Volume 3

STATUTES OF CALIFORNIA

AND DIGESTS OF MEASURES

2002

Constitution of 1879 as Amended

Measures Submitted to Vote of Electors,
Primary Election, March 5, 2002
and General Election, November 5, 2002

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

2001–02 Regular Session
2001–02 Second Extraordinary Session
2001–02 Third Extraordinary Session

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CHAPTER 513

An act to add Sections 115010.5 and 115261 to, and to add Article 19 (commencing with Section 115273) to Chapter 8 of Part 9 of Division 104 of, the Health and Safety Code, and to repeal Section 11 of Chapter 1309 of the Statutes of 1990, relating to radioactive waste.

[Approved by Governor September 12, 2002. Filed with Secretary of State September 12, 2002.]

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

SECTION 1. The Legislature finds and declares all of the following:

(a) Low-level radioactive waste generally is defined under federal and state laws as all radioactive waste other than spent reactor fuel, high level wastes from reprocessing spent fuel, certain high concentration wastes from nuclear weapons production, and uranium mill tailings. Low-level radioactive waste may include very long-lived materials, including plutonium-239, cesium-137, and strontium-90.

(b) In 1985, the federal Low-Level Waste Policy Amendments Act offered incentives to states to provide for the disposal of low-level radioactive waste, preferably through the establishment of regional compacts. California entered into the Southwestern Low-Level Radioactive Waste Disposal Compact (Section 115255 of the Health and Safety Code) in 1987 with the States of Arizona, North Dakota, and South Dakota. Under this compact, the state agreed to host a disposal facility for low-level radioactive wastes for the first 30 years

(c) Section (C) of Article 2 of the Southwestern Low-Level Radioactive Waste Disposal Compact defines the term ‘‘disposal’’ to mean the permanent isolation of low-level radioactive waste pursuant to requirements established by the Nuclear Regulatory Commission and the Environmental Protection Agency under applicable laws, or by a party state if that state hosts a disposal facility.

(d) Article 5 of the compact requires that a disposal facility shall be approved by the host state in accordance with its laws.

(e) In 1988, Ward Valley in San Bernardino County was selected as the proposed disposal site. Ward Valley is near the Colorado River, which is an important source of water for Arizona, Mexico, and California, providing a water supply to areas such as Blythe, the Imperial Valley, the Coachella Valley, and urban southern California. The design of the facility proposed the shallow land burial of containers of low-level radioactive waste.

(f) Ward Valley land is owned by the federal government and would have to be transferred to the state in order for the Ward Valley disposal facility to be constructed by the state’s licensee. The state made

significant efforts over a decade to obtain the land from the federal government. In 1999, the United States Bureau of Land Management formally denied the state's request to purchase the Ward Valley land for use as a low-level radioactive waste disposal site, citing, among other matters, questions about the suitability of the site and the extensive studies and tests that would be needed. The state and the state's licensee sued the federal government to require the federal government to transfer the land, but the court found in favor of the federal government.

(g) In the years since Ward Valley was selected as the disposal site, additional information has become available.

(h) There have been seven sites in the United States where commercial low-level radioactive wastes have been disposed. Radioactive materials have migrated in at least six of these sites, including one that has been designated as a site subject to the Comprehensive Environmental Response Compensation and Liability Act of 1980, as amended (42 U.S.C. Sec. 9601 et seq.), which is also known as the ''Federal Superfund Act.''

(i) There has been disagreement whether there is a hydrological connection between Ward Valley and the Colorado River. There also has been disagreement whether there is a potential for radioactive wastes disposed of at Ward Valley to contaminate the Colorado River. In 1984, the US Geological Survey found that the Ward Valley aquifer is a basin from which groundwater drains in the southerly direction toward the Colorado River.

(j) In 1993, the California Senate Office of Research released, ''How Safe? Issues Raised by the Proposed Ward Valley Low-Level Radioactive Waste Facility.'' The report raised the following issues: (1) the potential for waste migration and groundwater contamination, (2) the adequacy of shallow land burial as a disposal method, (3) the lack of consideration of measures to minimize waste disposal, (4) the understatement of the risks of the waste stream, (5) lack of a redundant system for waste containment, (6) the site operator's track record, (7) the potential for importation of out-of-compact wastes, and (8) problems with the low-level radioactive waste classification scheme.

(k) The Ward Valley site, subsequent to its selection as a prospective location for a radioactive waste disposal facility, was designated as critical habitat for the desert tortoise, a threatened species under the endangered species act.

(*l*) The Ward Valley land is considered sacred by several Native American tribes.

(m) In 2000, at the request of Governor Gray Davis, Richard Atkinson, President of the University of California, chaired a committee that prepared a report entitled, ''Management and Disposal of California's Low-Level Radioactive Waste.'' The report described the

four main options: (1) continue the status quo, (2) divide, manage, and dispose of the waste stream by half-life, allowing different criteria to be applied to the design and disposal for each type of waste, (3) build an "Assured Isolation Facility" with the commitment to monitor and maintain the facility until the wastes can be acceptably abandoned or managed in a different manner, and (4) design, site, license, and construct a new disposal facility or relicense an existing disposal facility as a low-level radioactive waste facility. The report did not make recommendations on which option should be adopted.

(n) In 2002, review of the state's licensee's application for renewal of the Ward Valley license was suspended by the State Department of Health Services pending the outcome of litigation related to the license. The department reserved its authority to review the request for renewal, including the requirement that the application for renewal be filed in a timely manner.

SEC. 2. The Legislature further finds and declares all of the following:

(a) Given the many problems, concerns, and issues attached to the Ward Valley site and the lack of progress toward construction, it is an appropriate time for the state to reevaluate how it intends to provide for disposal of low-level radioactive waste and to carry out its fiduciary responsibilities to protect public health, the economy, and the environment.

(b) Because of the need to protect public health and the environment, it is appropriate for the state to (1) prohibit shallow land burial of low-level radioactive waste because of the potential for the migration of radioactive waste beyond the site and to groundwater, and (2) require that a facility be designed and constructed to permanently isolate the radioactive waste to protect public health and the environment.

(c) Because of the immense importance of the Colorado River to California, Arizona, and Mexico, it would be inappropriate for the State of California to further consider the proposed Ward Valley low-level radioactive waste disposal site. Thus a low-level radioactive waste disposal facility should be sited elsewhere.

(d) A low-level radioactive waste disposal facility should also be sited to comply with state and federal environmental laws and to recognize the importance of sacred Indian lands.

(e) The Nuclear Regulatory Commission has established standards for the management and disposal of low-level radioactive waste. The state enforces those standards through an agreement with the commission. These standards contain requirements, including the performance objectives for radiation exposure, for the design, operation, and closure of a near-surface disposal facility.

(f) The state may establish alternative standards for the design of a disposal facility, if those standards would, at a minimum, comply with the performance objectives for radiation exposure established by the Nuclear Regulatory Commission.

(g) It is the intent of the Legislature to establish standards for the disposal of low-level radioactive waste to permanently isolate low-level radioactive waste, with the goal of protecting public health and the environment.

SEC. 3. Section 115010.5 is added to the Health and Safety Code, to read:

115010.5. The department shall, by regulation, establish and collect a fee for the issuance or renewal of a license to dispose of low-level radioactive waste pursuant to this chapter. The fees collected shall be sufficient to cover the state's cost in reviewing the application, issuing or renewing the license, and inspecting and conducting oversight of the licensee.

SEC. 4. Section 115261 is added to the Health and Safety Code, to read:

115261. (a) The department may not issue a license to dispose of low-level radioactive waste pursuant to this chapter, or renew a license that has been issued by the department pursuant to this chapter, unless the department determines that the siting, design, operation, and closure of the facility will, at a minimum, comply with the performance requirements and objectives of the Nuclear Regulatory Commission specified in Part 61 of Title 10 of the Code of Federal Regulations.

(b) The department may not issue a license to dispose of low-level radioactive waste pursuant to this chapter, or renew a license that has been issued by the department pursuant to this chapter, unless the disposal facility is sited, designed, constructed, and operated to do all of the following:

(1) Consist of multiple, engineered barriers to provide for the retention of the radioactive waste within the engineered barriers to last not less than 500 years, using best available technology.

(2) Provide visual inspection or remote monitoring to detect potential or actual releases of low-level radioactive waste from the engineered barriers.

(3) Provide methods to prevent potential releases or remediate actual releases of low-level radioactive waste from the engineered barriers when monitoring detects potential or actual releases.

(4) Be sited in a location and with soils and hydrology that, if the engineered barriers fail, the natural site characteristics would minimize migration of radioactive materials.

(c) A facility for the disposal of low-level radioactive waste may not use shallow land burial.

(d) (1) The department may issue a license to dispose of low-level radioactive waste pursuant to this chapter only if the department determines there is a preponderance of scientific evidence that there is not a hydrologic pathway whereby the Colorado River or any other agricultural or drinking water source could be contaminated with radioactive waste and harm public health or the environment.

(2) The proposed Ward Valley low-level radioactive disposal site in San Bernardino County may not serve as the state's low-level radioactive disposal facility for purposes of Article 5 of the compact.

(3) The state may not accept ownership or any other property rights to the site of the Ward Valley low-level radioactive waste disposal facility.

(e) For the purposes of this section, the following terms have the following meanings:

(1) ''Commission'' means the United States Nuclear Regulatory Commission.

(2) ''Compact'' means the Southwestern Low-Level Radioactive Waste Disposal Compact described in Section 115255.

(3) ''Department'' means the Department of Health Services.

(4) ''Low-level radioactive waste'' has the same meaning as defined in Article 2 of the compact.

(5) ''Low-level radioactive waste disposal facility,'' or ''facility'' means all contiguous land and structures, other appurtenances, and improvements, on the land used for the disposal of low-level radioactive waste.

(6) ''Shallow land burial'' means the disposal of low-level radioactive waste in or within the upper 30 meters of the earth's surface without the use of additional confinement by engineered barriers. Shallow land burial does not include the disposal of low-level radioactive waste if the disposal facility meets the requirements of subdivisions (b) and (c).

(f) The provisions of this section are severable. If any provision of this section 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. 5. Section 11 of Chapter 1309 of the Statutes of 1990 is repealed.

SEC. 6. Article 19 (commencing with Section 115273) is added to Chapter 8 of Part 9 of Division 104 of the Health and Safety Code, to read:

Article 19. Radioactive Waste Reduction

115273. In implementing this chapter, the department, consistent with other requirements imposed by this chapter to protect public health and safety, shall promote the reduction of low-level radioactive waste generated, both in volume and radioactivity, by encouraging waste reduction practices, including, but not limited to, all of the following:

(a) The minimization of waste produced by employing best practices to reduce the amount of contaminated materials;

(b) The substitution and use of nonradioactive materials or radioactive materials with shorter radioactive half-lives; and

(c) The compaction of low-level radioactive waste to reduce the volume of waste that must be transported and disposed of in the state.

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.

CHAPTER 514

An act to amend Sections 8670.37.58, 8670.40, 8670.54, and 8670.55 of, and to add Sections 8670.41 and 8670.42 to, the Government Code, relating to oil spills.

[Approved by Governor September 12, 2002. Filed with Secretary of State September 12, 2002.]

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

SECTION 1. Section 8670.37.58 of the Government Code, as added by Section 35 of Chapter 748 of the Statutes of 2001, is amended to read:

8670.37.58. (a) A nontank vessel required to have a contingency plan pursuant to this chapter shall not enter marine waters of the state unless the nontank vessel owner or operator has provided to the administrator evidence of financial responsibility that demonstrates, to the administrator's satisfaction, the ability to pay at least three hundred million dollars ($300,000,000) to cover damages caused by a spill, and

the owner or operator of the nontank vessel has obtained a certificate of financial responsibility from the administrator for the nontank vessel.

(b) Notwithstanding subdivision (a), the administrator may establish a lower standard of financial responsibility for a nontank vessel that has a carrying capacity of 6,500 barrels of oil or less, or for a nontank vessel that is owned and operated by California or a federal agency and has a carrying capacity of 7,500 barrels of oil or less. The standard shall be based upon the quantity of oil that can be carried by the nontank vessel and the risk of an oil spill into marine waters. The administrator shall not set a standard that is less than the expected cleanup costs and damages from an oil spill into marine waters.

(c) The administrator may adopt regulations to implement this section.

(d) This section shall remain in effect only until January 1, 2006, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2006, deletes or extends that date.

SEC. 2. Section 8670.37.58 of the Government Code, as added by Section 36 of Chapter 748 of the Statutes of 2001, is amended to read:

8670.37.58. (a) A nontank vessel, required to have a contingency plan pursuant to this chapter, shall not enter marine waters of the state unless the nontank vessel owner or operator has provided to the administrator evidence of financial responsibility that demonstrates, to the administrator's satisfaction, the ability to pay at least three hundred million dollars ($300,000,000) to cover damages caused by a spill, and the owner or operator of the nontank vessel has obtained a certificate of financial responsibility from the administrator for the nontank vessel.

(b) The administrator may adopt regulations to implement this section.

(c) This section shall become operative on January 1, 2006.

SEC. 3. Section 8670.40 of the Government Code is amended to read:

8670.40. (a) The State Board of Equalization shall collect a fee in an amount determined by the administrator to be sufficient to carry out the purposes set forth in subdivision (e), and a reasonable reserve for contingencies. The annual assessment may not exceed five cents ($0.05) per barrel of crude oil or petroleum products.

(b) (1) The oil spill prevention and administration fee shall be imposed upon every person owning crude oil at the time that the crude oil is received at a marine terminal from within or outside the state, and upon every person owning petroleum products at the time that those petroleum products are received at a marine terminal from outside this state. The fee shall be collected by the marine terminal operator from the owner of the crude oil or petroleum products based on each barrel of crude oil or petroleum products so received by means of a vessel

operating in, through, or across the marine waters of the state. In addition, every operator of a pipeline shall pay the oil spill prevention and administration fee for each barrel of crude oil originating from a production facility in marine waters and transported in the state by means of a pipeline operating across, under, or through the marine waters of the state. The fees shall be remitted to the board by the terminal or pipeline operator on the 25th day of the month based upon the number of barrels of crude oil or petroleum products received at a marine terminal or transported by pipeline during the preceding month. No fee shall be imposed pursuant to this section with respect to any crude oil or petroleum products if the person who would be liable for that fee, or responsible for its collection, establishes that the fee has been collected by a terminal operator registered under this chapter or paid to the board with respect to the crude oil or petroleum product.

(2) Every owner of crude oil or petroleum products is liable for the fee until it has been paid to the board, except that payment to a marine terminal operator registered under this chapter is sufficient to relieve the owner from further liability for the fee.

(3) On or before January 20, the administrator shall annually prepare a plan that projects revenues and expenses over three fiscal years, including the current year. Based on the plan, the administrator shall set the fee so that projected revenues, including any interest, are equivalent to expenses as reflected in the current Budget Act and in the proposed budget submitted by the Governor. In setting the fee, the administrator may allow for a surplus if the administrator finds that revenues will be exhausted during the period covered by the plan or that the surplus is necessary to cover possible contingencies.

(c) The moneys collected pursuant to subdivision (a) shall be deposited into the fund.

(d) The board shall collect the fee and adopt regulations for implementing the fee collection program.

(e) The fee described in this section shall be collected solely for all of the following purposes:

(1) To implement oil spill prevention programs through rules, regulations, leasing policies, guidelines, and inspections and to implement research into prevention and control technology.

(2) To carry out studies that may lead to improved oil spill prevention and response.

(3) To finance environmental and economic studies relating to the effects of oil spills.

(4) To reimburse the member agencies of the State Interagency Oil Spill Committee for costs arising from implementation of this chapter, Article 3.5 (commencing with Section 8574.1) of Chapter 7, and

Division 7.8 (commencing with Section 8750) of the Public Resources Code.

(5) To implement, install, and maintain emergency programs, equipment, and facilities to respond to, contain, and clean up oil spills and to ensure that those operations will be carried out as intended.

(6) To respond to an imminent threat of a spill in accordance with the provisions of Section 8670.62 pertaining to threatened discharges. The cumulative amount of any expenditure for this purpose shall not exceed the amount of one hundred thousand dollars ($100,000) in any fiscal year unless the administrator receives the approval of the Director of Finance and notification is given to the Joint Legislative Budget Committee. Commencing with the 1993–94 fiscal year, and each fiscal year thereafter, it is the intent of the Legislature that the annual Budget Act contain an appropriation of one hundred thousand dollars ($100,000) from the fund for the purpose of allowing the administrator to respond to threatened oil spills.

(7) To reimburse the board for costs incurred to implement this chapter and to carry out Part 24 (commencing with Section 46001) of Division 2 of the Revenue and Taxation Code.

(f) The moneys deposited in the fund shall not be used for responding to an oil spill.

SEC. 3.5. Section 8670.40 of the Government Code is amended to read:

8670.40. (a) The State Board of Equalization shall collect a fee in an amount determined by the administrator to be sufficient to carry out the purposes set forth in subdivision (e), and a reasonable reserve for contingencies. The annual assessment may not exceed five cents ($0.05) per barrel of crude oil or petroleum products.

(b) (1) The oil spill prevention and administration fee shall be imposed upon every person owning crude oil at the time that the crude oil is received at a marine terminal from within or outside the state, and upon every person owning petroleum products at the time that those petroleum products are received at a marine terminal from outside this state. The fee shall be collected by the marine terminal operator from the owner of the crude oil or petroleum products based on each barrel of crude oil or petroleum products so received by means of a vessel operating in, through, or across the marine waters of the state. In addition, every operator of a pipeline shall pay the oil spill prevention and administration fee for each barrel of crude oil originating from a production facility in marine waters and transported in the state by means of a pipeline operating across, under, or through the marine waters of the state. The fees shall be remitted to the board by the terminal or pipeline operator on the 25th day of the month based upon the number of barrels of crude oil or petroleum products received at a marine

terminal or transported by pipeline during the preceding month. No fee shall be imposed pursuant to this section with respect to any crude oil or petroleum products if the person who would be liable for that fee, or responsible for its collection, establishes that the fee has been collected by a terminal operator registered under this chapter or paid to the board with respect to the crude oil or petroleum product.

(2) Every owner of crude oil or petroleum products is liable for the fee until it has been paid to the board, except that payment to a marine terminal operator registered under this chapter is sufficient to relieve the owner from further liability for the fee.

(3) On or before January 20, the administrator shall annually prepare a plan that projects revenues and expenses over three fiscal years, including the current year. Based on the plan, the administrator shall set the fee so that projected revenues, including any interest, are equivalent to expenses as reflected in the current Budget Act and in the proposed budget submitted by the Governor. In setting the fee, the administrator may allow for a surplus if the administrator finds that revenues will be exhausted during the period covered by the plan or that the surplus is necessary to cover possible contingencies.

(c) The moneys collected pursuant to subdivision (a) shall be deposited into the fund.

(d) The board shall collect the fee and adopt regulations for implementing the fee collection program.

(e) The fee described in this section shall be collected solely for all of the following purposes:

(1) To implement oil spill prevention programs through rules, regulations, leasing policies, guidelines, and inspections and to implement research into prevention and control technology.

(2) To carry out studies that may lead to improved oil spill prevention and response.

(3) To finance environmental and economic studies relating to the effects of oil spills.

(4) To reimburse the member agencies of the State Interagency Oil Spill Committee for costs arising from implementation of this chapter, Article 3.5 (commencing with Section 8574.1) of Chapter 7, and Division 7.8 (commencing with Section 8750) of the Public Resources Code.

(5) To implement, install, and maintain emergency programs, equipment, and facilities to respond to, contain, and clean up oil spills and to ensure that those operations will be carried out as intended.

(6) To respond to an imminent threat of a spill in accordance with the provisions of Section 8670.62 pertaining to threatened discharges. The cumulative amount of any expenditure for this purpose shall not exceed the amount of one hundred thousand dollars ($100,000) in any fiscal

year unless the administrator receives the approval of the Director of Finance and notification is given to the Joint Legislative Budget Committee. Commencing with the 1993–94 fiscal year, and each fiscal year thereafter, it is the intent of the Legislature that the annual Budget Act contain an appropriation of one hundred thousand dollars ($100,000) from the fund for the purpose of allowing the administrator to respond to threatened oil spills.

(7) To reimburse the board for costs incurred to implement this chapter and to carry out Part 24 (commencing with Section 46001) of Division 2 of the Revenue and Taxation Code.

(8) To reimburse the costs incurred by the State Lands Commission in implementing the Oil Transfer and Transportation Emission and Risk Reduction Act of 2002 (Division 9 (commencing with Section 8780) of the Public Resources Code).

(f) The moneys deposited in the fund shall not be used for responding to an oil spill.

SEC. 4. Section 8670.41 is added to the Government Code, to read:

8670.41. (a) The administrator shall charge a nontank vessel owner or operator a reasonable fee, to be collected with each application to obtain a certificate of financial responsibility, in an amount that is based upon the administrator's costs in implementing this chapter relating to nontank vessels. Before January 1, 2005, the fee shall be two thousand five hundred dollars ($2,500), or less.

(b) The administrator may charge a reduced fee under this section for nontank vessels determined by the administrator to pose a reduced risk of pollution, including, but not limited to, vessels used for research or training and vessels that are moored permanently or rarely move.

(c) The administrator shall deposit all revenue derived from the fees imposed under this section in the Oil Spill Prevention and Administration Fund established in the State Treasury under Section 8670.38.

(d) Revenue derived from the fees imposed under this section may be spent for the purposes listed in subdivision (e) of Section 8670.40, and may not be used for responding to an oil spill.

SEC. 5. Section 8670.42 is added to the Government Code, to read:

8670.42. The Department of Fish and Game shall contract with the Department of Finance for the preparation of a detailed report that shall be submitted on or before January 1, 2005, to the Governor and the Legislature on the financial basis and programmatic effectiveness of the state's oil spill prevention, response, and preparedness program. This report shall include an analysis of all of the oil spill prevention, response, and preparedness program's major expenditures, fees and fines collected, staffing and equipment levels, spills responded to, and other relevant issues. The report shall recommend measures to improve the

efficiency and effectiveness of the state's oil spill prevention, response, and preparedness program, including, but not limited to, measures to modify existing contingency plan requirements, to improve protection of sensitive shoreline sites, and to ensure adequate and equitable funding for the state's oil spill prevention, response, and preparedness program.

SEC. 6. Section 8670.54 of the Government Code is amended to read:

8670.54. (a) The Oil Spill Technical Advisory Committee, hereafter in this article the committee, is hereby established to provide public input and independent judgment of the actions of the administrator and the State Interagency Oil Spill Committee. The committee shall consist of ten members, of whom six shall be appointed by the Governor, two by the Speaker of the Assembly, and two by the Senate Rules Committee. The appointments shall be made in the following manner:

(1) The Speaker of the Assembly, and Senate Rules Committee shall each appoint members who shall be representatives of the public.

(2) The Governor shall appoint a member who has a demonstrable knowledge of marine transportation.

(3) The Speaker of the Assembly and the Senate Rules Committee shall each appoint a member who has demonstrable knowledge of environmental protection and the study of ecosystems.

(4) The Governor shall appoint a member who has served as a local government elected official or who has worked for a local government.

(5) The Governor shall appoint a member who has experience in oil spill response and prevention programs.

(6) The Governor shall appoint a member who has been employed in the petroleum industry.

(7) The Governor shall appoint a member who has worked in state government.

(8) The Governor shall appoint a member who has demonstrable knowledge of the dry cargo vessel industry.

(b) The committee shall meet as often as required, but at least twice per year. Members shall be paid one hundred dollars ($100) per day for each meeting and all necessary travel expenses at state per diem rates.

(c) The administrator and any personnel the administrator determines to be appropriate shall serve as staff to the committee.

(d) A chairman and vice chairman shall be elected by a majority vote of the committee.

SEC. 7. Section 8670.55 of the Government Code is amended to read:

8670.55. (a) The committee shall provide recommendations to the administrator, the State Lands Commission, the California Coastal Commission, the San Francisco Bay Conservation and Development

Commission, and the State Interagency Oil Spill Committee, on any provision of this chapter including the promulgation of all rules, regulations, guidelines, and policies.

(b) The committee may, at its own discretion, study, comment on, or evaluate, any aspect of oil spill prevention and response in the state. To the greatest extent possible, these studies shall be coordinated with studies being done by the federal government, the administrator, the State Lands Commission, the State Water Resources Control Board, and other appropriate state and international entities. Duplication with the efforts of other entities shall be minimized.

(c) The committee may attend any drills called pursuant to Section 8601.10 or any oil spills, if practicable.

(d) The committee shall report biennially to the Governor and the Legislature on its evaluation of oil spill response and preparedness programs within the state and may prepare and send any additional reports it determines to be appropriate to the Governor and the Legislature.

(e) On or before August 1, 2005, the committee shall review the Department of Finance report required under Section 8670.42 and prepare and submit to the Governor and the Legislature comments on the report, including, but not limited to, recommendations for improving the state's oil spill prevention, response, and preparedness program.

SEC. 8. Section 3.5 of this bill incorporates amendments to Section 8670.40 of the Government Code proposed by both this bill and AB 2083. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2003, (2) each bill amends Section 8670.40 of the Government Code, and (3) this bill is enacted after AB 2083, in which case Section 3 of this bill shall not become operative.

SEC. 9. 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.

CHAPTER 515

An act to amend Sections 25620, 25620.1, 25620.2, 25620.3, 25620.5, 25620.7, 25620.8, 25648, 25648.4, and 25684 of, to add

Section 25620.10 to, and to add and repeal Section 25620.9 of, the Public Resources Code, to amend Sections 381, 383.5, 394.25, and 445 of, to add Sections 353.2, 383.6, and 2826.5 to, to add and repeal Section 2826.6 of, and to repeal and amend Section 399.7 of, the Public Utilities Code, relating to energy.

[Approved by Governor September 12, 2002. Filed with Secretary of State September 12, 2002.]

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

SECTION 1. Section 25620 of the Public Resources Code is amended to read:

25620. The Legislature hereby finds and declares all of the following:

(a) It is in the best interests of the people of this state that the quality of life of its citizens be improved by providing environmentally sound, safe, reliable, and affordable energy services and products.

(b) To improve the quality of life of this state's citizens, it is proper and appropriate for the state to undertake public interest energy research, development, and demonstration projects that are not adequately provided for by competitive and regulated energy markets.

(c) Public interest energy research, demonstration, and development projects should advance energy science or technologies of value to California citizens and should be consistent with the policies of Section 399.7 of the Public Utilities Code.

(d) The commission should use its adopted ''Five-Year Investment Plan, 2002 Through 2006 for the Public Interest Energy Research (PIER) Program (Volume 1)'' (P600-01-004a, March 1, 2001) to ensure compliance with the policies and provisions of Section 399.7 of the Public Utilities Code in the administration of public interest energy research, demonstration, and development programs.

SEC. 2. Section 25620.1 of the Public Resources Code is amended to read:

25620.1. (a) The commission shall develop, implement, and administer the Public Interest Research, Development, and Demonstration Program that is hereby created. The program shall include a full range of research, development, and demonstration activities that, as determined by the commission, are not adequately provided for by competitive and regulated markets. The commission shall administer the program consistent with the policies of Section 399.7 of the Public Utilities Code.

(b) The goal of the program is to provide public value for the benefit of California and its citizens through the development of technologies which will improve environmental quality, enhance system reliability,

increase efficiency of energy-using technologies, lower system costs, or provide other tangible benefits.

(c) To achieve the goal established in subdivision (b), the commission shall adopt a portfolio approach for the program that does all of the following:

(1) Effectively balances the risks, benefits, and time horizons for various activities and investments that will provide tangible benefits for California electricity ratepayers.

(2) Emphasizes innovative energy supply and end use technologies, focusing on their reliability, affordability, and environmental attributes.

(3) Includes projects that have the potential to enhance transmission and distribution capabilities.

(4) Includes projects that have the potential to enhance the reliability, peaking power, and storage capabilities of renewable energy.

(5) Demonstrates a balance of benefits to all sectors that contribute to the funding under Section 399.8 of the Public Utilities Code.

(6) Addresses key technical and scientific barriers.

(7) Demonstrates a balance between short-term, mid-term, and long-term potential.

(8) Ensures that prior, current, and future research not be unnecessarily duplicated.

(9) Provides for the future market utilization of projects funded through the program.

(d) The commission shall review the portfolio adopted pursuant to subdivision (c) in accordance with the "Five-Year Investment Plan, 2002 Through 2006 for the Public Interest Energy Research (PIER) Program (Volume 1)" (P600-01-004a, March 1, 2001).

(e) The term "award," as used in this chapter, may include, but is not limited to, contracts, grants, interagency agreements, loans, and other financial agreements designed to fund public interest research, demonstration, and development projects or programs.

SEC. 3. Section 25620.2 of the Public Resources Code is amended to read:

25620.2. (a) To ensure the efficient implementation and administration of the Public Interest Research, Development, and Demonstration Program, the commission shall do both of the following:

(1) Develop procedures for the solicitation of award applications for project or program funding, and to ensure efficient program management.

(2) Evaluate and select programs and projects, based on merit, that will be funded under the program.

(b) The commission shall adopt regulations to implement the program, in accordance with the following procedures:

(1) Prepare a preliminary text of the proposed regulation and provide a copy of the preliminary text to any person requesting a copy.

(2) Provide public notice of the proposed regulation to any person who has requested notice of the regulations prepared by the commission. The notice shall contain all of the following:

(A) A clear overview explaining the proposed regulation.

(B) Instructions on how to obtain a copy of the proposed regulations.

(C) A statement that if a public hearing is not scheduled for the purpose of reviewing a proposed regulation, any person may request, not later than 15 days prior to the close of the written comment period, a public hearing conducted in accordance with commission procedures.

(3) Accept written public comments for 30 calendar days after providing the notice required in paragraph (2).

(4) Certify that all written comments were read and considered by the commission.

(5) Place all written comments in a record that includes copies of any written factual support used in developing the proposed regulation, including written reports and copies of any transcripts or minutes in connection with any public hearings on the adoption of the regulation. The record shall be open to public inspection and available to the courts.

(6) Provide public notice of any substantial revision of the proposed regulation at least 15 days prior to the expiration of the deadline for public comments and comment period using the procedures provided in paragraph (2).

(7) Conduct public hearings, if a hearing is requested by an interested party, that shall be conducted in accordance with commission procedures.

(8) Adopt any proposed regulation at a regularly scheduled and noticed meeting of the commission. The regulation shall become effective immediately unless otherwise provided by the commission.

(9) Publish any adopted regulation in a manner that makes copies of the regulation easily available to the public. Any adopted regulation shall also be made available on the Internet. The commission shall transmit a copy of an adopted regulation to the Office of Administrative Law for publication, or, if the commission determines that printing the regulation is impractical, an appropriate reference as to where a copy of the regulation may be obtained.

(10) Notwithstanding any other provision of law, this subdivision provides an interim exception from the requirements of Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code for regulations required to implement Sections 25620.1 and 25620.2 that are adopted under the procedures specified in this subdivision.

(11) This subdivision shall become inoperative on January 1, 2007, unless a later enacted statute deletes or extends that date. However, after January 1, 2007, the commission is not required to repeat any procedural step in adopting a regulation that has been completed before January 1, 2007, using the procedures specified in this subdivision.

SEC. 4. Section 25620.3 of the Public Resources Code is amended to read:

25620.3. (a) The commission may, consistent with the requirements of this chapter, provide awards to any individual or entity for planning, implementation, and administration of projects or programs selected pursuant to Section 25620.5.

(b) The commission may provide an award to a project or program that includes a group of related projects, or to a party who aggregates projects that directly benefit from the award.

(c) The commission may establish multiparty agreements. In a multiparty agreement, the commission may be a signatory to a common agreement among two or more parties. These agreements include, but are not limited to, cofunding, leveraged research, collaborations, and membership arrangements. If the commission enters into these agreements, it shall be a party to these agreements and may share in the roles, responsibilities, risks, investments, and results.

(d) The commission may issue awards that include the ability to make advance payments to prime contractors, to enable them to make advance payments to a subcontractor that is a federal agency, national laboratory, or state entity, on the condition that the subcontract is binding and enforceable and includes specific performance milestones.

(e) The commission may issue awards that include the ability to assign tasks on a work authorization basis.

(f) Prior to making any award pursuant to this chapter for a research, development, or demonstration program or project, the commission shall identify the expected costs and any qualitative or quantitative benefits of the proposed program or project.

SEC. 5. Section 25620.5 of the Public Resources Code is amended to read:

25620.5. (a) The commission may solicit applications for awards, using a sealed competitive bid, competitive negotiation process, commission-issued intradepartmental master agreement, the methods for selection of professional services firms set forth in Chapter 10 (commencing with Section 4525) of Division 5 of Title 1 of the Government Code, interagency agreement, single source, or sole source method. When scoring teams are convened to review and score proposals, the scoring teams may include persons not employed by the commission, as long as employees of the state constitute no less than 50 percent of the membership of the scoring team. A person participating

on a scoring team may not have any conflict of interest with respect to the proposal before the scoring team.

(b) A sealed bid method may be used when goods and services to be acquired can be described with sufficient specificity so that bids can be evaluated against specifications and criteria set forth in the solicitation for bids.

(c) The commission may use a competitive negotiation process in any of the following circumstances:

(1) Whenever the desired award is not for a fixed price.

(2) Whenever project specifications cannot be drafted in sufficient detail so as to be applicable to a sealed competitive bid.

(3) Whenever there is a need to compare the different price, quality, and structural factors of the bids submitted.

(4) Whenever there is a need to afford bidders an opportunity to revise their proposals.

(5) Whenever oral or written discussions with bidders concerning the technical and price aspects of their proposals will provide better results to the state.

(6) Whenever the price of the award is not the determining factor.

(d) The commission may establish interagency agreements.

(e) The commission may provide awards on a single source basis by choosing from among two or more parties or by soliciting multiple applications from parties capable of supplying or providing similar goods or services. The cost to the state may be reasonable and the commission shall only enter into a single source agreement with a particular entity if the commission determines that it is in the state's best interests.

(f) The commission, in accordance with subdivision (g) and in consultation with the Department of General Services, may provide awards on a sole source basis when the cost to the state is reasonable and the commission makes any of the following determinations:

(1) The proposal was unsolicited and meets the evaluation criteria of this chapter.

(2) The expertise, service, or product is unique.

(3) A competitive solicitation would frustrate obtaining necessary information, goods, or services in a timely manner.

(4) The award funds the next phase of a multiphased proposal and the existing agreement is being satisfactorily performed.

(5) When it is determined by the commission to be in the best interests of the state.

(g) The commission may not use a sole source basis for an award pursuant to subdivision (f), unless both of the following conditions are met:

(1) The commission, at least 30 days prior to taking an action pursuant to subdivision (f), notifies the Joint Legislative Budget Committee, in writing, of its intent to take the proposed action.

(2) The Joint Legislative Budget Committee either approves or does not disapprove the proposed action within 30 days from the date of notification required by paragraph (1).

(h) The commission shall submit semiannual reports to the Legislative Analyst and to the appropriate fiscal and policy committees of the Legislature that review bills relating to energy and public utilities. The reports shall contain an evaluation of the progress and status of the implementation of this section. In addition, the reports shall identify each instance in which an exemption authorized by subdivision (b) of Section 25620.3 was utilized.

(i) The provisions of this section are severable. If any provision of this section or its application is held to be invalid, that invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.

SEC. 6. Section 25620.7 of the Public Resources Code is amended to read:

25620.7. (a) The commission may contract for, or through interagency agreement obtain, technical, scientific, or administrative services or expertise from one or more entities, to support the program. Funding for this purpose shall be made from money in the Public Interest Research, Development, and Demonstration Fund.

(b) The commission may select the services or expertise described in subdivision (a), pursuant to Section 25620.5. In the event that contracts or interagency agreements have been made to multiple entities and their subcontractors for similar purposes, the commission may select from among those entities the particular expertise needed for a specified type of work. Selection of the particular expertise may be based solely on a review of qualifications, including the specific expertise required, availability of the expertise, or access to a resource of special relevance to the work, including, but not limited to, a database, model, technical facility, or a collaborative or institutional affiliation that will expedite the quality and performance of the work.

SEC. 7. Section 25620.8 of the Public Resources Code is amended to read:

25620.8. The commission shall prepare and submit to the Legislature an annual report, not later than March 31 of each year, on awards made pursuant to this chapter. The report shall include information on the names of award recipients, the amount of awards, and the types of projects funded, an evaluation of the success of any funded projects, and any recommendations for improvements in the program. The report shall set forth the actual costs of programs or projects funded

by the commission, the results achieved, and how the actual costs and results compare to the expected costs and benefits. The commission shall establish procedures for protecting confidential or proprietary information and shall consult with all interested parties in the preparation of the annual report.

SEC. 8. Section 25620.9 is added to the Public Resources Code, to read:

25620.9. (a) Not later than three months after the enactment of this section, the commission shall designate a panel of independent experts with special expertise in public interest research, development, and demonstration programs. In order to ensure continuity in the evaluation of the public interest energy research, demonstration, and development projects, the commission, when practicable, shall select experts that served on prior independent review panels. The panel shall conduct a comprehensive evaluation of the program established pursuant to this chapter. The evaluation shall include a review of the public value of programs established pursuant to this chapter, including, but not limited to, the monetary and nonmonetary benefits to public health and the environment, and the benefit of providing funds for technology development that would otherwise not be funded.

(b) Not later than 15 months after the enactment of this section, the panel designated pursuant to subdivision (a) shall submit a preliminary report to the Governor and to the Legislature on its findings and recommendations on the implementation of the program established pursuant to this chapter. The panel, not later than 30 months after the enactment of this section, shall submit a final report to the Governor and to the Legislature, including any additional findings and recommendations regarding implementation of the program.

(c) This section shall remain in effect only until July 1, 2006, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2007, deletes or extends that date.

SEC. 9. Section 25620.10 is added to the Public Resources Code, to read:

25620.10. The commission shall regularly convene an advisory board that shall make recommendations to guide the commission's selection of programs and projects to be funded under this chapter. The advisory board shall be made up of representatives from the Public Utilities Commission, consumer organizations, environmental organizations, and electrical corporations subject to the funding requirements of Section 381 of the Public Utilities Code.

SEC. 10. Section 25648 of the Public Resources Code is amended to read:

25648. (a) The commission shall make loans, and research contract and grant awards, for purposes of making existing energy technologies

more efficient, cost-effective, and environmentally acceptable, and to research, develop, demonstrate, and commercialize new, cost-effective alternative sources of energy, technologies which displace conventional fuels, and energy efficiency and conservation devices.

(b) In selecting projects, the commission shall consider, but is not limited to, the list of opportunity technologies developed in the most current energy development report produced pursuant to Section 25604, or a subset of those opportunity technologies.

(c) The commission shall select the projects through competitive bid procedures, including, but not limited to, invitations for bids, requests for proposals, program opportunity notices, and multistep bids using preapplications, by demonstrating the need for sole source awards, or by evaluating small business grant and loan applications.

(d) The criteria for the selection of projects shall include, but not be limited to, all of the following factors:

(1) The potential of the project to reduce energy consumption or provide an alternative source of energy.

(2) The financial, technical, and management strength of the project applicant.

(3) The near-term and long-term feasibility of the project.

(4) The ability of the project technology to be used throughout California.

(5) The potential of the project for promoting diverse, secure, and resilient energy supplies.

(6) The potential of the project to displace petroleum.

(7) The potential of the project for reducing adverse environmental impacts.

(8) The potential of the project to stimulate economic development, employment, and tax revenues for California.

(9) The potential of the project for reducing short-term and long-term energy costs for the ratepayers of California.

(10) The need of the project for state financing.

(11) The ability of the project to attract private and other public investment.

(12) The investment payback period for the project.

(13) The probability of success in overcoming the risk of the project.

(14) The potential for stimulating small business competition in the field of alternative energy development.

(15) The ability of the project to generate needed community economic development for participating local jurisdictions.

(16) The extent of the applicant's financial participation.

(17) The degree of innovation of the project.

(18) Whether the project is, in general, consistent with the energy policies of California regarding the energy technologies and priorities as set forth in the biennial report of the commission.

(19) The cost of the project.

(e) The commission shall apply the criteria specified in subdivision (d) consistently within each competitive bid solicitation.

(f) Awards provided pursuant to this chapter are not subject to Article 4 (commencing with Section 10335) of Chapter 2 of Part 2 of Division 2 of the Public Contract Code.

SEC. 11. Section 25648.4 of the Public Resources Code is amended to read:

25648.4. The commission shall apply this chapter to research, development, demonstration, and commercialization projects that are not subject to Chapter 6 (commencing with Section 3800) of Division 3, Chapter 7.1 (commencing with Section 25620), and Chapter 7.8 (commencing with Section 25680).

SEC. 12. Section 25684 of the Public Resources Code is amended to read:

25684. (a) The commission shall make loans and repayable research contracts, and may provide primary research contracts funding from the account for the purposes of making energy technologies more efficient and cost-effective, and to develop new cost-effective alternative sources of energy. The commission shall select recipients through a procedure using an invitation for bids or a request for proposals. Each invitation for bids and request for proposals shall specify the criteria to be used in selecting projects for financing. The criteria shall include, but not be limited to, all of the following factors:

(1) The potential of the project to reduce consumption and increase the efficiency of nonrenewable energy sources and systems.

(2) The financial, technical, and management strength of the project applicant.

(3) The near-term and long-term feasibility of the project.

(4) The ability of the project technology to be used on other applications throughout California.

(5) The potential of the project for promoting diverse, secure, and resilient energy supplies.

(6) The potential of the project for reducing adverse environmental impacts.

(7) The potential of the project to stimulate economic development, employment, and tax revenues for California.

(8) The potential of the project for reducing short-term and long-term energy costs for the ratepayers of California.

(9) The need of the project for state financing.

(10) The ability of the project to garner private investment.

(11) The investment payback period for the project.

(12) The probability of success in overcoming the risk of the project.

(13) The potential for stimulating small business competition in the field of alternative energy development.

(14) The ability of the project to generate needed community economic development for participating local jurisdictions.

(15) The extent of the applicant's financial participation.

(16) The degree of innovation of the project.

(17) Whether the project is in general agreement with the energy policies of California regarding the energy technologies and priorities as set forth in the biennial report of the commission.

(b) Awards provided pursuant to this chapter are not subject to Article 4 (commencing with Section 10335) of Chapter 2 of Part 2 of Division 2 of the Public Contract Code.

SEC. 13. Section 353.2 is added to the Public Utilities Code, to read:

353.2. (a) As used in this article, ''ultra-clean and low-emission distributed generation'' means any electric generation technology that meets all of the following criteria:

(1) Commences initial operation between January 1, 2003, and December 31, 2005.

(2) Produces zero emissions during its operation or produces emissions during its operation that are equal to or less than the 2007 State Air Resources Board emission limits for distributed generation, except that technologies operating by combustion must operate in a combined heat and power application with a 60-percent system efficiency on a higher heating value.

(b) In establishing rates and fees, the commission may consider energy efficiency and emissions performance to encourage early compliance with air quality standards established by the State Air Resources Board for ultra-clean and low-emission distributed generation.

SEC. 14. Section 381 of the Public Utilities Code is amended to read:

381. (a) To ensure that the funding for the programs described in subdivision (b) and Section 382 are not commingled with other revenues, the commission shall require each electrical corporation to identify a separate rate component to collect the revenues used to fund these programs. The rate component shall be a nonbypassable element of the local distribution service and collected on the basis of usage. This rate component shall fall within the rate levels identified in subdivision (a) of Section 368.

(b) The commission shall allocate funds collected pursuant to subdivision (a), and any interest earned on collected funds, to programs that enhance system reliability and provide in-state benefits as follows:

(1) Cost-effective energy efficiency and conservation activities.

(2) Public interest research and development not adequately provided by competitive and regulated markets.

(3) In-state operation and development of existing and new and emerging renewable resource technologies defined as electricity produced from other than a conventional power source within the meaning of Section 2805, provided that a power source utilizing more than 25 percent fossil fuel may not be included.

(c) The Public Utilities Commission shall order the respective electrical corporations to collect and spend these funds, as follows:

(1) Cost-effective energy efficiency and conservation activities shall be funded at not less than the following levels commencing January 1, 1998, through December 31, 2001: for San Diego Gas and Electric Company a level of thirty-two million dollars ($32,000,000) per year; for Southern California Edison Company a level of ninety million dollars ($90,000,000) for each of the years l998, 1999, and 2000; fifty million dollars ($50,000,000) for the year 2001; and for Pacific Gas and Electric Company a level of one hundred six million dollars ($106,000,000) per year.

(2) Research, development, and demonstration programs to advance science or technology that are not adequately provided by competitive and regulated markets shall be funded pursuant to Section 399.8.

(3) In-state operation and development of existing and new and emerging renewable resource technologies shall be funded at not less than the following levels on a statewide basis: one hundred nine million five hundred thousand dollars ($109,500,000) per year for each of the years 1998, 1999, and 2000, and one hundred thirty-six million five hundred thousand dollars ($136,500,000) for the year 2001. To accomplish these funding levels over the period described herein the San Diego Gas and Electric Company shall spend twelve million dollars ($12,000,000) per year, the Southern California Edison Company shall expend no less than forty-nine million five hundred thousand dollars ($49,500,000) for the years 1998, 1999, and 2000, and no less than seventy-six million five hundred thousand dollars ($76,500,000) for the year 2001, and the Pacific Gas and Electric Company shall expend no less than forty-eight million dollars ($48,000,000) per year through the year 2001. Additional funding not to exceed seventy-five million dollars ($75,000,000) shall be allocated from moneys collected pursuant to subdivision (d) in order to provide a level of funding totaling five hundred forty million dollars ($540,000,000).

(4) Up to fifty million dollars ($50,000,000) of the amount collected pursuant to subdivision (d) may be used to resolve outstanding issues related to implementation of subdivision (a) of Section 374. Moneys

remaining after fully funding the provisions of this paragraph shall be reallocated for purposes of paragraph (3).

(5) Up to ninety million dollars ($90,000,000) of the amount collected pursuant to subdivision (d) may be used to resolve outstanding issues related to contractual arrangements in the Southern California Edison service territory stemming from the Biennial Resource Planning Update auction. Moneys remaining after fully funding the provisions of this paragraph shall be reallocated for purposes of paragraph (3).

(6) The funding of in-state operation and development of existing and new and emerging renewable resources technologies shall be made available pursuant to Section 399.8.

(d) Notwithstanding any other provisions of this chapter, the commission may allow entities subject to its jurisdiction to extend the period for competition transition charge collection up to three months beyond its otherwise applicable termination of December 31, 2001, so as to ensure that the aggregate portion of the research, environmental, and low-income funds allocated to renewable resources shall equal five hundred forty million dollars ($540,000,000) and that the costs specified in paragraphs (3), (4), and (5) of subdivision (c) are collected.

(e) Each electrical corporation shall allow customers to make voluntary contributions through their utility bill payments as either a fixed amount or a variable amount to support programs established pursuant to paragraph (3) of subdivision (b). Funds collected by electrical corporations for these purposes shall be forwarded in a timely manner to the appropriate fund as specified by the commission.

(f) For purposes of this article, ''emerging renewable technology'' means a new renewable technology, including, but not limited to, fuel cells using renewable fuels and photovoltaic technology, that is determined by the State Energy Resources Conservation and Development Commission to be emerging from research and development and that has significant commercial potential.

(g) The commission's authority to collect funds pursuant to this section, for purposes of paragraph (3) of subdivision (b), shall become inoperative on March 31, 2002.

SEC. 15. Section 383.5 of the Public Utilities Code is amended to read:

383.5. (a) It is the intent of the Legislature in establishing this program, to increase the amount of renewable electricity generated per year, so that it equals at least 17 percent of the total electricity generated for consumption in California.

(b) As used in this section, the following terms have the following meaning:

(1) ''In-state renewable electricity generation technology'' means a facility that meets all of the following criteria:

(A) The facility uses biomass, solar thermal, photovoltaic, wind, geothermal, fuel cells using renewable fuels, small hydroelectric generation of 30 megawatts or less, digester gas, municipal solid waste conversion, landfill gas, ocean wave, ocean thermal, or tidal current, and any additions or enhancements to the facility using that technology.

(B) The facility is located in the state or near the border of the state with the first point of connection to the Western Electricity Coordinating Council (WECC) transmission system located within this state.

(C) For the purposes of this subdivision, ''solid waste conversion'' means a technology that uses a noncombustion thermal process to convert solid waste to a clean burning fuel for the purpose of generating electricity, and that meets all of the following criteria:

(i) The technology does not use air or oxygen in the conversion process, except ambient air to maintain temperature control.

(ii) The technology produces no discharges of air contaminants or emissions, including greenhouse gases as defined in Section 42801 of the Health and Safety Code.

(iii) The technology produces no discharges to surface or groundwaters of the state.

(iv) The technology produces no hazardous wastes.

(v) To the maximum extent feasible, the technology removes all recyclable materials and marketable green waste compostable materials from the solid waste stream prior to the conversion process and the owner or operator of the facility certifies that the those materials will be recycled or composted.

(vi) The facility at which the technology is used is in compliance with all applicable laws, regulations, and ordinances.

(vii) The technology meets any other conditions established by the State Energy Resources Conservation and Development Commission.

(viii) The facility certifies that any local agency sending solid waste to the facility is in compliance with Division 30 (commencing with Section 40000) of the Public Resources Code, has reduced, recycled, or composted solid waste to the maximum extent feasible, and shall have been found by the California Integrated Waste Management Board to have diverted at least 30 percent of all solid waste through source reduction, recycling and composting.

(2) ''Report'' means the report entitled ''Investing in Renewable Electricity Generation in California'' (June 2001, Publication Number P500-00-022) submitted to the Governor and the Legislature by the State Energy Resources Conservation and Development Commission.

(3) ''Energy Commission'' means the State Energy Resources Conservation and Development Commission.

(c) (1) Twenty percent of the funds collected pursuant to paragraph (6) of subdivision (c) of Section 381 shall be used for programs that are

designed to improve the competitiveness of existing in-state renewable electricity generation technology facilities, and to secure for the state the environmental, economic, and reliability benefits that continued operation of those facilities will provide. Eligibility for incentives under this subdivision shall be limited to those technologies found eligible for funds by the Energy Commission pursuant to paragraphs (5), (6), and (8) of subdivision (c) of Section 399.6.

(2) Any funds used to support in-state renewable electricity generation technology facilities pursuant to this subdivision shall be expended in accordance with the provisions of the report, subject to all of the following requirements:

(A) Of the funding for existing renewable electricity generation technology facilities available pursuant to this subdivision, 75 percent shall be used to fund first tier technologies, including biomass and solar electric technologies and 25 percent shall be used to fund second tier wind technologies.

(B) The Energy Commission shall reexamine the tier structure as proposed in the report and adjust the structure to reflect market and contractual conditions. The Energy Commission shall also consider inflation when adjusting the structure.

(C) The Energy Commission shall establish a cents per kilowatthour production incentive, not to exceed the payment caps per kilowatthour established in the report, as those payment caps are revised in guidelines adopted by the commission, representing the difference between target prices and the market clearing price for electricity, if sufficient funds are available. If there are insufficient funds in any payment period to pay either the difference between the target and market clearing price or the payment caps, production incentives shall be based on the amount determined by dividing available funds by eligible generation. The market clearing price for electricity shall be determined by the Energy Commission based on the energy prices paid to nonutility power generators as authorized by the commission, or on otherwise available measures of market price. For the first tier biomass technologies, the Energy Commission shall establish a time-differentiated incentive structure that encourages plants to run the maximum feasible amount of time and that provides a higher incentive when the plants are receiving the lowest price. The Energy Commission may establish a different incentive rate within the same technology tier to account for discounted contracts.

(D) Facilities that are eligible to receive funding pursuant to this subdivision shall be registered in accordance with criteria developed by the Energy Commission and those facilities may not receive payments for any electricity produced that has any of the following characteristics:

(i) Is sold at monthly average rates equal to or greater than the applicable target price, as determined by the Energy Commission.

(ii) Is that portion of electricity generation attributable to the use of qualified agricultural biomass fuel, for a facility that is receiving fuel-based incentives through the Agricultural Biomass-to-Energy Incentive Grant Program established pursuant to Part 3 (commencing with Section 1101) of Division 1 of the Food and Agricultural Code. Notwithstanding subdivision (f) of Section 1104 of the Food and Agricultural Code, facilities that receive funding from the Agricultural Biomass-to-Energy Incentive Grant Program are eligible to receive funding pursuant to this subdivision.

(iii) Is used onsite or is sold to customers in a manner that excludes competitive transition charge payments, or is otherwise excluded from competitive transition charge payments.

(d) (1) Fifty-one and one-half percent of the funds collected pursuant to paragraph (6) of subdivision (c) of Section 381, shall be used for programs designed to foster the development of new in-state renewable electricity generation technology facilities, and to secure for the state the environmental, economic, and reliability benefits that continued operation of those facilities will provide.

(2) Any funds used for new in-state renewable electricity generation technology facilities pursuant to this subdivision shall be expended in accordance with the report, subject to all of the following requirements:

(A) In order to cover the above market costs of renewable resources as approved by the commission and selected by retail sellers to fulfill their obligations under Article 16 (commencing with Section 399.11), the Energy Commission shall award funds in the form of supplemental energy payments, subject to the following criteria:

(i) The Energy Commission may establish caps on supplemental energy payments. The caps shall be designed to provide for a viable energy market capable of achieving the goals of Article 16 (commencing with Section 399.11). The Energy Commission may waive application of the caps to accommodate a facility, if it is demonstrated to the satisfaction of the Energy Commission, that operation of the facility would provide substantial economic and environmental benefits to end use customers subject to the funding requirements of Section 381.

(ii) Supplemental energy payments shall be awarded only to facilities that are eligible for funding under this subdivision.

(iii) Supplemental energy payments awarded to facilities selected by an electrical corporation pursuant to Article 16 (commencing with Section 399.11) shall be paid for the lesser of 10 years, or the duration of the contract with the electrical corporation.

(iv) The Energy Commission shall reduce or terminate supplemental energy payments for projects that fail either to commence and maintain

operations consistent with the contractual obligations to an electrical corporation, or that fail to meet eligibility requirements.

(v) Funds shall be managed in an equitable manner in order for retail sellers to meet their obligation under Article 16 (commencing with Section 399.11).

(B) The Energy Commission may determine as part of a solicitation, that a facility that does not meet the definition of ''in-state renewable electricity generation technology'' facility solely because it is located outside the state, is eligible for funding under this subdivision if it meets both of the following requirements:

(i) It is located so that it is or will be connected to the Western Electricity Coordinating Council (WECC) transmission system.

(ii) It is developed with guaranteed contracts to sell its generation to end use customers subject to the funding requirements of Section 381, or to marketers that provide this guarantee for resale of the generation, for a period of time at least equal to the amount of time it receives incentive payments under this subdivision.

(C) Facilities that are eligible to receive funding pursuant to this subdivision shall be registered in accordance with criteria developed by the Energy Commission and those facilities may not receive payments for any electricity produced that has any of the following characteristics:

(i) Is sold under an existing long-term contract with an existing in-state electrical corporation if the contract includes fixed energy or capacity payments, except for that electricity that satisfies the provisions of subparagraph (C) of paragraph (1) of subdivision (c) of Section 399.6.

(ii) Is used onsite or is sold to customers in a manner that excludes competitive transition charge payments, or is otherwise excluded from competitive transition charge payments.

(iii) Is produced by a facility that is owned by an electrical corporation or a local publicly owned electric utility as defined in subdivision (d) of Section 9604.

(iv) Is a hydroelectric generation project that will require a new or increased appropriation of water under Part 2 (commencing with Section 1200) of Division 2 of the Water Code.

(D) Eligibility to compete for funds or to receive funds shall be contingent upon having to sell the output of the renewable electricity generation facility to customers subject to the funding requirements of Section 381.

(E) The Energy Commission may require applicants competing for funding to post a forfeitable bid bond or other financial guaranty as an assurance of the applicant's intent to move forward expeditiously with the project proposed. The amount of any bid bond or financial guaranty may not exceed 10 percent of the total amount of the funding requested by the applicant.

(F) In awarding funding, the Energy Commission may provide preference to projects that provide tangible demonstrable benefits to communities with a plurality of minority or low-income populations.

(3) Repowered existing facilities shall be eligible for funding under this subdivision if the capital investment to repower the existing facility equals at least 80 percent of the value of the repowered facility.

(4) Facilities engaging in the combustion of municipal solid waste or tires are not eligible for funding under this subdivision.

(5) Production incentives awarded under this subdivision prior to January 1, 2002, shall commence on the date that a project begins electricity production, provided that the project was operational prior to January 1, 2002, unless the Energy Commission finds that the project will not be operational prior to January 1, 2002, due to circumstances beyond the control of the developer. Upon making a finding that the project will not be operational due to circumstances beyond the control of the developer, the Energy Commission shall pay production incentives over a five-year period, commencing on the date of operation, provided that the date that a project begins electricity production may not extend beyond January 1, 2007.

(6) Facilities generating electricity from biomass energy shall be considered an in-state renewable electricity generation technology facility to the extent that they certify to the satisfaction of the Energy Commission that fuel utilization is limited to the following:

(A) Agricultural crops and agricultural wastes and residues.

(B) Solid waste materials such as waste pallets, crates, dunnage, manufacturing, and construction wood wastes, landscape or right-of-way tree trimmings, mill residues that are directly the result of the milling of lumber, and rangeland maintenance residues.

(C) Wood and wood wastes that meet all of the following requirements:

(i) Have been harvested pursuant to an approved timber harvest plan prepared in accordance with the Z'berg-Nejedly Forest Practice Act of 1973 (Ch. 8 (commencing with Sec. 4511), Pt. 2, Div. 4, P.R.C.).

(ii) Have been harvested for the purpose of forest fire fuel reduction or forest stand improvement.

(iii) Do not transport or cause the transportation of species known to harbor insect or disease nests outside zones of infestation or current quarantine zones, as identified by the Department of Food and Agriculture or the Department of Forestry and Fire Protection, unless approved by the Department of Food and Agriculture and the Department of Forestry and Fire Protection.

(e) (1) Seventeen and one-half percent of the funds collected pursuant to paragraph (6) of subdivision (c) of Section 381 shall be used

for a multiyear, consumer-based program to foster the development of emerging renewable technologies in distributed generation applications.

(2) Any funds used for emerging technologies pursuant to this subdivision shall be expended in accordance with the report, subject to all of the following requirements:

(A) Funding for emerging technologies shall be provided through a competitive, market-based process that shall be in place for a period of not less than five years, and shall be structured so as to allow eligible emerging technology manufacturers and suppliers to anticipate and plan for increased sale and installation volumes over the life of the program.

(B) The program shall provide monetary rebates, buydowns, or equivalent incentives, subject to subparagraph (C), to purchasers, lessees, lessors, or sellers of eligible electricity generating systems. Incentives shall benefit the end-use consumer of renewable generation by directly and exclusively reducing the purchase or lease cost of the eligible system, or the cost of electricity produced by the eligible system. Incentives shall be issued on the basis of the rated electrical capacity of the system measured in watts, or in the amount of electricity production of the system, measured in kilowatthours, determined by the Energy Commission.

(C) Eligible distributed emerging technologies are photovoltaic, solar thermal electric, fuel cell technologies that utilize renewable fuels, and wind turbines of not more than 50 kilowatts rated electrical generating capacity per customer site, and other distributed renewable emerging technologies that meet the emerging technology eligibility criteria established by the Energy Commission. Eligible electricity generating systems are intended primarily to offset part or all of the consumer's own electricity demand, and shall not be owned by local publicly owned electric utilities, nor be located at a customer site that is not receiving distribution service from an electrical corporation that is subject to Section 381 and contributing funds to support programs under this section. All eligible electricity generating system components shall be new and unused, and shall not have been previously placed in service in any other location or for any other application, and shall have a warranty of not less than five years to protect against defects and undue degradation of electrical generation output. Systems and their fuel resource shall be located on the same premises of the end-use consumer where the consumer's own electricity demand is located, and all eligible electricity generating systems shall be connected to the utility grid in California. The Energy Commission may require eligible electricity generating systems to have meters in place to monitor and measure a system's performance and generation. Only systems that will be operated in compliance with applicable law and the rules of the commission shall be eligible for funding.

(D) The Energy Commission shall limit the amount of funds available for any system or project of multiple systems and reduce the level of funding for any system or project of multiple systems that has received, or may be eligible to receive, any government or utility funds, incentives, or credit.

(E) In awarding funding, the Energy Commission may provide preference to systems that provide tangible demonstrable benefits to communities with a plurality of minority or low-income populations.

(F) In awarding funding, the Energy Commission shall develop and implement eligibility criteria and a system that provides preference to systems based upon system performance, taking into account factors, including, but not limited to, shading, insolation levels, and installation orientation.

(f) (1) Ten percent of the funds collected pursuant to paragraph (6) of subdivision (c) of Section 381 shall be used to provide customer credits to customers that entered into a direct transaction on or before September 20, 2001, for purchases of electricity produced by registered in-state renewable electricity generating facilities.

(2) Any funds used for customer credits pursuant to this subdivision shall be expended, as provided in the report, subject to the following requirements:

(A) Customer credits shall be awarded to California retail customers located in the service territory of an electrical corporation that is subject to Section 381 that is contributing funds to support programs under this section, and that is purchasing qualifying electricity from renewable electricity generating facilities, through transactions traceable to specific generation sources by any auditable contract trail or equivalent that provides commercial verification that the electricity from the claimed renewable electricity generating facilities has been sold once and only once to a retail customer.

(B) Credits awarded pursuant to this paragraph may be paid directly to electric service providers, energy marketers, aggregators, or generators if those persons or entities account for the credits on the recipient customer's utility bills. Credits may not exceed one and one-half cents ($0.015) per kilowatthour. Credits awarded to members of the combined class of customers, other than residential and small commercial customers, may not exceed one thousand dollars ($1,000) per customer per calendar year. In no event may more than 20 percent of the total customer incentive funds be awarded to members of the combined class of customers other than residential and small commercial customers.

(C) The Energy Commission shall develop criteria and procedures for the identification of energy purchasers and providers that are eligible to receive funds pursuant to this paragraph through a process consistent

with this paragraph. These criteria and procedures shall apply only to funding eligibility and may not extend to other renewable marketing claims.

(D) The commission shall notify the Energy Commission in writing within 10 days of revoking or suspending the registration of any electric service provider pursuant to paragraph (4) of subdivision (b) of Section 394.25.

(E) By March 31, 2003, the Energy Commission shall report to the Governor and the Legislature on how to most effectively utilize the funds for customer credits, including whether, and under what conditions, the program should be continued. The report shall include an examination of trends in markets for renewable energy, including the trading of nonenergy attributes, and the role of customer credits in these markets. The report will recommend an appropriate funding allocation for the customer credits and how implementation of the customer credits should be structured, if appropriate.

(F) Customer credits may not be awarded for the purchase of electricity that is used to meet the obligations of a renewable portfolio standard.

(g) One percent of the funds collected pursuant to paragraph (6) of subdivision (c) of Section 381 shall be used in accordance with the report to promote renewable energy and to disseminate information on renewable energy technologies, including emerging renewable technologies, and to help develop a consumer market for renewable energy and for small-scale emerging renewable energy technologies.

(h) (1) The Energy Commission shall adopt guidelines governing the funding programs authorized under this section and Section 399.13, at a publicly noticed meeting offering all interested parties an opportunity to comment. Substantive changes to the guidelines may not be adopted without at least 10 days' written notice to the public. The public notice of meetings required by this paragraph may not be less than 30 days. Notwithstanding any other provision of law, any guidelines adopted pursuant to this section shall be exempt from the requirements of Chapter 3.5 (commencing with Section 11340) of Division 3 of Title 2 of the Government Code. The Legislature declares that the changes made to this paragraph by the act amending this section during the 2002 portion of the 2001–02 Regular Session are declaratory of, and not a change in existing law.

(2) Funds to further the purposes of this section may be committed for multiple years.

(3) Awards made pursuant to this section are grants, subject to appeal to the Energy Commission upon a showing that factors other than those described in the guidelines adopted by the Energy Commission were applied in making the awards and payments. Any actions taken by an

applicant to apply for, or become or remain eligible and registered to receive, payments or awards, including satisfying conditions specified by the Energy Commission, shall not constitute the rendering of goods, services, or a direct benefit to the Energy Commission.

(i) The Energy Commission shall report to the Legislature on or before May 31, 2000, and on or before May 31 of every second year thereafter, regarding the results of the mechanisms funded pursuant to this section. Reports prepared pursuant to this subdivision shall include a description of the allocation of funds among existing, new and emerging technologies; the allocation of funds among programs, including consumer-side incentives; and the need for the reallocation of money among those technologies. The reports shall discuss the progress being made toward achieving the 17 percent target provided in subdivision (a) by each funding category authorized pursuant to subdivisions (c), (d), (e), (f), and (g) of this section. The reports shall also address the allocation of funds from interest on the accounts described in this section, and money in the accounts described in subdivision (e) of Section 381. Notwithstanding subdivisions (c), (d), (e), (f), and (g) of this section, money may be reallocated without further legislative action among existing, new, and emerging technologies and consumer-side programs in a manner consistent with the report and with the latest report provided to the Legislature pursuant to this subdivision, except that reallocations may not reduce the allocation established in subdivision (d) nor increase the allocation established in subdivision (c).

(j) The Energy Commission shall, by December 1, 2003, prepare and submit to the Legislature a comprehensive renewable electricity generation resource plan that describes the renewable resource potential available in California, and recommendations for a plan for development to achieve the target of increasing the amount of electricity generated from renewable sources per year, so that it equals 17 percent of the total electricity generated for consumption in California by 2006. The Energy Commission shall consult with the commission, electrical corporations, and the Independent System Operator, in the development and preparation of the plan.

(k) The Energy Commission shall participate in proceedings at the commission that relate to or affect efforts to stimulate the development of electricity generated from renewable sources, in order to obtain coordination of the state's efforts to achieve the target of increasing the amount of electricity generated from renewable sources per year, so that it equals 17 percent of the total electricity generated for consumption in California by 2006.

SEC. 16. Section 383.6 is added to the Public Utilities Code, to read:

383.6. The commission shall, by December 1, 2003, prepare and submit to the Legislature, a comprehensive transmission plan for

renewable electricity generation facilities, to provide for the rational, orderly, cost-effective expansion of transmission facilities that may be necessary to facilitate the development of renewable electricity generation facilities identified in the renewable electricity generation resource plan prepared pursuant to subdivision (j) of Section 383.5. The commission shall consult with the State Energy Resources Conservation and Development Commission, the Independent System Operator, and electrical corporations in the development of and preparation of the plan.

SEC. 17. Section 394.25 of the Public Utilities Code is amended to read:

394.25. (a) The commission may enforce the provisions of Sections 2102, 2103, 2104, 2105, 2107, 2108, and 2114 against electric service providers as if those electric service providers were public utilities as defined in these code sections. Notwithstanding the above, nothing in this section grants the commission jurisdiction to regulate electric service providers other than as specifically set forth in this part. Electric service providers shall continue to be subject to the provisions of Sections 2111 and 2112. Upon a finding by the commission's executive director that there is evidence to support a finding that the electric service provider has committed an act constituting grounds for suspension or revocation of registration as set forth in subdivision (b) of Section 394.25, the commission shall notify the electric service provider in writing and notice an expedited hearing on the suspension or revocation of the electric service provider's registration to be held within 30 days of the notification to the electric service provider of the executive director's finding of evidence to support suspension or revocation of registration. The commission shall, within 45 days after holding the hearing, issue a decision on the suspension or revocation of registration, which shall be based on findings of fact and conclusions of law based on the evidence presented at the hearing. The decision shall include the findings of fact and the conclusions of law relied upon.

(b) An electric service provider may have its registration suspended or revoked, immediately or prospectively, in whole or in part, for any of the following acts:

(1) Making material misrepresentations in the course of soliciting customers, entering into service agreements with those customers, or administering those service agreements.

(2) Dishonesty, fraud, or deceit with the intent to substantially benefit the electric service provider or its employees, agents, or representatives, or to disadvantage retail electricity customers.

(3) Where the commission finds that there is evidence that the electric service provider is not financially or operationally capable of providing the offered electric service.

(4) The misrepresentation of a material fact by an applicant in obtaining a registration pursuant to Section 394.

(c) Pursuant to its authority to revoke or suspend registration, the commission may suspend a registration for a specified period or revoke the registration, or in lieu of suspension or revocation, impose a moratorium on adding or soliciting additional customers. Any suspension or revocation of a registration shall require the electric service provider to cease serving customers within the boundaries of investor-owned electrical corporations, and the affected customers shall be served by the electrical corporation until the time when they may select service from another service provider. Customers shall not be liable for the payment of any early termination fees or other penalties to any electric service provider under the service agreement if the serving electric service provider's registration is suspended or revoked.

(d) The commission shall require any electric service provider whose registration is revoked pursuant to paragraph (4) of subdivision (b) to refund all of the customer credit funds that the electric service provider received from the State Energy Resources Conservation and Development Commission pursuant to paragraph (1) of subdivision (f) of Section 383.5. The repayment of these funds shall be in addition to all other penalties and fines appropriately assessed the electric service provider for committing those acts under other provisions of law. All customer credit funds refunded under this subdivision shall be deposited in the Renewable Resource Trust Fund for redistribution by the State Energy Resources Conservation and Development Commission pursuant to Section 383.5. This subdivision may not be construed to apply retroactively.

SEC. 18. Section 399.7 of the Public Utilities Code, as added by Section 4 of Chapter 1050 of the Statutes of 2000, is repealed.

SEC. 19. Section 399.7 of the Public Utilities Code, as added by Section 4 of Chapter 1051 of the Statutes of 2000, is amended to read:

399.7. (a) In order to ensure that prudent investments in research, development and demonstration of energy efficient technologies continue to produce substantial economic, environmental, public health, and reliability benefits, it is the policy of this state and the intent of the Legislature that funds made available, upon appropriation, for energy related public interest research, development and demonstration programs shall be used to advance science or technology that are not adequately provided by competitive and regulated markets.

(b) Notwithstanding any other provision of law, moneys collected for public-interest research, development and demonstration pursuant to this section shall be transferred to the Public Interest Research, Development, and Demonstration Fund of the Energy Commission to be held until further action by the Legislature. The Energy Commission

shall prepare and submit to the Legislature, on or before March 1, 2001, an initial investment plan for these moneys, addressing the application of moneys collected between January 1, 2002, and January 1, 2007. The initial investment plan shall address the recommendations of the PIER Independent Review Panel Report, dated March 2000, to either transform the RD&D program within the Energy Commission, or to administer it through, or in cooperation with, an external organization. The initial investment plan shall include criteria that will be used to determine that a project provides public benefits to California that are not adequately provided by competitive and regulated markets. On or before March 31, 2006, the Energy Commission shall prepare an investment plan addressing the application of moneys collected between January 1, 2007, and January 1, 2012. No moneys may be expended in the years covered by these plans without further legislative action.

(c) In lieu of the commission retaining funds authorized pursuant to Section 381 for investments made by electrical corporations in public interest research, development, and demonstration projects for transmission and distribution functions, up to 10 percent of the funds transferred to the Energy Commission pursuant to subdivision (b) shall be awarded to electrical corporations for public interest research, development, and demonstration projects for transmission and distribution functions consistent with the policies and subject to the requirements of Chapter 7.1 (commencing with Section 25620) of Division 15 of the Public Resources Code.

SEC. 20. Section 445 of the Public Utilities Code is amended to read:

445. (a) The Renewable Resource Trust Fund is hereby created in the State Treasury.

(b) The following accounts are hereby created within the Renewable Resource Trust Fund:

(1) The Existing Renewable Resources Account.

(2) New Renewable Resources Account.

(3) Emerging Renewable Resources Account.

(4) Customer-Credit Renewable Resource Purchases Account.

(5) Renewable Resources Consumer Education Account.

(c) The money in the fund may be expended for the state's administration of this article only upon appropriation by the Legislature in the annual Budget Act.

(d) Notwithstanding Section 383, that portion of revenues collected by electrical corporations for the benefit of in-state operation and development of existing and new and emerging renewable resource technologies, pursuant to paragraphs (3) and (6) of subdivision (c) of Section 381, shall be transmitted to the State Energy Resources Conservation and Development Commission (hereafter the Energy

Commission) at least quarterly for deposit in the Renewable Resource Trust Fund. After setting aside in the fund money that may be needed for expenditures authorized by the annual Budget Act in accordance with subdivision (c), the Treasurer shall immediately deposit money received pursuant to this section into the accounts created pursuant to subdivision (b) in proportions designated by the Energy Commission for the current calendar year. Notwithstanding Section 13340 of the Government Code, the money in the fund and the accounts within the fund are hereby continuously appropriated to the Energy Commission without regard to fiscal year for the purposes enumerated in Section 383.5.

(e) Upon notification by the Energy Commission, the Controller shall pay all awards of the money in the accounts created pursuant to subdivision (b) for purposes enumerated in Section 383.5. The eligibility of each award shall be determined solely by the Energy Commission based on the procedures it adopts under subdivision (h) of Section 383.5. Based on the eligibility of each award, the Energy Commission shall also establish the need for a multiyear commitment to any particular award and so advise the Department of Finance. Eligible awards submitted by the Energy Commission to the Controller shall be accompanied by information specifying the account from which payment should be made and the amount of each payment; a summary description of how payment of the award furthers the purposes enumerated in Section 383.5; and an accounting of future costs associated with any award or group of awards known to the Energy Commission to represent a portion of a multiyear funding commitment.

(f) The Energy Commission may transfer funds between accounts for cashflow purposes, provided that the balance due each account is restored and the transfer does not adversely affect any of the accounts. The Energy Commission shall examine the cashflow in the respective accounts on an annual basis, and shall annually prepare and submit to the Legislature a report that describes the status of account transfers and repayments.

(g) The Energy Commission shall, on a quarterly basis, report to the Legislature on the implementation of this article. Those quarterly reports shall be submitted to the Legislature not more than 30 days after the close of each quarter and shall include information describing the awards submitted to the Controller for payment pursuant to this article, the cumulative commitment of claims by account, the relative demand for funds by account, a forecast of future awards, and other matters the Energy Commission determines may be of importance to the Legislature.

(h) The Department of Finance, commencing March 1, 1999, shall conduct an independent audit of the Renewable Resource Trust Fund and its related accounts annually, and provide an audit report to the

Legislature not later than March 1 of each year for which this article is operative. The Department of Finance's report shall include information regarding revenues, payment of awards, reserves held for future commitments, unencumbered cash balances, and other matters that the Director of Finance determines may be of importance to the Legislature.

SEC. 21. Section 2826.5 is added to the Public Utilities Code, to read:

2826.5. (a) As used in this section, the following terms have the following meanings:

(1) ''Benefiting account'' means an electricity account, or more than one account, mutually agreed upon by Pacific Gas and Electric Company and the City of Davis.

(2) ''Bill credit'' means credits calculated based upon the electricity generation component of the rate schedule applicable to a benefiting account, as applied to the net metered quantities of electricity.

(3) ''PVUSA'' means the photovoltaic electricity generation facility selected by the City of Davis, located at 24662 County Road, Davis, California, with a rated peak electricity generation capacity of 600 kilowatts, and as it may be expanded, not to exceed one megawatt of peak generation capacity.

(4) ''Net metered'' means the electricity output from the PVUSA.

(5) ''Environmental attributes'' associated with the PVUSA include, but are not limited to, the credits, benefits, emissions reductions, environmental air quality credits, and emissions reduction credits, offsets, and allowances, however entitled resulting from the avoidance of the emission of any gas, chemical, or other substance attributable to the PVUSA.

(b) The City of Davis may elect to designate a benefiting account, or more than one account, to receive bill credit for the electricity generated by the PVUSA, if all of the following conditions are met:

(1) A benefiting account receives service under a time-of-use rate schedule.

(2) The electricity output of the PVUSA is metered for time of use to allow allocation of each bill credit to correspond to the time-of-use period of a benefiting account.

(3) All costs associated with the metering requirements of paragraphs (1) and (2) are the responsibility of the City of Davis.

(4) All electricity delivered to the electrical grid by the PVUSA is the property of Pacific Gas and Electric Company.

(5) PVUSA does not sell electricity delivered to the electrical grid to a third party.

(6) The right, title, and interest in the environmental attributes associated with the electricity delivered to the electrical grid by the PVUSA are the property of Nuon Renewable Ventures USA, LLC.

(c) A benefiting account shall be billed on a monthly basis, as follows:

(1) For all electricity usage, the rate schedule applicable to the benefiting account, including any surcharge, exit fee, or other cost recovery mechanism, as determined by the commission, to reimburse the Department of Water Resources for purchases of electricity, pursuant to Division 27 (commencing with Section 80000) of the Water Code.

(2) The rate schedule for the benefiting account shall also provide credit for the generation component of the time-of-use rates for the electricity generated by the PVUSA that is delivered to the electrical grid. The generation component credited to the benefiting account may not include the surcharge, exit fee, or other cost recovery mechanism, as determined by the commission, to reimburse the Department of Water Resources for purchases of electricity, pursuant to Division 27 (commencing with Section 80000) of the Water Code.

(3) If in any billing cycle, the charge pursuant to paragraph (1) for electricity usage exceeds the billing credit pursuant to paragraph (2), the City of Davis shall be charged for the difference.

(4) If in any billing cycle, the billing credit pursuant to paragraph (2), exceeds the charge for electricity usage pursuant to paragraph (1), the difference shall be carried forward as a credit to the next billing cycle.

(5) After the electricity usage charge pursuant to paragraph (1) and the credit pursuant to paragraph (2) are determined for the last billing cycle of a calendar year, any remaining credit resulting from the application of this section shall be reset to zero.

(d) Not more frequently that once per year, and upon providing Pacific Gas and Electric Company with a minimum of 60 days notice, the City of Davis may elect to change a benefiting account. Any credit resulting from the application of this section earned prior to the change in a benefiting account that has not been used as of the date of the change in the benefit account, shall be applied, and may only be applied, to a benefiting account as changed.

(e) Pacific Gas and Electric Company shall file an advice letter with the Public Utilities Commission, that complies with this section, not later than 10 days after the effective date of this section, proposing a rate tariff for a benefiting account. The commission, within 30 days of the date of filing, shall approve the proposed tariff, or specify conforming changes to be made by Pacific Gas and Electric Company to be filed in a new advice letter.

(f) The City of Davis may terminate its election pursuant to subdivision (b), upon providing Pacific Gas and Electric Company with a minimum of 60 days notice. Should the City of Davis sell its interest in the PVUSA, or sell the electricity generated by the PVUSA, in a manner other than required by this section, upon the date of either event,

and the earliest date if both events occur, no further bill credit pursuant to paragraph (2) of subdivision (b) may be earned. Only credit earned prior to that date shall be made to a benefiting account.

(g) The Legislature finds and declares that credit for a benefiting account for the electricity output from the PVUSA are in the public interest in order to value the production of this unique, wholly renewable resource electricity generation facility located in, and owned in part by, the City of Davis. Because of the unique circumstances applicable only to the PVUSA a statute of general applicability cannot be enacted within the meaning of subdivision (b) of Section 16 of Article IV of the California Constitution. Therefore, this special statute is necessary.

SEC. 22. Section 2826.6 is added to the Public Utilities Code, to read:

2826.6. (a) As used in this section, the following terms have the following meanings:

(1) ''Benefiting account'' means an electricity account, or more than one account, mutually agreed upon by Pacific Gas and Electric Company and California State University, Fresno, as selected by California State University, Fresno.

(2) ''Bill credit'' means credits calculated based upon the electricity generation component of the rate schedule applicable to a benefiting account, as applied to the net metered quantities of electricity.

(3) ''Dinuba Facility' means the biomass facility located in Reedley, California, that supplies 11.5 megawatts, using no more than 20 percent natural gas, to the electrical grid owned by Pacific Gas and Electric Company.

(4) ''Environmental attributes'' associated with the Dinuba Facility include, but are not limited to, the credits, benefits, emissions reductions, environmental air quality credits, and emissions reduction credits, offsets, and allowances, however entitled resulting from the avoidance of the emission of any gas, chemical, or other substance attributable to the Dinuba Facility.

(5) ''Net metered'' means the electricity output from the Dinuba Facility.

(b) California State University, Fresno may elect to designate a benefiting account, or more than one account, to receive bill credit for the electricity generated by the Dinuba Facility, if all of the following conditions are met:

(1) A benefiting account receives service under a time-of-use rate schedule.

(2) The electricity output of the Dinuba Facility is metered for time of use to allow allocation of each bill credit to correspond to the time-of-use period of a benefiting account.

(3) All costs associated with the metering requirements of paragraphs (1) and (2) are the responsibility of California State University, Fresno.

(4) All electricity delivered to the electrical grid by the Dinuba Facility is the property of Pacific Gas and Electric Company.

(5) The Dinuba Facility does not sell electricity delivered to the electrical grid to a third party.

(6) The right, title, and interest in the environmental attributes associated with the electricity delivered to the electrical grid by the Dinuba Facility are the property of Auxiliary Corporation of California State University, Fresno.

(c) A benefiting account shall be billed on a monthly basis, as follows:

(1) For all electricity usage, the rate schedule applicable to the benefiting account shall be the rate schedule of the benefiting account, including any surcharge, exit fee, or other cost recovery mechanism, as determined by the Public Utilities Commission, to reimburse the Department of Water Resources for purchases of electricity, pursuant to Division 27 (commencing with Section 80000) of the Water Code.

(2) The rate schedule for the benefiting account shall also provide credit for the generation component of the time-of-use rates for the electricity generated by the Dinuba Facility that is delivered to the electrical grid. The generation component credited to the benefiting account may not include the surcharge, exit fee, or other cost recovery mechanism, as determined by the Public Utilities Commission, to reimburse the Department of Water Resources for purchases of electricity, pursuant to Division 27 (commencing with Section 80000) of the Water Code.

(3) If in any billing cycle, the charge pursuant to paragraph (1) for electricity usage exceeds the billing credit pursuant to paragraph (2), California State University, Fresno shall be charged for the difference.

(4) If in any billing cycle, the billing credit pursuant to paragraph (2), exceeds the charge for electricity usage pursuant to paragraph (1), the difference shall be carried forward as a credit to the next billing cycle.

(5) After the electricity usage charge pursuant to paragraph (1) and the credit pursuant to paragraph (2) are determined for the last billing cycle of a calendar year, any remaining credit resulting from the application of this section shall be reset to zero.

(d) Not more frequently that once per year, and upon providing Pacific Gas and Electric Company with a minimum of 60 days notice, California State University, Fresno may elect to change a benefiting account. Any credit resulting from the application of this section earned prior to the change in a benefiting account that has not been used as of the date of the change in the benefit account, shall be applied, and may only be applied, to a benefiting account as changed.

(e) Pacific Gas and Electric Company shall file an advice letter with the Public Utilities Commission, that complies with this section, not later than 10 days after the effective date of this section, proposing a rate tariff for a benefiting account. The commission, within 30 days of the date of filing, shall approve the proposed tariff, or specify conforming changes to be made by Pacific Gas and Electric Company to be filed in a new advice letter.

(f) California State University, Fresno may terminate its election pursuant to subdivision (b), upon providing Pacific Gas and Electric Company with a minimum of 60 days notice. Should California State University, Fresno sell its interest in the Dinuba Facility, or sell the electricity generated by the Dinuba Facility, in a manner other than required by this section, upon the date of either event, and the earliest date if both events occur, no further bill credit pursuant to paragraph (2) of subdivision (b) may be earned. Only credit earned prior to that date shall be made to a benefiting account.

(g) The Legislature finds and declares that credit for a benefiting account for the electricity output from the Dinuba Facility is in the public interest in order to value the production of this unique, renewable resource electricity generation facility located in Reedley, and owned by California State University, Fresno. Because of the unique circumstances applicable only to the Dinuba Facility, a statute of general applicability cannot be enacted within the meaning of subdivision (b) of Section 16 of Article IV of the California Constitution. Therefore, this special statute is necessary.

(h) This section shall remain in effect only until January 1, 2008, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2008, deletes or extends that date.

SEC. 23. It is the intent of the Legislature, in adding Section 2826.5 to the Public Utilities Code, to establish a policy to provide the City of Davis with a bill credit for the electricity generated at a photovoltaic facility owned in part by the City of Davis known as PVUSA. PVUSA is a pioneering solar research project, which for many years served as a partnership between public and private utilities, government agencies, and private companies involved in the photovoltaic industry. PVUSA helped to research and demonstrate the use of photovoltaics for utility scale applications, and helped the industry learn more about how utilities could use photovoltaic systems in their generation mix. The City of Davis recently acquired the project from the State Energy Resources Conservation and Development Commission, and wishes to continue to utilize this existing unique facility. The goal of Section 2826.5 of the Public Utilities Code is to provide the City of Davis flexibility in benefiting from this photovoltaic electric generation project, while preventing any negative consequences for other utility customers.

SEC. 24. It is the intent of the Legislature, in adding Section 2826.6 to the Public Utilities Code, to establish a policy to provide California State University, Fresno with a bill credit for the electricity generated at a biomass facility owned by California State University, Fresno known as the Dinuba Facility or Dinuba Energy. The Dinuba Facility, located in Reedley, was donated to the Auxiliary Corporations of California State University, Fresno in 1999, which completed extensive maintenance and repair efforts on the facility. The Dinuba Facility began operations again in July 2001. The Dinuba Facility is located within 50 miles of the university, and uses forest fuels and agricultural byproducts to generate electricity, and may significantly contribute to reeducation in ambient particulate matter in the Central Valley. The goal of Section 2826.6 of the Public Utilities Code is to provide California State University, Fresno flexibility in benefiting from this biomass facility, while preventing any negative consequences for other utility customers.

SEC. 25. Section 14 of this bill shall only become operative if either, or both, Senate Bill 1078 or Senate Bill 1524 of the 2001–02 Regular Session of the Legislature is enacted and becomes effective on or before January 1, 2003, and add the California Renewables Portfolio Standard Program as Article 16 (commencing with Section 399.11) to Chapter 2.3 of Part 1 of Division 1 of the Public Utilities Code.

SEC. 26. No reimbursement is required by this act pursuant to Section 6 of Article X111 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 X111 B of the California Constitution.

CHAPTER 516

An act to add Sections 387, 390.1, and 399.25 to, and to add Article 16 (commencing with Section 399.11) to Chapter 2.3 of Part 1 of Division 1 of, the Public Utilities Code, relating to renewable energy.

[Approved by Governor September 12, 2002. Filed with Secretary of State September 12, 2002.]

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

SECTION 1. Section 387 is added to the Public Utilities Code, to read:

387. (a) Each governing body of a local publicly owned electric utility, as defined in Section 9604, shall be responsible for implementing and enforcing a renewables portfolio standard that recognizes the intent of the Legislature to encourage renewable resources, while taking into consideration the effect of the standard on rates, reliability, and financial resources and the goal of environmental improvement.

(b) Each local publicly owned electric utility shall report, on an annual basis, to its customers, the following:

(1) Expenditures of public goods funds collected pursuant to Section 385 for renewable energy resource development. Reports shall contain a description of programs, expenditures, and expected or actual results.

(2) The resource mix used to serve its customers by fuel type. Reports shall contain the contribution of each type of renewable energy resource with separate categories for those fuels considered eligible renewable energy resources as defined by Section 399.12.

SEC. 2. Section 390.1 is added to the Public Utilities Code, to read:

390.1. Any nonutility power generator using renewable fuels that has entered into a contract with an electrical corporation prior to December 31, 2001, specifying fixed energy prices for five years of output may negotiate a contract for an additional five years of fixed energy payments upon expiration of the initial five-year term, at a price to be determined by the commission.

SEC. 3. Article 16 (commencing with Section 399.11) is added to Chapter 2.3 of Part 1 of Division 1 of the Public Utilities Code, to read:

Article 16. California Renewables Portfolio Standard Program

399.11. The Legislature finds and declares all of the following:

(a) In order to attain a target of 20 percent renewable energy for the State of California and for the purposes of increasing the diversity, reliability, public health and environmental benefits of the energy mix, it is the intent of the Legislature that the California Public Utilities Commission and the State Energy Resources Conservation and Development Commission implement the California Renewables Portfolio Standard Program described in this article.

(b) Increasing California's reliance on renewable energy resources may promote stable electricity prices, protect public health, improve environmental quality, stimulate sustainable economic development, create new employment opportunities, and reduce reliance on imported fuels.

(c) The development of renewable energy resources may ameliorate air quality problems throughout the state and improve public health by reducing the burning of fossil fuels and the associated environmental impacts.

(d) The California Renewables Portfolio Standard Program is intended to complement the Renewable Energy Program administered by the State Energy Resources Conservation and Development Commission and established pursuant to Sections 383.5 and 445.

399.12. For purposes of this article, the following terms have the following meanings:

(a) (1) ''Eligible renewable energy resource'' means an electric generating facility that is one of the following:

(1) The facility meets the definition of ''in-state renewable electricity generation technology'' in Section 383.5.

(2) A geothermal generation facility originally commencing operation prior to September 26, 1996, shall be eligible for purposes of adjusting a retail seller's baseline quantity of eligible renewable energy resources except for output certified as incremental geothermal production by the Energy Commission, provided that the incremental output was not sold to an electrical corporation under contract entered into prior to September 26, 1996. For each facility seeking certification, the Energy Commission shall determine historical production trends and establish criteria for measuring incremental geothermal production that recognizes the declining output of existing steamfields and the contribution of capital investments in the facility or wellfield.

(3) The output of a small hydroelectric generation facility of 30 megawatts or less procured or owned by an electrical corporation as of the date of enactment of this article shall be eligible only for purposes of establishing the baseline of an electrical corporation pursuant to paragraph (3) of subdivision (a) of Section 399.15. A new hydroelectric facility is not an eligible renewable energy resource if it will require a new or increased appropriation or diversion of water under Part 2 (commencing with Section 1200) of Division 2 of the Water Code.

(4) A facility engaged in the combustion of municipal solid waste shall not be considered an eligible renewable resource unless it is located in Stanislaus County and was operational prior to September 26, 1996. Output from such facilities shall be eligible only for the purpose of adjusting a retail seller's baseline quantity of eligible renewable energy resources.

(b) ''Retail seller'' means an entity engaged in the retail sale of electricity to end-use customers, including any of the following:

(1) An electrical corporation, as defined in Section 218.

(2) A community choice aggregator. The commission shall institute a rulemaking to determine the manner in which a community choice aggregator will participate in the renewables portfolio standard subject to the same terms and conditions applicable to an electrical corporation.

(3) An electric service provider, as defined in Section 218.3 subject to the following conditions:

(A) An electric service provider shall be considered a retail seller under this article for sales to any customer acquiring service after January 1, 2003.

(B) An electric service provider shall be considered a retail seller under this article for sales to all its customers beginning on the earlier of January 1, 2006, or the date on which a contract between an electric service provider and a retail customer expires. Nothing on this subdivision may require an electric service provider to disclose the terms of the contract to the commission.

(C) The commission shall institute a rulemaking to determine the manner in which electric service providers will participate in the renewables portfolio standard. The electric service provider shall be subject to the same terms and conditions applicable to an electrical corporation pursuant to this article. Nothing in this paragraph shall impair a contract entered into between an electric service provider and a retail customer prior to the suspension of direct access by the commission pursuant to Section 80110 of the Water Code.

(4) ''Retail seller'' does not include any of the following:

(A) A corporation or person employing cogeneration technology or producing power consistent with subdivision (b) of Section 218.

(B) The Department of Water Resources acting in its capacity pursuant to Division 27 (commencing with Section 80000) of the Water Code.

(C) A local publicly owned electrical utility as defined in subdivision (d) of Section 9604.

(c) ''Renewables portfolio standard'' means the specified percentage of electricity generated by eligible renewable energy resources that a retail seller is required to procure pursuant to Sections 399.13 and 399.15.

399.13. The Energy Commission shall do all of the following:

(a) Certify eligible renewable energy resources that it determines meet the criteria described in subdivision (a) of Section 399.12.

(b) Design and implement an accounting system to verify compliance with the renewables portfolio standard by retail sellers, to ensure that renewable energy output is counted only once for the purpose of meeting the renewables portfolio standard of this state or any other state, and for verifying retail product claims in this state or any other state. In establishing the guidelines governing this system, the Energy Commission shall collect data from electricity market participants that it deems necessary to verify compliance of retail sellers, in accordance with the requirements of this article and the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code). In seeking data from electrical corporations, the Energy Commission shall request data from the commission. The

commission shall collect data from electrical corporations and remit the data to the Energy Commission within 90 days of the request.

(c) Allocate and award supplemental energy payments pursuant to Section 383.5 to eligible renewable energy resources to cover above-market costs of renewable energy.

399.14. (a) The commission shall direct each electrical corporation to prepare renewable energy procurement plans as described in paragraph (3) to satisfy its obligations under the renewables portfolio standard. To the extent feasible, this procurement plan shall be proposed, reviewed, and adopted by the commission as part of, and pursuant to, a general procurement plan process. The commission shall require each electrical corporation to review and update its renewable energy procurement plan as it determines to be necessary.

(1) The commission shall not require an electrical corporation to conduct procurement to fulfill the renewables portfolio standard until it is deemed creditworthy by the commission upon it having attained an investment grade rating as determined by at least two major rating agencies. Within 90 days of being deemed creditworthy, an electrical corporation shall conduct solicitations to implement a renewable energy procurement plan. The creditworthiness determination required by this paragraph shall apply only to the requirements established pursuant to this article. The requirements established for an electrical corporation pursuant to Section 454.5 shall be governed by that section.

(2) Not later than six months after the effective date of this section, the commission shall adopt, by rule, for all electrical corporations, all of the following:

(A) A process for determining market prices pursuant to subdivision (c) of Section 399.15. The commission shall make specific determinations of market prices after the closing date of a competitive solicitation conducted by an electrical corporation for eligible renewable energy resources. In order to ensure that the market price established by the commission pursuant to subdivision (c) of Section 399.15 does not influence the amount of a bid submitted through the competitive solicitation in a manner that would increase the amount ratepayers are obligated to pay for renewable energy, and in order to ensure that the bid price does not influence the establishment of the market price, the electrical corporation shall not transmit or share the results of any competitive solicitation for eligible renewable energy resources until the commission has established market prices pursuant to subdivision (c) of Section 399.15.

(B) A process that provides criteria for the rank ordering and selection of least-cost and best-fit renewable resources to comply with the annual California Renewables Portfolio Standard Program obligations on a total cost basis. This process shall consider estimates of indirect costs

associated with needed transmission investments and ongoing utility expenses resulting from integrating and operating eligible renewable energy resources.

(C) Flexible rules for compliance including, but not limited to, permitting electrical corporations to apply excess procurement in one year to subsequent years or inadequate procurement in one year to no more than the following three years.

(D) Standard terms and conditions to be used by all electrical corporations in contracting for eligible renewable energy resources, including performance requirements for renewable generators.

(3) Consistent with the goal of procuring the least-cost and best-fit eligible renewable energy resources, the renewable energy procurement plan submitted by an electrical corporation shall include, but is not limited to, all of the following:

(A) An assessment of annual or multiyear portfolio supplies and demand to determine the optimal mix of renewable generation resources with deliverability characteristics that may include peaking, dispatchable, baseload, firm, and as-available capacity.

(B) Provisions for employing available compliance flexibility mechanisms established by the commission.

(C) A bid solicitation setting forth the need for renewable generation of each deliverability characteristic, required online dates, and locational preferences, if any.

(4) In soliciting and procuring eligible renewable energy resources, each electrical corporation shall offer contracts of no less than 10 years in duration, unless the commission approves of a contract of shorter duration.

(5) In soliciting and procuring eligible renewable energy resources, each electrical corporation may give preference to projects that provide tangible demonstrable benefits to communities with a plurality of minority or low-income populations.

(b) The commission shall review and accept, modify, or reject each electrical corporation's renewable procurement plan 90 days prior to the commencement of renewable procurement pursuant to this article by the electrical corporation.

(c) The commission shall review the results of a renewable energy resources solicitation submitted for approval by an electrical corporation and accept or reject proposed contracts with eligible renewable energy resources based on consistency with the approved renewable procurement plan. If the commission determines that the bid prices are elevated due to a lack of effective competition amongst the bidders, the commission shall direct the electrical corporation to renegotiate such contracts or conduct a new solicitation.

(d) If an electrical corporation fails to comply with a commission order adopting a renewable procurement plan, the commission shall exercise its authority pursuant to Section 2113 to require compliance.

(e) Upon application by an electrical corporation, the commission may authorize another entity to enter into contracts on behalf of customers of the electrical corporation for deliveries of eligible renewable energy resources to satisfy the annual portfolio standard obligations, subject to similar terms and conditions applicable to an electrical corporation. The commission shall allow the procurement entity to recover reasonable costs through retail rates subject to review and approval.

(f) Procurement and administrative costs associated with long-term contracts entered into by an electrical corporation for eligible renewable resources, at or below the market price determined by the commission pursuant to subdivision (c) of Section 399.15, shall be deemed reasonable per se, and shall be recoverable in rates.

(g) For purposes of this article, ''procure'' means that a utility may acquire the renewable output of electric generation facilities that it owns or for which it has contracted. Nothing in this article is intended to imply that the purchase of electricity from third parties in a wholesale transaction is the preferred method of fulfilling a retail seller's obligation to comply with this article.

(h) Construction, alteration, demolition, installation, and repair work on an eligible renewable energy resource that receives production incentives or supplemental energy payments pursuant to Section 383.5, including, but not limited to, work performed to qualify, receive, or maintain production incentives or supplemental energy payments is ''public works'' for the purposes of Chapter 1 (commencing with Section 1720) of Part 7 of Division 2 of the Labor Code.

399.15. (a) In order to fulfill unmet long-term resource needs, the commission shall establish a renewables portfolio standard requiring all electrical corporations to procure a minimum quantity of output from eligible renewable energy resources as a specified percentage of total kilowatthours sold to their retail end-use customers each calendar year, if sufficient funds are made available pursuant to paragraph (2), and Sections 399.6 and 383.5 to cover the above-market costs of eligible renewables, and subject to all of the following:

(1) An electric corporation shall not be required to enter into long-term contracts with eligible renewable energy resources that exceed the market prices established pursuant to subdivision (c) of this section.

(2) The Energy Commission shall provide supplemental energy payments from funds in the New Renewable Resources Account in the Renewable Resource Trust Fund to eligible renewable energy resources

pursuant to Section 383.5,, consistent with this article, for above-market costs. Indirect costs associated with the purchase of eligible renewable energy resources, such as imbalance energy charges, sale of excess energy, decreased generation from existing resources, or transmission upgrades shall not be eligible for supplemental energy payments, but shall be recoverable by an electrical corporation in rates, as authorized by the commission.

(3) For purposes of setting annual procurement targets, the commission shall establish an initial baseline for each electrical corporation based on the actual percentage of retail sales procured from eligible renewable energy resources in 2001, and, to the extent applicable, adjusted going forward pursuant to subdivision (a) of Section 399.12.

(b) The commission shall implement annual procurement targets for each electrical corporation as follows:

(1) Beginning on January 1, 2003, each electrical corporation shall, pursuant to subdivision (a), increase its total procurement of eligible renewable energy resources by at least an additional 1 percent of retail sales per year so that 20 percent of its retail sales are procured from eligible renewable energy resources no later than December 31, 2017. An electrical corporation with 20 percent of retail sales procured from eligible renewable energy resources in any year shall not be required to increase its procurement of such resources in the following year.

(2) Only for purposes of establishing these targets, the commission shall include all power sold to retail customers by the Department of Water Resources pursuant to Section 80100 of the Water Code in the calculation of retail sales by an electrical corporation.

(3) In the event that an electrical corporation fails to procure sufficient eligible renewable energy resources in a given year to meet any annual target established pursuant to this subdivision, the electrical corporation shall procure additional eligible renewable energy resources in subsequent years to compensate for the shortfall if sufficient funds are made available pursuant to paragraph (2), and Sections 399.6 and 383.5 to cover the above-market costs of eligible renewables.

(4) If supplemental energy payments from the Energy Commission, in combination with the market prices approved by the commission, are insufficient to cover the above-market costs of eligible renewable energy resources, the commission shall allow an electrical corporation to limit its annual procurement obligation to the quantity of eligible renewable energy resources that can be procured with available supplemental energy payments.

(c) The commission shall establish a methodology to determine the market price of electricity for terms corresponding to the length of contracts with renewable generators, in consideration of the following:

(1) The long-term market price of electricity for fixed price contracts, determined pursuant to the electrical corporation's general procurement activities as authorized by the commission.

(2) The long-term ownership, operating, and fixed-price fuel costs associated with fixed-price electricity from new generating facilities.

(3) The value of different products including baseload, peaking, and as-available output.

(d) The establishment of a renewables portfolio standard shall not constitute implementation by the commission of the federal Public Utility Regulatory Policies Act of 1978 (Public Law 95-617).

(e) The commission shall consult with the Energy Commission in calculating market prices under subdivision (c) and establishing other renewables portfolio standard policies.

SEC. 4. Section 399.25 is added to the Public Utilities Code, immediately following Section 399.2, to read:

399.25. (a) Notwithstanding any other provision in Sections 1001 to 1013, inclusive, an application of an electrical corporation for a certificate authorizing the construction of new transmission facilities shall be deemed to be necessary to the provision of electric service for purposes of any determination made under Section 1003 if the commission finds that the new facility is necessary to facilitate achievement of the renewable power goals established in Article 16 (commencing with Section 399.11).

(b) With respect to a transmission facility described in subdivision (a), the commission shall take all feasible actions to ensure that the transmission rates established by the Federal Energy Regulatory Commission are fully reflected in any retail rates established by the commission. These actions shall include, but are not limited to:

(1) Making findings, where supported by an evidentiary record, that those transmission facilities provide benefit to the transmission network and are necessary to facilitate the achievement of the renewables portfolio standard established in Article 16 (commencing with Section 399.11).

(2) Directing the utility to which the generator will be interconnected, where the direction is not preempted by federal law, to seek the recovery through general transmission rates of the costs associated with the transmission facilities.

(3) Asserting the positions described in paragraphs (1) and (2) to the Federal Energy Regulatory Commission in appropriate proceedings.

(4) Allowing recovery in retail rates of any increase in transmission costs incurred by an electrical corporation resulting from the construction of the transmission facilities that are not approved for recovery in transmission rates by the Federal Energy Regulatory

Commission after the commission determines that the costs were prudently incurred in accordance with subdivision (a) of Section 454.

SEC. 5. 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.

CHAPTER 517

An act to add Section 8594 to the Government Code, relating to emergency services, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 12, 2002. Filed with Secretary of State September 13, 2002.]

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

SECTION 1. The Legislature finds and declares that:

(a) In the year 2000, the California Missing and Unidentified Persons System reflected that there were 695 child abduction cases that involved a stranger abduction or suspicious circumstances that may have indicated a stranger abduction. In Los Angeles County alone, there were 84 child abduction cases that involved a stranger abduction or suspicious circumstances that may have indicated a stranger abduction.

(b) It is essential to utilize maximum public participation to recover children in the most serious child abduction situations.

(c) In child abduction circumstances, law enforcement has information available to disseminate to the general public, that could assist in the safe recovery of the victim, the apprehension of the suspect, or both.

(d) The Amber Plan, first created in Dallas, Texas after the murder of Amber Hagerman, a 9-year-old girl who was abducted in 1996 from her home in Arlington, Texas, makes the Emergency Alert System available for use by law enforcement officials to alert the general public when a child has been abducted and is believed to be in danger.

(e) The goal of the Amber Plan is to coordinate the services of government, law enforcement, and broadcasting agencies in an effort to expedite the recovery of abducted children by coercing the kidnapper to release the child for fear of being caught.

(f) The Amber Plan requires law enforcement to meet certain criteria when evaluating a child abduction before an activation can occur. Therefore, the Amber Plan is not activated for every abduction or custody dispute.

(g) Tragedies, such as those concerning Polly Klaas and Amber Swartz, inspired the Chiefs of Police and the Sheriff's Association of Orange County and Attorney General Bill Lockyer's Office of Victim's Services to develop the Child Abduction Regional Emergency (C.A.R.E.) Alert Program, modeled after the Amber Plan, as a pilot project in Orange County.

(h) The goal of the C.A.R.E. Alert Program is the safe return of an abducted child by establishing an effective partnership between the community, the media, and law enforcement. A C.A.R.E. alert is the recruitment, via a widespread media alert, of public assistance to locate a child.

(i) The Governor and the California Highway Patrol, in consultation with the Department of Justice, shall implement the use of the Emergency Alert System and other current warning systems in use and establish them statewide so that the statewide system resembles the Amber Plan, Texas' early-warning system to respond to child kidnappings.

SEC. 2. Section 8594 is added to the Government Code, to read:

8594. (a) If an abduction has been reported to a law enforcement agency and the agency determines that a child 17 years of age or younger, or an individual with a proven mental or physical disability, has been abducted and is in imminent danger of serious bodily injury or death, and there is information available that, if disseminated to the general public, could assist in the safe recovery of the victim, the agency, through a person authorized to activate the Emergency Alert System, shall, absent extenuating investigative needs, request activation of the Emergency Alert System within the appropriate local area. Law enforcement agencies shall only request activation of the Emergency Alert System for an abduction if these requirements are met. The Emergency Alert System is not intended to be used for abductions resulting from custody

disputes that are not reasonably believed to endanger the life or physical health of a child.

The California Highway Patrol, if requested by a law enforcement agency, shall activate the system.

(b) The California Highway Patrol, in consultation with the Department of Justice, as well as a representative from the California State Sheriffs' Association, the California Police Chiefs' Association, and the California Peace Officers' Association, shall develop policies and procedures providing instruction specifying how law enforcement agencies, broadcasters participating in the Emergency Alert System, and any other intermediate emergency agencies that may institute activation of the Emergency Alert System, and, where appropriate, other supplemental warning systems, shall proceed after a qualifying abduction has been reported to a law enforcement agency. Those policies and procedures shall include, but not be limited to:

(1) Procedures for transfer of information regarding the abducted victim and abduction from the law enforcement agency to the broadcasters;

(2) Specification of the event code or codes that should be used if the Emergency Alert System is activated to report a qualifying child abduction;

(3) Recommended language for an abduction alert;

(4) Specification of information that must be included by the reporting law enforcement agency, including which agency a person with information relating to the abduction should contact and how the person should contact the agency; and

(5) Recommendations on the extent of the geographical area to which a child abduction emergency alert should be broadcast.

(c) The California Highway Patrol, in consultation with the Department of Justice, shall review the Amber Plan as adopted by other states and Orange County's Child Abduction Regional Emergency Alert Program for guidance in developing appropriate policies and procedures for use of the Emergency Alert System and, where appropriate, other supplemental warning systems to report qualifying abductions.

(d) The California Highway Patrol, in conjunction with the Department of Justice, shall develop a comprehensive child abduction education system to educate children in the state on the appropriate behavior to deter abduction. The California Highway Patrol shall convene a group consisting of a representative from the California State Sheriffs' Association, the California Police Chiefs' Association, and the California Peace Officers' Association, representatives of advocacy groups, and the Department of Education to assist in the development of a plan.

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.

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 ensure the expedient development of a statewide child abduction alert program to deter child abductions and immediately help aid in the recovery of abducted children, it is necessary that this act take effect immediately.

CHAPTER 518

An act to amend Sections 11005 and 15853 of the Government Code, and to add Sections 31402.1, 31402.2, and 31402.3 to the Public Resources Code, relating to coastal access.

[Approved by Governor September 12, 2002. Filed with Secretary of State September 13, 2002.]

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

SECTION 1. Section 11005 of the Government Code is amended to read:

11005. (a) Unless the Legislature specifically provides that approval is not required, every gift or dedication to the state of personal property, or every gift to the state of real property in fee or in any lesser estate or interest, shall be approved by the Director of Finance, and every contract for the acquisition or hiring of real property in fee or in any lesser estate or interest, entered into by or on behalf of the state, shall be approved by the Director of General Services. Any contract entered into in violation of this section is void. This section applies to any state agency that, by general or specific statute, is expressly or impliedly authorized to enter into transactions referred to in this section.

(b) This section does not apply (1) to unconditional gifts of money, (2) to the acquisition or hiring by the Department of Transportation of real property in fee or in any lesser estate or interest for highway

purposes, but does apply to the hiring by that department of office space in any office building, (3) to contracts entered into under the authority of Chapter 4 (commencing with Section 11770) of Part 3 of Division 2 of the Insurance Code, (4) to the receipt of donated, unencumbered personal property from private sources received in conjunction with the administration of the Federal Surplus Personal Property Program by the Department of General Services, (5) to the receipt of gifts of personal property in the form of interpretive or historical objects, each valued at fifteen thousand dollars ($15,000) or less, by the Department of Parks and Recreation, or (6) the acceptance by the State Coastal Conservancy of offers to dedicate public accessways made pursuant to Division 20 (commencing with Section 30000) of the Public Resources Code.

SEC. 2. Section 15853 of the Government Code is amended to read:

15853. (a) The board may select and acquire, in the name of and on behalf of the state, with the consent of the state agency concerned, the fee or any lesser right or interest in any real property necessary for any state purpose or function.

(b) If moneys are appropriated by the Budget Act for any fiscal year or by any other act for the acquisition of land or other real property, either (1) subject to this part or (2) for any state agency for whom property is acquired by the board, the moneys and acquisitions are subject to this part and the moneys shall be expended in accordance with this part, notwithstanding any other provisions of law.

(c) Notwithstanding any other provisions of law, all land and other real property to be acquired by or for any state agency, other than the Department of Transportation, the Department of Water Resources, the State Reclamation Board, the Department of Fish and Game, the Wildlife Conservation Board, the Public Employees' Retirement System, the State Teachers' Retirement System, the Department of Housing and Community Development, the State Lands Commission, except for property to be acquired for the State Lands Commission pursuant to an appropriation from the General Fund, and the State Coastal Conservancy with respect to acceptance of offers to dedicate public accessways made pursuant to Division 20 (commencing with Section 30000) of the Public Resources Code, shall be acquired by the State Public Works Board in accordance with this part.

(d) (1) Notwithstanding subdivision (a), the board shall acquire, on behalf of and for the Department of Parks and Recreation, in accordance with this part, any interests in real property, including options to purchase, which have been appraised, selected, and settled through purchase negotiations by the Department of Parks and Recreation pursuant to subdivision (b) of Section 5006 of the Public Resources Code. Out of moneys appropriated for the acquisition of options to purchase, no more than ten thousand dollars ($10,000) may be expended

for the acquisition of any single option unless otherwise provided by the Legislature.

(2) Notwithstanding Section 15854, purchase negotiations for interests in real property for the state park system pursuant to subdivision (d) of Section 5006 of the Public Resources Code shall be initiated within six months of the effective date of the act that appropriates funds for the acquisition. Purchase negotiations on all projects not proposed pursuant to subdivision (d) of Section 5006 of the Public Resources Code shall be initiated within 12 months of the effective date of the act appropriating funds for the acquisition. Either title shall be conveyed or a written agreement to transfer title shall be executed within the appropriate authorization period unless the Department of Parks and Recreation formally abandons the acquisition prior to the conclusion of the appropriate authorization period. For the purposes of this section, in order for the Department of Parks and Recreation to ''formally abandon'' an acquisition, it shall transmit written notification to the board of its intent not to proceed with the acquisition.

(3) The board, at any time during the periods specified in paragraph (2), may commence condemnation proceedings if it finds it to be appropriate. However, if, during the appropriate authorization period, title is not conveyed or a written agreement to transfer title is not signed, the acquisition has not been formally abandoned, or condemnation proceedings have not been commenced, the Department of Parks and Recreation shall notify, by letter, the chair of the committee in each house of the Legislature that considers appropriations, the Chair of the Joint Legislative Budget Committee, and the Members of the Legislature within whose district any part of the land or other real property is located of the status of the acquisition. For the purpose of this paragraph, condemnation proceedings shall be deemed to be commenced as of the date the board authorizes acquisition by condemnation.

(4) The board may schedule special meetings as are necessary to expedite the acquisition of options to purchase real property for the state park system.

(e) The board may acquire furnishings that the owner thereof agrees to sell and that are contained within improvements acquired by the board. Cost of acquisition of furnishings shall be charged to the appropriation available for acquisition of the real property.

SEC. 3. Section 31402.1 is added to the Public Resources Code, to read:

31402.1. (a) It is the intent of the Legislature to provide for timely acceptance of offers to dedicate interests in property, recorded pursuant

to Division 20 (commencing with Section 30000) and needed to provide public access to and along the ocean shoreline.

(b) The Legislature finds and declares all of the following:

(1) In order to prevent the potential loss of public accessways to and along the state's coastline, it is in the best interest of the state to accept all offers to dedicate real property that protect open space or have the potential to provide access to public tidelands, including any beach, shoreline, or view area, or that provide a connection to other easements or public properties providing this access.

(2) Offers to dedicate interests in property that are required and recorded pursuant to Division 20 (commencing with Section 30000) provide mitigation necessary for approved development to occur consistent with the policies and objectives of that division and are not gifts to the state or acquisitions of property interests within the meaning of Section 31105.

SEC. 4. Section 31402.2 is added to the Public Resources Code, to read:

31402.2. The conservancy shall accept any outstanding offer to dedicate a public accessway that has not been accepted by another public agency or nonprofit organization within 90 days of its expiration date.

SEC. 5. Section 31402.3 is added to the Public Resources Code, to read:

31402.3. (a) The conservancy shall open at least three public accessways each year either directly or by awarding grants to public agencies or nonprofit organizations.

(b) The conservancy may transfer public access easements or other less-than-fee interests in property to any appropriate public agency or nonprofit organization for development, management, or public use, or may enter into agreements with public agencies and nonprofit organizations for the development, management, or public use of the accessway.

(c) No public accessway accepted pursuant to Section 31402.2 shall be developed, improved, or formally opened for public use until its transfer, development, or public use has been authorized by the conservancy.

(d) The conservancy may not use moneys appropriated from the General Fund for the purposes of this section.

SEC. 6. (a) Before approving the conveyance by the conservancy to a nonprofit organization of an offer to dedicate an interest in real property under Division 20 (commencing with Section 30000) of the Public Resources Code, the Executive Director of the California Coastal Commission shall determine the following:

(1) The nonprofit organization qualifies and is in good standing as a nonprofit organization under Section 501(c)(3) of the United States Internal Revenue Code.

(2) The nonprofit organization has filed a Form 990 with the Internal Revenue Service.

(b) The nonprofit organization shall submit to the California Coastal Commission a management plan that describes the nonprofit organization's planned management and operation of the interest.

(c) The conservacy shall retain a power of entry, with the option to reclaim or assign the interest, if the commission determines that the nonprofit organization is not managing or operating the interest consistent with the management plan developed pursuant to subdivision (b).

CHAPTER 519

An act to amend Sections 2550.2 and 2550.7 of, to amend and repeal Sections 2550.5 and 2550.6 of, and to add Section 2550.1 to, the Education Code, relating to juvenile court schools and county community schools, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 13, 2002. Filed with Secretary of State September 13, 2002.]

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

SECTION 1. The Legislature finds and declares that revenue limit equalization for juvenile court schools and county community schools has been effectively accomplished as of June 30, 2002.

SEC. 2. Section 2550.1 is added to the Education Code, to read:

2550.1. (a) Commencing with the 2002–03 fiscal year, and each fiscal year thereafter, for juvenile court school programs operated by county superintendents of schools pursuant to Article 2.5 (commencing with Section 48645) of Chapter 4 of Part 27 and for county community school programs operated by county superintendents of schools pursuant to Chapter 6.5 (commencing with Section 1980) of Part 2, the Superintendent of Public Instruction shall make the following computations:

(1) Apply an inflation adjustment equal to the percentage increase applied to the statewide average revenue limit for school districts pursuant to Section 42238.1, multiplied by the revenue limits of the prior fiscal year for each juvenile court school program and for each county

community school program, including programs with average daily attendance for pupils enrolled pursuant to subdivision (c) of Section 1981 that exceeds the average daily attendance claimed in the 1991–92 fiscal year.

(2) Multiply the revenue limits per unit of average daily attendance computed in paragraph (1) by the number of units of average daily attendance for each juvenile court school program and county community school program operated in that same fiscal year.

(b) Cost-of-living adjustments to revenue limits per unit average daily attendance in juvenile court school and county community school programs operated by county superintendents of schools shall be computed pursuant to paragraph (1) of subdivision (a) in fiscal years in which appropriations are provided for that purpose.

SEC. 3. Section 2550.2 of the Education Code is amended to read:

2550.2. The Superintendent of Public Instruction shall make the following computations to determine the revenue limits for juvenile court school programs operated by county superintendents of schools pursuant to Article 2.5 (commencing with Section 48645) of Chapter 4 of Part 27:

(a) For the 1985–86 fiscal year and each fiscal year thereafter, add to the prior fiscal year revenue limit per unit of average daily attendance for juvenile court school programs all of the following amounts:

(1) An equalization adjustment for revenue limits per unit of average daily attendance that in the 1988–89 fiscal year were below the statewide average for that fiscal year, computed as follows:

(A) Subtract the county's 1988–89 fiscal year revenue limit per unit of average daily attendance from the statewide average revenue limit for juvenile court school programs for the 1988–89 fiscal year.

(B) Notwithstanding subdivision (c), for the 1989–90 fiscal year, the amount calculated pursuant to subparagraph (A).

(2) An inflation adjustment equal to the percentage increase applied to the statewide average revenue limit for school districts multiplied by the statewide average revenue limit for juvenile court school programs for the prior fiscal year.

(b) The Superintendent of Public Instruction shall multiply the revenue limit per unit of average daily attendance computed in subdivision (a) by the number of units of average daily attendance for county juvenile court school programs for the current fiscal year.

(c) In no event shall the amount computed pursuant to paragraph (1) of subdivision (a) exceed the amount computed pursuant to paragraph (2) of subdivision (a).

(d) As a condition of receiving an equalization adjustment pursuant to paragraph (1) of subdivision (a), the county superintendent of schools shall certify to the Superintendent of Public Instruction that all the funds

received pursuant to this section are expended solely for purposes of operating juvenile court school programs pursuant to Article 2.5 (commencing with Section 48645) of Chapter 4 of Part 27 or of serving pupils enrolled in community schools pursuant to subdivision (c) of Section 1981.

(e) In any fiscal year in which Section 2550.1 is operative, this section shall be inoperative.

SEC. 4. Section 2550.5 of the Education Code is amended to read:

2550.5. (a) For each fiscal year to which Section 2550.6 applies, revenue limit increases calculated pursuant to subdivisions (b) to (f), inclusive, of Section 2550.6 and revenue limit increases made pursuant to Section 2550.7 shall be funded from the amounts available for the inflation adjustment calculated pursuant to paragraph (2) of subdivision (a) of Section 2550.2. Those amounts shall be allocated as set forth in this section.

(b) The revenue limit increases calculated pursuant to subdivisions (b) to (f), inclusive, of Section 2550.6 shall be funded as follows:

(1) The revenue limit increases shall be funded from the funds derived from any amounts available for the inflation adjustment calculated pursuant to paragraph (2) of subdivision (a) of Section 2550.2.

(2) If no funds from the inflation adjustment are available, or if the funds available for the inflation adjustment are not sufficient to fully fund the revenue limit increases, the Superintendent of Public Instruction shall reduce the revenue limit increases for the fiscal year in which the funds are insufficient on a pro rata basis.

(c) In the first fiscal year that the funds that are available for the inflation adjustment calculated pursuant to paragraph (2) of subdivision (a) of Section 2550.2 exceed the amount needed to fully fund the revenue limit increases calculated pursuant to subdivisions (b) to (f), inclusive, of Section 2550.6, the Superintendent of Public Instruction shall, from those excess funds, allocate the amounts necessary to increase the revenue limits of county superintendents of schools pursuant to Section 2550.7. If those funds are not sufficient to fully fund the revenue limit increases described in Section 2550.7, the Superintendent of Public Instruction shall make allocations for those revenue limit increases on a pro rata basis. The Superintendent of Public Instruction shall, in each subsequent fiscal year that those excess funds are available, continue to allocate funds for the purposes of Section 2550.7 until the revenue limits are increased to the level contemplated by that section.

(d) If after making the allocation described in subdivision (c) excess funds are available, the Superintendent of Public Instruction shall, for the purpose of making an inflation adjustment, allocate those funds in a uniform amount per unit of average daily attendance for each school

receiving a revenue limit increase pursuant to the relevant subdivision of subdivision (b), (c), (d), (e), or (f) of Section 2550.6, with the uniform amount per unit of average daily attendance reduced as necessary and the amount thereby saved allocated to any school that does not receive a revenue limit increase pursuant to the relevant subdivision (b), (c), (d), (e), or (f) of Section 2550.6 to ensure that it has a funding level per unit of average daily attendance in the then current fiscal year that is not less than the highest funding level per unit of average daily attendance in the then current fiscal year for schools that receive a revenue limit increase pursuant to the relevant subdivision (b), (c), (d), (e), or (f) of Section 2550.6.

(e) If in the 2000–01 fiscal year there are not sufficient funds available to fully fund revenue limits for schools subject to Section 2550.6 at the level calculated pursuant to subdivision (f) of Section 2550.6, then the Superintendent of Public Instruction shall continue to equalize revenue limits per unit of average daily attendance for those schools in a manner consistent with Section 2550.6 in the 2001–02 fiscal year, and in any subsequent fiscal year, as necessary, and consistent with subdivision (f) of Section 2550.6.

(f) The equalization of revenue limits per unit of average daily attendance pursuant to Section 2550.6 shall be complete in the fiscal year in which the revenue limit per unit of average daily attendance, as computed pursuant to Section 2550.6, for each school subject to this section is within the following range:

(1) Not less than the statewide average revenue limit per unit of average daily attendance for pupils enrolled in schools for the prior fiscal year multiplied by the inflation adjustment computed pursuant to paragraph (2) of subdivision (a) of Section 2550.2 for the current fiscal year.

(2) Not more than the product calculated in paragraph (1) multiplied by 1.15.

(g) For the purpose of this section, ''school'' or ''schools'' means juvenile court schools operated by a county superintendent of schools pursuant to Article 2.5 (commencing with Section 48645) of Chapter 4 of Part 27, and county community schools described in subdivision (c) of Section 1981, that are subject to Section 2550.6.

(h) In any fiscal year in which Section 2550.1 is operative, this section shall be inoperative.

SEC. 5. Section 2550.6 of the Education Code is amended to read:

2550.6. The revenue limit per unit of average daily attendance for each juvenile court school operated by a county superintendent of schools pursuant to Article 2.5 (commencing with Section 48645) of Chapter 4 of Part 27 and each county community school described in

subdivision (c) of Section 1981 shall be subject to the following equalization adjustments:

(a) For the purposes of determining the revenue limit per unit of average daily attendance, make the following computations:

For the 1996–97 fiscal year, compute the statewide average revenue limit per unit of average daily attendance calculated pursuant to Section 2550.2 for the 1995–96 fiscal year for pupils enrolled in juvenile court schools pursuant to Article 2.5 (commencing with Section 48645) of Chapter 4 of Part 27 and for pupils enrolled in county community schools pursuant to subdivision (c) of Section 1981, as that section existed on June 30, 1996.

(b) If the revenue limit per unit of average daily attendance for the 1995–96 fiscal year determined pursuant to Section 2550.2 for the county superintendent of schools is less than the amount determined in subdivision (a), make the following computations:

(1) From the amount determined in subdivision (a), subtract the revenue limit per unit of average daily attendance for the 1995–96 fiscal year determined pursuant to Section 2550.2.

(2) Multiply the amount determined pursuant to paragraph (1) by 0.20.

(3) Add the amount determined in paragraph (2) to the revenue limit per unit of average daily attendance determined for the 1995–96 fiscal year.

(4) Add the amount determined in paragraph (3) to the inflation adjustment, if any, provided for the 1996–97 fiscal year pursuant to subdivision (d) of Section 2550.5. The amount of the sum is the revenue limit per unit of average daily attendance for the 1996–97 fiscal year for juvenile court schools and county community schools subject to this subdivision.

(c) The revenue limit per unit of average daily attendance for the 1997–98 fiscal year for each county superintendent of schools subject to subdivision (b) shall be determined as follows:

(1) Increase the amount determined in subdivision (a) by the inflation adjustment for the 1996–97 fiscal year as determined in paragraph (2) of subdivision (a) of Section 2550.2.

(2) If the revenue limit per unit of average daily attendance calculated pursuant to paragraph (4) of subdivision (b) is less than the amount determined pursuant to paragraph (1), make the following computation:

(A) From the amount calculated pursuant to paragraph (1) subtract the revenue limit per unit of average daily attendance calculated pursuant to paragraph (4) of subdivision (b).

(B) Multiply the amount determined in subparagraph (A) by 0.25.

(C) Add the amount determined in subparagraph (B) to the revenue limit per unit of average daily attendance calculated pursuant to

paragraph (4) of subdivision (b) as increased by the inflation adjustment, if any, provided for the 1997–98 fiscal year pursuant to subdivision (d) of Section 2550.5. The amount of this sum is the revenue limit per unit of average daily attendance for the 1997–98 fiscal year for juvenile court schools and county community schools subject to this subdivision.

(d) The revenue limit per unit of average daily attendance for the 1998–99 fiscal year for each county superintendent of schools subject to subdivision (c) shall be determined as follows:

(1) Increase the amount determined in paragraph (1) of subdivision (c) by the inflation adjustment for the 1997–98 fiscal year as determined in paragraph (2) of subdivision (a) of Section 2550.2.

(2) If the revenue limit per unit of average daily attendance calculated pursuant to subparagraph (C) of paragraph (2) of subdivision (c) is less than the amount determined pursuant to paragraph (1), make the following computation:

(A) From the amount calculated pursuant to paragraph (1) subtract the revenue limit per unit of average daily attendance calculated pursuant to subparagraph (C) of paragraph (2) of subdivision (c).

(B) Multiply the amount determined in subparagraph (A) by 0.33.

(C) Add the amount determined in subparagraph (B) to the revenue limit per unit of average daily attendance calculated pursuant to subparagraph (C) of paragraph (2) of subdivision (c) as increased by the inflation adjustment, if any, provided for the 1998–99 fiscal year pursuant to subdivision (d) of Section 2550.5. The amount of this sum is the revenue limit per unit of average daily attendance for the 1998–99 fiscal year for juvenile court schools and county community schools subject to this subdivision.

(e) The revenue limit per unit of average daily attendance for the 1999–2000 fiscal year for each county superintendent of schools subject to subdivision (d) shall be the amount determined as follows:

(1) Increase the amount determined in paragraph (1) of subdivision (d) by the inflation adjustment for the 1998–99 fiscal year as determined in paragraph (2) of subdivision (a) of Section 2550.2.

(2) If the revenue limit per unit of average daily attendance calculated pursuant to subparagraph (C) of paragraph (2) of subdivision (d) is less than the amount determined pursuant to paragraph (1), make the following computation:

(A) From the amount calculated pursuant to paragraph (1) subtract the revenue limit per unit of average daily attendance calculated pursuant to subparagraph (C) of paragraph (2) of subdivision (d).

(B) Multiply the amount determined in subparagraph (A) by 0.5.

(C) Add the amount determined in subparagraph (B) to the revenue limit per unit of average daily attendance calculated pursuant to subparagraph (C) of paragraph (2) of subdivision (d) as increased by the

inflation adjustment, if any, provided for the 1999–2000 fiscal year pursuant to subdivision (d) of Section 2550.5. The amount of this sum is the revenue limit per unit of average daily attendance for the 1999–2000 fiscal year for juvenile court schools and county community schools subject to this subdivision.

(f) The revenue limit per unit of average daily attendance for the 2000–01 fiscal year for each county superintendent of schools subject to subdivision (e) shall be the amount determined in subdivision (a) as adjusted for inflation in the 1996–97, 1997–98, 1998–99, 1999–2000, and 2000–01 fiscal years pursuant to paragraph (2) of subdivision (a) of Section 2550.2.

(g) In any fiscal year in which Section 2550.1 is operative this section shall be inoperative.

SEC. 6. Section 2550.7 of the Education Code is amended to read:

2550.7. The Superintendent of Public Instruction shall apportion funds for each unit of average daily attendance in county community school programs operated by a county superintendent of schools for pupils enrolled therein pursuant to subdivision (a), (b), (c), or (d) of Section 1981 if the county superintendent of schools claims an annual county community school average daily attendance of 20 or less, at the revenue limit per unit of average daily attendance provided for in subdivision (b) of Section 1982.

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:

To make fiscal adjustments necessary for the 2002 Budget Act, it is necessary that this measure take effect immediately as an urgency statute.

CHAPTER 520

An act to amend Section 1215.5 of, to repeal and add Section 1211 of, and to repeal Section 1211.5 of, the Insurance Code, relating to insurance.

[Approved by Governor September 13, 2002. Filed with Secretary of State September 13, 2002.]

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

SECTION 1. Section 1211 of the Insurance Code is repealed.

SEC. 2. Section 1211 is added to the Insurance Code, to read:

1211. (a) For the purposes of this section the following definitions shall apply:

(1) ''Aggregate counterparty exposure'' means the sum of the aggregate statement value options, swaptions, caps, floors, and warrants purchased, and the aggregate potential exposure of collars, swaps, forwards, and futures entered into.

(2) ''Cap'' means an agreement obligating the seller to make payments to the buyer with each payment based on the amount by which a reference price or level or the performance or value of one or more underlying interests exceeds a predetermined number, sometimes referred to as the strike rate or strike price.

(3) ''Collar'' means an agreement to receive payments as the buyer of an option, cap, or floor and to make payments as the seller of a different option, cap, or floor.

(4) ''Credit default swap'' means an agreement obligating the buyer to pay a periodic payment to the seller in return for the seller's obligation to make a payment to the buyer if a credit event or events occur with respect to underlying interests or an entity, as specified in the documentation of the credit default swap.

(5) ''Derivative instrument'' means an agreement, option, instrument or a series or combination of those (A) to make or take delivery of, or assume or relinquish, a specified amount of one or more underlying interests, or to make a cash settlement in lieu thereof, or (B) that has a price, performance, value, or cash flow based primarily upon the actual or expected price, level, performance, value, or cashflow of one or more underlying interests.

A derivative instrument includes all investment instruments or contracts that derive all or almost all of their value from the performance of an underlying market, index, or financial instruments. The term includes options, warrants, caps, floors, collars, swaps, credit default swaps, swaptions, forwards, and futures.

(6) ''Derivative transaction'' means a transaction involving the use of one or more derivative instruments.

(7) ''Floor'' means an agreement obligating the seller to make payments to the buyer in which each payment is based on the amount by which a predetermined number, sometimes called the floor rate or price, exceeds a reference price, level, performance, or value of one or more underlying interests.

(8) ''Forward'' means an agreement, other than a future, to make or take delivery in the future of one or more underlying interests, or effect a cash settlement, based on the actual or expected price, level, performance, or value of those underlying interests, but does not mean or include spot transactions effected within customary settlement

periods, when issued purchases, or other similar cash market transactions.

(9) ''Future'' means an agreement traded on an organized and qualified futures exchange, to make or take delivery of, or effect a cash settlement based on the actual or expected price, level, performance, or value of, one or more underlying interests.

(10) ''Hedging transaction'' means a derivative transaction that is entered into and at all times maintained to reduce (A) risk due to a change in the value, yield, price, cashflow, or quantity of assets or liabilities that the insurer has acquired or incurred or anticipates acquiring or incurring or (B) risk due to changes in the currency exchange rate or the degree of exposure as to assets or liabilities denominated in a foreign currency that an insurer has acquired or incurred or anticipates acquiring or incurring.

(11) ''Option'' means an agreement giving the buyer the right to buy or receive, sell, or deliver, enter into, extend, or terminate or effect a cash settlement based on the actual or expected price, spread, level, performance, or value of one or more underlying interests.

(A) For purposes of this paragraph, an agreement giving the buyer the right to buy or receive may also be called a ''call option.''

(B) For purposes of this paragraph, an agreement giving the buyer the right to sell or deliver may be called a ''put option.''

(12) ''Potential exposure'' means the amount determined in accordance with the National Association of Insurance Commissioners Annual Statement Instructions.

(13) ''Qualified bank'' means a bank or trust company that meets all of the following:

(A) The bank or trust company is organized and existing, or in the case of a branch or agency of a foreign banking organization is licensed, under federal law or the law of any state.

(B) The bank or trust company is regulated, supervised, and examined by the United States federal or state authorities having regulatory authority over banks and trust companies.

(C) The bank or trust company has assets in excess of five billion dollars ($5,000,000,000).

(D) The bank or trust company has senior obligations outstanding, or has a parent corporation that has senior obligations outstanding, rated AA or better, or the equivalent, by two independent nationally recognized statistical rating organizations.

(E) The bank or trust company has a ratio of primary capital to total assets of at least $5^1/_2$ percent and a ratio of total capital to total assets of at least 6 percent.

(14) ''Qualified counterparty'' is a qualified broker or dealer or a qualified bank or other counterparty rated AA- or Aa3 or higher by a nationally recognized statistical rating organization.

(15) ''Qualified broker or dealer'' means a broker or dealer that is organized under the laws of a state and is registered under the Securities Exchange Act of 1934 (15 U.S.C.A.78a-78kk), and has net capital in excess of two hundred fifty million dollars ($250,000,000).

(16) ''Replication transaction'' means a derivative transaction or combination of derivative transactions effected either separately or in conjunction with cash market investments included in the insurer's investment portfolio in order to replicate the investment characteristic of another authorized transaction, investment, or instrument or that may operate as a substitute for cash market investments. A derivative transaction entered into by the insurer as a hedging transaction authorized pursuant to this section shall not be considered a replication transaction.

(17) ''Swap'' means an agreement to exchange or to net payments or income streams at one or more times based on the actual or expected price, yield, level, performance, or value of one or more underlying interests.

(18) ''Swaption'' means an option to purchase or sell a swap at a given price and time or at a series of prices and times. A swaption does not mean a swap with an embedded option.

(19) ''Underlying interest'' means the assets, liabilities, other interests, or a combination thereof, underlying a derivative instrument, such as any one or more securities, currencies, rates, indices, commodities, or derivative instruments.

(20) ''Warrant'' means an instrument that gives the holder the right to purchase or sell the underlying interest at a given price and time or at a series of prices and times outlined in the warrant agreement.

(b) Any domestic incorporated insurer having admitted assets, as of the preceding December 31, of at least one billion dollars ($1,000,000,000) and capital and surplus of at least two hundred million dollars ($200,000,000), after investing an amount equal to its required minimum paid-in capital in securities specified in Article 3 (commencing with Section 1170), may engage in derivative transactions pursuant to, and in compliance with, this section.

(c) An insurer may only use derivative instruments under this section to engage in hedging transactions and replication transactions authorized pursuant to this section.

(d) An insurer that engages in hedging transactions or replication transactions as authorized pursuant to this section shall do both of the following:

(1) Maintain its position in any outstanding derivative instrument used as part of a hedging transaction or replication transaction for only as long as the hedging transaction or replication transaction, as the case may be, continues to be effective in meeting the objective and the

rationale the insurer identifies at the point of inception of the hedging or replication transaction.

(2) Be able to demonstrate to the commissioner, upon request, that any hedging transaction or replication transaction continues to be effective in meeting that objective and rationale.

(e) (1) The aggregate statement value, and potential exposure, of all transactions held under the authority of this section at any one time shall not be in excess of $7^1/_2$ percent of the insurer's admitted assets, as of the preceding December 31.

(2) Hedging transactions under this section may only be made if, as a result of, and after giving effect to the transaction, all of the following is established:

(A) Excluding options acquired under Section 1212, the aggregate statement value of options, swaptions, caps, floors, and warrants purchased pursuant to this section does not exceed $7^1/_2$ percent of its admitted assets as of the preceding December 31.

(B) Excluding options acquired under Section 1212, the aggregate statement value of options, swaptions, caps, and floors written pursuant to this section does not exceed 3 percent of its admitted assets as of the preceding December 31.

(C) Excluding futures entered into under Section 1212, the aggregate potential exposure of collars, swaps, forwards, and futures, entered into and, except for options acquired under Section 1212, options, swaptions, caps, and floors written pursuant to this section does not exceed $6^1/_2$ percent of its admitted assets as of the preceding December 31.

(f) An insurer may purchase or sell one or more derivative instruments to offset any derivative instrument previously purchased or sold, as the case may be, without regard to the quantitative limitations of this section, provided that the derivative instrument is an exact offset to the original derivative instrument being offset.

(g) (1) The board of directors of any domestic insurer that makes investments pursuant to this section shall first adopt written guidelines for the making of the investments. The guidelines shall cover factors including concentration and diversification of counterparty risk, quality, maturity, and diversification of derivative investments, and other specifications, including investment strategies, asset liability management practices, the insurer's liquidity needs and its capital and surplus, and other factors that the board of directors deems appropriate. The guidelines shall also include processes and practices that will facilitate the monitoring of derivative transactions through cashflow testing or other methods to substantiate the effectiveness of the hedging strategies and derivative transactions and provide the board of directors of the committee thereof charged with the responsibility for supervising investments the opportunity to assure itself of the training, sufficient

understanding, and competency of pertinent personnel implementing the derivative transactions.

(2) In order to address the need for appropriate oversight by senior management and by the board of directors, or a committee thereof charged with the responsibility for supervising investments, and to provide for a comprehensive risk management process, an insurer shall establish the following with respect to derivative transactions:

(A) Appropriate limits for various identified risks relevant to the derivative transactions used by the insurer.

(B) Procedures and practices that control the nature and amount of those risks.

(C) Adequate systems or processes for identifying and measuring those risks.

(D) Systems or processes for documenting, monitoring, and reporting risk exposures on a timely basis.

(E) Systems or processes of internal review and audit to ensure the integrity of the overall risk management process.

(3) The board of directors, or a committee thereof charged with the responsibility for supervising investments, shall receive and review quarterly reports which shall include all of the following:

(A) Information to ascertain that all derivative transactions have been made in accordance with delegations, standards, limitations, and investment objectives contained in the derivative guidelines.

(B) The outstanding derivative positions.

(C) The unrealized gains or losses thereon.

(D) The derivative transactions closed during the report period.

(E) A performance review of the derivative transactions.

(F) An evaluation of the risks and benefits of the derivative transactions.

(G) Other information necessary to ensure that the internal control procedures are being followed.

(4) The board of directors, or a committee thereof charged with the responsibility for supervising investments, shall establish the following management oversight standards for derivative transactions:

(A) The board of directors, or a committee thereof charged with the responsibility for supervising investments, has an affirmative obligation to inform management of its desired risk tolerance levels. Management shall appropriately translate these risk tolerance levels into effective policies and procedures that address both individual transactions and entire portfolios.

(B) Management and the board of directors, or a committee thereof charged with the responsibility for supervising investments, shall receive sufficient information to assess the strengths and limitations of the insurer's risk measurement systems in order to determine appropriate

risk limits. The board of directors, or a committee thereof charged with the responsibility for supervising investments, shall also review management's response to strengths and limitations identified through oversight processes such as stress testing, independent validation, and back-testing of risk measurement models. Management and the board of directors, or a committee thereof charged with the responsibility for supervising investments, shall consider the information identified by the oversight processes, including the potential for indirect effects of downside performance beyond the insurer's finances, when they determine and communicate their risk profile.

(C) When management or the board of directors, or a committee thereof charged with the responsibility for supervising investments, identifies weaknesses in the risk management process, they shall consider alternatives and take steps to strengthen that process and maintain detailed documentation of steps and actions taken.

(D) Actions shall be taken to correct any deficiencies in internal controls relative to derivative transactions, including any deficiencies determined by the independent certified public accountant in the evaluation of accounting procedures and internal controls and maintain detailed documentation of steps and actions taken.

(E) Personnel responsible for risk oversight functions shall possess independence, authority, and expertise.

(F) Issuer and counterparty credit decisions for each transaction shall be consistent with the overall credit standards of the insurer.

(G) In connection with each derivative transaction under this section, insurers shall maintain a statement in their records listing any member of the board of directors who is employed by, or a partner in, a party involved in the derivative transaction.

(5) The board of directors or committee charged with the responsibility of supervising investments shall determine at least quarterly whether all derivative transactions have been made in accordance with delegations, standards, limitations, and investment objectives prescribed in the guidelines. If the determinations are made by a committee of the board of directors, the minutes of the committee reflecting the determinations shall be recorded and a report thereon shall be submitted to the board for its review at the board's next meeting.

(6) The commissioner shall require the guidelines to be submitted and shall disapprove the guidelines if the insurer is unable to show that the guidelines are found sufficient to prevent financially unsound or hazardous transactions or practices.

(h) An insurer shall comply with applicable financial requirements as promulgated by the commissioner and the National Association of Insurance Commissioners included in the Purposes and Procedures Manual of the National Association of Insurance Commissioners

Securities Valuation Office, the National Association of Insurance Commissioners Accounting Practices and Procedures Manual, and the National Association of Insurance Commissioners Annual Statement Instructions, including, but not limited to, the reporting of transfers, if any, of interests in the assets of the insurer pledged as collateral or interests in the assets of counterparties received as collateral in connection with derivative transactions.

(i) (1) The counterparty exposure under a derivative instrument entered into by an insurer authorized to engage in derivative transactions pursuant to this section shall be deemed to be an obligation of the institution to which the insurer is exposed to credit risk and shall be included in determining compliance with any single or aggregate quantitative limitation on investments made by an insurer under this section.

(2) An insurer shall only enter into derivative transactions with counterparties that are rated one by the Securities Valuation Office.

(3) Notwithstanding any single or aggregate quantitative limitation on investments made by an insurer under this section, the aggregate counterparty exposure under one or more derivative transactions to any single counterparty rated one by the Securities Valuation Office, other than a "qualified counterparty," shall be limited to one-half of 1 percent of an insurer's admitted assets, and all counterparties rated one by the Securities Valuation Office, other than qualified counterparties, shall be limited to 3 percent of an insurer's admitted assets.

(j) Investments made pursuant to this section, and related transactions, are deemed excess funds investments and shall be subject to the provisions of Sections 1153.5, 1154, and 1210, and Article 4 (commencing with Section 1190), provided that if an insurer classifies an investment under Section 1210 that investment shall continue to be subject to the limitations of paragraph (1) of subdivision (e). Notwithstanding anything to the contrary, a requirement providing that any derivative transaction be disposed of by the insurer pursuant to Section 1202 shall be deemed conclusive unless the insurer establishes that the derivative transaction or transactions are financially sound and not hazardous. This section shall only be deemed to permit replication of investments or instruments, that are otherwise permitted in this code, and that are reported in compliance with the requirements of the risk-based capital and risk-based capital instructions required by Section 739.2.

(k) Except as permitted in this section, nothing in this section shall be deemed to permit an investment, transaction, or practice that is not authorized by another section of this code. Exposure to risk by use of derivatives shall be consistent with the overall investment guidelines. Insurers shall not enter into derivative transactions in whole or in part

with funds borrowed for that purpose, including, but not limited to on margin.

(*l*) The commissioner may adopt rules and issue guidelines establishing standards and requirements relative to practices authorized in this section. In connection with any of the actions contemplated by this section to be taken by the commissioner, including review of an insurer's written guidelines with respect to derivative transactions and review of documentation maintained by an insurer with respect to derivative transactions, the commissioner may deem the actions to be an examination of an insurer subject to the provisions of Sections 730 to 738, inclusive. The commissioner shall issue regulations establishing requirements regarding the disclosure of affiliations and conflicts of interest between an insurer and persons contracted by the commissioner to perform services on behalf of the commissioner in connection with the matters authorized by this section.

(m) An insurer that is not engaged in the issuance of new policies of insurance and that is formed for the purpose of facilitating the rehabilitation of an insolvent insurer under Article 14 (commencing with Section 1010) of Chapter 1, shall, prior to engaging in any derivative transaction, obtain approval for each transaction from the commissioner, and shall otherwise comply with the requirements of this section. However, the insurer may, upon request to the commissioner, and upon showing satisfactory to the commissioner that prior approval of each transaction would not be in the best interests of the policyholders, request that the commissioner waive the requirement of prior approval and the insurer shall, in addition to complying with the requirements of this section, submit monthly written reports of all derivative transactions to the commissioner in the form required by the commissioner within 30 days of the prior month's end.

SEC. 3. Section 1211.5 of the Insurance Code is repealed.

SEC. 4. Section 1215.5 of the Insurance Code is amended to read:

1215.5. (a) Transactions by registered insurers with their affiliates are subject to the following standards:

(1) The terms shall be fair and reasonable.

(2) Charges or fees for services performed shall be reasonable.

(3) Expenses incurred and payment received shall be allocated to the insurer in conformity with customary insurance accounting practices consistently applied.

(4) The books, accounts, and records of each party to all transactions shall be so maintained as to clearly and accurately disclose the precise nature and details of the transactions, including accounting information that is necessary to support the reasonableness of the charges or fees to the parties.

(5) The insurer's policyholder's surplus following any dividends or distributions to shareholder affiliates shall be reasonable in relation to the insurer's outstanding liabilities and adequate to its financial needs.

(b) The following transactions involving a domestic insurer or commercially domiciled insurer, as defined in Section 1215.13, and any person in its holding company system, may be entered into only if the insurer has notified the commissioner in writing of its intention to enter into the transaction at least 30 days prior thereto, or a shorter period as the commissioner may permit, and the commissioner has not disapproved it within that period. The commissioner shall require the payment of one thousand eight hundred eighty-nine dollars ($1,889) as a fee for filings under this subdivision. The payment shall accompany the filing.

(1) Sales, purchases, exchanges, loans, extensions of credit, or investments, if the transactions are equal to or exceed:

(A) For a nonlife insurer, the lessor of 3 percent of the insurer's admitted assets or 25 percent of the policyholder's surplus as of the preceding December 31st.

(B) For a life insurer, 3 percent of the insurer's admitted assets as of the preceding December 31st.

(2) Loans or extensions of credit to a person who is not an affiliate, if made with the agreement or understanding that the proceeds of the transactions, in whole or in substantial part, are to be used to make loans or extensions of credit to, to purchase assets of, or to make investments in, any affiliate of the insurer, if the transactions are equal to or exceed:

(A) For a nonlife insurer, the lesser of 3 percent of the insurer's admitted assets or 25 percent of the policyholder's surplus as of the preceding December 31st.

(B) For a life insurer, 3 percent of the insurer's admitted assets as of the preceding December 31st.

(3) Reinsurance agreements or modifications thereto in which the reinsurance premium or a change in the insurer's liabilities equals or exceeds 5 percent of the insurer's policyholder's surplus, as of the preceding December 31st, including those agreements that may require as consideration the transfer of assets from an insurer to a nonaffiliate, if an agreement or understanding exists between the insurer and nonaffiliate that any portion of the assets will be transferred to one or more affiliates of the insurer.

(4) All management agreements, service contracts, and cost-sharing arrangements. However, subscription agreements or powers of attorney executed by subscribers of a reciprocal or interinsurance exchange are not required to be reported pursuant to this section if the form of the agreement was in use before 1943 and was not amended in any way to modify payments, fees, or waivers of fees or otherwise substantially

amended after 1943. Payment or waiver of fees or other amounts due under subscription agreements or powers of attorney forms that were in use before 1943 and that have not been amended in any way to modify payments, fees, or waiver of fees, or otherwise substantially amended after 1943 shall not be subject to regulation pursuant to paragraph (2) of subdivision (a).

(5) Guarantees when initiated or made by a domestic or commercially domiciled insurer, provided that a guarantee that is quantifiable as to amount is not subject to the notice requirements of this paragraph unless it exceeds the lesser of one-half of 1 percent of the insurer's admitted assets or 10 percent of surplus as regards policyholders as of the 31st day of December next preceding. Further, all guarantees that are not quantifiable as to amount are subject to the notice requirements of this paragraph.

(6) Derivative transactions or series of derivative transactions. The written filing to the commissioner shall include the type or types of derivative transactions, the affiliate or affiliates engaging with the insurer in the derivative transactions, the objective and the rationale for the derivative transaction or series of derivative transactions, the maximum maturity and economic effect of the derivative transactions, and any other information required by the commissioner. Derivative transactions entered into pursuant to this subdivision shall comply with the provisions of Section 1211.

(7) Direct or indirect acquisitions or investments in a person that controls the insurer or in an affiliate of the insurer in an amount that, together with its present holdings in those investments, exceeds 2.5 percent of the insurer's policyholder's surplus. Direct or indirect acquisitions or investments in subsidiaries acquired under Section 1215.1, or in nonsubsidiary insurance affiliates that are subject to the provisions of this article, or in subsidiaries acquired pursuant to Section 1199, are exempt from this requirement.

(8) Any material transactions, specified by regulation, that the commissioner determines may adversely affect the interests of the insurer's policyholders.

(c) A domestic insurer may not enter into transactions that are part of a plan or series of transactions with persons within the holding company system if the purpose of those transactions is to avoid the statutory threshold amount and thus avoid review. If the commissioner determines that separate transactions were entered into over any 12-month period to avoid review, the commissioner may exercise his or her authority under Section 1215.10.

(d) The commissioner, in reviewing transactions under subdivision (b), shall consider whether the transactions comply with the standards

set forth in subdivision (a) and whether they may adversely affect the interests of policyholders.

(e) The commissioner shall be notified within 30 days of any investment by the insurer in any one corporation if the total investment in the corporation by the insurance holding company system exceeds 10 percent of the corporation's voting securities.

(f) For purposes of this article, in determining whether an insurer's policyholder's surplus is reasonable in relation to the insurer's outstanding liabilities and adequate to its financial needs, the following factors, among others, shall be considered:

(1) The size of the insurer, as measured by its assets, capital and surplus, reserves, premium writings, insurance in force, and other appropriate criteria.

(2) The extent to which the insurer's business is diversified among the several lines of insurance.

(3) The number and size of risks insured in each line of business.

(4) The extent of the geographical dispersion of the insurer's insured risks.

(5) The nature and extent of the insurer's reinsurance program.

(6) The quality, diversification, and liquidity of the insurer's investment portfolio.

(7) The recent past and projected future trend in the size of the insurer's investment portfolio.

(8) The recent past and projected future trend in the size of the insurer's surplus, and the policyholder's surplus maintained by other comparable insurers.

(9) The adequacy of the insurer's reserves.

(10) The quality and liquidity of investments in subsidiaries made under Section 1215.1. The commissioner may treat any such investment as a disallowed asset for purposes of determining the adequacy of the policyholder's surplus whenever, in his or her judgment, the investment so warrants.

(11) The quality of the company's earnings and the extent to which the reported earnings include extraordinary accounting items.

(g) No insurer subject to registration under Section 1215.4 shall pay any extraordinary dividend or make any other extraordinary distribution to its stockholders until 30 days after the commissioner has received notice of the declaration thereof and has approved the payment or has not, within the 30-day period, disapproved the payment.

For purposes of this section, an extraordinary dividend or distribution is any dividend or distribution which, together with other dividends or distributions made within the preceding 12 months, exceeds the greater of (1) 10 percent of the insurer's policyholder's surplus as of the preceding December 31st, or (2) the net gain from operations of the

insurer, if the insurer is a life insurer, or the net income, if the insurer is not a life insurer, for the 12-month period ending the preceding December 31st.

Notwithstanding any other provision of law, an insurer may declare an extraordinary dividend or distribution that is conditional upon the commissioner's approval. The declaration confers no rights upon stockholders until the commissioner has approved the payment of the dividend or distribution or until the commissioner has not disapproved the payment within the 30-day period referred to in this subdivision.

(h) Notwithstanding the control of a domestic insurer by any person, the officers and directors of the insurer shall not thereby be relieved of any obligation or liability to which they would otherwise be subject to by law, and the insurer shall be managed to ensure its separate operating identity consistent with the provisions of this article. However, nothing in this article shall preclude a domestic insurer from having or sharing a common management or cooperative or joint use of personnel, property, or services with one or more other persons under arrangements meeting the standards of subdivision (a).

(i) The provisions of this section do not apply to any insurer, information, or transaction exempted by the commissioner.

CHAPTER 521

An act to amend Section 148.3 of the Penal Code, relating to crime.

[Approved by Governor September 13, 2002. Filed with Secretary of State September 13, 2002.]

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

SECTION 1. Section 148.3 of the Penal Code is amended to read:

148.3. (a) Any individual who reports, or causes any report to be made, to any city, county, city and county, or state department, district, agency, division, commission, or board, that an ''emergency'' exists, knowing that the report is false, is guilty of a misdemeanor and upon conviction thereof shall be punishable by imprisonment in the county jail for a period not exceeding one year, or by a fine not exceeding one thousand dollars ($1,000), or by both that imprisonment and fine.

(b) Any individual who reports, or causes any report to be made, to any city, county, city and county, or state department, district, agency, division, commission, or board, that an ''emergency'' exists, and who knows that the report is false, and who knows or should know that the response to the report is likely to cause death or great bodily injury, and

great bodily injury or death is sustained by any person as a result of the false report, is guilty of a felony and upon conviction thereof shall be punishable by imprisonment in the state prison, or by a fine of not more than ten thousand dollars ($10,000), or by both that imprisonment and fine.

(c) ''Emergency'' as used in this section means any condition which results in, or which could result in, the response of a public official in an authorized emergency vehicle, aircraft, or vessel, or any condition which jeopardizes or could jeopardize public safety and results in, or could result in, the evacuation of any area, building, structure, vehicle, or of any other place which any individual may enter.

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.

CHAPTER 522

An act to add Section 14022.5 to the Welfare and Institutions Code, relating to Medi-Cal.

[Approved by Governor September 13, 2002. Filed with Secretary of State September 15, 2002.]

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

SECTION 1. Section 14022.5 is added to the Welfare and Institutions Code, to read:

14022.5. (a) It is the intent of the Legislature to recognize the challenges and unique dental treatment needs of the developmentally disabled population that cannot be addressed within the current structure of benefits, frequency of allowable procedures, and treatment authorization procedures for assistance programs relating to dental benefits.

(b) The department shall work in cooperation with the State Department of Developmental Services, and in consultation with the California Dental Association, to provide existing data directly to the fiscal and policy committees of the Legislature specified in subdivision (c), by April 1, 2003, describing the characteristics of dental services

received by Medi-Cal beneficiaries who are eligible to receive dental services under the Lanterman Developmental Disability Services Act (Division 4.5 (commencing with Section 4500)), who can be easily identified, including, but not limited to, the frequency of utilization of dental procedures and services, and types of dental procedures and services.

(c) The committees to whom the data shall be provided include all of the following:

(1) The Senate Committee on Health and Human Services.

(2) The Senate Budget Subcommittee Number 3 on Health, Human Services, Labor, and Veterans Affairs.

(3) The Assembly Committee on Health.

(4) The Assembly Committee on Human Services.

(5) The Assembly Budget Subcommittee Number 1 on Health and Human Services.

(d) It is the intent of the Legislature that the information described in subdivision (b) will be used to identify possible program modifications that are more appropriate to serve the population described in subdivision (b), and that are more efficient and more effective in serving this population, while remaining cost-neutral.

CHAPTER 523

An act to amend Section 594.1 of the Penal Code, relating to etching cream.

[Approved by Governor September 13, 2002. Filed with Secretary of State September 15, 2002.]

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

SECTION 1. Section 594.1 of the Penal Code is amended to read:

594.1. (a) (1) It shall be unlawful for any person, firm, or corporation, except a parent or legal guardian, to sell or give or in any way furnish to another person, who is in fact under the age of 18 years, any etching cream or aerosol container of paint that is capable of defacing property without first obtaining bona fide evidence of majority and identity.

(2) For purposes of this section, ‘‘etching cream’’ means any caustic cream, gel, liquid, or solution capable, by means of a chemical action, of defacing, damaging, or destroying hard surfaces in a manner similar to acid.

(3) For purposes of this subdivision, ''bona fide evidence of majority and identity'' is any document evidencing the age and identity of an individual which has been issued by a federal, state, or local governmental entity, and includes, but is not limited to, a motor vehicle operator's license, a registration certificate issued under the federal Selective Service Act, or an identification card issued to a member of the armed forces.

(4) This subdivision shall not apply to the furnishing of six ounces or less of etching cream or an aerosol container of paint to a minor for the minor's use or possession under the supervision of the minor's parent, guardian, instructor, or employer.

(5) Etching cream, aerosol containers of paint, or related substances may be furnished for use in school-related activities that are part of the instructional program when used under controlled and supervised situations within the classroom or on the site of a supervised project. These containers may not leave the supervised site and shall be inventoried by the instructor. This use shall comply with Section 32060 of the Education Code regarding the safe use of toxic art supplies in schools.

(b) It shall be unlawful for any person under the age of 18 years to purchase etching cream or an aerosol container of paint that is capable of defacing property.

(c) Every retailer selling or offering for sale in this state etching cream or aerosol containers of paint capable of defacing property shall post in a conspicuous place a sign in letters at least three-eighths of an inch high stating: ''Any person who maliciously defaces real or personal property with etching cream or paint is guilty of vandalism which is punishable by a fine, imprisonment, or both.''

(d) It is unlawful for any person to carry on his or her person and in plain view to the public etching cream or an aerosol container of paint while in any posted public facility, park, playground, swimming pool, beach, or recreational area, other than a highway, street, alley, or way, unless he or she has first received valid authorization from the governmental entity which has jurisdiction over the public area.

As used in this subdivision, ''posted'' means a sign placed in a reasonable location or locations stating it is a misdemeanor to possess etching cream or a spray can of paint in that public facility, park, playground, swimming pool, beach, or recreational area without valid authorization.

(e) (1) It is unlawful for any person under the age of 18 years to possess etching cream or an aerosol container of paint for the purpose of defacing property while on any public highway, street, alley, or way, or other public place, regardless of whether that person is or is not in any automobile, vehicle, or other conveyance.

(2) As a condition of probation for any violation of this subdivision, the court may order a defendant convicted of a violation of this subdivision to perform community service as follows:

(A) For a first conviction under this subdivision, community service not to exceed 100 hours over a period not to exceed 90 days during a time other than his or her hours of school attendance or employment.

(B) If the person has a prior conviction under this subdivision, community service not to exceed 200 hours over a period of 180 days during a time other than his or her hours of school attendance or employment.

(C) If the person has two prior convictions under this subdivision, community service not to exceed 300 hours over a period not to exceed 240 days during a time other than his or her hours of school attendance or employment.

(f) Violation of any provision of this section is a misdemeanor. Upon conviction of any person under this section, the court may, in addition to any other punishment imposed, if the jurisdiction has adopted a graffiti abatement program as defined in subdivision (f) of Section 594, order the defendant, and his or her parents or guardians if the defendant is a minor, to keep the damaged property or another specified property in the community free of graffiti, as follows:

(1) For a first conviction under this section, for 90 days.

(2) If the defendant has a prior conviction under this section, for 180 days.

(3) If the defendant has two or more prior convictions under this section, for 240 days.

Participation of a parent or guardian is not required under this subdivision if the court deems this participation to be detrimental to the defendant, or if the parent or guardian is a single parent who must care for young children.

(g) The court may order any person ordered to perform community service or graffiti removal pursuant to subdivision (e) or (f) to undergo counseling.

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.

CHAPTER 524

An act to amend Sections 33481 and 62569 of the Food and Agricultural Code, and to amend Section 17276.7 of the Revenue and Taxation Code, relating to agriculture, and making an appropriation therefor.

[Approved by Governor September 13, 2002. Filed with Secretary of State September 15, 2002.]

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

SECTION 1. Section 33481 of the Food and Agricultural Code is amended to read:

33481. The secretary shall establish regulations for the construction of sanitary milk barns and milk houses which are used in the production of market milk.

SEC. 2. Section 62569 of the Food and Agricultural Code is amended to read:

62569. Any money which is collected by the director pursuant to this chapter shall be deposited in a bank or other depository which is approved by the director. Funds which are so collected are exempt from Sections 11270 and 11272 of the Government Code and shall be deposited and disbursed only to pay for milk produced and delivered within this state, which has not been otherwise paid for, including pool equalization fund obligations, attorney's fees and other costs incurred in litigation involving the fund, expenses generated by the auditing requirement imposed by Section 62570, expenses generated by the use of alternative financial instruments pursuant to Section 62560, and for the costs set forth in Section 62573. The expenditure of those funds is exempt from Section 925.6 of the Government Code.

Nothing in this section prevents the director from using the increment received from investment, reinvestment, or deposit of money specified in Section 62573, in the manner provided by Section 62574.

SEC. 3. Section 17276.7 of the Revenue and Taxation Code is amended to read:

17276.7. (a) The term ''qualified taxpayer'' as used in Section 17276.1 includes a person or entity that conducts a farming business that is directly affected by Pierce's disease and its vectors. For purposes of this subdivision, all of the following shall apply:

(1) A net operating loss shall not be a net operating loss carryback to any taxable year, and a net operating loss for any taxable year beginning on or after the date that the area in which the taxpayer conducts a farming business is affected by Pierce's disease and its vectors shall be a net

operating loss carryover to each of the nine taxable years following the taxable year of loss, until used.

(2) For purposes of this subdivision:

(A) ''Net operating loss'' means the loss determined under Section 172 of the Internal Revenue Code, as modified by Section 17276.1, attributable to the taxpayer's farming business activities affected by Pierce's disease and its vectors. That attributable loss shall be determined in accordance with Chapter 17 (commencing with Section 25101) of Part 11, modified for purposes of this subdivision, as follows:

(i) A loss shall be apportioned to the area affected by Pierce's disease and its vectors by multiplying the total loss from the farming business by a fraction, the numerator of which is the property factor plus the payroll factor, and the denominator of which is two.

(ii) ''The area affected by Pierce's disease and its vectors'' shall be substituted for ''this state.''

(B) A net operating loss carryover computed under this section shall be allowed as a deduction only with respect to the taxpayer's farming business income attributable to the area affected by Pierce's disease and its vectors.

(C) Attributable income is that portion of the taxpayer's California source farming business income that is apportioned to the area affected by Pierce's disease and its vectors. For that purpose, that taxpayer's farming business income attributable to sources in this state first shall be determined in accordance with Chapter 17 (commencing with Section 25101) of Part 11. That farming business income shall be further apportioned to the area affected by Pierce's disease and its vectors in accordance with Article 2 (commencing with Section 25120) of Chapter 17 of Part 11, modified for purposes of this subdivision as follows:

(i) Farming business income shall be apportioned to the area affected by Pierce's disease and its vectors by multiplying the total California farming business income of the taxpayer by a fraction, the numerator of which is the property factor plus the payroll factor, and the denominator of which is two. For purposes of this paragraph:

(I) The property factor is a fraction, the numerator of which is the average value of the taxpayer's real and tangible personal property owned or rented and used in the area affected by Pierce's disease and its vectors during the taxable year, and the denominator of which is the average value of all the taxpayer's real and tangible personal property owned or rented and used in this state during the taxable year.

(II) The payroll factor is a fraction, the numerator of which is the total amount paid by the taxpayer in the area affected by Pierce's disease and its vectors during the taxable year for compensation, and the denominator of which is the total compensation paid by the taxpayer in this state during the taxable year.

(ii) If a loss carryover is allowable pursuant to this section for any taxable year after Pierce's disease and its vectors have occurred, the area affected by Pierce's disease and its vectors shall be deemed to remain in existence for purposes of computing the limitation set forth in subparagraph (B) and allowing a net operating loss deduction.

(b) A taxpayer who qualifies as a ''qualified taxpayer'' under one or more sections shall, for the taxable year of the net operating loss and any taxable year to which that net operating loss may be carried, designate on the original return filed for each year the section that applies to that taxpayer with respect to that net operating loss. If the taxpayer is eligible to qualify under more than one section, the designation is to be made after taking into account subdivision (c).

(c) If a taxpayer is eligible to compute its net operating loss under this section and either Section 17276.2, 17276.4, 17276.5, or 17276.6 as a ''qualified taxpayer,'' with respect to a net operating loss in a taxable year, the taxpayer shall designate which section is to apply to the taxpayer.

(d) Notwithstanding Section 17276, the amount of the loss determined under this section or Section 17276.2, 17276.4, 17276.5, or 17276.6 shall be the only net operating loss allowed to be carried over from that taxable year and the designation under subdivision (b) shall be included in the election under Section 17276.1.

(e) (1) A qualified taxpayer may utilize the net operating loss carryover allowed by this section only if the Department of Food and Agriculture confirms that the taxpayer's farming business was affected by Pierce's disease and its vectors during the year for which the qualified taxpayer seeks a deduction under this section.

(2) To make the determination required by this subdivision, the Department of Food and Agriculture shall utilize the definitions in Title 3 of the California Code of Regulations, relating to Pierce's disease and its vectors.

(3) The Franchise Tax Board shall develop a management agreement with the cooperation of the Department of Food and Agriculture to establish procedures by which the Franchise Tax Board secures the information. This subdivision shall not be construed to require the Department of Food and Agriculture to confirm more than the fact that the taxpayer's farming business was affected by Pierce's disease and its vectors during the year for which the qualified taxpayer seeks a deduction.

(f) This section applies to net operating losses attributable to taxable years beginning on or after January 1, 2001, and before January 1, 2003.

SEC. 4. The amendments to Section 62569 of the Food and Agricultural Code, as made by Section 2 of this act, shall only become

operative if SB 1769 is enacted and as enacted, amends Section 62560 of the Food and Agricultural Code.

CHAPTER 525

An act to amend Section 12940 of, to amend and renumber Section 12941.1 of, and to repeal Section 12941 of, the Government Code, relating to employment.

[Approved by Governor September 13, 2002. Filed with Secretary of State September 15, 2002.]

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

SECTION 1. Section 12940 of the Government Code is amended to read:

12940. It shall be an unlawful employment practice, unless based upon a bona fide occupational qualification, or, except where based upon applicable security regulations established by the United States or the State of California:

(a) For an employer, because of the race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, age, or sexual orientation of any person, to refuse to hire or employ the person or to refuse to select the person for a training program leading to employment, or to bar or to discharge the person from employment or from a training program leading to employment, or to discriminate against the person in compensation or in terms, conditions, or privileges of employment.

(1) This part does not prohibit an employer from refusing to hire or discharging an employee with a physical or mental disability, or subject an employer to any legal liability resulting from the refusal to employ or the discharge of an employee with a physical or mental disability, where the employee, because of his or her physical or mental disability, is unable to perform his or her essential duties even with reasonable accommodations, or cannot perform those duties in a manner that would not endanger his or her health or safety or the health or safety of others even with reasonable accommodations.

(2) This part does not prohibit an employer from refusing to hire or discharging an employee who, because of the employee's medical condition, is unable to perform his or her essential duties even with reasonable accommodations, or cannot perform those duties in a manner that would not endanger the employee's health or safety or the health or safety of others even with reasonable accommodations. Nothing in this

part shall subject an employer to any legal liability resulting from the refusal to employ or the discharge of an employee who, because of the employee's medical condition, is unable to perform his or her essential duties, or cannot perform those duties in a manner that would not endanger the employee's health or safety or the health or safety of others even with reasonable accommodations.

(3) Nothing in this part relating to discrimination on account of marital status shall do either of the following:

(A) Affect the right of an employer to reasonably regulate, for reasons of supervision, safety, security, or morale, the working of spouses in the same department, division, or facility, consistent with the rules and regulations adopted by the commission.

(B) Prohibit bona fide health plans from providing additional or greater benefits to employees with dependents than to those employees without or with fewer dependents.

(4) Nothing in this part relating to discrimination on account of sex shall affect the right of an employer to use veteran status as a factor in employee selection or to give special consideration to Vietnam era veterans.

(5) Nothing in this part prohibits an employer from refusing to employ an individual because of his or her age if the law compels or provides for that refusal. Promotions within the existing staff, hiring or promotion on the basis of experience and training, rehiring on the basis of seniority and prior service with the employer, or hiring under an established recruiting program from high schools, colleges, universities, or trade schools do not, in and of themselves, constitute unlawful employment practices.

(b) For a labor organization, because of the race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, age, or sexual orientation of any person, to exclude, expel or restrict from its membership the person, or to provide only second-class or segregated membership or to discriminate against any person because of the race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, age, or sexual orientation of the person in the election of officers of the labor organization or in the selection of the labor organization's staff or to discriminate in any way against any of its members or against any employer or against any person employed by an employer.

(c) For any person to discriminate against any person in the selection or training of that person in any apprenticeship training program or any other training program leading to employment because of the race, religious creed, color, national origin, ancestry, physical disability,

mental disability, medical condition, marital status, sex, age, or sexual orientation of the person discriminated against.

(d) For any employer or employment agency to print or circulate or cause to be printed or circulated any publication, or to make any non-job-related inquiry of an employee or applicant, either verbal or through use of an application form, that expresses, directly or indirectly, any limitation, specification, or discrimination as to race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, age, or sexual orientation, or any intent to make any such limitation, specification or discrimination. Nothing in this part prohibits an employer or employment agency from inquiring into the age of an applicant, or from specifying age limitations, where the law compels or provides for that action.

(e) (1) Except as provided in paragraph (2) or (3), for any employer or employment agency to require any medical or psychological examination of an applicant, to make any medical or psychological inquiry of an applicant, to make any inquiry whether an applicant has a mental disability or physical disability or medical condition, or to make any inquiry regarding the nature or severity of a physical disability, mental disability, or medical condition.

(2) Notwithstanding paragraph (1), an employer or employment agency may inquire into the ability of an applicant to perform job-related functions and may respond to an applicant's request for reasonable accommodation.

(3) Notwithstanding paragraph (1), an employer or employment agency may require a medical or psychological examination or make a medical or psychological inquiry of a job applicant after an employment offer has been made but prior to the commencement of employment duties, provided that the examination or inquiry is job-related and consistent with business necessity and that all entering employees in the same job classification are subject to the same examination or inquiry.

(f) (1) Except as provided in paragraph (2), for any employer or employment agency to require any medical or psychological examination of an employee, to make any medical or psychological inquiry of an employee, to make any inquiry whether an employee has a mental disability, physical disability, or medical condition, or to make any inquiry regarding the nature or severity of a physical disability, mental disability, or medical condition.

(2) Notwithstanding paragraph (1), an employer or employment agency may require any examinations or inquiries that it can show to be job-related and consistent with business necessity. An employer or employment agency may conduct voluntary medical examinations,

including voluntary medical histories, which are part of an employee health program available to employees at that worksite.

(g) For any employer, labor organization, or employment agency to harass, discharge, expel, or otherwise discriminate against any person because the person has made a report pursuant to Section 11161.8 of the Penal Code that prohibits retaliation against hospital employees who report suspected patient abuse by health facilities or community care facilities.

(h) For any employer, labor organization, employment agency, or person to discharge, expel, or otherwise discriminate against any person because the person has opposed any practices forbidden under this part or because the person has filed a complaint, testified, or assisted in any proceeding under this part.

(i) For any person to aid, abet, incite, compel, or coerce the doing of any of the acts forbidden under this part, or to attempt to do so.

(j) (1) For an employer, labor organization, employment agency, apprenticeship training program or any training program leading to employment, or any other person, because of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, age, or sexual orientation, to harass an employee, an applicant, or a person providing services pursuant to a contract. Harassment of an employee, an applicant, or a person providing services pursuant to a contract by an employee other than an agent or supervisor shall be unlawful if the entity, or its agents or supervisors, knows or should have known of this conduct and fails to take immediate and appropriate corrective action. An entity shall take all reasonable steps to prevent harassment from occurring. Loss of tangible job benefits shall not be necessary in order to establish harassment.

(2) The provisions of this subdivision are declaratory of existing law, except for the new duties imposed on employers with regard to harassment.

(3) An employee of an entity subject to this subdivision is personally liable for any harassment prohibited by this section that is perpetrated by the employee, regardless of whether the employer or covered entity knows or should have known of the conduct and fails to take immediate and appropriate corrective action.

(4) (A) For purposes of this subdivision only, ‘‘employer’’ means any person regularly employing one or more persons or regularly receiving the services of one or more persons providing services pursuant to a contract, or any person acting as an agent of an employer, directly or indirectly, the state, or any political or civil subdivision of the state, and cities. The definition of ‘‘employer’’ in subdivision (d) of Section 12926 applies to all provisions of this section other than this subdivision.

(B) Notwithstanding subparagraph (A), for purposes of this subdivision, ''employer'' does not include a religious association or corporation not organized for private profit, except as provided in Section 12926.2.

(C) For purposes of this subdivision, ''harassment'' because of sex includes sexual harassment, gender harassment, and harassment based on pregnancy, childbirth, or related medical conditions.

(5) For purposes of this subdivision, ''a person providing services pursuant to a contract'' means a person who meets all of the following criteria:

(A) The person has the right to control the performance of the contract for services and discretion as to the manner of performance.

(B) The person is customarily engaged in an independently established business.

(C) The person has control over the time and place the work is performed, supplies the tools and instruments used in the work, and performs work that requires a particular skill not ordinarily used in the course of the employer's work.

(k) For an employer, labor organization, employment agency, apprenticeship training program, or any training program leading to employment, to fail to take all reasonable steps necessary to prevent discrimination and harassment from occurring.

(*l*) For an employer or other entity covered by this part to refuse to hire or employ a person or to refuse to select a person for a training program leading to employment or to bar or to discharge a person from employment or from a training program leading to employment, or to discriminate against a person in compensation or in terms, conditions, or privileges of employment because of a conflict between the person's religious belief or observance and any employment requirement, unless the employer or other entity covered by this part demonstrates that it has explored any available reasonable alternative means of accommodating the religious belief or observance, including the possibilities of excusing the person from those duties that conflict with his or her religious belief or observance or permitting those duties to be performed at another time or by another person, but is unable to reasonably accommodate the religious belief or observance without undue hardship on the conduct of the business of the employer or other entity covered by this part. Religious belief or observance, as used in this section, includes, but is not limited to, observance of a Sabbath or other religious holy day or days, and reasonable time necessary for travel prior and subsequent to a religious observance.

(m) For an employer or other entity covered by this part to fail to make reasonable accommodation for the known physical or mental disability of an applicant or employee. Nothing in this subdivision or in

paragraph (1) or (2) of subdivision (a) shall be construed to require an accommodation that is demonstrated by the employer or other covered entity to produce undue hardship to its operation.

(n) For an employer or other entity covered by this part to fail to engage in a timely, good faith, interactive process with the employee or applicant to determine effective reasonable accommodations, if any, in response to a request for reasonable accommodation by an employee or applicant with a known physical or mental disability or known medical condition.

(o) For an employer or other entity covered by this part, to subject, directly or indirectly, any employee, applicant, or other person to a test for the presence of a genetic characteristic.

SEC. 2. Section 12941 of the Government Code is repealed.

SEC. 3. Section 12941.1 of the Government Code is amended and renumbered to read:

12941. The Legislature hereby declares its rejection of the court of appeal opinion in Marks v. Loral Corp. (1997) 57 Cal.App.4th 30, and states that the opinion does not affect existing law in any way, including, but not limited to, the law pertaining to disparate treatment. The Legislature declares its intent that the use of salary as the basis for differentiating between employees when terminating employment may be found to constitute age discrimination if use of that criterion adversely impacts older workers as a group, and further declares its intent that the disparate impact theory of proof may be used in claims of age discrimination. The Legislature further reaffirms and declares its intent that the courts interpret the state's statutes prohibiting age discrimination in employment broadly and vigorously, in a manner comparable to prohibitions against sex and race discrimination, and with the goal of not only protecting older workers as individuals, but also of protecting older workers as a group, since they face unique obstacles in the later phases of their careers. Nothing in this section shall limit the affirmative defenses traditionally available in employment discrimination cases including, but not limited to, those set forth in Section 7286.7 of Title 2 of the California Code of Regulations.

SEC. 4. It is the intent of the Legislature in enacting this act to construe and clarify the meaning and effect of existing law and to reject the interpretation given to the law in Esberg v. Union Oil Company of California, 87 Cal.App.4th 378 (2001).

CHAPTER 526

An act to amend Sections 142 and 847 of the Penal Code, relating to peace officers.

[Approved by Governor September 13, 2002. Filed with Secretary of State September 15, 2002.]

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

SECTION 1. Section 142 of the Penal Code is amended to read:

142. (a) Any peace officer who has the authority to receive or arrest a person charged with a criminal offense and willfully refuses to receive or arrest that person shall be punished by a fine not exceeding ten thousand dollars ($10,000), or by imprisonment in the state prison, or in a county jail not exceeding one year, or by both that fine and imprisonment.

(b) Notwithstanding subdivision (a), the sheriff may determine whether any jail, institution, or facility under his or her direction shall be designated as a reception, holding, or confinement facility, or shall be used for several of those purposes, and may designate the class of prisoners for which any facility shall be used.

(c) This section shall not apply to arrests made pursuant to Section 837.

SEC. 2. Section 847 of the Penal Code is amended to read:

847. (a) A private person who has arrested another for the commission of a public offense must, without unnecessary delay, take the person arrested before a magistrate, or deliver him or her to a peace officer.

(b) There shall be no civil liability on the part of, and no cause of action shall arise against, any peace officer or federal criminal investigator or law enforcement officer described in subdivision (a) or (d) of Section 830.8, acting within the scope of his or her authority, for false arrest or false imprisonment arising out of any arrest under any of the following circumstances:

(a) The arrest was lawful, or the peace officer, at the time of the arrest, had reasonable cause to believe the arrest was lawful.

(b) The arrest was made pursuant to a charge made, upon reasonable cause, of the commission of a felony by the person to be arrested.

(c) The arrest was made pursuant to the requirements of Section 142, 837, 838, or 839.

CHAPTER 527

An act to amend Section 104495 of the Health and Safety Code, relating to tobacco products.

[Approved by Governor September 13, 2002. Filed with Secretary of State September 15, 2002.]

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

SECTION 1. Section 104495 of the Health and Safety Code is amended to read:

104495. (a) For the purposes of this section, the following definitions shall govern:

(1) ''Playground'' means any park or recreational area specifically designed to be used by children that has play equipment installed, or any similar facility located on public or private school grounds, or on city, county, or state park grounds.

(2) ''Tot lot sandbox area'' means a designated play area within a public park for the use by children under five years of age. Where the area is not contained by a fence, the boundary of a tot lot sandbox area shall be defined by the edge of the resilient surface of safety material, such as concrete or wood, or any other material surrounding the tot lot sandbox area.

(3) ''Public park'' includes a park operated by a public agency.

(4) ''Smoke or smoking'' means the carrying of a lighted pipe, lighted cigar, or lighted cigarette of any kind, or the lighting of a pipe, cigar, or cigarette of any kind, including, but not limited to, tobacco, or any other weed or plant.

(5) ''Cigarette'' means the same as defined in Section 104556.

(6) ''Cigar'' means the same as defined in Section 104550.

(b) No person shall smoke a cigarette, cigar, or other tobacco-related product within 25 feet of any playground or tot lot sandbox area.

(c) No person shall dispose of cigarette butts, cigar butts, or any other tobacco-related waste within 25 feet of a playground or a tot lot sandbox area.

(d) No person shall intimidate, threaten any reprisal, or effect any reprisal, for the purpose of retaliating against another person who seeks to attain compliance with this section.

(e) Any person who violates this section is guilty of an infraction and shall be punished by a fine of two hundred fifty dollars ($250) for each violation of this section. Punishment under this section shall not preclude punishment pursuant to Section 13002, Section 374.4 of the Penal Code, or any other provision of law proscribing the act of littering.

(f) The prohibitions contained in subdivisions (b), (c), and (d) shall not apply to private property.

(g) The prohibitions contained in subdivisions (b) and (c) shall not apply to a public sidewalk located within 25 feet of a playground or a tot lot sandbox area.

(h) This section shall not preempt the authority of any county, city, or city and county to regulate smoking around playgrounds or tot lot sandbox areas. Any county, city, or city and county may enforce any ordinance adopted prior to January 1, 2002, or may adopt and enforce new regulations that are more restrictive than this section, on and after January 1, 2002.

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.

CHAPTER 528

An act to amend Section 10753.5 of the Revenue and Taxation Code, relating to vehicle license fees.

[Approved by Governor September 13, 2002. Filed with Secretary of State September 15, 2002.]

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

SECTION 1. Section 10753.5 of the Revenue and Taxation Code is amended to read:

10753.5. Notwithstanding any other provisions of this part, the annual amount of the license fee for a vehicle that has been assigned a special identification plate or plates as described in Section 5004 of the Vehicle Code shall be two dollars ($2).

CHAPTER 529

An act to amend Section 1547 of the Penal Code, relating to rewards, and making an appropriation therefor.

[Approved by Governor September 13, 2002. Filed with
Secretary of State September 15, 2002.]

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

SECTION 1. 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) (A) 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.

(B) As used in this paragraph, ''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.

(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 that 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 that 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 and Fire Protection 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 Governor may offer a reward of not more than one hundred thousand dollars ($100,000), payable out of the General Fund, for information leading to the arrest and conviction of any person who commits arson upon a place of worship.

(d) The reward shall be paid to the person giving the information, promptly upon the conviction of the person so arrested, after a recommendation from the United States Attorney, or the California Attorney General, or the district attorney and the chief law enforcement officer, or his or her designate, in the jurisdiction where the crime occurred. Rewards shall only be paid to the person if the information is

given voluntarily, at the person's own initiative. Rewards shall not be paid as part of any plea bargain.

(e) The reward may also be paid to the person giving the information if both of the following are met:

(1) The arrest or conviction of the person for an offense described in subdivision (a), (b), or (c) is rendered impossible by an intervening event, including, but not limited to, the death of the person during a pursuit by law enforcement, or while in custody.

(2) The appropriate law enforcement officials, after reviewing the evidence related to the crime or crimes, determine that the person is the individual responsible for the crime or crimes for which the reward was offered, and that the information would have reasonably led to the arrest and conviction of that person.

(f) If more than one claimant is eligible for any reward issued pursuant to this section, the Governor may apportion the reward money in a manner the Governor deems appropriate.

SEC. 2. The changes enacted by Section 1 of this act do not constitute a change in, but are intended to be declarative of, existing law.

CHAPTER 530

An act to add Section 121 to the Streets and Highways Code, relating to state highways.

[Approved by Governor September 13, 2002. Filed with Secretary of State September 15, 2002.]

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

SECTION 1. Section 121 is added to the Streets and Highways Code, to read:

121. Notwithstanding any other provision of law, a state highway that has been designated by the federal government as an All-American Road on or before April 30, 2002, shall be maintained and operated by the department consistent with the recommendations for context-sensitive design standards relative to aesthetics and safety that are contained in the corridor management plan submitted to the Federal Highway Administration.

CHAPTER 531

An act to add Section 2248.5 to the Business and Professions Code and to amend Sections 109280 and 109282 of the Health and Safety Code, relating to physicians and surgeons.

[Approved by Governor September 13, 2002. Filed with Secretary of State September 15, 2002.]

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

SECTION 1. Section 2248.5 is added to the Business and Professions Code, to read:

2248.5. (a) A standardized written summary in layman's language and in a language understood by patients shall be approved by the State Department of Health Services. The department may approve the use of an existing publication from a recognized cancer authority as the written summary. Commencing on January 1, 2003, and every three years thereafter, the department shall review its approval of the use of an existing publication from a recognized cancer authority as the written summary to ensure that the approved written summary comprises timely, new, and revised information regarding prostate cancer treatment options as the department determines is necessary. The written summary shall be printed or made available by the Medical Board of California to physicians and surgeons, concerning the advantages, disadvantages, risks, and descriptions, of procedures with regard to medically viable and efficacious alternative methods of treatment of prostate cancer. Physicians and surgeons are urged to make the summary available to patients when appropriate.

(b) The board shall post this summary on its Web site for public use.

(c) If the State Department of Health Services updates this summary, the board shall make the updated summary available to its licensees and update its Web site to contain the updated summary.

SEC. 2. Section 109280 of the Health and Safety Code is amended to read:

109280. (a) A standardized written summary in layman's language and in a language understood by patients shall be approved by the department. The department may approve the use of an existing publication from a recognized cancer authority as the written summary. Commencing on January 1, 2003, and every three years thereafter, the department shall review its approval of the use of an existing publication from a recognized cancer authority as the written summary to ensure that the approved written summary comprises timely, new, and revised information regarding prostate cancer treatment options as the department determines is necessary. The written summary shall be

printed or made available by the Medical Board of California to physicians and surgeons, concerning the advantages, disadvantages, risks, and descriptions, of procedures with regard to medically viable and efficacious alternative methods of treatment of prostate cancer. Physicians and surgeons are urged to make the summary available to patients when appropriate.

(b) The department shall post this summary on its Web site for public use.

(c) If the department updates this summary, it shall send the updated summary to the Medical Board of California and post this updated summary on its Web site.

SEC. 3. Section 109282 of the Health and Safety Code is amended to read:

109282. (a) Every person or entity who owns or operates a health facility or a clinic, or who is licensed as a physician and surgeon and rents or owns the premises where his or her practice is located, shall cause a sign or notice to be posted where prostate cancer screening or treatment is performed by any physician and surgeon, or in a reasonably proximate area to where prostate cancer screening or treatment is performed. A sign or notice posted at the patient registration area of the health facility, clinic, or physician and surgeon's office shall constitute compliance with this section.

(b) The sign or notice shall read as follows:

"BE INFORMED"

"If you are a patient being treated for any form of prostate cancer, or prior to performance of a biopsy for prostate cancer, your physician and surgeon is urged to provide you a written summary of alternative efficacious methods of treatment, pursuant to Section 109280 of the California Health and Safety Code."

"The information about methods of treatment was developed by the State Department of Health Services to inform patients of the advantages, disadvantages, risks, and descriptions of procedures."

(c) The sign shall be not less than eight and one-half inches by 11 inches and shall be conspicuously displayed so as to be readable. The words "BE INFORMED" shall not be less than one-half inch in height and shall be centered on a single line with no other text. The message on the sign shall appear in English, Spanish, and Chinese.

(d) Subject to future, regular production and replacement schedules from the implementation of the act adding this subdivision, these signs and notices shall include the Internet Web site address of the State

Department of Health Services and the Medical Board of California, and a notice regarding the availability of updated prostate cancer summaries on these Web sites.

CHAPTER 532

An act to amend Sections 110960, 113740, 113925, and 113995 of the Health and Safety Code, relating to retail food facilities.

[Approved by Governor September 13, 2002. Filed with Secretary of State September 15, 2002.]

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

SECTION 1. Section 110960 of the Health and Safety Code is amended to read:

110960. Except as provided in Section 113995, it is unlawful for any person to transport, hold, or display any potentially hazardous refrigerated food at any temperature above 45 degrees Fahrenheit.

SEC. 2. Section 113740 of the Health and Safety Code is amended to read:

113740. (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, transporter, 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. 3. Section 113925 of the Health and Safety Code is amended to read:

113925. (a) Enforcement officers are charged with the enforcement of this chapter and all regulations adopted pursuant to it.

(b) (1) For purposes of enforcement of this chapter, any authorized enforcement officer may, during the facility's hours of operation and other reasonable times, enter, inspect, issue citations to, and secure any sample, photographs, or other evidence from, any of the following:

(A) Any food facility.

(B) Any facility suspected of being a food facility.

(C) Any vehicle transporting food to or from a retail facility, when the vehicle is stationary at an agricultural inspection station, a border crossing, or at any food facility under the jurisdiction of the enforcement agency, or upon the request of an incident commander.

(2) If a food facility is operating under an HACCP plan, as defined in Section 113797 and adopted pursuant to Section 114055 or 114056, the enforcement officer may, for the purpose of determining compliance with the plan, secure as evidence any documents, or copies of documents, relating to the facility's adherence to the HACCP plan.

(c) It is a violation of this chapter for any person to refuse to permit entry or inspection, the taking of samples or other evidence, or access to copy any record as authorized by this chapter, or to conceal any samples or evidence, or withhold evidence concerning them.

(d) 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. 4. Section 113995 of the Health and Safety Code is amended to read:

113995. (a) Except as otherwise provided in this section, all potentially hazardous food held at a retail food facility, or being transported to or from a retail food facility for a period of longer than 30 minutes, 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 113997 and 114351.

(b) A retail food facility may accept potentially hazardous food at or below 7 degrees Celsius (45 degrees Fahrenheit), per subdivision (a), if the potentially hazardous food is cooled within four hours of receipt to a temperature at or below 5 degrees Celsius (41 degrees Fahrenheit).

(c) (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 114085.

(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 a 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.

(d) 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 114055 or 114056. 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.

(e) A thermometer accurate to plus or minus 1 degree Celsius (2 degrees Fahrenheit) shall be provided for each refrigeration 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. 5. The Legislature finds and declares that the amendments made by this act to Section 113925 of the Health and Safety Code are intended to provide safeguards for the transportation of potentially hazardous foods, and not to require the establishment of a new local vehicle inspection enforcement program with additional fees.

SEC. 6. 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.

CHAPTER 533

An act to amend Sections 46000 and 46003 of, to add Sections 46001, 46004.1, 46008, 46013.1, 46013.2, 46014.1, 46014.2, 46014.4, 46014.6, 46016.1, 46016.2, 46016.3, 46016.4, 46016.5, 46017, 46018.1, 46018.2, 46020, 46021, 46022, 46023, 46024, 46027, 46028, and 46029 to, and to repeal and add Sections 46002, 46005, 46007, 46009, 46011, and 46015 of, the Food and Agricultural Code, and to amend the heading of Article 7 (commencing with Section 110810) of Chapter 5 of Part 5 of Division 104 of, to amend Sections 110810, 110815, 110820, 110825, 110830, 110835, 110840, 110845, 110850, 110870, 110875, 110880, 110885, 110890, 110895, 110900, 110910, 110915, 110930, 110940, 110956, 110957, and 110958 of, to add Sections 110811, 110812, 110818, 110838, 110839, and 110959 to, the Health and Safety Code, relating to organic products.

[Approved by Governor September 13, 2002. Filed with Secretary of State September 15, 2002.]

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

SECTION 1. Section 46000 of the Food and Agricultural Code is amended to read:

46000. (a) This chapter shall be known, and may be cited as, the California Organic Products Act of 2003.

(b) The secretary and county agricultural commissioners under the supervision and direction of the secretary shall enforce regulations adopted by the National Organic Program (NOP) (Section 6517 of the federal Organic Foods Production Act of 1990 (7 U.S.C. Sec. 6501 et seq.)), and Article 7 (commencing with Section 110810) of Chapter 5 of Part 5 of Division 104 of the Health and Safety Code and this act applicable to any person selling products as organic.

SEC. 2. Section 46001 is added to the Food and Agricultural Code, to read:

46001. This act shall be interpreted in conjunction with Article 7 (commencing with Section 110810) of Chapter 5 of Part 5 of Division 104 of the Health and Safety Code and regulations adopted by the National Organic Program (Section 6517 of the federal Organic Foods Production Act of 1990 (7 U.S.C. Sec. 6501 et seq.).

SEC. 3. Section 46002 of the Food and Agricultural Code is repealed.

SEC. 4. Section 46002 is added to the Food and Agricultural Code, to read:

46002. (a) All organic food or product regulations and any amendments to those regulations adopted pursuant to the federal Organic Foods Production Act of 1990 (7 U.S.C. Sec. 6501 et seq.), that are in effect on the date this bill is enacted or that are adopted after that date, shall be the organic food and product regulations of this state.

(b) The secretary may, by regulation, prescribe conditions under which organic foods or other products not addressed by the National Organic Program may be sold in this state.

SEC. 5. Section 46003 of the Food and Agricultural Code is amended to read:

46003. (a) The secretary shall establish an advisory committee, which shall be known as the California Organic Products Advisory Committee, for the purpose of advising the secretary with respect to his or her responsibilities under this act and Article 7 (commencing with Section 110810) of Chapter 5 of Part 5 of Division 104 of the Health and Safety Code.

(b) The advisory committee shall be comprised of 15 members. Each member may have an alternate. Six members and their alternates shall be producers, at least one of whom shall be a producer of meat, fowl, fish, dairy products, or eggs. Two members and their alternates shall be processors, one member shall be a wholesale distributor, two members shall be consumer representatives, one member shall be an environmental representative, two members shall be technical representatives with scientific credentials related to agricultural chemicals, toxicology, or food science, and one member shall be a retail representative. Alternates at large may be appointed to serve in the absence of any of the following categories: two alternates for producers, one alternate for processors, one alternate for consumer, and one alternate for technical representatives. Except for the consumer, environmental, and technical representatives, the members of the advisory committee and their alternates shall have derived a substantial portion of their business income, wages, or salary as a result of services they provide which directly result in the production, handling, processing, or retailing of products sold as organic for at least three years preceding their appointment to the advisory committee. The consumer and environmental representatives and their alternates shall not have a financial interest in the direct sales or marketing of the organic product industry and shall be members or employees of representatives of recognized nonprofit organizations whose principal purpose is the protection of consumer health or protection of the environment. The

technical representatives and their alternates shall not have a financial interest in the production, handling, processing, or marketing of the organic products industry. The technical representatives may be involved in organic research or technical review providing they have no financial benefit from results of the research project or technical review.

(c) An alternate member shall serve at an advisory committee meeting only in the absence of, and shall have the same powers and duties as, the category whom he or she is representing as alternate, except for duties and powers as an officer of the committee. The number of alternates present who are not serving in the capacity of a member shall not be considered in determining a quorum.

(d) An alternate member may serve at an advisory committee subcommittee meeting only in the absence of, and shall have the same powers and duties as, the member whom he or she is designated as alternate, except for duties and powers as a subcommittee chairperson.

(e) The members of the advisory committee and their alternates described in subdivision (b) shall be reimbursed for the reasonable expenses actually incurred in the performance of their duties, as determined by the advisory committee and approved by the secretary.

(f) The secretary or his or her representative, State Director of Health Services, or his or her representative, and a county agricultural commissioner may serve as ex officio members of the advisory committee.

SEC. 6. Section 46004.1 is added to the Food and Agricultural Code, to read:

46004.1. Unless defined pursuant to the National Organic Program (NOP), the following words and phrases, when used in this act, shall have the following meanings:

(a) ''Act'' means this chapter. It also means the federal Organic Foods Production Act of 1990 (7 U.S.C. Sec. 6501 et seq.) and the regulations adopted pursuant to the federal Organic Foods Production Act of 1990 (7 U.S.C. Sec. 6501 et seq.).

(b) ''Categorical products'' means categories of products of like commodity such as apples, salad products, etc. and does not require variety specific information.

(c) ''Enforcement authority'' means the governmental unit with primary enforcement jurisdiction, as provided in Section 46008.

(d) ''Handle'' means to sell, process, or package agricultural products.

(e) ''Handler'' means any person engaged in the business of handling agricultural products, but does not include final retailers of agricultural products that do not process agricultural products.

(f) ''Handling operation'' means any operation or portion of an operation, except final retailers of agricultural products that do not

process agricultural products that (1) receives or otherwise acquires agricultural products, and (2) processes, packages, or stores agricultural products.

(g) ''NOP'' means the National Organic Program established pursuant to the federal Organic Foods Production Act of 1990 (7 U.S.C. Sec. 6501 et seq.) and the regulations adopted for implementation.

(h) ''Person'' means any individual, firm, partnership, trust, corporation, limited liability company, company, estate, public or private institution, association, organization, group, city, county, city and county, political subdivision of this state, other governmental agency within the state, and any representative, agent, or agency of any of the foregoing.

(i) ''Processing'' means cooking, baking, heating, drying, mixing, grinding, churning, separating, extracting, cutting, fermenting, eviscerating, preserving, dehydrating, freezing, or otherwise manufacturing, and includes packaging, canning, jarring, or otherwise enclosing food in a container.

(j) ''Secretary'' means the Secretary of the Department of Food and Agriculture.

(k) ''USDA'' means the United States Department of Agriculture.

SEC. 7. Section 46005 of the Food and Agricultural Code is repealed.

SEC. 7.5. Section 46005 is added to the Food and Agricultural Code, to read:

46005. This act shall apply notwithstanding any other provision of law that is inconsistent with this act. Nothing in this act is intended to repeal any other provision of law not inconsistent with this act.

SEC. 8. Section 46007 of the Food and Agricultural Code is repealed.

SEC. 8.5. Section 46007 is added to the Food and Agricultural Code, to read:

46007. (a) Any penalties collected by the secretary and any fees collected by a county agricultural commissioner pursuant to this chapter shall be deposited in the Department of Food and Agriculture Fund and, upon appropriation by the Legislature, shall be expended solely to fulfill the responsibilities of the secretary and county agricultural commissioner acting under the direction and supervision of the secretary, as specified in this act.

(b) Any fees and penalties collected by a county agricultural commissioner pursuant to Section 46017 and any other penalties collected by a county agricultural commissioner pursuant to this chapter shall be paid directly to the county agricultural commissioner and expended to fulfill the responsibilities of the county agricultural commissioner, as specified in this chapter.

(c) The secretary shall establish a specific minimum amount to be reimbursed to each county agricultural commissioner per registrant in that county. This reimbursement shall not limit the amount of the reimbursement otherwise made to county commissioners for their enforcement activities.

SEC. 9. Section 46008 is added to the Food and Agricultural Code, to read:

46008. (a) Article 14 (commencing with Section 43031) of Chapter 2 of the Food and Agricultural Code applies to any product that is represented as organically produced by any person who is not registered as required by this chapter or any product that is not in compliance with this chapter or the NOP.

(b) The secretary, county agricultural commissioners, and the State Director of Health Services shall be considered enforcing officers for purposes of those provisions of law under their respective jurisdiction.

SEC. 10. Section 46009 of the Food and Agricultural Code is repealed.

SEC. 11. Section 46009 is added to the Food and Agricultural Code, to read:

46009. Any person subject to this act that does not pay the registration fee within 10 days of the date on which the fee is due and payable shall pay a penalty of 10 percent of the total amount determined to be due plus interest at the rate of $1^1/_2$ percent per month on the unpaid balance.

SEC. 12. Section 46011 of the Food and Agricultural Code is repealed.

SEC. 12.5. Section 46011 is added to the Food and Agricultural Code, to read:

46011. This act shall not apply to the term ‘‘natural’’ when used in the labeling or advertising of a product.

SEC. 13. Section 46013.1 is added to the Food and Agricultural Code, to read:

46013.1. (a) Every person engaged in this state in the production or handling of raw agricultural products sold as organic, and retailers that are engaged in the production of products sold as organic, and retailers that are engaged in the processing, as defined by the NOP, of products sold as organic, shall register with the agricultural commissioner in the county of principal operation prior to the first sale of the product. All processors of organic agriculturally derived products that are not required to be registered as outlined in subdivision (b) must register with the secretary. Each registrant must annually renew the registration unless no longer engaged in the activities requiring the registration. Each registrant shall provide a complete copy of its registration to the county

agricultural commissioner in any county in which the registrant operates.

(b) Every person engaged in this state in the processing or handling of processed products pursuant to Section 110460 of the Health and Safety Code, and pet food pursuant to Section 18653, and cosmetics pursuant to Section 111795 of the Health and Safety Code, including processors of alcohol beverages, fish and seafood, shall register with the State Director of Health Services.

(c) Registration pursuant to this section shall be on a form either provided by the secretary or approved by the secretary and shall be valid for a period of one calendar year from the date of validation by the secretary or county agricultural commissioner of the completed registration form.

(d) The information provided on the registration form shall include all of the following:

(1) The nature of the registrant's business, including the categorical products produced, handled, or processed that are sold as organic and the names and registration numbers of those persons for whom they sell product as applicable.

(2) (A) For producers, a map showing the precise location and dimensions of the facility or farm where the products are produced. The map shall also describe the boundaries of the production area and all adjacent land uses, shall assign field numbers to distinct fields or management units, and shall describe the size of each field or management unit.

(B) When the registrant has not had control of the property being registered for at least 36 months, documentation shall be provided from previous owners or managers that shows the 36-month land use history. When the registrant is not the owner, documentation shall be provided from the owner granting permission for the parcel to be registered as organic by the registrant.

(3) Sufficient information, under penalty of perjury, to enable the secretary or county agricultural commissioner to verify the amount of the registration fee to be paid in accordance with this act.

(4) The names of all certification organizations or governmental entities, if any, providing organic certification to them.

(5) In the case of producers, for each field or management unit, a list of all substances applied to the crop, soil, growing medium, growing area, irrigation water or postharvest wash or rinse water, or seed, including the source of the substance, the brand name, if any, the rate of application, and the total amount applied in each calendar year, for at least the applicable time periods specified in this act.

(e) The registration form shall include a separate "public information sheet" or its equivalent that shall include:

(1) The name and address of the registrant.

(2) The nature of the registrant's business, including the categorical products produced, handled, or processed that are sold as organic.

(3) The names of all certification organizations or governmental entities, if any, providing certification pursuant to the NOP and this act.

(f) A registration form shall be accompanied by payment of a nonrefundable registration fee by producers, handlers, and processors, which shall be based on gross sales by the registrant of product sold as organic in the calendar year that precedes the date of registration or, if no sales were made in the preceding year, then based on the expected sales during the 12-calendar months following the date of registration. Unless specified elsewhere the fee is based according to the following schedule:

Gross Sales			Registration Fee
$ 0	–	4,999	$ 25
$ 5,000	–	10,000	$ 50
$ 10,001	–	25,000	$ 75
$ 25,001	–	50,000	$ 100
$ 50,001	–	100,000	$ 175
$ 100,001	–	250,000	$ 300
$ 250,001	–	500,000	$ 450
$ 500,001	–	1,000,000	$ 750
$ 1,000,001	–	2,500,000	$ 1,000
$ 2,500,001	–	5,000,000	$ 1,500
$ 5,000,001	–	15,000,000	$ 2,000
$ 15,000,001	–	25,000,000	$ 2,500
$ 25,000,001	–	and above	$ 3,000

(1) Any person required to register pursuant to this section whose registration fee would be less than seventy-five dollars ($75) shall pay an initial registration fee of seventy-five dollars ($75). Thereafter, the annual fee shall be as specified above.

(2) Any person selling a multi-ingredient product in which less than 70 percent of the ingredients are organic shall pay a fee of one hundred dollars ($100) or one-half of the amount that would be due based on the above chart, whichever is more.

(3) Producers that sell processed product shall pay fees based on the value of raw product prior to being processed and the value of any product sold as unprocessed.

(4) Any person that packs, repacks, labels, sorts, or otherwise handles any organic product that is outside the jurisdiction of the State Director of Health Services and that does not take title or manage the sale of the

product, but provides only handling services for organic product, shall register and pay one hundred dollars ($100) per year.

(5) Commission merchants or brokers that do not take possession or title of the product but arrange for the sale of the product shall register and pay one hundred dollars ($100) per year.

(6) A retail store engaged in the handling or processing of organic products shall register and pay a fee of one hundred dollars ($100) for each store location that processes organic products onsite.

(7) Any person that provides temporary storage or transportation for organic product and does not handle the raw unpackaged product does not have to register.

(8) Any person that hires any other person for custom packing or labeling shall register and pay a fee based on the total sales of product custom produced for them as outlined in the chart above. In addition to the required registration information above the person must disclose on the registration form the names of all companies that pack and process for them.

(9) Any person required to register pursuant to this section that fits the description of more than one of the persons described above shall pay the greater of the multiple amounts.

SEC. 14. Section 46013.2 is added to the Food and Agricultural Code, to read:

46013.2. (a) To the extent feasible, the secretary shall coordinate the registration and fee collection procedures of this section with similar licensing or registration procedures applicable to registrants.

(b) The secretary or county agricultural commissioner shall deny a registration submission that is incomplete or not in compliance with this act.

(c) A registrant shall, within a reasonable time, notify the secretary of any change in the information reported on the registration form and shall pay any additional fee owed if that change results in a higher fee owed than that previously paid.

(d) At the request of any person, the ''public information sheet'' described in subdivision (e) of Section 46013.1 for any registrant shall be made available for inspection and copying at the main office of the department and each county agricultural commissioner. Copies of the ''public information sheet'' shall also be made available by mail, upon written request. The secretary or county agricultural commissioner may charge a reasonable fee for the cost of reproducing a ''public information sheet.'' Except as provided in this subdivision, a registration form is exempt from Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code.

(e) The secretary, in consultation with the California Organic Products Advisory Committee, may suspend the registration program

set forth in this section if the secretary determines that income derived from registration fees is insufficient to support a registration enforcement program.

(f) A registration is considered legal and valid until revoked, suspended, or until the expiration of the registration.

(g) The registration revocation process shall be in conjunction with other provisions of this act. The secretary or county agricultural commissioner's office may initiate the revocation process for failure to comply with the NOP or this act. Any person against whom the action is being taken shall have the opportunity to appeal the action and be afforded the opportunity to be heard in an administrative appeal. This appeal shall be administered by either the state or county agricultural commissioner's office.

(h) When the registration fee is not paid within 60 days from the expiration date, the account shall be considered closed and the registration voided. A notification shall be sent to the registrant and the certifier, if applicable, notifying them the registrant is no longer able to market products as organic until the account is paid in full.

(i) Any producer, handler, processor, or certification agency subject to this chapter that does not pay the fee within 10 days of the date on which the fee is due and payable shall pay a penalty of 10 percent of the total amount determined to be due plus interest at the rate of $1^1/_2$ percent per month on the unpaid balance.

SEC. 15. Section 46014.1 is added to the Food and Agricultural Code, to read:

46014.1. (a) Any certification organization that certifies product in this state sold as organic shall register with the secretary and shall thereafter annually renew the registration, unless the organization is no longer engaged in the activities requiring the registration. Registration shall be on a form provided by the secretary, shall include a copy of accreditation by the USDA or proof of application if applicable.

(b) Each certification organization shall pay to the secretary an annual registration fee of twenty-five dollars ($25) for each client they have certified in this state up to a maximum of two hundred fifty dollars ($250). Any registration submitted by a certification organization, shall be made available to the public for inspection and copying. The secretary may audit the organization's certification procedures and records at any time, but any records of the certification organization not otherwise required to be disclosed shall be kept confidential by the secretary.

(c) The secretary and the county agricultural commissioners under the supervision of the secretary shall, if requested by a sufficient number of persons to cover the costs of the program in a county as determined by the secretary, establish a certification program. This program shall meet all of the requirements of this act. In addition, this program shall

meet all of the requirements of the federal certification program, including federal accreditation. The secretary shall establish a fee schedule for participants in this program that covers all of the department's reasonable costs of the program. A county agricultural commissioner that conducts a voluntary certification program pursuant to this section shall establish a fee schedule for participants in this program that covers all of the county's reasonable costs of the program. The secretary may not expend funds obtained from registration fees collected under this chapter for the purposes of adopting or administering this program. The certification fee authorized by this subdivision is due and payable on January 1 or may be prorated before the 10th day of the month following the month in which the decision to grant the certification is issued. Any person who does not pay the amount that is due within the required period shall pay the enforcement authority providing the certificate a penalty of 10 percent of the total amount determined to be due, plus interest at the rate of $1^1/_2$ percent interest per month on the unpaid balance.

SEC. 16. Section 46014.2 is added to the Food and Agricultural Code, to read:

46014.2. (a) All products sold as organic in California shall be certified by a federally accredited certifying agent, if they are required to be certified under the federal act.

(b) Product shall be sold as organic only in accordance with this act.

(c) A certification organization shall be accredited by the USDA as provided in the NOP.

SEC. 18. Section 46014.4 is added to the Food and Agricultural Code, to read:

46014.4. A registered certification organization shall submit to the secretary every January and June a list of all persons whose production or processing of product in California is certified. The list shall be publicly available within 30 days after the end of each filing period. A certifier that keeps a current list on a Web site available to the public may be deemed to meet this requirement.

SEC. 20. Section 46014.6 is added to the Food and Agricultural Code, to read:

46014.6. Only products that have been produced and handled in accordance with this act may be certified by a registered certification organization.

SEC. 21. Section 46015 of the Food and Agricultural Code is repealed.

SEC. 21.5. Section 46015 is added to the Food and Agricultural Code, to read:

46015. Materials acceptable in this state are those outlined in Sections 205.600 to 205.607, inclusive, of Title 7 of the Code of Federal Regulations.

SEC. 22. Section 46016.1 is added to the Food and Agricultural Code, to read:

46016.1. (a) Any person may file a complaint with the secretary concerning suspected noncompliance with this act, as provided in Section 46000 or regulations adopted by the NOP.

(b) The secretary shall, to the extent funds are available, establish procedures for handling complaints, including provision of a written complaint form, and procedures for commencing an investigation within three working days after receiving a complaint regarding fresh food, and within seven working days for other products, and completing an investigation and reporting findings and enforcement action taken, if any, to the complainant within 60 days thereafter.

(c) The secretary may establish minimum information requirements to determine the verifiability of a complaint, and may provide for rejection of a complaint that does not meet the requirements. The secretary shall provide written notice of the reasons for rejection to the person filing the complaint.

(d) The secretary shall carry out the functions and objectives of this act to the extent funds are available for those purposes.

(e) The complaint process in this state must also meet all the complaint process outlined in regulations adopted by the NOP.

SEC. 23. Section 46016.2 is added to the Food and Agricultural Code, to read:

46016.2. (a) Any county agricultural commissioner may, at any time, initiate a notice and hearing process to determine whether a violation of these provisions has occurred. The hearing process to determine if a violation has occurred may include a review of the actions or records of:

(1) The organic registrant.

(2) A family member, employee, or any other person authorized to act on behalf of the registrant.

(3) Any other person whose actions may have resulted in the violation.

(b) The notice of hearing shall be on a form approved by the secretary and may contain:

(1) The reasons why the hearing is being held.

(2) A warning that failure to participate may result in other adverse actions or may be considered to be admission to a possible violation.

(3) A hearing date, time, and location of the hearing.

(4) The secretary or county agricultural commissioner may, upon determination that a violation has been made in accordance with subdivision (a) above, take any corrective action as specified in this act.

SEC. 24. Section 46016.3 is added to the Food and Agricultural Code, to read:

46016.3. Any person may appeal to the secretary for a hearing if aggrieved by any one of the following actions or decisions:

(a) Denial of any registration.

(b) Revocation of any registration.

SEC. 25. Section 46016.4 is added to the Food and Agricultural Code, to read:

46016.4. The appeal shall be submitted to the secretary in writing within 30 days of the date the action, or the letter proposing the action. The secretary's proceeding shall, insofar as practicable, comply with the provisions of the Administrative Procedure Act, Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, except that a department hearing officer may be used.

SEC. 26. Section 46016.5 is added to the Food and Agricultural Code, to read:

46016.5. As provided for in regulations adopted by the NOP, the action proposed by a NOP accredited certifier against a client may be appealed to the secretary for mediation.

SEC. 27. Section 46017 is added to the Food and Agricultural Code, to read:

46017. (a) In lieu of prosecution, the secretary or a county agricultural commissioner may levy a civil penalty against any person under the enforcement jurisdiction of the secretary as provided in Section 46000 who violates this act, or any regulation adopted pursuant thereto or pursuant to this chapter, or regulations adopted by the NOP, in an amount not more than five thousand dollars ($5,000) for each violation. The amount of the penalty assessed for each violation shall be based upon the nature of the violation, the seriousness of the effect of the violation upon effectuation of the purposes and provisions of this chapter and the impact of the penalty on the violator, including the deterrent effect on future violations.

(b) Notwithstanding the penalties prescribed in subdivision (a), if the secretary or county agricultural commissioner finds that a violation was not intentional, the secretary or county agricultural commissioner may levy a civil penalty of not more than two thousand five hundred dollars ($2,500) for each violation.

(c) For a first offense, in lieu of a civil penalty as prescribed in subdivision (a) or (b), the secretary or county agricultural commissioner

may issue a notice of violation if he or she finds that the violation is minor.

(d) A person against whom a civil penalty is proposed shall be afforded an opportunity for a hearing before the secretary or county agricultural commissioner, upon request made in writing within 30 days after the issuance of the notice of penalty. At the hearing, the person shall be given the right to review the secretary's or commissioner's evidence of the violation and the right to present evidence on his or her own behalf. If no hearing is requested, the civil penalty shall constitute a final and nonreviewable order.

(e) If a hearing is held, review of the final decision of the secretary or county agricultural commissioner may be requested in writing by any person, pursuant to Section 1094.5 of the Code of Civil Procedure within 30 days of the date of the final order of the secretary or county agricultural commissioner.

(f) A civil penalty levied by the secretary pursuant to this section may be recovered in a civil action brought in the name of the state. A civil penalty levied by a county agricultural commissioner pursuant to this section may be recovered in a civil action brought in the name of the county.

(g) The secretary shall maintain in a central location, and make publicly available for inspection and copying upon request, a list of all civil penalties levied by the secretary and by each county agricultural commissioner within the past five years, including the amount of each penalty, the person against whom the penalty was levied, and the nature of the violation. Copies of this list shall also be available by mail, upon written request and payment of a reasonable fee, as set by the secretary.

SEC. 28. Section 46018.1 is added to the Food and Agricultural Code, to read:

46018.1. The secretary and the county agricultural commissioners may conduct a program of spot inspections to determine compliance with this act.

SEC. 29. Section 46018.2 is added to the Food and Agricultural Code, to read:

46018.2. At the request of a county agricultural commissioner, the district attorney for that county may bring an action to enforce this act and the NOP within the enforcement jurisdiction of that commissioner.

SEC. 30. Section 46020 is added to the Food and Agricultural Code, to read:

46020. (a) It is unlawful for any person to sell, offer for sale, advertise, or label any product in violation of this act.

(b) Notwithstanding subdivision (a), a person engaged in business as a handler, distributor, or retailer of food who in good faith sells, offers for sale, labels, or advertises any product in reliance on the

representations of a producer, processor, or other distributor that the product may be sold as organic, shall not be found to violate this act unless the distributor either:

(1) Knew or should have known that the product could not be sold as organic.

(2) Was engaged in producing or processing the product.

(3) Prescribed or specified the manner in which the product was produced or processed.

SEC. 31. Section 46021 is added to the Food and Agricultural Code, to read:

46021. (a) It is unlawful for any person to certify any product in violation of this act.

(b) It is unlawful for any person to certify a product or company as organic unless duly registered as a certification organization pursuant to this act.

(c) It is unlawful for any person to willfully make a false statement or representation, or knowingly fail to disclose a fact required to be disclosed, in registration for a certification organization pursuant to this act.

SEC. 32. Section 46022 is added to the Food and Agricultural Code, to read:

46022. (a) It is unlawful for any person to produce or handle any product sold as organic unless duly registered pursuant to Section 46013.1.

(b) It is unlawful for any person to willfully make a false statement or representation, or knowingly fail to disclose a fact required to be disclosed, in registration pursuant to Section 46013.1.

SEC. 33. Section 46023 is added to the Food and Agricultural Code, to read:

46023. It is unlawful for any person to forge, falsify, fail to retain, fail to obtain, or fail to disclose records pursuant to Section 46028.

SEC. 34. Section 46024 is added to the Food and Agricultural Code, to read:

46024. (a) It is unlawful for any person to advertise, label, or otherwise represent that any fertilizer or pesticide chemical may be used in connection with the production, processing, or distribution of products sold as organic if that fertilizer or pesticide chemical contains a prohibited material.

(b) It is unlawful for any person to refuse to submit for inspection.

(c) It is unlawful for any person to mislabel any organic product.

(d) It is unlawful for any person to alter any organic registration form.

(e) It is unlawful for any person to alter any certification document.

(f) It is unlawful for any person to falsify any document.

(g) It is unlawful for any person to remove a hold off sale or disposal order from any lot of product.

(h) It is unlawful to use the term ''transitional organic'' in this state.

SEC. 35. Section 46027 is added to the Food and Agricultural Code, to read:

46027. (a) No food or product may be advertised or labeled as ''organic when available'' or similar terminology that leaves in doubt whether the food is being sold as organic.

SEC. 36. Section 46028 is added to the Food and Agricultural Code, to read:

46028. (a) All persons who produce, handle, or retail products that are sold as organic shall keep accurate and specific records of the following as applicable:

(1) The quantity harvested from each field or management unit, the size of the field or management unit, the field number, and the date of harvest.

(2) Unless the livestock, fowl, or fish was raised or hatched by the producer, the name and address of all suppliers of livestock, fowl, or fish and the date of the transaction.

(3) For each field or management unit, all substances applied to the crop, soil, growing medium, growing area, irrigation or post harvest wash or rinse water, or seed, the quantity of each substance applied, and the date of each application. All substances shall be identified by brand name, if any, and by source.

(4) All substances administered and fed to the animal, including all feed, medication and drugs, and all substances applied in any area in which the animal, milk, or eggs are kept, including the quantity administered or applied, and the date of each application. All substances shall be identified by brand name, if any, and by source.

(5) (A) Invoices, bills of lading or other documents that show transfer of title of certified organic products shall indicate the product is ''organic'' or ''certified organic'' and, if applicable, the California registration number of the person transferring the product.

(B) Any person selling product that is exempt or excluded from certification under NOP rules, must follow the requirements of Section 205.101 of Title 7 of the Code of Federal Regulations.

(6) All substances applied to the product or used in or around any area where product is kept including the quantity applied and the date of each application. All pesticide chemicals shall be identified by brand name, if any, and by source.

(7) Except when sold to the consumer, the name and address of all persons, to whom or from whom the product is sold, purchased or otherwise transferred, the quantity of product sold or otherwise transferred, and the date of the transaction.

SEC. 37. Section 46029 is added to the Food and Agricultural Code, to read:

46029. (a) Notwithstanding any other provision of law, any producer, handler, processor, or retailer of product sold as organic shall immediately make available for inspection by, and shall upon request, within 72 hours of the request, provide a copy to, the secretary, the Attorney General, any prosecuting attorney, any governmental agency responsible for enforcing laws related to the production or handling of products sold as organic, of any record required to be kept under this section for purposes of carrying out this act. Records acquired pursuant to this act shall not be public records as that term is defined in Section 6252 of the Government Code and shall not be subject to Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code.

(b) Upon written request of any person that establishes cause for the request, the secretary shall obtain and provide to the requesting party within 10 working days of the request a copy of any of the following records required to be kept under this act that pertain to a specific product sold or offered for sale, and that identify substances applied, administered, or added to that product, except that financial information about an operation or transaction, information regarding the quantity of a substance administered or applied, the date of each administration or application, information regarding the identity of suppliers or customers, and the quantity or price of supplies purchased or products sold shall be removed before disclosure and shall not be released to any person other than persons and agencies authorized to acquire records under subdivision (a):

(1) Records of a producer, as described in Section 46028.

(2) Records of a handler, as described in Section 46028, records of previous handlers, if any, and producers as described in Section 46028 without identifying the previous handlers or producers, and, if applicable, records obtained as required in this act.

(3) (A) Records of a retailer, as described in Section 46028, records of previous handlers, if any, and producers as described in Section 46028 without identifying the previous processors, handlers, or producers, and, if applicable, records obtained as required in subdivision (d). This subdivision shall be the exclusive means of public access to records required to be kept by producers, processors, handlers, and retailers under this act.

(B) A person required to provide records pursuant to a request under this subdivision, may petition the secretary to deny the request based on a finding that the request is of a frivolous or harassing nature. The secretary may, upon the issuance of this finding, waive the information

production requirements of this subdivision for the specific request for information that was the subject of the petition.

(c) Information specified in subdivision (b) that is required to be released upon request shall not be considered a ''trade secret'' under Section 110165, Section 1060 of the Evidence Code, or the Uniform Trade Secrets Act (Title 5 (commencing with Section 3426) of Part 1 of Division 4 of the Civil Code).

(d) The secretary may charge the person requesting records a reasonable fee to reimburse himself or herself or the source of the records for the cost of reproducing the records requested.

(e) The secretary shall not be required to obtain records not in his or her possession in response to a subpoena. Prior to releasing records required to be kept pursuant to this act in response to a subpoena, the secretary shall delete any information regarding the identity of suppliers or customers and the quantity or price of supplies purchased or products sold.

SEC. 38. The heading of Article 7 (commencing with Section 110810) of Chapter 5 of Part 5 of Division 104 of the Health and Safety Code is amended to read:

Article 7. The California Organic Products Act of 2003

SEC. 39. Section 110810 of the Health and Safety Code is amended to read:

110810. This article shall be known, and may be cited as, the California Organic Products Act of 2003.

SEC. 40. Section 110811 is added to the Health and Safety Code, to read:

110811. This article shall be interpreted in conjunction with Chapter 10 (commencing with Section 46000) of Division 17 of the Food and Agricultural Code and the regulations promulgated by the National Organic Program (NOP) (Section 6517 of the federal Organic Foods Production Act of 1990 (7 U.S.C. Sec. 6501 et seq.)).

SEC. 41. Section 110812 is added to the Health and Safety Code, to read:

110812. The director shall enforce regulations promulgated by the National Organic Program (Section 6517 of the federal Organic Foods Production Act of 1990 (7 U.S.C. Sec. 6501 et seq.)), provisions of this article, and Chapter 10 (commencing with Section 46000) of Division 17 of the Food and Agricultural Code.

SEC. 42. Section 110815 of the Health and Safety Code is amended to read:

110815. Unless otherwise defined pursuant to the National Organic Program, the following words and phrases, when used in this article, shall have the following meanings:

(a) ''Animal food'' means any food intended to be fed to any household animal, including, but not limited to, cats, or dogs and other carnivores. It does not include ''feed'' intended for livestock as defined in Section 205.2 of Title 7 of the Code of Federal Regulations.

(b) ''Director'' means the Director of the Department of Health Services.

(c) ''Enforcement authority'' means the governmental unit with primary enforcement jurisdiction, as provided in Section 119030.

(d) ''Handle'' means to sell, process, or package agricultural products.

(e) ''Handler'' means any person engaged in the business of handling agricultural products, but does not include final retailers of agricultural products that do not process agricultural products.

(f) ''Handling operation'' means any operation or portion of an operation, except final retailers of agricultural products that do not process agricultural products, that (1) receives or otherwise acquires agricultural products and (2) processes, packages, or stores agricultural products.

(g) ''NOP'' means the National Organic Program established pursuant to the Organic Foods Production Act of 1990 (7 U.S.C. Sec. 6501 et seq.) and the regulations adopted for implementation.

(h) ''Processing'' means cooking, baking, heating, drying, mixing, grinding, churning, separating, extracting, cutting, fermenting, eviscerating, preserving, dehydrating, freezing, or otherwise manufacturing, and includes packaging, canning, jarring, or otherwise enclosing food in a container.

(i) ''Prohibited materials'' means any materials prohibited under regulations adopted by (Section 6517 of the federal Organic Foods Production Act of 1990 (7 U.S.C. Sec. 6501 et seq.)). For products not covered by the National Organic Program, prohibited materials are anything not on the approved list.

(j) ''Secretary'' means the Secretary of the California Department of Food and Agriculture.

(k) ''Sold as organic'' means any use of the terms ''organic,'' ''organically grown,'' or grammatical variations of those terms, whether orally or in writing, in connection with any product grown, handled, processed, sold, or offered for sale in this state, including, but not limited to, any use of these terms in labeling or advertising of any product and any ingredient in a multi-ingredient product.

(*l*) ''USDA'' means the United States Department of Agriculture.

SEC. 43. Section 110818 is added to the Health and Safety Code, to read:

110818. Water, including substances dissolved in water, shall not be a prohibited material, even if it contains incidental contamination from a prohibited material, if the prohibited material was not added by, or under the direction or control of, the person in control of the product.

SEC. 44. Section 110820 of the Health and Safety Code is amended to read:

110820. Except as otherwise provided in this article, no product shall be sold as organic pursuant to this article unless it is produced according to regulations promulgated by the NOP, and consists entirely of products manufactured only from raw or processed agricultural products except as follows:

(a) Water, air, and salt may be added to the product.

(b) Ingredients other than raw or processed agricultural products may be added to the product if these ingredients include nonagricultural substances or nonorganically produced agricultural products produced in a manner consistent with, or which are on the national list adopted by the United States Secretary of Agriculture pursuant to Section 6517 of the NOP and do not represent more than 5 percent of the weight of the total finished product, excluding salt and water.

SEC. 45. Section 110825 of the Health and Safety Code is amended to read:

110825. Materials acceptable in this state are those outlined by regulations promulgated by the NOP and the provisions of this article.

SEC. 48. Section 110830 of the Health and Safety Code is amended to read:

110830. (a) No product handled, processed, sold, advertised, represented, or offered for sale in this state, shall be sold as organic unless it also is prominently labeled and invoiced with similar terminology as set forth by regulations promulgated by the NOP.

(b) No product may be advertised or labeled as ‘‘organic when available’’ or similar terminology that leaves in doubt whether the food is being sold as organic.

SEC. 49. Section 110835 of the Health and Safety Code is amended to read:

110835. The director may adopt regulations allowing or prohibiting the use of substances in the processing of products that are exempt or excluded from certification under the NOP, and animal food and cosmetics sold as organic.

SEC. 50. Section 110838 is added to the Health and Safety Code, to read:

110838. (a) Cosmetic products sold, labeled, or represented as organic or made with organic ingredients shall contain, at least 70 percent organically produced ingredients.

(b) The percentage of all organically produced ingredients in an agricultural product sold, labeled, or represented as "organic" or "100 percent organic," or sold, labeled, or represented as being made with organic ingredients or food groups, or as inclusive of organic ingredients, shall be calculated as follows:

(1) For products containing organically produced ingredients in solid form, by dividing the total net weight of combined organic ingredients at formulation, excluding water and salt, by the total weight of the finished product, excluding water and salt.

(2) For products containing organically produced ingredients in liquid form, by dividing the fluid volume of all organic ingredients, excluding water and salt, by the fluid volume of the finished product, excluding water and salt. If the liquid product is identified on the principal display panel or information panel as being reconstituted from concentrates, the calculation should be made on the basis of single-strength concentrations of the ingredients and finished product.

(3) For products containing organically produced ingredients in both solid and liquid form, by dividing the combined weight of the solid ingredients and the weight of the liquid ingredients, excluding water and salt, by the total weight of the finished product, excluding water and salt.

(c) The percentage of all organically produced ingredients in an agricultural product must be rounded down to the nearest whole number.

(d) The percentage of all organically produced ingredients in an agricultural product must be determined by the handler who affixes the label to the consumer package and verified by the handler's certifying agent. The handler may use information provided by the certified operation in determining the percentage.

SEC. 51. Section 110839 is added to the Health and Safety Code, to read:

110839. Multi-ingredient cosmetic products sold as organic in California with less than 70 percent organically produced ingredients, by weight or by fluid volume, excluding water and salt, may only identify the organic content as follows:

(a) By identifying each organically produced ingredient in the ingredient statement with the word "organic" or with an asterisk or other reference mark that is defined below the ingredient statement to indicate the ingredient is organically produced.

(b) If the organically produced ingredients are identified in the ingredient statement, by displaying the product's percentage of organic contents on the information panel.

SEC. 54. Section 110840 of the Health and Safety Code is amended to read:

110840. (a) All persons who handle products sold as organic shall keep accurate and specific records of the following:

(1) Except when sold to the consumer, the name and address and, if applicable, the registration numbers issued pursuant to Section 110875 of this code or Section 46002 of the Food and Agricultural Code of all persons, to whom or from whom the product is sold, purchased, or otherwise transferred, the quantity of product sold or otherwise transferred, and the date of the transaction.

(2) Invoices, bills of lading, or other documents that show transfer of title of certified organic products must indicate the product is ''organic'' or ''certified organic'' and, if applicable, the California registration number of the person transferring the product.

(3) Any person selling a product which is exempt or excluded from certification under NOP rules, shall follow the requirements of Section 205.101 of Title 7 of the Code of Federal Regulations.

(4) All substances applied to the product or used in or around any area where product is kept, including the quantity applied and the date of each application. All pesticide chemicals shall be identified by brand name, if any, and by source.

(b) All persons who sell, at retail, products sold as organic shall keep accurate and specific records of the following:

(1) Except when sold to the consumer, the name and address and, if applicable, the registration numbers issued pursuant to Section 110875 of this code or Section 46002 of the Food and Agricultural Code of all suppliers of persons, to whom or from whom the product is sold, purchased, or otherwise transferred, the quantity of product purchased or otherwise transferred, and the date of the transaction.

(2) Invoices, bills of lading or other documents that show transfer of title of certified organic products must indicate the product is ''organic'' or ''certified organic'' and, if applicable, the California registration number of the person transferring the product.

(3) Any person selling a product that is exempt or excluded from certification under NOP rules, shall follow the requirements of Section 205.101 of Title 7 of the Code of Federal Regulations.

(4) All substances applied to the product or used in or around any area where product is kept, including the quantity applied and the date of each application. All pesticide chemicals shall be identified by brand name, if any, and by source.

(c) All records required to be kept under this section shall be maintained as set forth by regulations promulgated by the NOP, when applicable, or as follows: by producers for not less than three years and by handlers for not less than two years from the date that the product is

sold, and shall be maintained by retailers for not less than one year from the date that the product is sold, and shall be maintained by the retailers for not less than one year from the date that the product is received by the retailer. These records shall be made available for inspection at any time by the director or the secretary and by each certification organization that certifies the product, if any, for purposes of carrying out this article and Chapter 10 (commencing with Section 46000) of Division 17 of the Food and Agricultural Code.

SEC. 55. Section 110845 of the Health and Safety Code is amended to read:

110845. (a) Notwithstanding any other provision of law, any producer, handler, processor, or retailer of products sold as organic shall immediately make available for inspection by, and shall upon request, within 72 hours of the request, provide a copy to, the director, the Attorney General, any prosecuting attorney, any governmental agency responsible for enforcing laws related to the production or handling of products sold as organic, or the secretary of any record required to be kept under this section for purposes of carrying out this article and Chapter 10 (commencing with Section 46000) of Division 17 of the Food and Agricultural Code. Records acquired pursuant to this subdivision shall not be public records as that term is defined in Section 6252 of the Government Code and shall not be subject to Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code.

(b) Upon written request of any person that establishes cause for the request, the director and the secretary shall obtain and provide to the requesting party within 10 working days of the request a copy of any of the following records required to be kept under this article that pertain to a specific product sold or offered for sale, and that identify substances applied, administered, or added to that product, except that financial information about an operation or transaction, information regarding the quantity of a substance administered or applied, the date of each administration or application, information regarding the identity of suppliers or customers, and the quantity or price of supplies purchased or products sold shall be removed before disclosure and shall not be released to any person other than persons and agencies authorized to acquire records under subdivision (a):

(1) Records of a handler, as described in paragraph (4) of subdivision (a) of Section 110840, records of previous handlers, if any, without identifying the previous handlers or producers, and, if applicable, records obtained as required in subdivision (b).

(2) Records of a retailer, as described in paragraph (4) of subdivision (b) of Section 110840, records of previous handlers, if any, as described in paragraph (4) of subdivision (a) of, Section 110840, without

identifying the previous handlers, and, if applicable, records obtained as required in subdivision (b).

This subdivision shall be the exclusive means of public access to records required to be kept by handlers and retailers under this article.

A person required to provide records pursuant to a request under this subdivision, may petition the director or the secretary to deny the request based on a finding that the request is of a frivolous or harassing nature. The secretary or director may, upon the issuance of this finding, waive the information production requirements of this subdivision for the specific request for information that was the subject of the petition.

(c) Information specified in subdivision (b) that is required to be released upon request shall not be considered a ''trade secret'' under Section 110165, Section 1060 of the Evidence Code, or the Uniform Trade Secrets Act (Title 5 (commencing with Section 3426) of Part 1 of Division 4 of the Civil Code).

(d) The director or the secretary may charge the person requesting records a reasonable fee to reimburse him or her self or the source of the records for the cost of reproducing the records requested.

(e) Any person who first imports into this state, for resale, products sold as organic shall obtain and provide to the enforcement authority, upon request, proof that the products being sold have been certified by an accredited certifying organization or have otherwise been produced in compliance with this article.

(f) The director shall not be required to obtain records not in his or her possession in response to a subpoena. Prior to releasing records required to be kept pursuant to this chapter in response to a subpoena, the director shall delete any information regarding the identity of suppliers or customers and the quantity or price of supplies purchased or products sold.

SEC. 56. Section 110850 of the Health and Safety Code is amended to read:

110850. (a) Following initial United States Department of Agriculture accreditation of certifying agents as provided in Section 6514 of Title 7 of the United States Code and upon implementation of the federal organic certification requirement pursuant to the federal Organic Foods Production Act of 1990 (7 U.S.C. Sec. 6501 et seq., Sec. 2101, P.L. 101-624), all products sold as organic in California shall be certified by a federally accredited certifying agent, if they are required to be certified under the federal act. In addition products shall be sold as organic only in accordance with this section, Sections 110855 to 110870, inclusive, and Section 46009 of the Food and Agricultural Code. The secretary, director, and the county agricultural commissioners shall carry out this subdivision to the extent that adequate funds are made available for that purpose.

(b) Products sold as organic may be certified only by a certification organization registered pursuant to Section 46014.1 of the Food and Agricultural Code or a federally accredited certification organization.

(c) In order to be registered, a certification organization shall be accredited by the USDA, if required.

(d) A certification organization that certifies processed products sold as organic shall register with the secretary.

(e) The director may audit the organization's certification procedures and records at any time. Records of certification organizations not otherwise required to be released upon request or made publicly available shall not be released by the director except to other employees of the department, the Department of Food and Agriculture, a county agricultural commissioner, the Attorney General, any prosecuting attorney, or any government agency responsible for enforcing laws related to the activities of the person subject to this part.

SEC. 57. Section 110870 of the Health and Safety Code is amended to read:

110870. Only products that have been handled and processed in accordance with this article may be certified by a registered certification organization.

SEC. 58. Section 110875 of the Health and Safety Code is amended to read:

110875. (a) Every person engaged in this state in the processing or handling of processed products for human consumption, including dietary supplements, alcoholic beverages, and fish or seafood sold as organic (except for processors and handlers of processed meat, fowl, or dairy products and retailers that are engaged in the processing or handling of products sold as organic), and every person engaged in the processing or handling of animal food and cosmetics sold as organic, shall register with the director, and shall thereafter annually renew the registration unless no longer so engaged. Handlers of processed food products that are registered with the department pursuant to Article 2 (commencing with Section 110460) shall register under this section in conjunction with the annual renewal of their registration pursuant to that article. Handlers of organic products that are required to be registered to manufacture, pack, or hold processed food pursuant to Article 2 (commencing with Section 110460) of Chapter 5 of Part 5 of Division 104, licensed to bottle, vend, haul, or process water pursuant to Article 12 (commencing with Section 11070) of Chapter 5 of Part 5 of Division 104, certified to process or handle fresh or frozen seafood or fresh or frozen raw shellfish pursuant to Chapter 5 (commencing with Section 112150) of Part 6 of Division 104, licensed to operate a cold storage facility pursuant to Chapter 6 (commencing with Section 112350) of Part 6 of Division 104, licensed to process low acid canned foods pursuant

to Chapter 8 (commencing with Section 112650) of Part 6 of Division 104, licensed to manufacture olive oil pursuant to Chapter 9 (commencing with Section 112875) of Part 6 of Division 104, and licensed or registered to process or hold pet food in California pursuant to Chapter 10 (commencing with Section 113025) of Part 6 of Division 104, shall possess a valid registration or license in order to obtain a valid organic registration for the same facility under this section. All others required to register under this subdivision shall register within 30 days of forms being made available for this purpose. Any processor or handler of processed products required to register under this subdivision that does not pay the registration fee required by subdivision (c) within 30 days of the date on which the fee is due and payable shall pay a penalty of $1^1/_2$ percent per month on the unpaid balance.

(b) Registration shall be on a form provided by the director and shall be valid for a period of one calendar year from the date of validation of the completed registration form. The director shall make registration forms available for this purpose. The information provided on the registration form shall include all of the following:

(1) The nature of the registrant's business, including the specific commodities and quantities of each commodity that is handled and sold as organic.

(2) The total current annual organic gross sales, or if not selling the product, the total current gross annual revenue received from processing, packaging, repackaging, labeling, or otherwise handling organic products for others, in dollars.

(3) The names of all certification organizations and governmental entities, if any, providing certification to the registrant pursuant to this article and the regulations adopted by the NOP.

(4) Sufficient information, under penalty of perjury, to enable the director to verify the amount of the registration fee to be paid in accordance with subdivision (c).

(c) To the extent feasible, the director shall coordinate the registration and fee collection procedures of this section with similar licensing or registration procedures applicable to registrants. When coordinating the organic registration with other required registrations or licenses identified in subdivision (a), the expiration date shall be the same expiration date as the valid license or registration. For persons that hold two-year licenses or registrations pursuant to subdivision (a), the organic registration shall be renewed annually using the same expiration month and day as the two-year license or registration.

(d) A registration form shall be accompanied by payment of a nonrefundable registration fee payable to the department by handlers which shall be based on annual gross sales of organic product or annual revenue received from processing, packaging, repackaging, labeling, or

otherwise handling organic product for others, by the registrant in the calendar year that precedes the date of registration. If no sales or revenue were made in the preceding year, then based on the expected sales or revenue during the 12 calendar months following the date of registration. Unless specified elsewhere, the fee is based according to the following schedule:

Gross Annual Sales or Revenue	Annual Registration Fee
$0–$5,000	$ 50
$5,001–$50,000	$100
$50,001–$125,000	$200
$125,001–$250,000	$300
$250,001–$500,000	$400
$500,001–$1,500,000	$500
$1,500,001–$2,500,000	$600
$2,500,001–and above	$700

(1) Any handler that does not take possession or title of the product but arranges for the sale of the product shall register and pay one hundred dollars ($100) per year.

(2) Any person that only provides temporary storage for seven days or less, or only provides transportation for organic product and does not handle the processed packaged product, does not have to register.

(3) Any person that hires any other person to custom pack, repack, or label organic products shall register and pay a fee based on the total annual sales of products custom packed, repacked, or labeled for them as outlined in the chart above.

(e) Revenue received pursuant to this section shall be deposited in the Food Safety Fund created pursuant to Section 110050.

(f) The director shall reject a registration submission that is incomplete or not in compliance with this article and regulations promulgated by the NOP.

(g) The director shall provide a validated certificate to the registrant.

(h) Registration forms shall be made available to the public for inspection and copying at the main office of the department. Copies of registration forms shall also be made available by mail, upon written request and payment of a reasonable fee, as determined by the director. Registration information regarding quantity of products sold and gross sales volume in dollars shall be deleted prior to public inspection and copying and shall not be released to any person except other employees of the department, the Department of Food and Agriculture, a county agricultural commissioner, the Attorney General, any prosecuting

attorney, or any government agency responsible for enforcing laws related to the activities of the person subject to this part.

(i) A registrant shall immediately notify the director of any change in the information reported on the registration form and shall pay any additional fee owed if that change results in a higher fee owed than previously paid.

(j) The director in consultation with the California Organic Products Advisory Committee, may suspend the registration program set forth in this section if the director determines that income derived from registration fees is insufficient to support a registration enforcement program.

(k) A registration is considered legal and valid until revoked, suspended, or until the expiration of the registration.

(*l*) The registration revocation process must be in conjunction with other provisions of this article. The director can initiate the revocation process for failure to comply with this article or any part of the regulations adopted pursuant to the NOP. Any person against whom the action is being taken shall have the opportunity to appeal the action and be afforded the opportunity to be heard in an administrative appeal. This appeal can be administered by either the state or county agricultural commissioner's office.

(m) When the registration fee is not paid within 60 days from the expiration date the account may be considered closed and the registration voided. A notification will be sent to the registrant and the certifier will notify them that they are no longer able to market products as organic until the account is paid in full.

(n) Any registration that is more than 60 days late will be considered invalid and it is a violation if product is sold as organic.

SEC. 59. Section 110880 of the Health and Safety Code is amended to read:

110880. This article shall apply to all products sold as organic within the state, wherever produced, handled, or processed, and to all products produced, that are handled or processed in the state, wherever sold as organic.

SEC. 60. Section 110885 of the Health and Safety Code is amended to read:

110885. This article shall not apply to the term "natural" when used in the labeling or advertising of a product.

SEC. 61. Section 110890 of the Health and Safety Code is amended to read:

110890. (a) It is unlawful for any person to sell, offer for sale, advertise, or label any product in violation of this article.

(b) Notwithstanding subdivision (a), a person engaged in business as a distributor or retailer of products who in good faith sells, offers for sale,

labels, or advertises any product in reliance on the representations of a producer, handler, or other distributor that the product may be sold as organic, shall not be found to violate this article unless the distributor either: (1) knew or should have known that the product could not be sold as organic; (2) was engaged in producing or processing the product; or (3) prescribed or specified the manner in which the product was produced or processed.

SEC. 62. Section 110895 of the Health and Safety Code is amended to read:

110895. (a) It is unlawful for any person to certify products in violation of this article.

(b) It is unlawful for any person to certify products as organic unless duly registered or accredited as a certification organization pursuant to Section 110850.

(c) It is unlawful for any person to willfully make a false statement or representation, or knowingly fail to disclose a fact required to be disclosed, in registration for a certification organization pursuant to Section 110850.

SEC. 63. Section 110900 of the Health and Safety Code is amended to read:

110900. (a) It is unlawful for any person to produce, handle, or process products sold as organic unless duly registered pursuant to Section 110875.

(b) It is unlawful for any person to willfully make a false statement or representation, or knowingly fail to disclose a fact required to be disclosed, in registration pursuant to Section 110875.

SEC. 64. Section 110910 of the Health and Safety Code is amended to read:

110910. It is unlawful for any person to do any of the following:

(a) Advertise, label, or otherwise represent that any fertilizer or pesticide chemical may be used in connection with the production, processing, or distribution of products sold as organic if that fertilizer or pesticide chemical contains a prohibited material.

(b) Alter any organic registration form.

(c) Alter any certification document.

(d) Falsify any document.

(e) Use the term ‘‘transitional organic’’ in this state to represent a product for sale.

SEC. 65. Section 110915 of the Health and Safety Code is amended to read:

110915. (a) In lieu of prosecution, the director may levy a civil penalty against any person who violates this article, any regulation adopted pursuant to this article, or any regulation promulgated by the NOP in an amount not more than five thousand dollars ($5,000) for each

violation. The amount of the penalty assessed for each violation shall be based upon the nature of the violation, the seriousness of the effect of the violation upon effectuation of the purposes and provisions of this article, and the impact of the penalty on the violator, including the deterrent effect on future violations.

(b) Notwithstanding the penalties prescribed in subdivision (a), if the director finds that a violation was not intentional, the director may levy a civil penalty of not more than two thousand five hundred dollars ($2,500) for each violation.

(c) For a first offense, in lieu of a civil penalty as prescribed in subdivisions (a) and (b), the director may issue a notice of violation, if he or she finds that the violation is minor.

(d) A person against whom a civil penalty is levied shall be afforded an opportunity for a hearing before the director, upon request made within 30 days after the date of issuance of the notice of penalty. At the hearing, the person shall be given the right to review the director's evidence of the violation and the right to present evidence on his or her own behalf. If no hearing is requested, the civil penalty shall constitute a final and nonreviewable order.

(e) If a hearing is held, review of the decision of the director may be sought by any person within 30 days of the date of the final order of the director pursuant to Section 1094.5 of the Code of Civil Procedure.

(f) A civil penalty levied by the director pursuant to this section may be recovered in a civil action brought in the name of the state.

SEC. 66. Section 110930 of the Health and Safety Code is amended to read:

110930. The director shall, to the extent funds are available, enforce this article applicable to all processors and handlers of processed products sold as organic, including handlers and processors of fish and seafood, cosmetics, and animal food products sold as organic, except for processors and handlers of processed meat, fowl, and dairy products.

SEC. 67. Section 110940 of the Health and Safety Code is amended to read:

110940. (a) Any person may file a complaint with the director concerning suspected noncompliance with this article by a person over whom the director has responsibility as provided in this article or regulations adopted by the NOP.

(b) The director shall, to the extent funds are available, establish a procedure for handling complaints, including, provision of a written complaint form, and procedures for commencing an investigation within three working days of receiving a written complaint regarding fresh food, and within seven working days for other product, and completing an investigation and reporting findings and enforcement action taken, if any, to the complainant within 90 days thereafter.

(c) The director may establish minimum information requirements to determine the verifiability of a complaint and may provide for rejection of a complaint that does not meet the requirements. The director shall provide written notice of the reasons for rejection to the person filing the complaint.

(d) The responsibilities of the director under this section shall be carried out to the extent funds are available.

(e) The complaint process in this state shall also meet all the complaint processes outlined in regulations promulgated by the NOP.

SEC. 68. Section 110956 of the Health and Safety Code is amended to read:

110956. (a) All organic product regulations and any amendments to those regulations adopted pursuant to the NOP, that are in effect on the date this bill is enacted or that are adopted after that date shall be the organic product regulations of this state.

(b) The director may, by regulation, prescribe conditions under which organic products not addressed by the National Organic Program may be sold in this state.

SEC. 69. Section 110957 of the Health and Safety Code is amended to read:

110957. It shall be unlawful for a person to represent in advertising or labeling that the person or the products of the person are registered pursuant to this article.

SEC. 70. Section 110958 of the Health and Safety Code is amended to read:

110958. Annually, the director shall compile and publish and submit to the California Organic Products Advisory Committee a summary of information collected under Section 110875, including, but not limited to, the following:

(a) The total number of registrations received under this section.

(b) The total number and quantity of each type of product sold as organic by all registrants combined.

(c) The total annual organic gross sales volume or revenue of all registrants combined, and the median gross annual organic sales or revenue of all registrants.

(d) The names of all registrants.

(e) The number of registrants in each of the following ranges of annual gross sales volume:

(1) $0–$5,000
(2) $5,001–$25,000
(3) $25,001–$50,000
(4) $50,001–$125,000
(5) $125,001–$250,000
(6) $250,001–$500,000

(7) $500,001–$750,000
(8) $750,001–$1,000,000
(9) $1,000,001–$1,500,000
(10) $1,500,001–$2,500,000
(11) $2,500,001–$10,000,000
(12) $10,000,001–$30,000,000
(13) $30,000,001 and above.

(f) The report published pursuant to this section shall present the required information in an aggregate form that preserves the confidentiality of the proprietary information of individual registrants.

SEC. 71. Section 110959 is added to the Health and Safety Code, to read:

110959. Beginning January 1, 2003, the director shall conduct a program of spot inspections of persons required to register pursuant to Section 110875 to verify continuing compliance with this article and the regulations adopted by the NOP according to uniform procedures established by the director and regulations promulgated by the NOP.

SEC. 72. 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.

CHAPTER 534

An act to amend Sections 836 and 13700, of the Penal Code, relating to domestic violence.

[Approved by Governor September 13, 2002. Filed with Secretary of State September 15, 2002.]

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

SECTION 1. Section 836 of the Penal Code is amended to read:

836. (a) A peace officer may arrest a person in obedience to a warrant, or, pursuant to the authority granted to him or her by Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2, without a warrant, may arrest a person whenever any of the following circumstances occur:

(1) The officer has probable cause to believe that the person to be arrested has committed a public offense in the officer's presence.

(2) The person arrested has committed a felony, although not in the officer's presence.

(3) The officer has probable cause to believe that the person to be arrested has committed a felony, whether or not a felony, in fact, has been committed.

(b) Any time a peace officer is called out on a domestic violence call, it shall be mandatory that the officer make a good faith effort to inform the victim of his or her right to make a citizen's arrest. This information shall include advising the victim how to safely execute the arrest.

(c) (1) When a peace officer is responding to a call alleging a violation of a domestic violence protective or restraining order issued under the Family Code, Section 527.6 of the Code of Civil Procedure, Section 213.5 of the Welfare and Institutions Code, Section 136.2 of this code, or paragraph (2) of subdivision (a) of Section 1203.097 of this code, or of a domestic violence protective or restraining order issued by the court of another state, tribe, or territory and the peace officer has probable cause to believe that the person against whom the order is issued has notice of the order and has committed an act in violation of the order, the officer shall, consistent with subdivision (b) of Section 13701, make a lawful arrest of the person without a warrant and take that person into custody whether or not the violation occurred in the presence of the arresting officer. The officer shall, as soon as possible after the arrest, confirm with the appropriate authorities or the Domestic Violence Protection Order Registry maintained pursuant to Section 6380 of the Family Code that a true copy of the protective order has been registered, unless the victim provides the officer with a copy of the protective order.

(2) The person against whom a protective order has been issued shall be deemed to have notice of the order if the victim presents to the officer proof of service of the order, the officer confirms with the appropriate authorities that a true copy of the proof of service is on file, or the person against whom the protective order was issued was present at the protective order hearing or was informed by a peace officer of the contents of the protective order.

(3) In situations where mutual protective orders have been issued under Division 10 (commencing with Section 6200) of the Family Code, liability for arrest under this subdivision applies only to those persons who are reasonably believed to have been the primary aggressor. In those situations, prior to making an arrest under this subdivision, the peace officer shall make reasonable efforts to identify, and may arrest, the primary aggressor involved in the incident. The primary aggressor is the person determined to be the most significant, rather than the first, aggressor. In identifying the primary aggressor, an officer shall consider (A) the intent of the law to protect victims of domestic violence from continuing abuse, (B) the threats creating fear of physical injury, (C) the history of domestic violence between the persons involved, and (D) whether either person involved acted in self-defense.

(d) Notwithstanding paragraph (1) of subdivision (a), if a suspect commits an assault or battery upon a current or former spouse, fiancé, fiancée, a current or former cohabitant as defined in Section 6209 of the Family Code, a person with whom the suspect currently is having or has previously had an engagement or dating relationship, as defined in paragraph (10) of subdivision (f) of Section 243, a person with whom the suspect has parented a child, or is presumed to have parented a child pursuant to the Uniform Parentage Act (Part 3 (commencing with Section 7600) of Division 12 of the Family Code), a child of the suspect, a child whose parentage by the suspect is the subject of an action under the Uniform Parentage Act, a child of a person in one of the above categories, any other person related to the suspect by consanguinity or affinity within the second degree, or any person who is 65 years of age or older and who is related to the suspect by blood or legal guardianship a peace officer may arrest the suspect without a warrant where both of the following circumstances apply:

(1) The peace officer has probable cause to believe that the person to be arrested has committed the assault or battery, whether or not it has in fact been committed.

(2) The peace officer makes the arrest as soon as probable cause arises to believe that the person to be arrested has committed the assault or battery, whether or not it has in fact been committed.

(e) In addition to the authority to make an arrest without a warrant pursuant to paragraphs (1) and (3) of subdivision (a), a peace officer may, without a warrant, arrest a person for a violation of Section 12025 when all of the following apply:

(1) The officer has reasonable cause to believe that the person to be arrested has committed the violation of Section 12025.

(2) The violation of Section 12025 occurred within an airport, as defined in Section 21013 of the Public Utilities Code, in an area to which access is controlled by the inspection of persons and property.

(3) The peace officer makes the arrest as soon as reasonable cause arises to believe that the person to be arrested has committed the violation of Section 12025.

SEC. 2. Section 13700 of the Penal Code is amended to read:

13700. As used in this title:

(a) ''Abuse'' means intentionally or recklessly causing or attempting to cause bodily injury, or placing another person in reasonable apprehension of imminent serious bodily injury to himself or herself, or another.

(b) ''Domestic violence'' means abuse committed against an adult or a minor who is a spouse, former spouse, cohabitant, former cohabitant, or person with whom the suspect has had a child or is having or has had a dating or engagement relationship. For purposes of this subdivision, ''cohabitant'' means two unrelated adult persons living together for a substantial period of time, resulting in some permanency of relationship. Factors that may determine whether persons are cohabiting include, but are not limited to, (1) sexual relations between the parties while sharing the same living quarters, (2) sharing of income or expenses, (3) joint use or ownership of property, (4) whether the parties hold themselves out as husband and wife, (5) the continuity of the relationship, and (6) the length of the relationship.

(c) ''Officer'' means any officer or employee of a local police department or sheriff's office, and any peace officer of the Department of the California Highway Patrol, the Department of Parks and Recreation, the University of California Police Department, or the California State University and College Police Departments, as defined in Section 830.2, a housing authority patrol officer, as defined in subdivision (d) of Section 830.31, or a peace officer as defined in subdivisions (a) and (b) of Section 830.32.

(d) ''Victim'' means a person who is a victim of domestic violence.

SEC. 3. It is the intent of the Legislature that any increased costs resulting from any increased duties with respect to domestic violence and elder parent abuse imposed by this act are offset by savings to local agencies.

SEC. 4. 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.

CHAPTER 535

An act to amend Sections 6741, 19213, 19215, 24713, 25023, 25703, 27573, 27644, and 43100 of the Food and Agricultural Code, and to amend Section 110485 of the Health and Safety Code, relating to agriculture.

[Approved by Governor September 13, 2002. Filed with Secretary of State September 15, 2002.]

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

SECTION 1. Section 6741 of the Food and Agricultural Code is amended to read:

6741. A person is not required to pay any license fee if all of the following facts exist:

(a) The person's sales of plants amount to less than one thousand dollars ($1,000) within any one fiscal year.

(b) The person has reported to the commissioner his or her intention to make those sales.

(c) All plants which are sold by the person are of his or her own production, and are sold for planting within the county in which the plants were grown.

SEC. 2. Section 19213 of the Food and Agricultural Code is amended to read:

19213. ''Rendering'' means all recycling, processing, and conversion of animal and fish materials and carcasses and inedible kitchen grease into fats, oils, proteins, and other products that are used in the animal, poultry, and pet food industries and other industries.

SEC. 3. Section 19215 of the Food and Agricultural Code is amended to read:

19215. ''Transporter of inedible kitchen grease'' means any person who transports inedible kitchen grease.

SEC. 4. Section 24713 of the Food and Agricultural Code is amended to read:

24713. (a) This chapter does not apply to a poultry plant where poultry which was produced on the premises is slaughtered if the poultry meat which is derived from the poultry is sold by the producer in any of the following ways:

(1) At retail upon the premises.

(2) At retail off of the premises, either direct to consumers at their homes or at a retail stand which is operated by the producer in a farmers' market.

(b) As used in this section, ''producer'' includes only an individual producer who does not employ, except in unforeseeable exigencies, any person except members of his or her immediate family.

SEC. 5. Section 25023 of the Food and Agricultural Code is amended to read:

25023. (a) This chapter does not apply to poultry meat which is derived from poultry which is produced upon the premises where it is slaughtered if the poultry meat is sold by the producer in any of the following ways:

(1) At retail on the premises.

(2) At retail by the producer of the poultry meat off of the premises, either direct to consumers at their homes or at a retail stand which is operated by the producer in a farmers' market.

(b) As used in this section, ''producer'' includes only an individual producer who does not employ, except in unforeseeable exigencies, any person except members of his or her immediate family.

SEC. 6. Section 25703 of the Food and Agricultural Code is amended to read:

25703. (a) This part does not apply to poultry meat which is derived from poultry which is produced upon the premises where it is slaughtered if the poultry meat is sold by the producer in any of the following ways:

(1) At retail upon the premises.

(2) At retail off of the premises, either direct to consumers at their homes or at a retail stand which is operated by the producer in a farmers' market.

(b) As used in this section, ''producer'' includes only an individual producer who does not employ, except in unforeseeable exigencies, any person except members of his or her immediate family.

SEC. 7. Section 27573 of the Food and Agricultural Code is amended to read:

27573. The committee shall be advisory to the Secretary of Food and Agriculture on all matters pertaining to standards for shell eggs. The committee may advise on:

(a) Quality of shell eggs.

(b) Recommendations concerning sampling.

(c) Uniformity of inspection.

(d) Adjustment of fees for proper administration and enforcement.

(e) Annual budget for the administration and enforcement of this chapter and all matters pertaining to this chapter or regulations adopted pursuant thereto.

(f) Components of the Egg Quality Assurance Plan, a voluntary food safety program, that are consistent with and promote the purposes of this chapter.

SEC. 8. Section 27644 of the Food and Agricultural Code is amended to read:

27644. (a) It is unlawful for an egg handler, as defined in Section 27510, to sell, offer for sale, or expose for sale eggs that are packed or graded for human consumption unless at least one of the following conditions is met:

(1) The consumer container is plainly, legibly, and conspicuously labeled "KEEP REFRIGERATED" or with words of similar meaning. Consumer container labeling that complies with the safe-handling instructions required by Section 101.17 of Title 21 of the Code of Federal Regulations shall be deemed to comply with this paragraph.

(2) A conspicuous sign is posted at the point of sale for eggs on bulk display advising consumers that the eggs are to be refrigerated as soon as practical after purchase.

(b) Except as provided in subdivision (c), it is unlawful for an egg handler to sell, offer for sale, or expose for sale eggs that are packed for human consumption unless each container intended for sale to the ultimate consumer is labeled on one outside top, side, or end with all of the following:

(1) (A) The words "Sell-by" immediately followed by the month and day in bold type, for example "June 30" or "6-30." Common abbreviations of months shall be permitted.

(B) The sell-by date shall not exceed 30 days from the date on which the eggs were packed, excluding the date of packing.

(C) If the eggs are repacked but not regraded, the original sell-by date shall apply.

(2) A Julian pack date. As used in this paragraph, the Julian pack date is the consecutive day of the year on which the eggs were packed.

(3) The identification number of the plant of origin.

(c) This section does not apply to eggs that are packaged for export. Paragraph (1) of subdivision (b) does not apply to eggs that are packaged for interstate commerce or eggs that are packaged for military sales.

(d) All eggs returned from grocery stores, store warehouses, and institutions shall not be reprocessed for retail shell egg sales.

(e) (1) For the purposes of paragraph (3) of subdivision (b), the department, in consultation with the Shell Egg Advisory Committee, shall establish a plant identification numbering system and assign identification numbers to all egg handling facilities.

(2) For the purposes of complying with paragraph (3) of subdivision (b), an egg handling facility that is inspected by the United States Department of Agriculture, and to which a federal plant identification number has been assigned, may use the federal identification number, the identification number assigned by the department, or both.

SEC. 9. Section 43100 of the Food and Agricultural Code is amended to read:

43100. (a) The terms "California grown," "California-grown," and similar terms with identical connotations shall be used in the labeling or advertising of agricultural products as follows:

(1) The terms "California grown," "California-grown," and similar terms with identical connotations may be used for marketing, advertising, or promotional purposes, only to identify food or agricultural products that have been produced in the state or harvested in its surface or coastal waters.

(2) The Secretary of Food and Agriculture may adopt guidelines, rules, and regulations to further define acceptable uses of the terms "California grown," "California-grown," and similar terms with identical connotations, and to prevent any misleading use of the terms.

(b) A fraudulent use of the term "California grown" or "California-grown," or of any seals or other identities officially adopted by the Department of Food and Agriculture in connection with these terms, or a deliberately misleading or unwarranted use of these items or terms, is a misdemeanor punishable by a fine of not less than one hundred dollars ($100) or more than three thousand dollars ($3,000), or by imprisonment in the county jail for not more than six months, or by both the fine and imprisonment.

SEC. 10. Section 110485 of the Health and Safety Code is amended to read:

110485. (a) Every person who is engaged in the manufacture, packing, or holding of processed food in this state shall pay a food safety fee of one hundred dollars ($100) to the department in addition to any fees paid pursuant to Section 110470.

(b) Revenue received pursuant to this section shall be deposited in the Food Safety Fund created pursuant to Section 110050. A penalty of 10 percent per month shall be added to any food safety fee not paid when due.

(c) Upon appropriation, the food safety fees deposited in the Food Safety Fund shall be used by the department to assist in developing and implementing education and training programs related to food safety. These programs shall be developed in consultation with representatives of the food processing industry. Implementation shall include education and training in the prevention of microbial contamination.

(d) This section does not apply to companies exclusively involved in flour milling, dried bean processing, or in the drying or milling of rice, or to those individual registrants the director determines should not be assessed because substantial economic hardship would result to those registrants. For the purposes of this subdivision, the substantial hardship exemption shall be extended only to registrants whose wholesale gross

annual income from the registered business is twenty thousand dollars ($20,000) or less.

(e) This section shall remain in effect only until January 1, 2006, and as of that date is repealed, unless a later enacted statute, that is enacted on or before January 1, 2006, deletes or extends that date.

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.

CHAPTER 536

An act to amend Sections 11164 and 124595 of, to add Section 1596.799 to, and to repeal Section 130015 of, the Health and Safety Code, and to amend Section 14094.3 of the Welfare and Institutions Code, relating to public health.

[Approved by Governor September 13, 2002. Filed with Secretary of State September 15, 2002.]

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

SECTION 1. Section 1596.799 is added to the Health and Safety Code, to read:

1596.799. (a) Notwithstanding Section 1597.05 or any other provision of law, any day care center that exclusively offers a program of services for which there is no contract or agreement between any parent and the center for the regular care of any child, and for which there is no prearranged schedule of care for any child, shall not be required to do either of the following:

(1) Verify children's immunizations or tuberculosis testing.

(2) Maintain files regarding children's immunizations or tuberculosis testing.

(b) Upon admission of a child, the parent shall sign an acknowledgment that he or she understands that verification of immunizations and tuberculosis testing is not required for any child accepted in this type of program.

(c) This section shall not be construed to exempt a day care center from any other licensing requirement.

SEC. 2. Section 11164 of the Health and Safety Code is amended to read:

11164. Except as provided in Section 11167, no person shall prescribe a controlled substance, nor shall any person fill, compound, or dispense a prescription for a controlled substance unless it complies with the requirements of this section.

(a) The signature on each prescription for a controlled substance classified in Schedule II shall be wholly written in ink or indelible pencil in the handwriting of the prescriber upon the official prescription form issued by the Department of Justice. Each prescription shall be prepared in triplicate, signed by the prescriber, and shall contain, either typewritten or handwritten by the prescriber or his or her employee, the date, name, and address of the person for whom the controlled substance is prescribed, the name, quantity, and strength of the controlled substance prescribed, directions for use, and the address, category of professional licensure, and the federal controlled substance registration number of the prescriber. The original and duplicate of the prescription shall be delivered to the pharmacist filling the prescription. The duplicate shall be retained by the pharmacist and the original, properly endorsed by the pharmacist with the name and address of the pharmacy, the pharmacy's state license number, the date the prescription was filled and the signature of the pharmacist, shall be transmitted to the Department of Justice at the end of the month in which the prescription was filled. Upon receipt of an incompletely prepared official prescription form of the Department of Justice, the pharmacist may enter on the face of the prescription the address of the patient. A pharmacist may fill a prescription for a controlled substance classified in Schedule II containing an error or errors, if the pharmacist notifies the prescriber of the error or errors and the prescriber approves any correction. The prescriber shall fax or mail a corrected prescription to the pharmacist within seven days of the prescription being dispensed.

(b) Each prescription for a controlled substance classified in Schedule III, IV, or V, except as authorized by subdivision (c), shall be subject to the following requirements:

(1) The prescription shall be signed and dated by the prescriber and shall contain the name of the person for whom the controlled substance is prescribed, the name and quantity of the controlled substance prescribed, and directions for use. With respect to prescriptions for controlled substances classified in Schedules III and IV, the signature, date, and information required by this paragraph shall be wholly written in ink or indelible pencil in the handwriting of the prescriber.

(2) In addition, the prescription shall contain the name, address, telephone number, category of professional licensure, and federal controlled substance registration number of the prescriber. The

information required by this paragraph shall be either preprinted upon the prescription blank, typewritten, rubber stamped, or printed by hand. Notwithstanding any provision in this section, the prescriber's address, telephone number, category of professional licensure, or federal controlled substances registration number need not appear on the prescription if that information is readily retrievable in the pharmacy.

(3) The prescription shall also contain the address of the person for whom the controlled substance is prescribed. If the prescriber does not specify this address on the prescription, the pharmacist filling the prescription or an employee acting under the direction of the pharmacist shall write or type the address on the prescription or maintain this information in a readily retrievable form in the pharmacy.

(c) Any controlled substance classified in Schedule III, IV, or V may be dispensed upon an oral or electronically transmitted prescription, which shall be reduced to writing by the pharmacist filling the prescription or by any other person expressly authorized by provisions of the Business and Professions Code. The date of issue of the prescription and all the information required for a written prescription by subdivision (b) shall be included in the written record of the prescription. The pharmacist need not reduce to writing the address, telephone number, license classification, or federal registry number of the prescriber or the address of the patient if that information is readily retrievable in the pharmacy. Pursuant to authorization of the prescriber, any employee of the prescriber on behalf of the prescriber may orally or electronically transmit a prescription for a controlled substance classified in Schedule III, IV, or V, if in these cases the written record of the prescription required by this subdivision specifies the name of the employee of the prescriber transmitting the prescription.

(d) The use of commonly used abbreviations shall not invalidate an otherwise valid prescription.

(e) Notwithstanding any provision of subdivisions (b) and (c), prescriptions for a controlled substance classified in Schedule V may be for more than one person in the same family with the same medical need.

(f) In addition to the prescriber's record required by Section 11190, any practitioner dispensing a controlled substance classified in Schedule II in accordance with subdivision (b) of Section 11158 shall prepare a written record thereof on the official forms issued by the Department of Justice, pursuant to Section 11161, and shall transmit the original to the Department of Justice in accordance with any rules that the department may adopt for completion and transmittal of the forms.

SEC. 3. Section 124595 of the Health and Safety Code is amended to read:

124595. (a) The Indian Health Policy Panel, established by the director pursuant to Section 1520 of Title 17 of the California

Administrative Code, is continued in existence and shall be renamed the American Indian Health Policy Panel. The policy panel shall advise the department on the level of resources, priorities, criteria, and guidelines necessary to implement this chapter. The policy panel shall be composed of 10 members, appointed by the director. Four members shall be appointed from a list of persons submitted by the California Rural Indian Health Board, four members shall be appointed from a list of persons submitted by the Western Indian Network, and two members shall represent the public. The persons appointed by the director to represent the public may be consumers, consumer advocates, health service providers, representatives of state or county health agencies, health professionals, or private citizens. The terms of the members shall be established pursuant to bylaws adopted by the policy panel.

(b) The director may also seek advice from individuals and groups, other than the policy panel, on program issues.

(c) Those persons who are members of the policy panel on December 31, 1983, shall continue to be members for the remainder of their terms and, upon expiration of their terms, shall be eligible for reappointment by the director.

SEC. 4. Section 130015 of the Health and Safety Code is repealed.

SEC. 5. Section 14094.3 of the Welfare and Institutions Code is amended to read:

14094.3. (a) Notwithstanding this article or Section 14093.05 or 14094.1, CCS covered services shall not be incorporated into any Medi-Cal managed care contract entered into after August 1, 1994, pursuant to Article 2.7 (commencing with Section 14087.3), Article 2.8 (commencing with Section 14087.5), Article 2.9 (commencing with Section 14088), Article 2.91 (commencing with Section 14089), Article 2.95 (commencing with Section 14092); or either Article 2 (commencing with Section 14200), or Article 7 (commencing with Section 14490) of Chapter 8, until August 1, 2005, except for contracts entered into for county organized health systems in the Counties of San Mateo, Santa Barbara, Solano, Yolo, Marin, and Napa.

(b) Notwithstanding any other provision of this chapter, providers serving children under the CCS program who are enrolled with a Medi-Cal managed care contractor but who are not enrolled in a pilot project pursuant to subdivision (c) shall continue to submit billing for CCS covered services on a fee-for-service basis until CCS covered services are incorporated into the Medi-Cal managed care contracts described in subdivision (a).

(c) (1) The department may authorize a pilot project in Solano County in which reimbursement for conditions eligible under the CCS program may be reimbursed on a capitated basis pursuant to Section 14093.05, and provided all CCS program's guidelines, standards, and

regulations are adhered to, and CCS program's case management is utilized.

(2) During the time period described in subdivision (a), the department may approve, implement, and evaluate limited pilot projects under the CCS program to test alternative managed care models tailored to the special health care needs of children under the CCS program. The pilot projects may include, but need not be limited to, coverage of different geographic areas, focusing on certain subpopulations, and the employment of different payment and incentive models. Pilot project proposals from CCS program-approved providers shall be given preference. All pilot projects shall utilize CCS program-approved standards and providers pursuant to Section 14094.1.

(d) (1) The department shall submit to the appropriate committees of the Legislature an evaluation of pilot projects established pursuant to subdivision (c) based on at least one full year of operation.

(2) The evaluation required by paragraph (1) shall address the impact of the pilot projects on outcomes as set forth in paragraph (4) and, in addition, shall do both of the following:

(A) Examine the barriers, if any, to incorporating CCS covered services into the Medi-Cal managed care contracts described in subdivision (a).

(B) Compare different pilot project models with the fee-for-service system. The evaluation shall identify, to the extent possible, those factors that make pilot projects most effective in meeting the special needs of children with CCS eligible conditions.

(3) CCS covered services shall not be incorporated into the Medi-Cal managed care contracts described in subdivision (a) before the evaluation process has been completed.

(4) The pilot projects shall be evaluated to determine if:

(A) All children enrolled with a Medi-Cal managed care contractor described in subdivision (a) identified as having a CCS eligible condition are referred in a timely fashion for appropriate health care.

(B) All children in the CCS program have access to coordinated care that includes primary care services in their own community.

(C) CCS program standards are adhered to.

(e) For purposes of this section, CCS covered services include all program benefits administered by the program specified in Section 123840 of the Health and Safety Code regardless of the funding source.

(f) Nothing in this section shall be construed to exclude or restrict CCS eligible children from enrollment with a managed care contractor, or from receiving from the managed care contractor with which they are

enrolled primary and other health care unrelated to the treatment of the CCS eligible condition.

CHAPTER 537

An act to add Section 14145.3 to the Welfare and Institutions Code, relating to long-term care.

[Approved by Governor September 13, 2002. Filed with Secretary of State September 15, 2002.]

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

SECTION 1. Section 14145.3 is added to the Welfare and Institutions Code, to read:

14145.3. (a) The department shall develop at least, but not limited to, one alternative model to the Long-Term Care Integration Pilot Program authorized under Article 4.3 (commencing with Section 14139.05) that shall be designed to achieve the goals set forth in Section 14139.11.

(b) The department or, at the discretion of the department, the center for long-term care integration referred to in subdivision (a) of Section 14145, shall consult with an established waiver technical advisory committee to assist in the development of an alternative model or models pursuant to subdivision (a).

(c) No reimbursement or compensation shall be provided to committee members referred to in subdivision (b).

(d) The department shall report the recommendations of the waiver technical advisory committee to the Legislature on or before December 1, 2003.

CHAPTER 538

An act relating to transportation.

[Approved by Governor September 13, 2002. Filed with Secretary of State September 15, 2002.]

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

SECTION 1. The Legislature requests the University of California, in consultation with the Los Angeles County Metropolitan

Transportation Authority, the County of Los Angeles, cities within the County of Los Angeles, users of services and facilities operated or provided by the authority, and other affected parties, to conduct a study of the membership and governance structure of the authority. The study shall include, but not be limited to, an examination of whether to add members to the authority who represent users of the authority's transportation services, or whether to replace any existing authority members with the service users' representatives. The University of California shall report its findings and recommendations, with respect to the study, to the Legislature by July 1, 2003. If the University of California agrees to conduct the study, it may not use any state funds for that purpose or any purpose related to the study.

SEC. 2. The Legislature finds and declares all of the following:

(a) Transportation is an economic stimulus for the State of California.

(b) Public transportation is necessary for the health, welfare, and safety of the transit dependent and the transit disadvantaged.

(c) Therefore, in order to provide clear customer service goals, such as policies on service standards, safety and reliability, discount service, complaint resolution, reduced overcrowding, clean fuel technology, public participation, access to employment, education and medical services, and in order to ensure greater accountability, local and regional transportation agencies should adopt a "California Transit Riders Bill of Rights."

CHAPTER 539

An act to amend Section 155 of the Family Code, relating to support orders.

[Approved by Governor September 13, 2002. Filed with Secretary of State September 15, 2002.]

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

SECTION 1. (a) The Legislature finds and declares the following:

(1) The California Court of Appeal held in Dupont v. Dupont (2001) 88 Cal.App.4th 192, that a child support order which calculates the amount of past due support owed under a prior order and sets a monthly amount to reduce the past due support constitutes a new installment judgment.

(2) The decision in Dupont has resulted in disparate application of the rules regarding accrual of interest from order to order, court to court, and

county to county for the purpose of calculating interest under Section 685.020 of the Code of Civil Procedure.

(3) It is therefore the intent of the Legislature to abrogate the holding of the California Court of Appeal in Dupont v. Dupont, to reaffirm that the legislative intent is that no support order or notice issued, which sets forth the amount of support owed for prior periods of time or establishes a periodic payment to liquidate the support owed for prior periods, be considered a money judgment for the purposes of subdivision (b) of Section 685.020 of the Code of Civil Procedure. It is further the intent of the Legislature to ensure the consistent treatment of parents and their support obligations, and to allow the Department of Child Support Services to address the issue of interest as part of a comprehensive approach to maximize collections for families.

(b) (1) The Legislature further finds that the Department of Child Support Services is completing, pursuant to subdivision (b) of Section 17602 of the Family Code, an analytic evaluation of the current amount of uncollected child support debt and the factors that may influence collections. The analysis will address the type and amount of child support owed, and how and why the debts have accrued. The analysis will include comprehensive, programwide recommendations for strategies to increase collections on arrearages and prevent the accumulation on arrearages. Included in this analysis will be an examination of the effect interest on child support obligations has on collections and efforts to achieve self-sufficiency.

(2) The Department of Child Support Services shall submit to the Legislature the analysis prepared pursuant to subdivision (b) of Section 17602 of the Family Code, including recommendations for improving the efficient collection of child support, on or before March 31, 2003.

SEC. 2. Section 155 of the Family Code is amended to read:

155. ''Support order'' means a judgment or order of support in favor of an obligee, whether temporary or final, or subject to modification, termination, or remission, regardless of the kind of action or proceeding in which it is entered. For the purposes of Section 685.020 of the Code of Civil Procedure, only the initial support order, whether temporary or final, whether or not the order is contained in a judgment, shall be considered an installment judgment. No support order or other order or notice issued, which sets forth the amount of support owed for prior periods of time or establishes a periodic payment to liquidate the support owed for prior periods, shall be considered a money judgment for purposes of subdivision (b) of Section 685.020 of the Code of Civil Procedure.

CHAPTER 540

An act to amend Section 1206 of the Health and Safety Code, relating to health facilities.

[Approved by Governor September 13, 2002. Filed with Secretary of State September 15, 2002.]

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

SECTION 1. Section 1206 of the Health and Safety Code is amended to read:

1206. This chapter does not apply to the following:

(a) Except with respect to the option provided with regard to surgical clinics in paragraph (1) of subdivision (b) of Section 1204 and, further, with respect to specialty clinics specified in paragraph (2) of subdivision (b) of Section 1204, any place or establishment owned or leased and operated as a clinic or office by one or more licensed health care practitioners and used as an office for the practice of their profession, within the scope of their license, regardless of the name used publicly to identify the place or establishment.

(b) Any clinic directly conducted, maintained, or operated by the United States or by any of its departments, officers, or agencies, and any primary care clinic specified in subdivision (a) of Section 1204 that is directly conducted, maintained, or operated by this state or by any of its political subdivisions or districts, or by any city. Nothing in this subdivision precludes the state department from adopting regulations that utilize clinic licensing standards as eligibility criteria for participation in programs funded wholly or partially under Title XVIII or XIX of the federal Social Security Act.

(c) Any clinic conducted, maintained, or operated by a federally recognized Indian tribe or tribal organization, as defined in Section 450 or 1601 of Title 25 of the United States Code, that is located on land recognized as tribal land by the federal government.

(d) Clinics conducted, operated, or maintained as outpatient departments of hospitals.

(e) Any facility licensed as a health facility under Chapter 2 (commencing with Section 1250).

(f) Any freestanding clinical or pathological laboratory licensed under Chapter 3 (commencing with Section 1200) of Division 2 of the Business and Professions Code.

(g) A clinic operated by, or affiliated with, any institution of learning that teaches a recognized healing art and is approved by the state board or commission vested with responsibility for regulation of the practice of that healing art.

(h) A clinic that is operated by a primary care community or free clinic and that is operated on separate premises from the licensed clinic and is only open for limited services of no more than 20 hours a week. An intermittent clinic as described in this paragraph shall, however, meet all other requirements of law, including administrative regulations and requirements, pertaining to fire and life safety.

(i) The offices of physicians in group practice who provide a preponderance of their services to members of a comprehensive group practice prepayment health care service plan subject to Chapter 2.2 (commencing with Section 1340).

(j) Student health centers operated by public institutions of higher education.

(k) Nonprofit speech and hearing centers, as defined in Section 1201.5. Any nonprofit speech and hearing clinic desiring an exemption under this subdivision shall make application therefor to the director, who shall grant the exception to any facility meeting the criteria of Section 1201.5. Notwithstanding the licensure exemption contained in this subdivision, a nonprofit speech and hearing center shall be deemed to be an organized outpatient clinic for purposes of qualifying for reimbursement as a rehabilitation center under the Medi-Cal Act (Chapter 7 (commencing with Section 14000) of Part 3 of Division 9 of the Welfare and Institutions Code).

(*l*) A clinic operated by a nonprofit corporation exempt from federal income taxation under paragraph (3) of subsection (c) of Section 501 of the Internal Revenue Code of 1954, as amended, or a statutory successor thereof, that conducts medical research and health education and provides health care to its patients through a group of 40 or more physicians and surgeons, who are independent contractors representing not less than 10 board-certified specialties, and not less than two-thirds of whom practice on a full-time basis at the clinic.

(m) Any clinic, limited to in vivo diagnostic services by magnetic resonance imaging functions or radiological services under the direct and immediate supervision of a physician and surgeon who is licensed to practice in California. This shall not be construed to permit cardiac catheterization or any treatment modality in these clinics.

(n) A clinic operated by an employer or jointly by two or more employers for their employees only, or by a group of employees, or jointly by employees and employers, without profit to the operators thereof or to any other person, for the prevention and treatment of accidental injuries to, and the care of the health of, the employees comprising the group.

(o) A community mental health center, as defined in Section 5601.5 of the Welfare and Institutions Code.

(p) (1) A clinic operated by a nonprofit corporation exempt from federal income taxation under paragraph (3) of subsection (c) of Section 501 of the Internal Revenue Code of 1954, as amended, or a statutory successor thereof, as an entity organized and operated exclusively for scientific and charitable purposes and that satisfies all of the following requirements:

(A) Commenced conducting medical research on or before January 1, 1982, and continues to conduct medical research.

(B) Conducted research in, among other areas, prostatic cancer, cardiovascular disease, electronic neural prosthetic devices, biological effects and medical uses of lasers, and human magnetic resonance imaging and spectroscopy.

(C) Sponsored publication of at least 200 medical research articles in peer-reviewed publications.

(D) Received grants and contracts from the National Institutes of Health.

(E) Held and licensed patents on medical technology.

(F) Received charitable contributions and bequests totaling at least five million dollars ($5,000,000).

(G) Provides health care services to patients only:

(i) In conjunction with research being conducted on procedures or applications not approved or only partially approved for payment (I) under the Medicare program pursuant to Section 1359y(a)(1)(A) of Title 42 of the United States Code, or (II) by a health care service plan registered under Chapter 2.2 (commencing with Section 1340), or a disability insurer regulated under Chapter 1 (commencing with Section 10110) of Part 2 of Division 2 of the Insurance Code; provided that services may be provided by the clinic for an additional period of up to three years following the approvals, but only to the extent necessary to maintain clinical expertise in the procedure or application for purposes of actively providing training in the procedure or application for physicians and surgeons unrelated to the clinic.

(ii) Through physicians and surgeons who, in the aggregate, devote no more than 30 percent of their professional time for the entity operating the clinic, on an annual basis, to direct patient care activities for which charges for professional services are paid.

(H) Makes available to the public the general results of its research activities on at least an annual basis, subject to good faith protection of proprietary rights in its intellectual property.

(I) Is a freestanding clinic, whose operations under this subdivision are not conducted in conjunction with any affiliated or associated health clinic or facility defined under this division, except a clinic exempt from licensure under subdivision (m). For purposes of this subparagraph, a freestanding clinic is defined as ‘‘affiliated’’ only if it directly, or

indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, a clinic or health facility defined under this division, except a clinic exempt from licensure under subdivision (m). For purposes of this subparagraph, a freestanding clinic is defined as ''associated'' only if more than 20 percent of the directors or trustees of the clinic are also the directors or trustees of any individual clinic or health facility defined under this division, except a clinic exempt from licensure under subdivision (m). Any activity by a clinic under this subdivision in connection with an affiliated or associated entity shall fully comply with the requirements of this subdivision. This subparagraph shall not apply to agreements between a clinic and any entity for purposes of coordinating medical research.

(2) This subdivision shall become inoperative on January 1, 2008. Prior to extending or deleting that inoperative date, the Legislature shall receive a report from each clinic meeting the criteria of this subdivision and any other interested party concerning the operation of the clinic's activities. The report shall include, but not be limited to, an evaluation of how the clinic impacted competition in the relevant health care market, and a detailed description of the clinic's research results and the level of acceptance by the payer community of the procedures performed at the clinic. The report shall also include a description of procedures performed both in clinics governed by this subdivision and those performed in other settings.

CHAPTER 541

An act to add Sections 2915.5, 2915.7, 4980.39, 4980.395, 4996.25, and 4996.26 to, and to add Article 14 (commencing with Section 860) to Chapter 1 of Division 2 of, the Business and Professions Code, to add Article 6 (commencing with Section 51280) to Chapter 2 of Part 28 of Division 4 of Title 2 of, and to add Article 9 (commencing with Section 66085) to Chapter 2 of Part 40 of Division 5 of Title 3 of, the Education Code, to add Article 6 (commencing with Section 9910) to Chapter 2 of Part 1 of Division 3 of the Unemployment Insurance Code, to amend Section 9661 of, to add Article 3 (commencing with Section 9118) to Chapter 2 of Division 8.5 of, to add Chapter 3.5 (commencing with Section 9250) to Division 8.5 of, to add Article 2.5 (commencing with Section 9664) to Chapter 10.5 of Division 8.5 of, and to add Article 5 (commencing with Section 9687) to Chapter 10.5 of Division 8.5 of, the Welfare and Instructions Code, relating to aging.

[Approved by Governor September 13, 2002. Filed with
Secretary of State September 15, 2002.]

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

SECTION 1. (a) This act shall be known and may be cited as the California Integrated Elder Care and Involvement Act of 2002.

(b) The Legislature finds and declares all of the following:

(1) By the year 2020, the number of people in California age 65 years and older is projected to nearly double, to more than 6.5 million people. The greatest growth will be among our oldest Californians who are 85 years of age and older.

(2) California will soon become a truly ''aging'' state. In 2030, one in three Californians will be over the age of 50 years, and one in six will be over the age of 65 years.

(3) The State of California faces an enormous challenge and opportunity with respect to the unprecedented aging of our population.

(4) Our best hope for addressing the challenge and crisis presented by our becoming an ''aging'' state must be grounded in a profound, positive, and pervasive change of our culture and its vision and attitudes toward aging, as today's elders are yesterday's children and today's children are tomorrow's elders.

(5) There are two predominant faces of aging, including both of the following:

(A) Healthy and active seniors who have the time and energy to be of service to their communities if given the opportunity to contribute.

(B) Elders in need of assistance because of failing health, economic pressures, or isolation.

(6) Healthy and active seniors who have the time and energy to be of service to their communities should be looked upon as a growing natural resource.

SEC. 2. (a) It is the intent of the Legislature to enact legislation permitting California to seize opportunities for change. In order to deal responsibly, both humanly and fiscally, with the impending ''age wave,'' we must adopt and implement a comprehensive aging agenda for the new millennium with each of the following components:

(1) Standards for gerontology and geriatric training for various professionals and paraprofessionals in the healing arts.

(2) A model curriculum for primary grades in the areas of lifelong health, aging, and financial preparedness.

(3) Standards and guidelines for a curriculum in gerontology and geriatrics in higher education.

(4) Elder care benefits for employees.

(5) Efforts toward engaging elders through volunteerism.

(6) A master plan for involvement of our seniors.

(7) A coordinated system of care that includes, but is not limited to, care navigation and CalCareNet.

(8) A StayWell Program that includes issues of age diversity and elder involvement.

(9) A campaign to change the cultural attitudes toward, and perceptions of, older adults.

(b) The enactment of this plan will serve as the blueprint and template for collaborative efforts among the public, private, and nonprofit sectors.

(c) In recognition of California's fiscal situation in 2002, it is essential to smartly and strategically craft, draft, and implement this act so as to minimize the creation of new mandates and General Fund costs.

SEC. 3. Article 14 (commencing with Section 860) is added to Chapter 1 of Division 2 of the Business and Professions Code, to read:

Article 14. Gerontology and Geriatric Training for the Healing Arts

860. (a) The Legislature finds and declares both of the following:

(1) California's system of care suffers from a severe shortage of professionals and paraprofessionals in the healing arts to administer programs and provide services for older adults.

(2) As a result of rapidly changing age demographics in California, it is essential that we prepare a sufficient number of competent and qualified professionals and paraprofessionals in the healing arts to administer programs for, and provide services to, California's older adults and adults with disabilities.

(b) It is the intent of the Legislature to enact legislation to require various professionals and paraprofessionals in the healing arts to complete certain educational requirements in aging and long-term care as a condition or licensure or renewal of licensure, or both.

SEC. 4. Section 2915.5 is added to the Business and Professions Code, to read:

2915.5. (a) Any applicant for licensure as a psychologist who began graduate study on or after January 1, 2004, shall complete, as a condition of licensure, a minimum of 10 contact hours of coursework in aging and long-term care, which could include, but is not limited to, the biological, social, and psychological aspects of aging.

(b) Coursework taken in fulfillment of other educational requirements for licensure pursuant to this chapter, or in a separate course of study, may, at the discretion of the board, fulfill the requirements of this section.

(c) In order to satisfy the coursework requirement of this section, the applicant shall submit to the board a certification from the chief academic officer of the educational institution from which the applicant graduated stating that the coursework required by this section is included within the institution's required curriculum for graduation, or within the coursework, that was completed by the applicant.

(d) The board shall not issue a license to the applicant until the applicant has met the requirements of this section.

SEC. 5. Section 2915.7 is added to the Business and Professions Code, to read:

2915.7. (a) Effective January 1, 2005, as a condition of the first renewal of a person's license pursuant to this chapter, any person who began graduate study prior to January 1, 2004, shall complete a three-hour continuing education course in aging and long-term care, and shall submit to the board evidence acceptable to the board of the person's satisfactory completion of that course.

(b) The course could include, but is not limited to, the biological, social, and psychological aspects of aging.

(c) Any person seeking the first renewal of his or her license pursuant to this chapter may submit to the board a certificate evidencing completion of equivalent courses in aging and long-term care taken prior to the operative date of this section, or proof of equivalent teaching or practice experience. The board, in its discretion, may accept that certification as meeting the requirements of this section.

(d) The board shall not renew an applicant's license upon the applicant's application for the first renewal of his or her license until the applicant has met the requirements of this section.

SEC. 6. Section 4980.39 is added to the Business and Professions Code, to read:

4980.39. (a) Any applicant for licensure as a marriage and family therapist who began graduate study on or after January 1, 2004, shall complete, as a condition of licensure, a minimum of 10 contact hours of coursework in aging and long-term care, which could include, but is not limited to, the biological, social, and psychological aspects of aging.

(b) Coursework taken in fulfillment of other educational requirements for licensure pursuant to this chapter, or in a separate course of study, may, at the discretion of the board, fulfill the requirements of this section.

(c) In order to satisfy the coursework requirement of this section, the applicant shall submit to the board a certification from the chief academic officer of the educational institution from which the applicant graduated stating that the coursework required by this section is included within the institution's required curriculum for graduation, or within the coursework, that was completed by the applicant.

(d) The board shall not issue a license to the applicant until the applicant has met the requirements of this section.

SEC. 7. Section 4980.395 is added to the Business and Professions Code, to read:

4980.395. (a) Effective January 1, 2005, as a condition of the first renewal of a person's license pursuant to this chapter, any person who

began graduate study prior to January 1, 2004, shall complete a three-hour continuing education course in aging and long-term care and shall submit to the board evidence, acceptable to the board, of the person's satisfactory completion of the course.

(b) The course could include, but is not limited to, the biological, social, and psychological aspects of aging.

(c) Any person seeking the first renewal of his or her license pursuant to this chapter may submit to the board a certificate evidencing completion of equivalent courses in aging and long-term care taken prior to the operative date of this section, or proof of equivalent teaching or practice experience. The board, in its discretion, may accept that certification as meeting the requirements of this section.

(d) The board shall not renew an applicant's license upon the applicant's application for the first renewal of his or her license until the applicant has met the requirements of this section.

SEC. 8. Section 4996.25 is added to the Business and Professions Code, to read:

4996.25. (a) Any applicant for licensure as a licensed clinical social worker who began graduate study on or after January 1, 2004, shall complete, as a condition of licensure, a minimum of 10 contact hours of coursework in aging and long-term care, which could include, but is not limited to, the biological, social, and psychological aspects of aging.

(b) Coursework taken in fulfillment of other educational requirements for licensure pursuant to this chapter, or in a separate course of study, may, at the discretion of the board, fulfill the requirements of this section.

(c) In order to satisfy the coursework requirement of this section, the applicant shall submit to the board a certification from the chief academic officer of the educational institution from which the applicant graduated stating that the coursework required by this section is included within the institution's required curriculum for graduation, or within the coursework, that was completed by the applicant.

(d) The board shall not issue a license to the applicant until the applicant has met the requirements of this section.

SEC. 9. Section 4996.26 is added to the Business and Professions Code, to read:

4996.26. (a) Effective January 1, 2005, as a condition of the first renewal of a person's license pursuant to this chapter, any person who began graduate study prior to January 1, 2004, shall complete a three-hour continuing education course in aging and long-term care, and shall submit to the board evidence acceptable to the board of the person's satisfactory completion of the course.

(b) The course could include, but is not limited to, the biological, social, and psychological aspects of aging.

(c) Any person seeking the first renewal of his or her license pursuant to this chapter may submit to the board a certificate evidencing completion of equivalent courses in aging and long-term care taken prior to the operative date of this section, or proof of equivalent teaching or practice experience. The board, in its discretion, may accept that certification as meeting the requirements of this section.

(d) The board shall not renew an applicant's license upon the applicant's application for the first renewal of his or her license until the applicant has met the requirements of this section.

SEC. 10. Article 6 (commencing with Section 51280) is added to Chapter 2 of Part 28 of Division 4 of Title 2 of the Education Code, to read:

Article 6. Primary Education Model Curriculum for Lifelong Health, Aging, and Financial Preparedness

51280. (a) The Legislature finds and declares all of the following:

(1) There are profound personal and financial implications for Californians associated with the average life expectancy steadily increasing toward 100 years of age.

(2) The savings rate among ''boomers'' continues to drop, while their cumulative debt continues to rise.

(3) A majority of workers choose to ''cash out'' of their employment savings plans when changing jobs, rather than transferring the accounts upon job changes and maintaining their savings in these accounts.

(4) It is estimated that 40 to 50 percent of ''boomers'' will likely find themselves living their later years in financial hardship.

(5) Californians should be financially prepared for, and aware of, the lifelong health issues associated with later life.

(b) It is the intent of the Legislature to enact legislation that will result in the education of all Californians regarding our prospect of becoming an ''aging'' state, including education as to all of the following:

(1) The changes we can expect in the later years of our lives.

(2) The changes we can expect of a society that is growing older.

(3) How we can be better prepared to sustain ourselves and our society in the coming years.

(4) The financial realities of living for a century.

(5) The importance of saving and financial planning.

(6) The financial benefits of healthful living and disease prevention.

(7) A new vision of aging, thereby dispelling ageist myths.

(8) An understanding of chronic disease and illness, with an emphasis on disease prevention and health in later life.

51282. (a) It is the intent of the Legislature to enact legislation to establish educational requirements in order to instill in California's

youth a sense of importance about lifelong financial planning and preparation, including, among other things, the costs of health care, in a much-extended later life.

(b) Educational institutions have developed a model curriculum in lifelong healthy aging and financial preparedness, with materials, free of charge, for the Superintendent of Public Instruction to disseminate to school teachers at the local level.

(c) The Superintendent of Public Instruction shall make this existing curriculum available to teachers, using materials that are currently available at no cost, with information and links provided through the Internet, in order to provide to students in grades 7 to 12, inclusive, instruction on human growth, human development, and financial preparedness.

51284. After January 1, 2003, and concurrently with, but not prior to, the next revision of text books or curriculum frameworks in the social sciences, health, and mathematics curricula, the State Board of Education shall ensure that these academic areas integrate components of human growth, human development, and human contribution to society, across the life course, and also financial preparedness.

SEC. 11. Article 9 (commencing with Section 66085) is added to Chapter 2 of Part 40 of Division 5 of Title 3 of the Education Code, to read:

Article 9. Standards and Guidelines for a Curriculum in Gerontology and Geriatrics in Higher Education

66085. The Legislature requests that the Trustees of the California State University, the Regents of the University of California, and the Board of Governors of the California Community Colleges, in consultation with the California Council on Gerontology and Geriatrics and other qualified groups or individuals, develop standards and guidelines, based on standards developed by the Association for Gerontology in Higher Education, for the biological, social, and psychological aspects of aging for professional degree programs at the associate, bachelor, and graduate levels, including those programs in gerontology, nursing, social work, psychology, marriage and family therapy, and the rehabilitation therapies. Nothing in this article shall be construed to require any additional coursework requirements for professional degree programs.

SEC. 12. Article 6 (commencing with Section 9910) is added to Chapter 2 of Part 1 of Division 3 of the Unemployment Insurance Code, to read:

Article 6. Employer Elder Care Benefits

9910. (a) The Legislature finds and declares all of the following:

(1) The percentage of California employers offering pension and retirement plans to employees is substantially lower than the national average.

(2) Many employers lack an understanding of the implications of our coming ''age wave,'' and how to best assist employees in preparing for the long-term care needs of themselves and their families.

(b) It is the intent of the Legislature, in future years, to develop and to enact legislation to institute elder care and caregiving programs as an employee benefit, holding employers to the same standard in providing benefits and leave time for employees caring for elders as those provided employees caring for children.

9912. (a) The Legislature requests that the Senior Worker Advocate Office of the Employment Development Department work with the California Commission on Aging and other interested organizations including, but not limited to, AARP, in order to conduct outreach to the business community. The Legislature encourages other state entities, including, but not limited to, the California Department of Aging, to join in this effort.

(b) The Legislature requests that this outreach effort be directed at educating employers about the implications of the impending ''age wave,'' and at providing employers with information on matters relevant to the aging population and on related employment implications.

(c) State funds may not be appropriated for purposes of this article. The Employment Development Department is not required to undertake any new task pursuant to this article unless the department receives federal or private funds for the purposes of this article.

SEC. 13. Article 3 (commencing with Section 9118) is added to Chapter 2 of Division 8.5 of the Welfare and Institutions Code, to read:

Article 3. Engaging Elders Through Volunteerism

9118. The Legislature finds and declares the following:

(a) The talents of our elders will prove to be vital to the prosperity and well-being of California.

(b) California's seniors possess an abundance of experience, perspective, wisdom, time, and goodwill that Californians fail to cherish, and to use, for our common good.

(c) Currently, persons age 55 years and older have the lowest rate of volunteerism among adults.

(d) California's seniors represent enormous civic potential, and they are underutilized.

(e) California's seniors should be provided opportunities for civic involvement.

9118.5. (a) The Legislature requests that the Governor's Office on Service and Volunteerism, in formulating its Unified State Plan for Service, and in coordination with the Corporation for National and Community Service and other involved entities including, but not limited to, the California Department of Aging and the State Department of Social Services, pursue resources to develop an Elder Corps master plan to expand opportunities for engaging California's seniors, and to set standards for the effective training and supervision of volunteers.

(b) The master plan described in subdivision (a) should also include recommendations for exploring the feasibility of incorporating the Retired and Senior Volunteer Program as a state program authorized under the Mello-Granlund Older Californians Act pursuant to Division 5 (commencing with Section 9000).

(c) The master plan described in subdivision (a) shall be completed only if and when private funding is received for that purpose.

(d) The Legislature requests that the Governor's Office on Service and Volunteerism work with the Corporation for National and Community Service to ensure that California's portion of the federal funds expected to be received through President Bush's USA Freedom Corps are used, in part, to enhance senior volunteer opportunities and intergenerational involvement, building off current programs and structures and utilizing the best practices of volunteer management.

SEC. 14. Chapter 3.5 (commencing with Section 9250) is added to Division 8.5 of the Welfare and Institutions Code, to read:

CHAPTER 3.5. COORDINATED SYSTEM OF CARE

9250. (a) The Legislature finds and declares all of the following:

(1) Our delivery of long-term care needs to be vastly improved in order to coordinate services that are appropriate to each individual's functional needs and financial situation. Care services should be holistic and address the needs of the entire person, including the person's mental, physical, social, and emotional needs.

(2) The coming age wave will bankrupt California if we maintain the current uncoordinated system of long-term care.

(3) The new generation of aging Californians will desire, expect, and demand a much more responsive, coherent, and human-dignified system of care services.

(4) Multiple funding streams and varied eligibility criteria have created "silos" of services, making it difficult for consumers to move with ease from one service or program to another.

(5) Separate funding streams and uncoordinated services for older adults and adults with disabilities have created barriers in services for these populations. Adults with disabilities often receive long-term care services designed to support and protect the institutionalized older population. Instead, services need to be individualized to empower older adults and persons with disabilities to live in the community.

(6) Historically, two delivery systems, referred to as the medical model and the social model of care, have evolved with little or no coordination between the two.

(7) A high percentage of consumers enter the long-term care system after a hospitalization. Assistance and support following hospitalization would reduce the number of nursing home placements.

(8) The Legislature affirms the notion that individuals should be able to receive care in the least restrictive environment.

(9) Skilled nursing facilities account for 5 percent of the long-term care caseload and 52 percent of the long-term care expenditures. Home and community-based services account for 78 percent of the long-term care caseload, and 13 percent of long-term care expenditures. It is, therefore, more cost-effective to connect consumers with services in the community than to continue to place individuals in institutions.

(10) A number of counties and programs have developed and implemented innovative Internet-based information systems. Some of these systems are designed to help consumers access information regarding long-term care services, and others are designed to help providers track client information.

(11) The California Health and Human Services Agency is developing the ''CalCareNet'' Web site, which is designed to help the consumer find state-licensed providers of health services, social services, mental health services, alcohol and other drug services, and disability services, and also to find state-licensed care facilities.

(b) It the intent of the Legislature to enact legislation to do all of the following:

(1) Ensure that each consumer is able to connect with the appropriate services necessary to meet individual needs.

(2) Better coordinate long-term care delivery, recognizing the elements that are already in place, and expand the availability of long-term care.

(3) Deliver long-term care services in the most cost-effective manner.

(4) Access multiple public and private funding streams, without supplanting existing funding for programs and services.

9251. For purposes of this chapter, the following definitions apply:

(a) The term ''long-term care'' refers to a wide range of supportive and health and social services for older adults and adults with disabilities. Long-term care differs from other types of care in that the

goal of long-term care is not to cure illnesses, but to allow individuals to attain and maintain optimal levels of functioning in their homes or in their communities. The provision of long-term services involves a continuum of health and social services in a variety of home- and community-based settings.

(b) The term ''care navigation'' describes any of the following services, performed in multiple settings, including, but not limited to, area agencies on aging, hospitals, caregiver resource centers, independent living centers, and senior centers:

(1) Consumer information delivered over the Internet, by telephone, including a statewide information hotline, or in person.

(2) Referral to programs or services delivered over the Internet, by telephone, including a statewide information telephone hotline, or in person.

(3) Short-term assistance for the consumer or caregiver, provided by persons qualified to work with the consumer to define needs, to refer the consumer to services that are free of charge or that may be purchased by the consumer, and to develop a plan of coordinated care.

(4) Recognition of the need for ongoing assistance, with the ability to link consumers to ongoing assistance, care coordination, services coordination, or case management.

(c) (1) The term ''care navigator'' describes an individual who provides care navigation to older persons or persons with disabilities in need of long-term care services, or to caregivers. Care navigators consider an individual's medical and functional needs, financial resources, and social support, in order to partner with the individual and, together, determine which services offered in the community are most appropriate for the consumer. The intervention with the consumer may be limited, depending on the consumer's needs.

(2) Care navigation may be performed within existing programs and at multiple points of entry, including, but not limited to, area agencies on aging, independent living centers, county welfare departments, hospitals, caregiver resource centers, and senior centers.

(d) The term ''CalCareNet'' describes a self-directed statewide, Internet-based application using the State of California Internet portal to link local Internet information systems. The CalCareNet Web site is designed to help the consumer find state-licensed providers of health services, social services, mental health services, alcohol and other drug services, and disability services, and also to find state-licensed care facilities. The purpose of CalCareNet is to enable the consumer to better navigate the long-term care system.

9252. Implementation of this chapter shall be grounded on the following principles:

(a) Services shall be provided in the least restrictive, most home-based environment compatible with the health condition, mental status, and long-term needs of each consumer.

(b) Services shall be accessible through multiple points of entry into a continuum of long-term care services that meet a wide range of needs of the aging population and for persons with disabilities.

(c) Home- and community-based long-term care services shall be readily accessible from the hospital.

(d) Home- and community-based long-term care services that meet a wide range of consumer needs shall be available.

9253. By June 1, 2003, pursuant to the California long-term care plan developed pursuant to Section 96 of Assembly Bill 442 of the 2001–02 Regular Session, the Long-Term Care Council shall assess the current availability of home- and community-based services, identify gaps in service availability, and evaluate changes that could be made to enable consumers to be served in the most integrated setting possible.

9254. (a) By January 1, 2005, the agency, with recommendations from the Long-Term Care Council, shall set standards for CalCareNet, with the goal of creating an Internet site that links to counties and planning service areas, and that provides information on long-term care services that are available to the consumer. The agency shall recommend guidelines for local Internet information systems, allowing for flexibility in design and structure. The local entities with existing systems are encouraged to maintain existing systems, assuming CalCareNet guidelines are met.

(b) State funds shall not be appropriated for purposes of this section. The agency is not required to undertake any new task described in this section unless it receives federal or private funds for that purpose.

(c) Information shared between, and tracked by, providers through CalCareNet may in no way violate Section 15633, pertaining to client confidentiality, or any other statute requiring that client information be kept confidential, unless otherwise exempted by law.

(d) In crafting its guidelines for the local-level information systems, the Long-Term Care Council shall seek input from interested stakeholders, including, but not limited to, all of the following:

(1) Consumers.
(2) Consumer advocacy organizations.
(3) Area agencies on aging.
(4) Senior legal services.
(5) The California Commission on Aging.
(6) Caregiver resource centers.
(7) Veterans' services.
(8) Senior centers.
(9) PACE (Program for All Inclusive Care for the Elderly).

(10) The Senior Care Action Network (SCAN).

(11) The Multipurpose Senior Services Program (MSSP) services.

(12) Ombudspersons.

(13) County-level programs, including, but not limited to, In-Home Supportive Services (IHSS), county welfare departments, public health departments, and adult protective services agencies.

(14) Programs for persons with disabilities, including, but not limited to, independent living centers.

(15) Other social service programs, including, but not limited to, employment development programs.

(e) By January 1, 2004, the agency shall link the CalCareNet Web site to local Internet information systems. The agency shall permit counties and planning service areas to design local information systems, contingent upon the availability of funding and resources for these purposes.

9255. (a) By January 1, 2004, the agency, based on recommendations from the Long-Term Care Council, shall recommend to the Legislature standards for care navigation, including suggestions for connecting consumers from the acute care system, to and through the long-term care system.

(b) In its recommendations to the Legislature, the agency shall address care navigator educational and training requirements, the care navigator location within the long-term care continuum, licensure and oversight requirements, and potential funding impact. In its recommendations, the agency shall discuss the need for waivers, enhancing access to home- and community-based services for private payers, connecting the acute care system with the long-term care system, and obtaining private and public funding. The agency shall also discuss means for the cooperative participation of insurance companies, physicians, hospitals, assisted living facilities, home health agencies, and skilled nursing facilities.

(c) In crafting its recommendations to the agency, the Long-Term Care Council shall seek input from interested stakeholders, including, but not limited to, those stakeholders described in subdivision (d) of Section 9254.

(d) Care navigation must be consistent with the goal of developing a program that is based on the existing state and local systems, to ensure that consumers are connected to the necessary care and services.

(e) State funds shall not be appropriated for the purpose of implementing this section. The agency is not required to undertake any new task specified in this section unless it receives federal or private funds for that purpose.

9256. The implementation of a care navigation program, as described in Section 9255, shall be subject to the enactment of legislation requiring implementation.

SEC. 15. Section 9661 of the Welfare and Institutions Code is amended to read:

9661. (a) The StayWell Program shall have all of the following functions:

(1) Focus on educating California's seniors, as well as caregivers, families, and health care professions, about the importance of living a healthy lifestyle, including, but not limited to, nutrition, exercise, injury prevention, and mental well-being.

(2) Provide information on, and help California's culturally and ethnically diverse seniors and adults with, functional impairments.

(3) Provide educational information on the resources and services available for seniors from both private and public entities in communities throughout the state and the area agencies on aging. The educational material shall accommodate the diverse linguistic needs of various populations in the state, including, but not limited to, English, Spanish, Russian, Chinese, and Braille.

(4) Promote education and training for professionals and caregivers who work directly with seniors in order to maximize wellness.

(5) Generate a cultural shift to a more positive vision and expectation with respect to how aging is viewed by all Californians.

(6) Transform perceptions of aging into a more hopeful, appreciative, and aspiring mode of being.

(7) Create a new culture that cherishes each of us, including the population of older adults, adults with disabilities, our aging, our ethnic and racial diversity, our becoming elders, and our maturity.

(8) Advance the recognition of the unique status, experience, capacity, and role of seniors to become our models for guidance and inspiration.

(9) Replace the image of seniors who are "self-interested" with an image of seniors who are actively engaged and involved in their communities.

(10) Promote and mobilize older adults and adults with disabilities into emerging roles for the public benefit.

(11) Challenge the prevailing culture, to the extent that it discounts the value of age.

(12) Rid our culture of the negative attitudes toward adults who are aging and adults with disabilities.

(b) Notwithstanding Section 9663, state funds shall not be appropriated for the purpose of implementing paragraphs (5) to (12), inclusive, of subdivision (a), and the department is not required to

undertake implementation of those paragraphs, unless it receives federal or private funds for that purpose.

SEC. 16. Article 2.5 (commencing with Section 9664) is added to Chapter 10.5 of Division 8.5 of the Welfare and Institutions Code, to read:

Article 2.5. Campaign to Change Cultural Attitudes Toward and Perceptions of Older Adults

9664. (a) The Legislature finds and declares all of the following:

(1) Ageism is the systematic stereotyping of, and discrimination against, persons based on age.

(2) Ageism is manifested, at both the individual and institutional levels, in a range of ways, from the perpetuation of stereotypes and myths about aging and aging people, the dislike and outright disdain of elders, and the simple subtle avoidance of contact with elders, to discriminatory practices against elders in housing, employment, and services.

(b) It is the intent of the Legislature to enact legislation to encourage the development of partnerships addressed at combating ageism in the workplace.

9665. (a) The Legislature requests that the California Department of Aging partner with the Industry Coalition on Age Equity in Media, which is a joint coalition of the California Commission on Aging, Women in Film, and the Employment Development Department, to work with the entertainment industry in an effort to change cultural attitudes and perceptions of aging and older adults, with the goals of making the workplace more receptive to older workers and eradicating ageism in society.

(b) It is the intent of the Legislature, in enacting this act, to generate pervasive, profound, and positive changes in our culture, vision, and attitudes toward aging.

(c) State funds shall not be appropriated for purposes of implementing this section. The department is not required to undertake any new task pursuant to this section unless it receives federal or private funds for that purpose.

CHAPTER 542

An act to amend Section 4425 of, and to repeal Section 4427 of, the Business and Professions Code, and to amend Sections 130400, 130401, 130403, 130404, 130406, 130407, 130408, and 130409 of, and to add

Sections 130401.1, 130406.5, 130407.5, and 130410 to, the Health and Safety Code, relating to pharmacies, and making an appropriation therefor.

[Approved by Governor September 13, 2002. Filed with Secretary of State September 15, 2002.]

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

SECTION 1. Section 4425 of the Business and Professions Code is amended to read:

4425. (a) As a condition for the participation of a pharmacy in the Medi-Cal program pursuant to Chapter 7 (commencing with Section 14000) of Division 9 of the Welfare and Institutions Code, the pharmacy, upon presentation of a valid prescription for the patient and the patient's Medicare card, shall charge Medicare beneficiaries a price that does not exceed the Medi-Cal reimbursement rate for prescription medicines, and an amount, as set by the State Department of Health Services to cover electronic transmission charges. However, Medicare beneficiaries shall not be allowed to use the Medi-Cal reimbursement rate for over-the-counter medications or compounded prescriptions.

(b) The State Department of Health Services shall provide a mechanism to calculate and transmit the price to the pharmacy, but shall not apply the Medi-Cal drug utilization review process for purposes of this section.

(c) The State Department of Health Services shall monitor pharmacy participation with the requirements of subdivision (a).

(d) The State Department of Health Services shall conduct an outreach program to inform Medicare beneficiaries of their right to participate in the program described in subdivision (a), including, but not limited to, the following:

(1) Including on its Internet Web site the Medi-Cal reimbursement rate for, at minimum, 200 of the most commonly prescribed medicines and updating this information monthly.

(2) Providing a sign to participating pharmacies that the pharmacies shall prominently display at the point of service and at the point of sale, reminding the Medicare beneficiaries to ask that the charge for their prescription be the same amount as the Medi-Cal reimbursement rate and providing the department's telephone number, e-mail address, and Internet Web site address to access information about the program.

(e) If prescription drugs are added to the scope of benefits available under the federal Medicare program, the Senate Office of Research shall report that fact to the appropriate committees of the Legislature. It is the intent of the Legislature to evaluate the need to continue the implementation of this article under those circumstances.

(f) This section shall not apply to a prescription that is covered by insurance.

SEC. 2. Section 4427 of the Business and Professions Code is repealed.

SEC. 3. Section 130400 of the Health and Safety Code is amended to read:

130400. (a) This division shall be known, and may be cited as, the Golden Bear State Pharmacy Assistance Program.

(b) As used in this division:

(1) ''Department'' means the State Department of Health Services.

(2) ''Fund'' means the Golden Bear State Pharmacy Assistance Program Rebate Fund.

(3) ''Medicare beneficiary'' means a Medicare beneficiary who is a California resident.

SEC. 4. Section 130401 of the Health and Safety Code is amended to read:

130401. (a) In addition to participating in the program provided for under Article 24 (commencing with Section 4425) of Chapter 9 of Division 2 of the Business and Professions Code, any Medicare beneficiary may participate in the program provided for under this division.

(b) The department shall conduct an outreach program to inform Medicare beneficiaries of their right to participate in this program. Medicare beneficiaries shall be informed of the method by which the prescription drug discount is determined and that the discount shall periodically fluctuate. No outreach material shall contain a likeness of an elected state official.

(c) In order to participate in the program provided for under this division, a Medicare beneficiary shall be required to register on a one-time basis. Registration may be made at any pharmacy participating in this program. In order to register for the program, the Medicare beneficiary shall pay to the pharmacy an administrative fee, which the pharmacy shall retain, in an amount to be established by the department. Upon payment of this fee, the pharmacy shall issue a program registration card, which shall be prepared and provided to the pharmacy by the department, to the Medicare beneficiary.

SEC. 5. Section 130401.1 is added to the Health and Safety Code, to read:

130401.1. (a) The department may accept on behalf of the state any gift, bequest, or donation of outreach services or materials to inform eligible Medicare beneficiaries of their right to participate in this program. Neither Section 11005 of the Government Code nor any other law requiring approval by a state officer of a gift, bequest, or donation shall apply to these gifts, bequests, or donations. For purposes of this

section, outreach services may include, but not be limited to, coordinating and implementing outreach efforts and plans, and outreach materials may include, but not be limited to, brochures, pamphlets, fliers, posters, advertisements, and other promotional items.

(b) An advertisement provided as a gift, bequest, or donation pursuant to this section shall be exempt from the provisions of Article 5 (commencing with Section 11080) of Chapter 1 of Part 1 of Division 3 of Title 2 of the Government Code.

SEC. 6. Section 130403 of the Health and Safety Code is amended to read:

130403. (a) The department shall attempt to negotiate rebate amounts with drug manufacturers for all prescription drugs purchased by Medicare beneficiaries. As part of these agreements, the department shall negotiate a separate fee in an amount required to administer each pharmacy claim reimbursement submitted to the department pursuant to Section 130405.

(b) If the department determines that it is unable to negotiate rebates with a sufficient number of drug manufacturers, it may cease to continue the implementation or operation of this division.

SEC. 7. Section 130404 of the Health and Safety Code is amended to read:

130404. (a) With respect to any prescription drug for which a rebate amount has been negotiated pursuant to Section 130403, upon presentation of a program registration card issued pursuant to Section 130401, a participating pharmacy shall charge Medicare beneficiaries a price for a prescription drug that does not exceed the following computed price:

(1) The Medi-Cal reimbursement rate for the prescription drug, and an amount, as set by the department, to cover electronic transmission charges.

(2) The amount ascertained pursuant to paragraph (1) shall be reduced by the rebate amount negotiated by the department pursuant to Section 130403.

(b) The pharmacy shall request, and the department shall provide, through electronic means, the price to be charged pursuant to this section.

(c) This division shall not apply to any prescription that is covered by insurance.

SEC. 8. Section 130406 of the Health and Safety Code is amended to read:

130406. (a) The department may collect prospective rebates from drug manufacturers for payment to pharmacies pursuant to Section 130405.

(b) The department shall notify a drug manufacturer of all instances in which it has paid a rebate amount pursuant to Section 130405 with respect to one of the manufacturer's drugs.

(c) A drug manufacturer shall pay the department the amount of any rebate of which the drug manufacturer is notified pursuant to subdivision (b) that exceeds the amount collected by the department pursuant to subdivision (a).

SEC. 9. Section 130406.5 is added to the Health and Safety Code, to read:

130406.5. (a) As part of the program provided in this division, the department may establish a system to provide a Medicare beneficiary access to a drug discount program operated by a drug manufacturer that would provide greater prescription drug discounts than are otherwise available through the program provided in this division. The program registration card issued pursuant to Section 130401 shall serve as the single point of entry to the private drug discount programs of participating manufacturers.

(b) To establish the system described in subdivision (a), the department may negotiate a contract with a drug manufacturer that operates a prescription drug discount program. To assist in these negotiations, the department may contract with a public or private entity.

(c) (1) A Medicare beneficiary shall not in any circumstance be required to participate in, or to disclose information that would determine his or her eligibility to participate in, these private drug discount programs in order to participate in the program provided in this division.

(2) Notwithstanding paragraph (1), a Medicare beneficiary may voluntarily disclose or provide information that may be necessary to determine eligibility for participation in a private drug discount program.

SEC. 10. Section 130407 of the Health and Safety Code is amended to read:

130407. (a) The department shall deposit all payments received pursuant to Sections 130406 and 130410 into the Golden Bear State Pharmacy Assistance Program Rebate Fund, which is hereby created in the State Treasury.

(b) Notwithstanding Section 13340 of the Government Code, the fund is hereby continuously appropriated to the department without regard to fiscal years for the purpose of paying rebates pursuant to Section 130405 and for defraying the costs of administering this division. Notwithstanding any other law, no money in the fund is available for expenditure for any other purpose or for loaning or transferring to any other fund, including the General Fund.

SEC. 11. Section 130407.5 is added to the Health and Safety Code, to read:

130407.5. The department shall repay the General Fund the loan in the amount of one million dollars ($1,000,000), which was appropriated to the department for startup costs associated with the program provided in this division.

SEC. 12. Section 130408 of the Health and Safety Code is amended to read:

130408. The department shall develop a program to prevent the occurrence of fraud under this division. An individual or entity that violates any provision of the fraud prevention program may be precluded from participating in the Golden Bear State Pharmacy Assistance Program. The department shall adopt regulations setting forth a procedure for precluding participation in the program on this basis.

SEC. 13. Section 130409 of the Health and Safety Code is amended to read:

130409. The department may hire any staff needed for the implementation of this division. The department may also use the contract with the Medi-Cal fiscal intermediary or contract with another public or private entity to implement or administer the program and to enroll Medicare beneficiaries who are eligible to participate in the program, to collect rebates, and to pay claims, only if services provided under this program are specifically identified and reimbursed in a manner that does not claim federal financial reimbursement. For purposes of this division, use of the Medi-Cal program fiscal intermediary shall be exempt from Part 2 (commencing with Section 10100) of Division 2 of the Public Contract Code. This division shall not be implemented unless and until the director executes a declaration, which shall be retained by the director, stating that all federal approvals necessary for implementation of this division have been received.

SEC. 14. Section 130410 is added to the Health and Safety Code, to read:

130410. A contract executed for the purposes of this division is exempt from Part 2 (commencing with Section 10100) of Division 2 of the Public Contract Code.

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 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.

CHAPTER 543

An act to amend Sections 11218, 11219, 11758.42, and 11758.46 of the Health and Safety Code, relating to controlled substances.

[Approved by Governor September 13, 2002. Filed with Secretary of State September 15, 2002.]

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

SECTION 1. Section 11218 of the Health and Safety Code is amended to read:

11218. A physician treating an addict for addiction may not prescribe for or furnish to the addict more than any one of the following amounts of controlled substances during each of the first 15 days of that treatment:

(a) Eight grains of opium.
(b) Four grains of morphine.
(c) Six grains of Pantopon.
(d) One grain of Dilaudid.
(e) Four hundred milligrams of isonipecaine (Demerol).

SEC. 2. Section 11219 of the Health and Safety Code is amended to read:

11219. After 15 days of treatment, the physician may not prescribe for or furnish to the addict more than any one of the following amounts of controlled substances during each day of the treatment:

(a) Four grains of opium.
(b) Two grains of morphine.
(c) Three grains of Pantopon.
(d) One-half grain of Dilaudid.
(e) Two hundred milligrams of isonipecaine (Demerol).

SEC. 3. Section 11758.42 of the Health and Safety Code is amended to read:

11758.42. (a) For purposes of this chapter, "LAAM" means levoalphacetylmethadol.

(b) (1) The department shall establish a narcotic replacement therapy dosing fee for methadone and LAAM.

(2) In addition to the narcotic replacement therapy dosing fee provided for pursuant to paragraph (1), narcotic treatment programs shall be reimbursed for the ingredient costs of methadone or LAAM

dispensed to Medi-Cal beneficiaries. These costs may be determined on an average daily dose of methadone or LAAM, as set forth by the department, in consultation with the State Department of Health Services.

(c) Reimbursement for narcotic replacement therapy dosing and ancillary services provided by narcotic treatment programs shall be based on a per capita uniform statewide monthly reimbursement rate for each individual patient, as established by the department, in consultation with the State Department of Health Services. The uniform statewide monthly reimbursement rate for narcotic replacement therapy dosing and ancillary services shall be based upon, where available and appropriate, all of the following:

(1) The outpatient rates for the same or similar services under the fee-for-service Medi-Cal program.

(2) Cost report data.

(3) Other data deemed reliable and relevant by the department.

(4) The rate studies completed pursuant to Section 54 of Assembly Bill 3483 of the 1995–96 Regular Session of the Legislature.

(d) The uniform statewide monthly reimbursement rate for ancillary services shall not exceed, for individual services or in the aggregate, the outpatient rates for the same or similar services under the fee-for-service Medi-Cal program.

(e) The uniform statewide monthly reimbursement rate shall be established after consultation with narcotic treatment program providers and county alcohol and drug program administrators.

(f) Reimbursement for narcotic treatment program services shall be limited to those services specified in state law and state and federal regulations governing the licensing and administration of narcotic treatment programs. These services shall include, but are not limited to, all of the following:

(1) Admission, physical evaluation, and diagnosis.

(2) Drug screening.

(3) Pregnancy tests.

(4) Narcotic replacement therapy dosing.

(5) Intake assessment, treatment planning, and counseling services. Frequency of counseling or medical psychotherapy, outcomes, and rates shall be addressed through regulations adopted by the department. For purposes of this paragraph, these services include, but are not limited to, substance abuse services to pregnant and postpartum Medi-Cal beneficiaries.

(g) Reimbursement under this section shall be limited to claims for narcotic treatment program services at the uniform statewide monthly reimbursement rate for these services. These rates shall be exempt from

the requirements of Section 14021.6 of the Welfare and Institutions Code.

(h) (1) Reimbursement to narcotic treatment program providers shall be limited to the lower of either the uniform statewide monthly reimbursement rate, pursuant to subdivision (c), or the provider's usual and customary charge to the general public for the same or similar service.

(2) (A) Reimbursement paid by a county to a narcotic treatment program provider for services provided to any person subject to Section 1210.1 or 3063.1 of the Penal Code, and for which the individual client is not liable to pay, does not constitute a usual and customary charge to the general public for the purposes of this section.

(B) Subparagraph (A) does not constitute a change in, but is declaratory of, existing law.

(i) Reimbursement for narcotic treatment program services provided by narcotic treatment program providers shall, if the patient receives less than a full month of services, be prorated to the daily cost per patient, based on the annual cost per patient and a 365-day year. No program shall be reimbursed for services not rendered to or received by a patient of a narcotic treatment program.

(j) Reimbursement for narcotic treatment program services provided to substance abusers shall be administered by the department and counties electing to participate in the program. Utilization and payment for these services shall be subject to federal medicaid and state utilization and audit requirements.

SEC. 4. Section 11758.46 of the Health and Safety Code is amended to read:

11758.46. (a) For purposes of this section, "drug-Medi-Cal services" means all of the following services, administered by the department, and to the extent consistent with state and federal law:

(1) Narcotic treatment program services, as set forth in Section 11758.42.

(2) Day care habilitative services.

(3) Perinatal residential services for pregnant women and women in the postpartum period.

(4) Naltrexone services.

(5) Outpatient drug-free services.

(b) Upon federal approval of a federal medicaid state plan amendment authorizing federal financial participation in the following services, and subject to appropriation of funds, "drug-Medi-Cal" services shall also include the following services, administered by the department, and to the extent consistent with state and federal law:

(1) Notwithstanding subdivision (a) of Section 14132.90 of the Welfare and Institutions Code, day care habilitative services, which, for

purposes of this paragraph, are outpatient counseling and rehabilitation services provided to persons with alcohol or other drug abuse diagnoses.

(2) Case management services, including supportive services to assist persons with alcohol or other drug abuse diagnoses in gaining access to medical, social, educational, and other needed services.

(3) Aftercare services.

(c) The department shall adopt emergency regulations to implement subdivision (b). The regulations shall be developed in conjunction with appropriate stakeholders.

(d) (1) By July 1, 1997, and annually thereafter, the department shall publish procedures for contracting for drug-Medi-Cal services with certified providers and for claiming payments, including procedures and specifications for electronic data submission for services rendered.

(2) By July 1, 1997, the department, county alcohol and drug program administrators, and alcohol and drug service providers shall automate the claiming process and the process for the submission of specific data required in connection with reimbursement for drug-Medi-Cal services, except that this requirement applies only if funding is available from sources other than those made available for treatment or other services.

(e) A county or a contractor for the provision of drug-Medi-Cal services shall notify the department, within 30 days of the receipt of the county allocation, of its intent to contract, as a component of the single state-county contract, for and provide certified services pursuant to Section 11758.42 for the proposed budget year. The notification shall include an accurate and complete budget proposal, the structure of which shall be mutually agreed to by county alcohol and drug program administrators and the department, in the format provided by the department, for specific services, for a specific time period, estimated units of service, estimated rate per unit consistent with law and regulations, and total estimated cost for appropriate services.

(f) (1) Within 30 days of receipt of the proposal described in subdivision (e), the department shall provide, to counties and contractors proposing to provide drug-Medi-Cal services in the proposed budget year, a proposed multiple-year contract, as a component of the single state-county contract, for these services, a current utilization control plan, and appropriate administrative procedures.

(2) A county contracting for alcohol and drug services shall receive a single state-county contract for the net negotiated amount and drug-Medi-Cal services.

(3) Contractors contracting for drug-Medi-Cal services shall receive a drug-Medi-Cal contract.

(g) (1) Upon receipt of a contract proposal pursuant to subdivision (e), a county and a contractor seeking to provide reimbursable

drug-Medi-Cal services and the department may begin negotiations and the process for contract approval.

(2) If a county does not approve a contract by July 1 of the appropriate fiscal year, in accordance with subdivisions (d) to (f), inclusive, the county shall have 30 additional days in which to approve a contract. If the county has not approved the contract by the end of that 30-day period, the department shall contract directly for services within 30 days.

(3) Counties shall negotiate contracts only with providers certified to provide reimbursable drug-Medi-Cal services and that elect to participate in this program. Upon contract approval by the department, a county shall establish approved contracts with certified providers within 30 days following enactment of the annual Budget Act. A county may establish contract provisions to ensure interim funding pending the execution of final contracts, multiple-year contracts pending final annual approval by the department, and, to the extent allowable under the annual Budget Act, other procedures to ensure timely payment for services.

(h) (1) For counties and contractors providing drug-Medi-Cal services, pursuant to approved contracts, and that have accurate and complete claims, reimbursement for services from state General Fund moneys shall commence no later than 45 days following the enactment of the annual Budget Act for the appropriate state fiscal year.

(2) For counties and contractors providing drug-Medi-Cal services, pursuant to approved contracts, and that have accurate and complete claims, reimbursement for services from federal medicaid funds shall commence no later than 45 days following the enactment of the annual Budget Act for the appropriate state fiscal year.

(3) By July 1, 1997, the State Department of Health Services and the department shall develop methods to ensure timely payment of drug-Medi-Cal claims.

(4) The State Department of Health Services, in cooperation with the department, shall take steps necessary to streamline the billing system for reimbursable drug-Medi-Cal services, to assist the department in meeting the billing provisions set forth in this subdivision.

(i) The department shall submit a proposed interagency agreement to the State Department of Health Services by May 1 for the following fiscal year. Review and interim approval of all contractual and programmatic requirements, except final fiscal estimates, shall be completed by the State Department of Health Services by July 1. The interagency agreement shall not take effect until the annual Budget Act is enacted and fiscal estimates are approved by the State Department of Health Services. Final approval shall be completed within 45 days of enactment of the Budget Act.

(j) (1) A county or a provider certified to provide reimbursable drug-Medi-Cal services, that is contracting with the department, shall estimate the cost of those services by April 1 of the fiscal year covered by the contract, and shall amend current contracts, as necessary, by the following July 1.

(2) A county or a provider, except for a provider to whom subdivision (k) applies, shall submit accurate and complete cost reports for the previous state fiscal year by November 1, following the end of the state fiscal year. The department may settle cost for drug-Medi-Cal services, based on the cost report as the final amendment to the approved single state-county contract.

(k) Certified narcotic treatment program providers, that are exclusively billing the state or the county for services rendered to persons subject to Section 1210.1 of the Penal Code, Section 3063.1 of the Penal Code, or Section 11758.42 shall submit accurate and complete performance reports for the previous state fiscal year by November 1 following the end of that state fiscal year. A provider to which this subdivision applies shall estimate its budgets using the uniform state monthly reimbursement rate. The format and content of the performance reports shall be mutually agreed to by the department, the County Alcohol and Drug Program Administrators Association of California, and representatives of the narcotic treatment providers.

CHAPTER 544

An act to amend Sections 88500, 88510, 88515, 88520, 88525, 88530, 88531, 88540, 88542, 88543, 88550, and 88551 of, and to amend the heading of Part 52 (commencing with Section 88500) of, the Education Code, relating to community colleges.

[Approved by Governor September 13, 2002. Filed with Secretary of State September 15, 2002.]

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

SECTION 1. The Legislature finds and declares all of the following:

(a) The Association of American Community Colleges, in its study "2001 Community Colleges in the Knowledge Economy," found all of the following:

(1) The sectors of the economy with the most educated workers are growing the fastest, increasing the demand for credentials and degrees. In 1998, 86 percent of prime-age, high-tech workers had attended a postsecondary institution, up from more than 60 percent in 1973.

Nineteen percent of high-tech workers in 1998 had coursework but no degree, while 15 percent had associate degrees and more than one-half had bachelor's degrees. Health care, business services, and related fields have similar requirements.

(2) Ultimately, successful careers are best guaranteed by degree education beyond high school and long-term access to general and job-specific learning. Community colleges are ideally positioned to continue to evolve with these trends as both academic and vocational credentials multiply, and as the line between academic and applied learning blurs.

(3) The United States Office of Vocational and Adult Education, in a study, ''Turning Skills into Profit: Economic Benefits of Workplace Education Programs,'' found that more than 40 percent of the U.S. workforce and more than 50 percent of high school graduates do not have the basic skills needed to do their jobs.

(b) The California Economic Strategy Panel has concluded that California's new economy is an economy of regions, driven by various industry clusters or concentrations of firms with potential for creating and sustaining regional wealth. The panel noted that regions are not defined by political boundaries, but by common economic interests.

(c) The California Community Colleges Economic Development Program, through its various industry support programs, has demonstrated its capacity as an essential component of the region-by-region infrastructure that will be required to sustain the competitiveness of California's new economy. This capacity and positive outcomes have been validated in several consecutive annual program evaluation reports since the program's inception.

(d) The California Community Colleges Economic Development Program, first established by statute in 1991, is an extensive statewide planning process, utilizing a broad range of representatives from community colleges, businesses, and workers. The program resulted in the adoption of a statewide strategic plan for community college participation in California's economic growth.

(e) Regional workforce development and business resource assistance plans, including resources for nonprofits, have been developed and adopted for each designated region of the state. These plans provide an assessment of workforce and business development needs and rapid response strategies for community colleges. This comprehensive program represents a well-planned network of services focused on meeting the needs of business and the incumbent workforce in each major economic region of California in a timely and flexible manner. The program's initiative areas and short-term grants have benefited new workforce entrants, current workers, faculty, colleges, and employers.

(f) Economic development was added by the Legislature to the statutory mission of the California Community Colleges by Chapter 1057 of the Statutes of 1996. The incorporation of economic development into the mission of California Community Colleges has increased the system's active support of regional economic development.

SEC. 2. In adding this section, it is the intent of the Legislature to reauthorize the program as the California Community Colleges Economic and Workforce Development Program, so as to maximize the program's capacity and mission to provide critical support for continuous workforce improvement and economic development in a manner that is adaptive and responsive to the changing needs of regional economies.

SEC. 3. The heading of Part 52 (commencing with Section 88500) of the Education Code is amended to read:

PART 52. CALIFORNIA COMMUNITY COLLEGES ECONOMIC AND WORKFORCE DEVELOPMENT PROGRAM

SEC. 4. Section 88500 of the Education Code is amended to read:

88500. The mission of the economic and workforce development program, subject to approval and amendment by the Board of Governors of the California Community Colleges, shall include, but not necessarily be limited to, all of the following:

(a) To advance California's economic growth and global competitiveness through high quality education and services focusing on continuous workforce improvement, technology deployment, and business development, consistent with the current needs of the state's regional economies.

(b) To maximize and leverage the resources of the California Community Colleges to fulfill its role as the primary provider in fulfilling the vocational education and training needs of California business and industry.

(c) To work with representatives of business, labor, and professional trade associations to explore and develop new alternatives for assisting incumbent workers. A key objective is to enable incumbent workers to become more competitive in their region's labor market, increase competency, and identify career paths to economic self-sufficiency and lifelong access to good-paying jobs. This includes, but is not necessarily limited to, career ladder approaches.

(d) To collaborate with other state and local agencies, including partners under the federal Workforce Investment Act of 1998 (Public Law 105-220), and the Technology, Trade, and Commerce Agency, to deliver services that meet statewide and regional workforce, business

development, technology transfer, and trade needs that attract, retain, and expand businesses.

(e) To develop, in consultation with the Economic Strategy Panel of the Technology, Trade, and Commerce Agency, local economic development agencies, the private sector, and labor and community groups, innovative solutions, as needed, in identified strategic priority areas, including, but not necessarily limited to, advanced transportation, biotechnology, small business, applied competitive technologies, including computer integrated manufacturing, production and continuous quality improvement, business and workforce improvement, environmental technologies, health care delivery, multimedia/entertainment, international trade, and workplace literacy. Strategic priority areas that may be explored if new or additional funding becomes available may include information technology, e-commerce and e-trade, and nanotechnology.

(f) To identify, acquire, and leverage community college and other vocational training resources when possible, to support local, regional, and statewide economic development.

(g) To create effective logistical, technical, and marketing infrastructure support for economic development activities within the California Community Colleges.

(h) To optimize access to community colleges' economic development services.

(i) To develop strategic public and private sector partnerships.

(j) To assist communities experiencing military base downsizing and closure.

SEC. 5. Section 88510 of the Education Code is amended to read:

88510. (a) The Board of Governors of the California Community Colleges and the Chancellor of the California Community Colleges may award grants to districts for leadership in accomplishing the mission and goals of the economic and workforce development program, as described in Section 88500.

(b) (1) The board of governors shall establish an advisory committee for the California Community Colleges Economic and Workforce Development Program and determine the membership, pursuant to paragraph (2). The advisory committee shall guide overall program development, recommend resource development and deployment, and recommend strategies for implementation and coordination of regional business resources. Based on new funding and information developed by the Chancellor of the California Community Colleges pursuant to subdivision (d) and forwarded to the advisory committee, the advisory committee shall make recommendations to the chancellor and the board of governors on whether new initiatives should be undertaken, and

whether existing initiatives should continue to be funded at their existing levels, their funding increased or decreased, or their funding terminated.

(2) The membership of the advisory committee shall include representatives from labor; business; appropriate state agencies, including the Technology, Trade, and Commerce Agency; a faculty representative; a classified employee representative; and one community college chief executive officer representative from each of the 10 regions of the California Community Colleges Economic and Workforce Development Program.

(3) The advisory committee shall be organized so that its work is workforce and business development driven, each leveraging the other to achieve economic development.

(c) The decision criteria for allocating funds to colleges shall take into account all of the following:

(1) Regional workforce and business development needs.

(2) Emerging industries, labor market growth sectors, and gaps in service provided by the community colleges of a region, as identified by the current regional business resource, assistance, and innovation network infrastructure with identified strategic priority areas.

(3) Performance of the college or district in the administration and achievement of proposed results of recently awarded economic development projects.

(4) For service delivery projects, the cost of organizing, administering, and delivering proposed services relative to the number of clients to be served and the expected benefits. For capacity building projects, showing how the capacity of the college is improved in order to deliver services to employers and students.

(5) Demonstrated benefit to the college and faculty resulting from the services provided for in subdivisions (a), (b), (c), (h), and (j) of Section 88531.

(d) The chancellor's office shall provide systemwide oversight and evaluation of the economic and workforce development program.

(e) The chancellor may establish program requirements and performance standards in the administration of the economic and workforce development program and distribute funds as appropriate to implement the program.

(f) The chancellor may provide technical assistance to community colleges for the purpose of improving the competitiveness of their proposals.

(g) Funds shall be awarded for the program on a competitive basis.

(h) The chancellor, in awarding short-term competitive funds, shall take into account colleges in economically distressed urban and rural areas, and colleges that have not previously been successful in the competitive bid process.

SEC. 6. Section 88515 of the Education Code is amended to read:

88515. This part shall be implemented only during those fiscal years for which funds are appropriated for the purposes of this part in the annual Budget Act.

SEC. 7. Section 88520 of the Education Code is amended to read:

88520. The following definitions govern the construction of this part:

(a) ''Business Resource Assistance and Innovation Network'' means the network of projects and programs that comprise the California Community Colleges Economic and Workforce Development Program.

(b) ''California Community Colleges Economic and Workforce Development Program,'' ''economic and workforce development program,'' and ''ED>Net Program'' mean the program.

(c) ''Center'' means a comprehensive program of services offered by one or more community colleges to an economic region of the state in accordance with criteria established by the board of governors for designation as an economic and workforce development program center. Center services shall be designed to respond to the statewide strategic priorities pursuant to the mission of the community colleges' economic and workforce development program, and to be consistent with programmatic priorities, targeted industries, identified economic development, vocational education, business development, and continuous workforce training needs of a region as identified by regional business resource, assistance, and innovation network infrastructure plans. Centers shall provide a foundation for the long-term sustained relationship with businesses, labor, and colleges in the region. They shall support, develop, and deliver direct services to businesses, colleges, labor organizations, employees, and employers. Direct services shall include curriculum development, faculty training, assessment, one-on-one counseling, seminars, workshops, conferences, training, technology transfer, and educational services. Centers shall provide developmental and delivery support and technical assistance to colleges within their regions as needed to meet the business and workforce education and training needs in their districts.

(d) ''Industry cluster'' means a geographic concentration or emerging concentration of interdependent industries with direct service, supplier, and research relationships, or independent industries that share common resources and sell a significant portion of their goods or services outside of the region.

(e) ''Industry-driven regional collaborative'' means a regional public, private, or other community organizational structure that jointly defines priorities, delivers services across programs, sectors, and in response to, or driven by, industry needs. The industry-driven regional collaborative projects meet the needs and fill gaps in services that

respond to regional business, employee, and labor needs. These service-delivery structures offer flexibility to local communities and partners to meet the identified needs in an economic development region. Industry-driven regional collaboratives are broadly defined to allow maximum local autonomy in developing projects responding to the needs of business, industry, and labor. Industry-driven regional collaborative services respond to the statewide strategic priority pursuant to the mission of the community colleges economic and workforce development program, and are consistent with the programmatic priorities, targeted industries, identified economic development, vocational education, and continuous workforce training needs of a region as identified by regional business resource, assistance, and innovation network infrastructure plans.

(f) ''Initiative'' is an identified strategic priority area that is organized statewide, but is a regionally based effort to develop and implement innovative solutions designed to facilitate the development, implementation, and coordination of community college economic development and related programs and services. Each initiative shall be workforce and business development driven by a statewide committee made up of community college faculty and administrators and practitioners and managers from business, labor, and industry. Centers, industry-driven regional collaboratives, and other economic and workforce development programs performing services as a part of the implementation of an initiative shall coordinate services statewide and within regions of the state as appropriate.

(g) ''Job development incentive training'' means programs that provide incentives to employers to create entry-level positions in their businesses, or through their suppliers or prime customers, for welfare recipients and the working poor.

(h) ''Living wage'' means family or personal incomes at or above 250 percent of the poverty level, based on United States Census Bureau data for the region. This definition may be amended upon review of current data and recommendation of the California Community Colleges Economic and Workforce Development Program Advisory Committee and approval of the board of governors.

(i) ''Matching resources'' means any combination of public or private resources, either cash or in-kind, derived from sources other than the economic and workforce development program funds appropriated by the annual Budget Act, that are determined to be necessary for the success of the project to which they are applied. The criteria for in-kind resources shall be developed by the board of governors, with advice from the chancellor and the California Community Colleges Economic and Workforce Development Program Advisory Committee, and shall be consistent with generally accepted accounting practices for state and

federal matching requirements. The ratio of matching resources to economic and workforce development program funding shall be determined by the board of governors.

(j) ''Performance improvement training'' means training delivered by a community college that includes all of the following:

(1) An initial needs assessment process that identifies both training and nontraining issues that need to be addressed to improve individual and organizational performance.

(2) Consultation with employers to develop action plans that address business or nonprofit performance improvements.

(3) Training programs that link individual performance requirements with quantifiable business measures, resulting in demonstrable productivity gains, and, as appropriate, job retention, job creation, or improvement in wages or living wages.

(k) ''Region'' means a geographic area of the state defined by economic and labor market factors containing at least one industry cluster and the cities, counties, or community college districts, or all of them, in the industry cluster's geographic area. For the purposes of this chapter, ''California Community College economic development regions'' shall be designated by the board of governors based on factors, including, but not necessarily limited to, all of the following:

(1) Regional economic development and training needs of business and industry.

(2) Regional collaboration, as appropriate, among community colleges and districts, and existing economic development, continuous workforce improvement, technology deployment, and business development.

(3) Other state economic development definitions of regions.

SEC. 8. Section 88525 of the Education Code is amended to read:

88525. The California Community Colleges Business Resource Assistance and Innovation Network Trust Fund is hereby established in the State Treasury as a special fund administered by the board of governors. The board of governors may solicit direct contributions for deposit in the fund from various nonstate public and private sources for the purpose of funding the California Community Colleges Economic and Workforce Development Program. Special funds in the trust shall be placed in a surplus money investment account to earn interest. Interest generated by funds deposited in this trust fund shall be reinvested in the fund, and may only be used to fund eligible projects and activities of the economic and workforce development program and related board of governors initiatives. Upon appropriation by the Legislature, the fund may be expended for purposes of administering grants and contracts for providing services, through the program, to public and private entities.

SEC. 9. Section 88530 of the Education Code is amended to read:

88530. (a) It is the intent of the Legislature that the programs and services provided through the ED>Net Program shall be flexible and responsive to the needs identified through the statewide and regional planning process. Services shall be demand-driven, and delivery structures shall be agile, performance-oriented, cost-effective, and contribute to regional economic growth and competitiveness. The use of economic and workforce development program centers, local economic development corporations, industry-driven regional collaboratives, and business networks, employers, and service providers shall provide a stable and flexible response mechanism for the identification of training priorities and to focus resources on short-term intensive projects for high growth sectors. These networks shall have the flexibility to meet the demand for new and emerging growth sectors and be formed, modified, eliminated, and reformed for short- or long-term responses customized to the duration of the need. Programs and projects developed and implemented at centers and industry-driven regional collaborative projects may act as catalysts for future vocational education programs in the system.

(b) It is the intent of the Legislature that centers shall be established as the long-term structure of the network's service delivery system. Centers shall provide regional sites to efficiently respond to employer and worker needs, and shall deliver services for the strategic initiative areas pursuant to the mission of the community colleges economic and workforce development program.

(c) It is the intent of the Legislature that industry-driven regional collaboratives perform services as participants of regional networks. Grants by industry-driven regional collaboratives shall provide flexibility for local projects to assess and define their individual project needs. New local programs and equipment shall be key components of these grants. Funding shall not be limited per project, but shall be based on the merit and reasonable cost for the anticipated outcomes and performance of the project. Funding for industry-driven regional collaboratives shall be limited to two consecutive fiscal years.

SEC. 10. Section 88531 of the Education Code is amended to read:

88531. Economic and workforce development program centers and California Community College participation in industry-driven regional collaboratives may provide any or all of the following services and perform the following functions as participants of networks, including, but not necessarily limited to, all of the following:

(a) Curriculum development, design, and modification that contribute to workforce skill development common to industry clusters within a region.

(b) Development of instructional packages focusing on the technical skill specific to emerging occupations in targeted industries and growing industry clusters.

(c) Faculty mentorships, faculty and staff development, in-service training, and worksite experience supporting the new curriculum and instructional modes responding to identified regional needs.

(d) Institutional support, professional development, and transformational activities focused on removing systematic barriers to the development of new methods, transition to a flexible and more responsive administration of programs, and the timely and cost-effective delivery of services.

(e) The deployment of new methodologies, modes, and technologies that enhance performance and outcomes and improve cost effectiveness of service delivery or create new college programs.

(f) One-on-one counseling, seminars, workshops, and conferences that contribute to the achievement of the success of existing business and foster the growth of new business and jobs in emerging industry clusters.

(g) The delivery of performance-improvement training, which shall be provided on a matching basis to employers to benefit workforce participants. This will promote continuous workforce improvement in identified strategic priority areas, identified industry clusters, or areas targeted in the regional business resource assistance and innovation network plans.

(h) Credit and noncredit programs and courses that contribute to workforce skill development common to industry clusters within a region or that focus on the technical skills specific to emerging occupations in targeted industries and growing industry clusters, as identified by regional needs assessment.

(i) Subsidized student internships on a cash or in-kind matching basis for program participants in occupational categories determined to be consistent with the skill clusters necessary to be successful in the identified strategic priority areas, identified industry clusters, or areas targeted by network infrastructure plans.

(j) Acquisition of equipment to support the eligible activities and the limited renovation of facilities to accommodate the delivery of eligible services.

SEC. 11. Section 88540 of the Education Code is amended to read:

88540. (a) (1) Programs and activities of the Job Development Incentive Training Program shall include a strong partnership with state and local economic development entities, workforce development agencies, community-based organizations, and the private sector. It is the intent of the Legislature that this program provide training on a no-cost or low-cost basis to participating employers who create

employment opportunities at an acceptable wage level for the attainment of self-sufficiency by both of the following groups:

(A) Recipients of aid under Chapter 2 (commencing with Section 11200) of Part 3 of Division 9 of the Welfare and Institutions Code.

(B) Clients determined to be eligible because they are employed at a wage too low to attain self-sufficiency.

(2) Guidelines for the determination of eligibility under this subdivision shall be developed by the chancellor's office in consultation with the appropriate agencies responsible for collecting appropriate data. A structured career ladder methodology may be implemented in this program area.

(3) Funds received from other eligible programs, including, but not necessarily limited to, programs under the federal Workforce Investment Act of 1998 (Public Law 105-220) and other applicable programs selected by the chancellor, or a combination of programs, may be used to provide funds to match job development incentive training funds.

(b) It is the intent of the Legislature that the expenditure of funds under this section should lead measurably to the upgrading of highly skilled and technical workers, upgrade opportunities for those who are employed at a wage too low to attain self-sufficiency, and the creation of jobs for new entrants into the workforce.

SEC. 12. Section 88542 of the Education Code is amended to read:

88542. Matching fund requirements shall be waived for employers who receive training services through the Job Development Incentive Training Program and who accomplish either of the following:

(a) Create employment opportunities for recipients of aid under Chapter 2 (commencing with Section 11200) of Part 3 of Division 9 of the Welfare and Institutions Code at an acceptable wage level to attain self-sufficiency.

(b) Create opportunities for individuals working at a low wage to upgrade to a wage adequate to attain self-sufficiency.

SEC. 13. Section 88543 of the Education Code is amended to read:

88543. Each community college that participates in the Job Development Incentive Training Program shall inventory its local or regional business community, including nonprofit organizations, and identify industry-driven needs and employment opportunities with a goal of attaining self-sufficiency through workforce reentry, continuous employee training, and skills upgrades.

SEC. 14. Section 88550 of the Education Code is amended to read:

88550. (a) The chancellor shall implement accountability measures that provide the Governor, Legislature, and general public with accountability measurements of the program that quantify both employer and student outcomes and seek to specifically isolate the impact of the ED>Net Program on participants.

(b) The chancellor shall submit a report to the Governor and Legislature on or about March 1 of each year. Sufficient information shall be provided in the report to ensure the understanding of the magnitude of expenditures, by type of expenditure, including those specified in Section 88525, disaggregated by industry cluster and region. The report shall also include the marketing efforts conducted, the type of services provided to colleges and employers, and the number of businesses, students, and employees served, and identify the benchmarks and indicators used to demonstrate the results achieved.

SEC. 15. Section 88551 of the Education Code is amended to read:

88551. This part shall remain in effect only until January 1, 2008, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2008, deletes or extends that date.

CHAPTER 545

An act to amend Section 15155 of the Government Code, to amend Sections 11372.7 and 11836 of the Health and Safety Code, to amend Sections 23, 830.8, and 1000 of the Penal Code, to amend Sections 1808, 13350, 13352, 13352.4, 13352.5, 13353.3, 13353.4, 13353.45, 13353.5, 13386, 23249, 23521, 23536, 23538, 23540, 23542, 23546, 23548, 23550, 23550.5, 23552, 23554, 23556, 23560, 23562, 23566, and 23568 of the Vehicle Code, and to amend Section 827.9 of the Welfare and Institutions Code, relating to public safety.

[Approved by Governor September 13, 2002. Filed with Secretary of State September 15, 2002.]

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

SECTION 1. Section 15155 of the Government Code is amended to read:

15155. The committee shall consist of representatives from the following organizations:

(1) Two representatives from the Peace Officers' Association of the State of California.

(2) One representative from the California State Sheriffs' Association.

(3) One representative from the League of California Cities.

(4) One representative from the County Supervisors Association of California.

(5) One representative from the Department of Justice.

(6) One representative from the Department of Motor Vehicles.

(7) One representative from the Department of General Services.

(8) One representative from the California Highway Patrol.

(9) One representative from the California Police Chiefs Association.

SEC. 1.5. Section 11372.7 of the Health and Safety Code is amended to read:

11372.7. (a) Except as otherwise provided in subdivision (b) or (e), each person who is convicted of a violation of this chapter shall pay a drug program fee in an amount not to exceed one hundred fifty dollars ($150) for each separate offense. The court shall increase the total fine, if necessary, to include this increment, which shall be in addition to any other penalty prescribed by law.

(b) The court shall determine whether or not the person who is convicted of a violation of this chapter has the ability to pay a drug program fee. If the court determines that the person has the ability to pay, the court may set the amount to be paid and order the person to pay that sum to the county in a manner that the court believes is reasonable and compatible with the person's financial ability. In its determination of whether a person has the ability to pay, the court shall take into account the amount of any fine imposed upon that person and any amount that person has been ordered to pay in restitution. If the court determines that the person does not have the ability to pay a drug program fee, the person shall not be required to pay a drug program fee.

(c) The county treasurer shall maintain a drug program fund. For every drug program fee assessed and collected pursuant to subdivisions (a) and (b), an amount equal to this assessment shall be deposited into the fund for every conviction pursuant to this chapter, in addition to fines, forfeitures, and other moneys which are transmitted by the courts to the county treasurer pursuant to Sections 11372.5 and 11502. These deposits shall be made prior to any transfer pursuant to Section 11502. Amounts deposited in the drug program fund shall be allocated by the administrator of the county's drug program to drug abuse programs in the schools and the community, subject to the approval of the board of supervisors, as follows:

(1) The moneys in the fund shall be allocated through the planning process established pursuant to Sections 11983, 11983.1, 11983.2, and 11983.3.

(2) A minimum of 33 percent of the fund shall be allocated to primary prevention programs in the schools and the community. Primary prevention programs developed and implemented under this article shall emphasize cooperation in planning and program implementation among schools and community drug abuse agencies, and shall demonstrate coordination through an interagency agreement among county offices of education, school districts, and the county drug program administrator. These primary prevention programs may include:

(A) School- and classroom-oriented programs, including, but not limited to, programs designed to encourage sound decisionmaking, an awareness of values, an awareness of drugs and their effects, enhanced self-esteem, social and practical skills that will assist students toward maturity, enhanced or improved school climate and relationships among all school personnel and students, and furtherance of cooperative efforts of school- and community-based personnel.

(B) School- or community-based nonclassroom alternative programs, or both, including, but not limited to, positive peer group programs, programs involving youth and adults in constructive activities designed as alternatives to drug use, and programs for special target groups, such as women, ethnic minorities, and other high-risk, high-need populations.

(C) Family-oriented programs, including, but not limited to, programs aimed at improving family relationships and involving parents constructively in the education and nurturing of their children, as well as in specific activities aimed at preventing drug abuse.

(d) Moneys deposited into a county drug program fund pursuant to this section shall supplement, and shall not supplant, any local funds made available to support the county's drug abuse prevention and treatment efforts.

(e) This section shall not apply to any person convicted of a violation of subdivision (b) of Section 11357 of the Health and Safety Code.

SEC. 2. Section 11836 of the Health and Safety Code is amended to read:

11836. (a) The department shall have the sole authority to issue, deny, suspend, or revoke the license of a driving-under-the-influence program. As used in this chapter, ''program'' means any firm, partnership, association, corporation, local governmental entity, agency, or place that has been initially recommended by the county board of supervisors, subject to any limitation imposed pursuant to subdivisions (c) and (d), and that is subsequently licensed by the department to provide alcohol or drug recovery services in that county to any of the following:

(1) A person whose license to drive has been administratively suspended or revoked for, or who is convicted of, a violation of Section 23152 or 23153 of the Vehicle Code, and admitted to a program pursuant to Section 13352, 23538, 23542, 23548, 23552, 23556, 23562, or 23568 of the Vehicle Code.

(2) A person who is convicted of a violation of subdivision (b), (c), (d), or (e) of Section 655 of the Harbors and Navigation Code, or of Section 655.4 of that code, and admitted to the program pursuant to Section 668 of that code.

(3) A person who has pled guilty or nolo contendere to a charge of a violation of Section 23103 of the Vehicle Code, under the conditions set forth in subdivision (c) of Section 23103.5 of the Vehicle Code, and who has been admitted to the program under subdivision (e) of Section 23103.5 of the Vehicle Code.

(4) A person whose license has been suspended, revoked, or delayed due to a violation of Section 23140, and who has been admitted to a program under Article 2 (commencing with Section 23502) of Chapter 1 of Division 11.5 of the Vehicle Code.

(b) If a firm, partnership, corporation, association, local government entity, agency, or place has, or is applying for, more than one license, the department shall treat each licensed program, or each program seeking licensure, as belonging to a separate firm, partnership, corporation, association, local government entity, agency, or place for the purposes of this chapter.

(c) For purposes of providing recommendations to the department pursuant to subdivision (a), a county board of supervisors may limit its recommendations to those programs that provide services for persons convicted of a first driving-under-the-influence offense, or services to those persons convicted of a second or subsequent driving-under-the-influence offense, or both services. If a county board of supervisors fails to provide recommendations, the department shall determine the program or programs to be licensed in that county.

(d) After determining a need, a county board of supervisors may also place one or more limitations on the services to be provided by a driving-under-the-influence program or the area the program may operate within the county, when it initially recommends a program to the department pursuant to subdivision (a).

(1) For purposes of this subdivision, a board of supervisors may restrict a program for those convicted of a first driving-under-the-influence offense to providing only a three-month program, or may restrict a program to those convicted of a second or subsequent driving-under-the-influence offense to providing only an 18-month program, as a condition of its recommendation.

(2) A board of supervisors may not place any restrictions on a program that would violate any statute or regulation.

(3) When recommending a program, if a board of supervisors fails to place any limitation on a program pursuant to this subdivision, the department may license that program to provide any driving-under-the-influence program services that are allowed by law within that county.

(4) This subdivision is intended to apply only to the initial recommendation to the State Department of Alcohol and Drug Programs for licensure of a program by the county. It is not intended to affect any

license that has been previously issued by the department or the renewal of any license for a driving-under-the-influence program. In counties where a contract or other written agreement is currently in effect between the county and a licensed driving-under-the-influence program operating in that county, this subdivision is not intended to alter the terms of that relationship or the renewal of that relationship.

(e) This section shall become operative on January 1, 2001.

SEC. 3. Section 23 of the Penal Code is amended to read:

23. In any criminal proceeding against a person who has been issued a license to engage in a business or profession by a state agency pursuant to provisions of the Business and Professions Code or the Education Code, or the Chiropractic Initiative Act, the state agency which issued the license may voluntarily appear to furnish pertinent information, make recommendations regarding specific conditions of probation, or provide any other assistance necessary to promote the interests of justice and protect the interests of the public, or may be ordered by the court to do so, if the crime charged is substantially related to the qualifications, functions, or duties of a licensee.

For purposes of this section, the term "license" shall include a permit or a certificate issued by a state agency.

For purposes of this section, the term "state agency" shall include any state board, commission, bureau, or division created pursuant to the provisions of the Business and Professions Code, the Education Code, or the Chiropractic Initiative Act to license and regulate individuals who engage in certain businesses and professions.

SEC. 4. Section 830.8 of the Penal Code is amended to read:

830.8. (a) Federal criminal investigators and law enforcement officers are not California peace officers, but may exercise the powers of arrest of a peace officer in any of the following circumstances:

(1) Any circumstances specified in Section 836 or Section 5150 of the Welfare and Institutions Code for violations of state or local laws.

(2) When these investigators and law enforcement officers are engaged in the enforcement of federal criminal laws and exercise the arrest powers only incidental to the performance of these duties.

(3) When requested by a California law enforcement agency to be involved in a joint task force or criminal investigation.

(4) When probable cause exists to believe that a public offense that involves immediate danger to persons or property has just occurred or is being committed.

In all of these instances, the provisions of Section 847 shall apply. These investigators and law enforcement officers, prior to the exercise of these arrest powers, shall have been certified by their agency heads as having satisfied the training requirements of Section 832, or the equivalent thereof.

This subdivision does not apply to federal officers of the Bureau of Land Management or the Forest Service of the Department of Agriculture. These officers have no authority to enforce California statutes without the written consent of the sheriff or the chief of police in whose jurisdiction they are assigned.

(b) Duly authorized federal employees who comply with the training requirements set forth in Section 832 are peace officers when they are engaged in enforcing applicable state or local laws on property owned or possessed by the United States government, or on any street, sidewalk, or property adjacent thereto, and with the written consent of the sheriff or the chief of police, respectively, in whose jurisdiction the property is situated.

(c) National park rangers are not California peace officers but may exercise the powers of arrest of a peace officer as specified in Section 836 and the powers of a peace officer specified in Section 5150 of the Welfare and Institutions Code for violations of state or local laws provided these rangers are exercising the arrest powers incidental to the performance of their federal duties or providing or attempting to provide law enforcement services in response to a request initiated by California state park rangers to assist in preserving the peace and protecting state parks and other property for which California state park rangers are responsible. National park rangers, prior to the exercise of these arrest powers, shall have been certified by their agency heads as having satisfactorily completed the training requirements of Section 832.3, or the equivalent thereof.

(d) Notwithstanding any other provision of law, during a state of war emergency or a state of emergency, as defined in Section 8558 of the Government Code, federal criminal investigators and law enforcement officers who are assisting California law enforcement officers in carrying out emergency operations are not deemed California peace officers, but may exercise the powers of arrest of a peace officer as specified in Section 836 and the powers of a peace officer specified in Section 5150 of the Welfare and Institutions Code for violations of state or local laws. In these instances, the provisions of Section 847 and of Section 8655 of the Government Code shall apply.

(e) (1) Any qualified person who is appointed as a Washoe tribal law enforcement officer is not a California peace officer, but may exercise the powers of a Washoe tribal peace officer when engaged in the enforcement of Washoe tribal criminal laws against any person who is an Indian, as defined in subsection (a) of Section 450b of Title 25 of the United States Code, on Washoe tribal land. The respective prosecuting authorities, in consultation with law enforcement agencies, may agree on who shall have initial responsibility for prosecution of specified infractions. This subdivision is not meant to confer cross-deputized

status as California peace officers, nor to confer California peace officer status upon Washoe tribal law enforcement officers when enforcing state or local laws in the State of California. Nothing in this section shall be construed to impose liability upon or to require indemnification by the County of Alpine or the State of California for any act performed by an officer of the Washoe Tribe. Washoe tribal law enforcement officers shall have the right to travel to and from Washoe tribal lands within California in order to carry out tribal duties.

(2) Washoe tribal law enforcement officers are exempted from the provisions of subdivision (a) of Section 12025 and subdivision (a) of Section 12031 while performing their official duties on their tribal lands or while proceeding by a direct route to or from the tribal lands. Tribal law enforcement vehicles are deemed to be emergency vehicles within the meaning of Section 30 of the Vehicle Code while performing official police services.

(3) As used in this subdivision, the term ''Washoe tribal lands'' includes the following:

(A) All lands located in the County of Alpine within the limits of the reservation created for the Washoe Tribe of Nevada and California, notwithstanding the issuance of any patent and including rights-of-way running through the reservation and all tribal trust lands.

(B) All Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through the same.

(4) As used in this subdivision, the term ''Washoe tribal law'' refers to the laws codified in the Law and Order Code of the Washoe Tribe of Nevada and California, as adopted by the Tribal Council of the Washoe Tribe of Nevada and California.

SEC. 5. Section 1000 of the Penal Code is amended to read:

1000. (a) This chapter shall apply whenever a case is before any court upon an accusatory pleading for a violation of Section 11350, 11357, 11364, 11365, 11377, or 11550 of the Health and Safety Code, or subdivision (b) of Section 23222 of the Vehicle Code, or Section 11358 of the Health and Safety Code if the marijuana planted, cultivated, harvested, dried, or processed is for personal use, or Section 11368 of the Health and Safety Code if the narcotic drug was secured by a fictitious prescription and is for the personal use of the defendant and was not sold or furnished to another, or subdivision (d) of Section 653f if the solicitation was for acts directed to personal use only, or Section 381 or subdivision (f) of Section 647 of the Penal Code, if for being under the influence of a controlled substance, or Section 4060 of the Business and Professions Code, and it appears to the prosecuting attorney that, except as provided in subdivision (b) of Section 11357 of the Health and Safety Code, all of the following apply to the defendant:

(1) The defendant has no conviction for any offense involving controlled substances prior to the alleged commission of the charged offense.

(2) The offense charged did not involve a crime of violence or threatened violence.

(3) There is no evidence of a violation relating to narcotics or restricted dangerous drugs other than a violation of the sections listed in this subdivision.

(4) The defendant's record does not indicate that probation or parole has ever been revoked without thereafter being completed.

(5) The defendant's record does not indicate that he or she has successfully completed or been terminated from diversion or deferred entry of judgment pursuant to this chapter within five years prior to the alleged commission of the charged offense.

(6) The defendant has no prior felony conviction within five years prior to the alleged commission of the charged offense.

(b) The prosecuting attorney shall review his or her file to determine whether or not paragraphs (1) to (6), inclusive, of subdivision (a) apply to the defendant. Upon the agreement of the prosecuting attorney, law enforcement, the public defender, and the presiding judge of the criminal division of the superior court, or a judge designated by the presiding judge, this procedure shall be completed as soon as possible after the initial filing of the charges. If the defendant is found eligible, the prosecuting attorney shall file with the court a declaration in writing or state for the record the grounds upon which the determination is based, and shall make this information available to the defendant and his or her attorney. This procedure is intended to allow the court to set the hearing for deferred entry of judgment at the arraignment. If the defendant is found ineligible for deferred entry of judgment, the prosecuting attorney shall file with the court a declaration in writing or state for the record the grounds upon which the determination is based, and shall make this information available to the defendant and his or her attorney. The sole remedy of a defendant who is found ineligible for deferred entry of judgment is a postconviction appeal.

(c) All referrals for deferred entry of judgment granted by the court pursuant to this chapter shall be made only to programs that have been certified by the county drug program administrator pursuant to Chapter 1.5 (commencing with Section 1211) of Title 8, or to programs that provide services at no cost to the participant and have been deemed by the court and the county drug program administrator to be credible and effective. The defendant may request to be referred to a program in any county, as long as that program meets the criteria set forth in this subdivision.

(d) Deferred entry of judgment for a violation of Section 11368 of the Health and Safety Code shall not prohibit any administrative agency from taking disciplinary action against a licensee or from denying a license. Nothing in this subdivision shall be construed to expand or restrict the provisions of Section 1000.4.

(e) Any defendant who is participating in a program referred to in this section may be required to undergo analysis of his or her urine for the purpose of testing for the presence of any drug as part of the program. However, urine analysis results shall not be admissible as a basis for any new criminal prosecution or proceeding.

SEC. 6. Section 1808 of the Vehicle Code is amended to read:

1808. (a) Except where a specific provision of law prohibits the disclosure of records or information or provides for confidentiality, all records of the department relating to the registration of vehicles, other information contained on an application for a driver's license, abstracts of convictions, and abstracts of accident reports required to be sent to the department in Sacramento, except for abstracts of accidents where, in the opinion of a reporting officer, another individual was at fault, shall be open to public inspection during office hours. All abstracts of accident reports shall be available to law enforcement agencies and courts of competent jurisdiction.

(b) The department shall make available or disclose abstracts of convictions and abstracts of accident reports required to be sent to the department in Sacramento, as described in subdivision (a), if the date of the occurrence is not later than the following:

(1) Seven years for any violation designated as two points pursuant to Section 12810.

(2) Three years for accidents and all other violations.

(c) The department shall make available or disclose suspensions and revocations of the driving privilege while the suspension or revocation is in effect and for three years following termination of the action or reinstatement of the privilege, except that driver's license suspension actions taken pursuant to Sections 13202.6 and 13202.7, or Section 256 or 11350.6 of the Welfare and Institutions Code shall be disclosed only during the actual time period in which the suspension is in effect.

(d) The department shall not make available or disclose any suspension or revocation that has been judicially set aside or stayed.

(e) The department shall not make available or disclose personal information about any person unless the disclosure is in compliance with the Driver's Privacy Protection Act of 1994 (18 U.S.C. Sec. 2721 et seq.). However, any disclosure is subject to the prohibition in paragraph (2) of subdivision (a) of Section 12800.5.

(f) The department shall make available or disclose to the courts and law enforcement agencies any conviction of Section 23152, 23153, or

paragraph (1) of subdivision (c) of Section 192 of the Penal Code, punished as a felony for a period of 10 years from the date of the offense for the purpose of imposing penalties mandated by Section 23550.5, or by any other applicable provisions of California law.

(g) The department shall make available or disclose to the courts and law enforcement agencies any conviction of Section 191.5, or paragraph (3) of subdivision (c) of Section 192 of the Penal Code, punished as a felony, for the purpose of imposing penalties mandated by Section 23550.5, or by any other applicable provisions of California law.

SEC. 7. Section 13350 of the Vehicle Code is amended to read:

13350. (a) The department immediately shall revoke the privilege of any person to drive a motor vehicle upon receipt of a duly certified abstract of the record of any court showing that the person has been convicted of any of the following crimes or offenses:

(1) Failure of the driver of a vehicle involved in an accident resulting in injury or death to any person to stop or otherwise comply with Section 20001.

(2) Any felony in the commission of which a motor vehicle is used, except as provided in Section 13351, 13352, or 13357.

(3) Reckless driving causing bodily injury.

(b) If a person is convicted of a violation of Section 23152 punishable under Section 23546, 23550, or 23550.5, or a violation of Section 23153 punishable under Section 23550.5 or 23566, including a violation of paragraph (3) of subdivision (c) of Section 192 of the Penal Code as provided in Section 193.7 of that code, the court shall, at the time of surrender of the driver's license or temporary permit, require the defendant to sign an affidavit in a form provided by the department acknowledging his or her understanding of the revocation required by paragraph (5), (6), or (7) of subdivision (a) of Section 13352, and an acknowledgment of his or her designation as a habitual traffic offender. A copy of this affidavit shall be transmitted, with the license or temporary permit, to the department within the prescribed 10 days.

(c) The department shall not reinstate the privilege revoked under subdivision (a) until the expiration of one year after the date of revocation and until the person whose privilege was revoked gives proof of financial responsibility as defined in Section 16430.

SEC. 8. Section 13352 of the Vehicle Code is amended to read:

13352. (a) The department shall immediately suspend or revoke, or record the court-administered suspension or revocation of, the privilege of any person to operate a motor vehicle upon receipt of an abstract of the record of any court showing that the person has been convicted of a violation of Section 23152 or 23153 or subdivision (a) of Section 23109, or upon receipt of a report of a judge of the juvenile court, a juvenile traffic hearing officer, or a referee of a juvenile court showing that the

person has been found to have committed a violation of Section 23152 or 23153 or subdivision (a) of Section 23109. If any offense specified in this section occurs in a vehicle defined in Section 15210, the suspension or revocation specified below shall apply to the noncommercial driving privilege. The commercial driving privilege shall be disqualified as specified in Sections 15300 to 15302, inclusive. For the purposes of this section, suspension or revocation shall be as follows:

(1) Upon a conviction or finding of a violation of Section 23152 punishable under Section 23536, the privilege shall be suspended for a period of six months. The privilege shall not be reinstated until the person gives proof of financial responsibility and gives proof satisfactory to the department of successful completion of a driving-under-the-influence program licensed pursuant to Section 11836 of the Health and Safety Code described in subdivision (b) of Section 23538.

Instead of suspending the person's driving privilege, the department shall issue a restricted license upon receipt of an abstract of record from the court certifying the court has granted probation to the person based on the conditions specified in paragraph (2) of subdivision (a) of, and subdivision (b) of, Section 23538.

(2) Upon a conviction or finding of a violation of Section 23153 punishable under Section 23554, the privilege shall be suspended for a period of one year. The privilege shall not be reinstated until the person gives proof of financial responsibility and gives proof satisfactory to the department of successful completion of a driving-under-the-influence program licensed pursuant to Section 11836 of the Health and Safety Code as described in Section 23556.

(3) Except as provided in Section 13352.5, upon a conviction or finding of a violation of Section 23152 punishable under Section 23540, the privilege shall be suspended for two years. The privilege shall not be reinstated until the person gives proof of financial responsibility and gives proof satisfactory to the department of successful completion of a driving-under-the-influence program licensed pursuant to Section 11836 of the Health and Safety Code as described in Section 23542. For the purposes of this paragraph, enrollment, participation, and completion of an approved program shall be subsequent to the date of the current violation. No credit shall be given to any program activities completed prior to the date of the current violation. The department shall advise the person that after completion of 12 months of the suspension period, the person may apply to the department for a restricted driver's license, subject to the following conditions:

(A) The person has satisfactorily provided, subsequent to the current underlying conviction, either of the following:

(i) Proof of enrollment in an 18-month driving-under-the-influence program licensed pursuant to Section 11836 of the Health and Safety Code.

(ii) Proof of enrollment in a 30-month driving-under-the-influence program licensed pursuant to Section 11836 of the Health and Safety Code, if available in the county of the person's residence or employment.

(B) The person agrees, as a condition of the restriction, to continue satisfactory participation in the program described in subparagraph (A).

(C) The person submits the "Verification of Installation" form described in paragraph (2) of subdivision (e) of Section 13386.

(D) The person agrees to maintain the ignition interlock device as required under subdivision (g) of Section 23575.

(E) The person provides proof of financial responsibility, as defined in Section 16430.

(F) The person pays all administrative fees or reissue fees and any restriction fee required by the department.

(G) The restriction shall remain in effect for the period required in subdivision (f) of Section 23575.

(4) Except as provided in this paragraph, upon a conviction or finding of a violation of Section 23153 punishable under Section 23560, the privilege shall be revoked for a period of three years. The privilege shall not be reinstated until the person gives proof of financial responsibility, and the person gives proof satisfactory to the department of successful completion of a driving-under-the-influence program licensed pursuant to Section 11836 of the Health and Safety Code as described in Section 23562. For the purposes of this paragraph, enrollment, participation, and completion of an approved program shall be subsequent to the date of the current violation. No credit shall be given to any program activities completed prior to the date of the current violation. The department shall advise the person that after the completion of 18 months of the revocation period, the person may apply to the department for a restricted driver's license, subject to the following conditions:

(A) The person has satisfactorily completed, subsequent to the current underlying conviction, either of the following:

(i) An 18-month driving-under-the-influence program licensed pursuant to Section 11836 of the Health and Safety Code.

(ii) The initial 18 months of a 30-month driving-under-the-influence program licensed pursuant to Section 11836 of the Health and Safety Code, if available in the county of the person's residence or employment, and the person agrees, as a condition of the restriction, to continue satisfactory participation in that 30-month program.

(B) The person submits the "Verification of Installation" form described in paragraph (2) of subdivision (e) of Section 13386.

(C) The person agrees to maintain the ignition interlock device as required under subdivision (g) of Section 23575.

(D) The person provides proof of financial responsibility, as defined in Section 16430.

(E) The person pays all applicable reinstatement or reissue fees and any restriction fee required by the department.

(F) The restriction shall remain in effect for the period required in subdivision (f) of Section 23575.

(5) Except as provided in this paragraph, upon a conviction or finding of a violation of Section 23152 punishable under Section 23546, the privilege shall be revoked for a period of three years. The privilege shall not be reinstated until the person files proof of financial responsibility and gives proof satisfactory to the department of successful completion of one of the following programs: an 18-month driving-under-the-influence program licensed pursuant to Section 11836 of the Health and Safety Code or, if available in the county of the person's residence or employment, a 30-month driving-under-the-influence program licensed pursuant to Section 11836 of the Health and Safety Code, or a program specified in Section 8001 of the Penal Code. For the purposes of this paragraph, enrollment, participation, and completion of an approved program shall be subsequent to the date of the current violation. No credit shall be given to any program activities completed prior to the date of the current violation. The department shall advise the person that after completion of 18 months of the revocation period, the person may apply to the department for a restricted driver's license, subject to the following conditions:

(A) The person has satisfactorily completed, subsequent to the current underlying conviction, either of the following:

(i) An 18-month driving-under-the-influence program licensed pursuant to Section 11836 of the Health and Safety Code.

(ii) The initial 18 months of a 30-month driving-under-the-influence program licensed pursuant to Section 11836 of the Health and Safety Code, if available in the county of the person's residence or employment, and the person agrees, as a condition of the restriction, to continue satisfactory participation in the 30-month driving-under-the-influence program.

(B) The person submits the ''Verification of Installation'' form described in paragraph (2) of subdivision (e) of Section 13386.

(C) The person agrees to maintain the ignition interlock device as required under subdivision (g) of Section 23575.

(D) The person provides proof of financial responsibility, as defined in Section 16430.

(E) Any individual convicted of a violation of Section 23152 punishable under Section 23546 may also, at any time after sentencing, petition the court for referral to an 18-month driving-under-the-influence program licensed pursuant to Section 11836 of the Health and Safety Code, or, if available in the county of the person's residence or employment, a 30-month driving-under-the-influence program licensed pursuant to Section 11836 of the Health and Safety Code. Unless good cause is shown, the court shall order the referral.

(F) The person pays all applicable reinstatement or reissue fees and any restriction fee required by the department.

(G) The restriction shall remain in effect for the period required in subdivision (f) of Section 23575.

(6) Except as provided in this paragraph, upon a conviction or finding of a violation of Section 23153 punishable under Section 23566, the privilege shall be revoked for a period of five years. The privilege shall not be reinstated until the person gives proof of financial responsibility and proof satisfactory to the department of successful completion of one of the following programs: an 18-month driving-under-the-influence program licensed pursuant to Section 11836 of the Health and Safety Code, or, if available in the county of the person's residence or employment, a 30-month driving-under-the-influence program licensed pursuant to Section 11836 of the Health and Safety Code, or a program specified in Section 8001 of the Penal Code. For the purposes of this paragraph, enrollment, participation, and completion of an approved program shall be subsequent to the date of the current violation. No credit shall be given to any program activities completed prior to the date of the current violation. The department shall advise the person that after the completion of 30 months of the revocation period, the person may apply to the department for a restricted driver's license, subject to the following conditions:

(A) The person has satisfactorily completed, subsequent to the current underlying conviction, either of the following:

(i) The initial 18 months of a 30-month driving-under-the-influence program licensed pursuant to Section 11836 of the Health and Safety Code, if available in the county of the person's residence or employment, and the person agrees, as a condition of the restriction, to continue satisfactory participation in the 30-month driving-under-the-influence program.

(ii) An 18-month driving-under-the-influence program licensed pursuant to Section 11836 of the Health and Safety Code, if a 30-month program is unavailable in the person's county of residence or employment.

(B) The person submits the ''Verification of Installation'' form described in paragraph (2) of subdivision (e) of Section 13386.

(C) The person agrees to maintain the ignition interlock device as required under subdivision (g) of Section 23575.

(D) The person provides proof of financial responsibility, as defined in Section 16430.

(E) Any individual convicted of a violation of Section 23153 punishable under Section 23566 may also, at any time after sentencing, petition the court for referral to an 18-month driving-under-the-influence program or, if available in the county of the person's residence or employment, a 30-month program licensed pursuant to Section 11836 of the Health and Safety Code. Unless good cause is shown, the court shall order the referral.

(F) The person pays all applicable reinstatement or reissue fees and any restriction fee required by the department.

(G) The restriction shall remain in effect for the period required in subdivision (f) of Section 23575.

(7) Except as provided in this paragraph, upon a conviction or finding of a violation of Section 23152 punishable under Section 23550 or 23550.5, or Section 23153 punishable under Section 23550.5 the privilege shall be revoked for a period of four years. The privilege shall not be reinstated until the person gives proof of financial responsibility and proof satisfactory to the department of successful completion of one of the following programs: an 18-month driving-under-the-influence program licensed pursuant to Section 11836 of the Health and Safety Code, or, if available in the county of the person's residence or employment, a 30-month driving-under-the-influence program licensed pursuant to Section 11836 of the Health and Safety Code, or a program specified in Section 8001 of the Penal Code. For the purposes of this paragraph, enrollment, participation, and completion of an approved program shall be subsequent to the date of the current violation. No credit shall be given to any program activities completed prior to the date of the current violation. The department shall advise the person that after the completion of 24 months of the revocation period, the person may apply to the department for a restricted driver's license, subject to the following conditions:

(A) The person has satisfactorily completed, subsequent to the current underlying conviction, either of the following:

(i) An 18-month driving-under-the-influence program licensed pursuant to Section 11836 of the Health and Safety Code.

(ii) The initial 18 months of a 30-month driving-under-the-influence program licensed pursuant to Section 11836 of the Health and Safety Code, if available in the county of the person's residence or employment, and the person agrees, as a condition of the restriction, to continue

satisfactory participation in the 30-month driving-under-the-influence program.

(B) The person submits the "Verification of Installation" form described in paragraph (2) of subdivision (e) of Section 13386.

(C) The person agrees to maintain the ignition interlock device as required under subdivision (g) of Section 23575.

(D) The person provides proof of financial responsibility, as defined in Section 16430.

(E) Any individual convicted of a violation of Section 23152 punishable under Section 23550 may also, at any time after sentencing, petition the court for referral to an 18-month driving-under-the-influence program or, if available in the county of the person's residence or employment, a 30-month driving-under-the-influence program licensed pursuant to Section 11836 of the Health and Safety Code. Unless good cause is shown, the court shall order the referral.

(F) The person pays all applicable reinstatement or reissue fees and any restriction fee required by the department.

(G) The restriction shall remain in effect for the period required in subdivision (f) of Section 23575.

(8) Upon a conviction or finding of a violation of subdivision (a) of Section 23109 punishable under subdivision (e) of that section, the privilege shall be suspended for a period of 90 days to six months, if and as ordered by the court.

(9) Upon a conviction or finding of a violation of subdivision (a) of Section 23109 punishable under subdivision (f) of that section, the privilege shall be suspended for a period of six months, if the court orders the department to suspend the privilege. The privilege shall not be reinstated until the person gives proof of financial responsibility.

(b) For the purpose of paragraphs (2) to (9), inclusive, of subdivision (a), the finding of the juvenile court judge, the juvenile traffic hearing officer, or the referee of a juvenile court of a commission of a violation of Section 23152 or 23153 or subdivision (a) of Section 23109, as specified in subdivision (a) of this section, is a conviction.

(c) Each judge of a juvenile court, juvenile traffic hearing officer, or referee of a juvenile court shall immediately report the findings specified in subdivision (a) to the department.

(d) A conviction of an offense in any state, territory, or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or Canada that, if committed in this state, would be a violation of Section 23152, is a conviction of Section 23152 for purposes of this section, and a conviction of an offense that, if committed in this state, would be a violation of Section 23153, is a conviction of Section 23153 for purposes of this section. The department shall suspend or

revoke the privilege to operate a motor vehicle pursuant to this section upon receiving notice of that conviction.

(e) For the purposes of the restriction conditions specified in paragraphs (3) to (7), inclusive, of subdivision (a), the department shall terminate the restriction imposed pursuant to this section and shall suspend or revoke the person's driving privilege upon receipt of notification from the program that the person has failed to comply with the program requirements. The person's driving privilege shall remain suspended or revoked for the remaining period of the originating suspension or revocation and until all reinstatement requirements described in this section are met.

(f) For purposes of this section, completion of a program is the following:

(1) Satisfactory completion of all program requirements approved pursuant to program licensure, as evidenced by a certificate of completion issued, under penalty of perjury, by the licensed program.

(2) Certification, under penalty of perjury, by the director of a program specified in Section 8001 of the Penal Code, that the person has completed a program specified in Section 8001 of the Penal Code.

SEC. 9. Section 13352.4 of the Vehicle Code is amended to read:

13352.4. (a) The department shall require a person upon whom the court has imposed the condition of probation required by subdivision (b) of Section 23538 to submit proof of the satisfactory completion of a driving-under-the-influence program licensed pursuant to Section 11836 of the Health and Safety Code or of a program defined in Section 8001 of the Penal Code, within a time period set by the department, beginning from the date of a conviction or a finding by a court of a violation of Section 23152.

(b) The department shall suspend the privilege to drive of any person who is not in compliance with subdivision (a).

(c) The department may suspend the privilege to drive of any person for failure to file proof of financial responsibility when the person has been ordered by the court to do so. The suspension shall remain in effect until adequate proof of financial responsibility is filed with the department by the person.

(d) The department shall not restore the privilege to operate a motor vehicle after a suspension pursuant to subdivision (b) until the department receives proof of the completion of a program pursuant to subdivision (a) that the department finds satisfactory.

SEC. 10. Section 13352.5 of the Vehicle Code is amended to read:

13352.5. (a) The department shall issue a restricted driver's license to a person granted probation under the conditions described in subdivision (b) of Section 23542 instead of suspending that person's license, if the person meets all of the following requirements:

(1) Submits proof of enrollment in, or completion of, a driving-under-the-influence program licensed pursuant to Section 11836 of the Health and Safety Code, as described in paragraph (4) of subdivision (b) of Section 23542.

(2) Submits proof of financial responsibility, as described in Section 16430.

(3) Pays all applicable reinstatement or reissue fees and any restriction fee required by the department.

(b) The restriction of the driving privilege shall become effective when the department receives all of the documents and fees required under subdivision (a) and shall remain in effect for the duration of the treatment program described in paragraph (4) of subdivision (b) of Section 23542.

(c) The restriction of the driving privilege shall be limited to the hours necessary for driving to and from the place of employment, driving during the course of employment, and driving to and from activities required in the treatment program.

(d) Whenever the driving privilege is restricted under this section, proof of financial responsibility, as defined in Section 16430, shall be maintained for three years. If the person does not maintain that proof of financial responsibility at any time during the restriction, the driving privilege shall be suspended until proof pursuant to Section 16484 is received by the department.

(e) The restriction imposed under this section may be removed when the person presents evidence satisfactory to the department that the person has completed a driving-under-the-influence program licensed pursuant to Section 11836 of the Health and Safety Code. For the purposes of this section, enrollment, participation, and completion of an approved program shall be subsequent to the date of the current violation. No credit shall be given to any program activities completed prior to the date of the current violation.

(f) The department shall immediately terminate the restriction imposed pursuant to this section and shall suspend the privilege to drive under paragraph (3) of subdivision (a) of Section 13352 upon receipt of notification from the treatment program that the person has failed to comply with the program requirements.

(g) Any person restricted pursuant to this section may apply to the department for a restricted driver's license, subject to the conditions specified in paragraph (3) of subdivision (a) of Section 13352. Whenever proof of financial responsibility has already been provided and a restriction fee has been paid in compliance with restrictions described in this section, and the offender subsequently receives an ignition interlock device restriction described in paragraph (3) of subdivision (a) of Section 13352, the proof of financial responsibility period shall not be

extended beyond the previously established term and no additional restriction fee shall be required.

SEC. 11. Section 13353.3 of the Vehicle Code is amended to read:

13353.3. (a) An order of suspension of a person's privilege to operate a motor vehicle pursuant to Section 13353.2 shall become effective 30 days after the person is served with the notice pursuant to Section 13382 or 13388, or subdivision (b) of Section 13353.2.

(b) The period of suspension of a person's privilege to operate a motor vehicle under Section 13353.2 is as follows:

(1) Except as provided in Section 13353.6, if the person has not been convicted of a separate violation of Section 23103, as specified in Section 23103.5, of Section 23140, 23152, or 23153, of Section 191.5 of the Penal Code, or of paragraph (3) of subdivision (c) of Section 192 of that code, the person has not been administratively determined to have refused chemical testing pursuant to Section 13353 or 13353.1, or the person has not been administratively determined to have been driving with an excessive concentration of alcohol pursuant to Section 13353.2 on a separate occasion, which offense or occurrence occurred within seven years of the occasion in question, the person's privilege to operate a motor vehicle shall be suspended for four months.

(2) If the person has been convicted of one or more separate violations of Section 23103, as specified in Section 23103.5, Section 23140, 23152, or 23153, Section 191.5 of the Penal Code, or paragraph (3) of subdivision (c) of Section 192 of that code, the person has been administratively determined to have refused chemical testing pursuant to Section 13353 or 13353.1, or the person has been administratively determined to have been driving with an excessive concentration of alcohol pursuant to Section 13353.2 on a separate occasion, which offense or occasion occurred within seven years of the occasion in question, the person's privilege to operate a motor vehicle shall be suspended for one year.

(3) Notwithstanding any other provision of law, if a person has been administratively determined to have been driving in violation of Section 23136 or to have refused chemical testing pursuant to Section 13353.1, the period of suspension shall not be for less than one year.

(c) If a person's privilege to operate a motor vehicle is suspended pursuant to Section 13353.2 and the person is convicted of a violation of Section 23140, 23152, or 23153, including a violation described in Section 23620, arising out of the same occurrence, both the suspension under Section 13353.2 and the suspension or revocation under Section 13352 shall be imposed, except that, notwithstanding Section 13354, the periods of suspension or revocation shall run concurrently, and the total period of suspension or revocation shall not exceed the longer of the two suspension or revocation periods. This subdivision shall not affect a

suspension or revocation pursuant to Section 13353 for refusal to submit to chemical testing or the imposition of consecutive periods of suspension or revocation pursuant to Section 13354 for that refusal.

(d) For purposes of this section, a conviction of any offense in any state, territory, or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or Canada that, if committed in this state, would be a violation of Section 23103, as specified in Section 23103.5, or Section 23140, 23152, or 23153, or Section 191.5 or paragraph (3) of subdivision (c) of Section 192 of the Penal Code, is a conviction of that particular section of the Vehicle or Penal Code.

SEC. 12. Section 13353.4 of the Vehicle Code is amended to read:

13353.4. (a) Except as provided in subdivision (b) of Section 13353.6, or Section 13353.7 or 13353.8, the driving privilege shall not be restored, and no restricted or hardship permit to operate a motor vehicle shall be issued, to a person during the suspension or revocation period specified in Section 13353, 13353.1, or 13353.3.

(b) The privilege to operate a motor vehicle shall not be restored after a suspension or revocation pursuant to Section 13352, 13353, 13353.1, or 13353.2 until all applicable fees, including the fees prescribed in Section 14905, have been paid and the person gives proof of financial responsibility, as defined in Section 16430, to the department.

SEC. 13. Section 13353.45 of the Vehicle Code is amended to read:

13353.45. The department shall, in consultation with the State Department of Alcohol and Drug Programs, with representatives of the county alcohol program administrators, and with representatives of licensed drinking driver program providers, develop a certificate of completion for the purposes of Sections 13352, 13352.4, and 13352.5 and shall develop, implement, and maintain a system for safeguarding the certificates against misuse. The department may charge a reasonable fee for each blank completion certificate distributed to a drinking driver program. The fee shall be sufficient to cover, but shall not exceed, the costs incurred in administering this section, Sections 13352, 13352.4, and 13352.5 or twelve dollars ($12) per person, whichever is less.

SEC. 14. Section 13353.5 of the Vehicle Code is amended to read:

13353.5. (a) If a person whose driving privilege is suspended or revoked under Section 13352 or 13352.4 is a resident of another state at the time the mandatory period of suspension or revocation expires, the department may, upon written application of the person, terminate the suspension or revocation for the purpose of allowing the person to apply for a license in his or her state of residence. The application shall include, but not be limited to, evidence satisfactory to the department that the applicant now resides in another state.

(b) If the person submits an application for a California driver's license within three years after the date of the action to terminate suspension or revocation pursuant to subdivision (a), a license shall not be issued until evidence satisfactory to the department establishes that the person is qualified for reinstatement and no grounds exist including, but not limited to, one or more subsequent convictions for driving under the influence of alcohol or other drugs that would support a refusal to issue a license. The department may waive the three-year requirement upon receipt of a program completion certificate, as described in subdivision (c) of Section 13353.4, that has been duly issued to the individual.

SEC. 15. Section 13386 of the Vehicle Code is amended to read:

13386. (a) (1) The Department of Motor Vehicles shall certify or cause to be certified ignition interlock devices required by Article 5 (commencing with Section 23575) of Chapter 2 of Division 11.5 and publish a list of approved devices.

(2) (A) The Department of Motor Vehicles shall ensure that ignition interlock devices that have been certified according to the requirements of this section continue to meet certification requirements. The department may periodically require manufacturers to indicate in writing whether the devices continue to meet certification requirements.

(B) The department may use denial of certification, suspension or revocation of certification, or decertification of an ignition interlock device in another state as an indication that the certification requirements are not met, if either of the following apply:

(i) The denial of certification, suspension or revocation of certification, or decertification in another state constitutes a violation by the manufacturer of Article 2.55 (commencing with Section 125.00) of Chapter 1 of Division 1 of the Title 13 of the California Code of Regulations.

(ii) The denial of certification for an ignition interlock device in another state was due to a failure of an ignition interlock device to meet the standards adopted by the regulation set forth in clause (i), specifically Sections 1 and 2 of the model specification for breath alcohol ignition interlock devices, as published by notice in the Federal Register, Vol. 57, No. 67, Tuesday, April 7, 1992, on pages 11774 to 11787, inclusive.

(C) Failure to continue to meet certification requirements shall result in suspension or revocation of certification of ignition interlock devices.

(b) The department shall utilize information from an independent laboratory to certify ignition interlock devices on or off the premises of the manufacturer or manufacturer's agent, in accordance with the guidelines. The cost of certification shall be borne by the manufacturers of ignition interlock devices. If the certification of a device is suspended or revoked, the manufacturer of the device shall be responsible for, and

shall bear the cost of, the removal of the device and the replacement of a certified device of the manufacturer or another manufacturer.

(c) No model of ignition interlock device shall be certified unless it meets the accuracy requirements and specifications provided in the guidelines adopted by the National Highway Traffic Safety Administration.

(d) All manufacturers of ignition interlock devices that meet the requirements of subdivision (c) and are certified in a manner approved by the Department of Motor Vehicles, who intend to market the devices in this state, first shall apply to the Department of Motor Vehicles on forms provided by that department. The application shall be accompanied by a fee in an amount not to exceed the amount necessary to cover the costs incurred by the department in carrying out this section.

(e) The department shall ensure that standard forms and procedures are developed for documenting decisions and compliance and communicating results to relevant agencies. These forms shall include all of the following:

(1) An ''Option to Install,'' to be sent by the Department of Motor Vehicles to repeat offenders along with the mandatory order of suspension or revocation. This shall include the alternatives available for early license reinstatement with the installation of an ignition interlock device and shall be accompanied by a toll-free telephone number for each manufacturer of a certified ignition interlock device. Information regarding approved installation locations shall be provided to drivers by manufacturers with ignition interlock devices that have been certified in accordance with this section.

(2) A ''Verification of Installation'' to be returned to the department by the reinstating offender upon application for reinstatement. Copies shall be provided for the manufacturer or the manufacturer's agent.

(3) A ''Notice of Noncompliance'' and procedures to ensure continued use of the ignition interlock device during the restriction period and to ensure compliance with maintenance requirements. The maintenance period shall be standardized at 60 days to maximize monitoring checks for equipment tampering.

(f) Every manufacturer and manufacturer's agent certified by the department to provide ignition interlock devices shall adopt fee schedules that provide for the payment of the costs of the device by applicants in amounts commensurate with the applicant's ability to pay.

SEC. 17. Section 23249 of the Vehicle Code is amended to read:

23249. The Department of Motor Vehicles shall conduct two studies to evaluate the effectiveness of ignition interlock in California and shall report the findings to the Legislature, as specified in subdivisions (a) and (b).

(a) The department shall conduct a process study of ignition interlock in California and report the findings to the Legislature on or before July 1, 2002. This study shall examine the implementation of ignition interlock by the courts, the department and ignition interlock installers, and report the rate at which courts assign interlock to persons convicted of a violation of Section 14601.2 and the rate at which these persons install these devices.

(b) The department shall conduct an outcome study of ignition interlock in California and report the findings to the Legislature on or before July 1, 2004. This study shall examine the effectiveness of California's ignition interlock laws in reducing recidivism, moving violation convictions and crashes among drivers ordered by the court to install interlock devices, and among drivers applying to the department, and receiving from it, an ignition interlock restricted license.

SEC. 18. Section 23521 of the Vehicle Code is amended to read:

23521. Any finding of a juvenile court judge, juvenile traffic hearing officer, or referee of a juvenile court of a commission of an offense in any state, territory, possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or the Dominion of Canada which, if committed in this state, would be a violation of Section 23152, is a conviction of a violation of Section 23152 for the purposes of Sections 13352, 13352.3, and 13352.5, and the finding of a juvenile court judge, juvenile traffic hearing officer, or referee of a juvenile court of a commission of an offense which, if committed in this state, would be a violation of Section 23153 is a conviction of a violation of Section 23153 for the purposes of Sections 13352 and 13352.3.

SEC. 19. Section 23536 of the Vehicle Code is amended to read:

23536. (a) If any person is convicted of a first violation of Section 23152, that person shall be punished by imprisonment in the county jail for not less than 96 hours, at least 48 hours of which shall be continuous, nor more than six months and by a fine of not less than three hundred ninety dollars ($390), nor more than one thousand dollars ($1,000).

(b) The court shall order that any person punished under subdivision (a), who is to be punished by imprisonment in the county jail, be imprisoned on days other than days of regular employment of the person, as determined by the court. If the court determines that 48 hours of continuous imprisonment would interfere with the person's work schedule, the court shall allow the person to serve the imprisonment whenever the person is normally scheduled for time off from work. The court may make this determination based upon a representation from the defendant's attorney or upon an affidavit or testimony from the defendant.

(c) Except as provided in paragraph (2) of subdivision (a) of Section 23538, the person's privilege to operate a motor vehicle shall be suspended by the Department of Motor Vehicles pursuant to paragraph (1) of subdivision (a) of Section 13352. The court shall require the person to surrender the driver's license to the court in accordance with Section 13550.

SEC. 20. Section 23538 of the Vehicle Code is amended to read:

23538. (a) Except as provided in subdivision (d), if the court grants probation to any person punished under Section 23536, in addition to the provisions of Section 23600 and any other terms and conditions imposed by the court, the court shall impose as a condition of probation that the person be subject to one of the following:

(1) Be confined in the county jail for at least 48 hours but not more than six months, and pay a fine of at least three hundred ninety dollars ($390), but not more than one thousand dollars ($1,000). Except as provided in paragraph (2), the person's privilege to operate a motor vehicle shall be suspended by the Department of Motor Vehicles pursuant to paragraph (1) of subdivision (a) of Section 13352. The court shall require the person to surrender the driver's license to the court in accordance with Section 13550.

(2) Pay a fine of at least three hundred ninety dollars ($390) but not more than one thousand dollars ($1,000), and, if the person gives proof of financial responsibility, as defined in Section 16430, to the Department of Motor Vehicles, have the privilege to operate a motor vehicle restricted for 90 days to necessary travel to and from that person's place of employment and to and from participation in a program described in subdivision (b). If driving a motor vehicle is necessary to perform the duties of the person's employment, the restriction also shall allow the person to drive to locations within the person's scope of employment. Whenever the driving privilege is restricted pursuant to this paragraph, the person shall maintain proof of financial responsibility for three years.

(3) If the court elects to order a 90-day restriction as provided for in paragraph (2), the court shall order and advise the person of the following matters:

(A) If the person's privilege to operate a motor vehicle is suspended under Section 13353.2, the court-ordered restriction does not allow the person to operate a motor vehicle unless the suspension under Section 13353.2 has either been served to completion or set aside, and his or her license has been reinstated. The restriction of the driver's license described in paragraph (2) shall commence upon the reinstatement of the privilege to operate a motor vehicle.

(B) If a suspension was not imposed pursuant to Section 13353.2, the person shall be advised by the court that the person's driving privilege

may be suspended by the department pursuant to subdivision (c) of Section 13352.4 until proof of financial responsibility is provided.

(b) In any county where the board of supervisors has approved, and the State Department of Alcohol and Drug Programs has licensed, a program or programs described in Section 11837.3 of the Health and Safety Code, the court shall also impose as a condition of probation that the driver shall enroll and participate in, and successfully complete a driving-under-the-influence program, licensed pursuant to Section 11836 of the Health and Safety Code, in the driver's county of residence or employment, as designated by the court.

(1) The court shall refer a first offender whose blood-alcohol concentration was less than 0.20 percent, by weight, to participate for at least three months or longer, as ordered by the court, in a licensed program that consists of at least 30 hours of program activities, including those education, group counseling, and individual interview sessions described in Chapter 9 (commencing with Section 11836) of Part 2 of Division 10.5 of the Health and Safety Code.

(2) The court shall refer a first offender whose blood-alcohol concentration was 0.20 percent or more, by weight, or who refused to take a chemical test, to participate for at least six months or longer, as ordered by the court, in a licensed program that consists of at least 45 hours of program activities, including those education, group counseling, and individual interview sessions described in Chapter 9 (commencing with Section 11836) of Part 2 of Division 10.5 of the Health and Safety Code.

(3) The court shall advise the person at the time of sentencing that the driving privilege shall not be restored until the person has provided proof satisfactory to the Department of Motor Vehicles of successful completion of a driving-under-the-influence program licensed pursuant to Section 11836 of the Health and Safety Code.

(c) (1) The court shall revoke the person's probation pursuant to Section 23602, except for good cause shown, for the failure to enroll in, participate in, or complete a program specified in subdivision (b).

(2) The court, in establishing reporting requirements, shall consult with the county alcohol program administrator. The county alcohol program administrator shall coordinate the reporting requirements with the department and with the State Department of Alcohol and Drug Programs. That reporting shall ensure that all persons who, after being ordered to attend and complete a program, may be identified for either (A) failure to enroll in, or failure to successfully complete, the program, or (B) successful completion of the program as ordered.

(d) Notwithstanding subdivision (a), if the offense occurred in a vehicle requiring a driver with a class A or class B driver's license or with an endorsement specified in Section 15278, the court shall upon

conviction order the department to suspend the driver's privilege pursuant to paragraph (1) of subdivision (a) of Section 13352.

SEC. 21. Section 23540 of the Vehicle Code is amended to read:

23540. If any person is convicted of a violation of Section 23152 and the offense occurred within seven years of a separate violation of Section 23103, as specified in Section 23103.5, 23152, or 23153, which resulted in a conviction, that person shall be punished by imprisonment in the county jail for not less than 90 days nor more than one year and by a fine of not less than three hundred ninety dollars ($390) nor more than one thousand dollars ($1,000). The person's privilege to operate a motor vehicle shall be suspended by the Department of Motor Vehicles pursuant to paragraph (3) of subdivision (a) of Section 13352. The court shall require the person to surrender the driver's license to the court in accordance with Section 13550.

SEC. 22. Section 23542 of the Vehicle Code is amended to read:

23542. If the court grants probation to any person punished under Section 23540, in addition to the provisions of Section 23600 and any other terms and conditions imposed by the court, the court shall impose as conditions of probation that the person be subject to either subdivision (a) or (b), as follows:

(a) Be confined in the county jail for at least 10 days but not more than one year, and pay a fine of at least three hundred ninety dollars ($390), but not more than one thousand dollars ($1,000). The person's privilege to operate a motor vehicle shall be suspended by the Department of Motor Vehicles pursuant to paragraph (3) of subdivision (a) of Section 13352. The court shall require the person to surrender the driver's license to the court in accordance with Section 13550.

(b) All of the following:

(1) Be confined in the county jail for at least 96 hours, but not more than one year. A sentence of 96 hours of confinement shall be served in two increments consisting of a continuous 48 hours each. The two 48-hour increments may be served nonconsecutively.

(2) Pay a fine of at least three hundred ninety dollars ($390), but not more than one thousand dollars ($1,000).

(3) Have the privilege to operate a motor vehicle be restricted by the Department of Motor Vehicles pursuant to Section 13352.5. Until all conditions prescribed in this section are met, the person's driving privilege is suspended pursuant to paragraph (3) of subdivision (a) of Section 13352. This paragraph does not apply if the offense occurred in a vehicle requiring a driver with a class A or class B driver's license or with an endorsement prescribed in Section 15278.

(4) Either of the following:

(A) Enroll and participate, for at least 18 months subsequent to the date of the underlying violation and in a manner satisfactory to the court,

in a driving-under-the-influence program licensed pursuant to Section 11836 of the Health and Safety Code, as designated by the court. The person shall complete the entire program subsequent to, and shall not be given any credit for any program activities completed prior to, the date of the current violation. The program shall provide for persons who cannot afford the program fee pursuant to paragraph (2) of subdivision (b) of Section 11837.4 of the Health and Safety Code in order to enable those persons to participate.

(B) Enroll and participate, for at least 30 months subsequent to the date of the underlying violation and in a manner satisfactory to the court, in a driving-under-the-influence program licensed pursuant to Section 11836 of the Health and Safety Code. The person shall complete the entire program subsequent to, and shall not be given any credit for any program activities completed prior to, the date of the current violation.

(c) The court shall advise the person at the time of sentencing that the driving privilege shall not be restored until the person has provided proof satisfactory to the Department of Motor Vehicles of successful completion of a driving-under-the-influence program licensed pursuant to Section 11836 of the Health and Safety Code.

SEC. 23. Section 23546 of the Vehicle Code is amended to read:

23546. (a) If any person is convicted of a violation of Section 23152 and the offense occurred within seven years of two separate violations of Section 23103, as specified in Section 23103.5, 23152, or 23153, or any combination thereof, which resulted in convictions, that person shall be punished by imprisonment in the county jail for not less than 120 days nor more than one year and by a fine of not less than three hundred ninety dollars ($390) nor more than one thousand dollars ($1,000). The person's privilege to operate a motor vehicle shall be revoked by the Department of Motor Vehicles as required in paragraph (5) of subdivision (a) of Section 13352. The court shall require the person to surrender his or her driver's license to the court in accordance with Section 13550.

(b) Any person convicted of a violation of Section 23152 punishable under this section shall be designated as a habitual traffic offender for a period of three years, subsequent to the conviction. The person shall be advised of this designation pursuant to subdivision (b) of Section 13350.

SEC. 24. Section 23548 of the Vehicle Code is amended to read:

23548. (a) If the court grants probation to any person punished under Section 23546, in addition to the provisions of Section 23600 and any other terms and conditions imposed by the court, the court shall impose as conditions of probation that the person be confined in the county jail for at least 120 days but not more than one year and pay a fine of at least three hundred ninety dollars ($390) but not more than one thousand dollars ($1,000). The person's privilege to operate a motor

vehicle shall be revoked by the Department of Motor Vehicles pursuant to paragraph (5) of subdivision (a) of Section 13352. The court shall require the person to surrender the driver's license to the court in accordance with Section 13550.

(b) In addition to subdivision (a), if the court grants probation to any person punished under Section 23546, the court may order as a condition of probation that the person participate, for at least 30 months subsequent to the underlying conviction and in a manner satisfactory to the court, in a driving-under-the-influence program licensed pursuant to Section 11836 of the Health and Safety Code. In lieu of the minimum term of imprisonment specified in subdivision (a), the court shall impose as a condition of probation under this subdivision that the person be confined in the county jail for at least 30 days but not more than one year. The court shall not order the treatment prescribed by this subdivision unless the person makes a specific request and shows good cause for the order, whether or not the person has previously completed a treatment program pursuant to paragraph (4) of subdivision (b) of Section 23542 or paragraph (4) of subdivision (b) of Section 23562. A person ordered to treatment pursuant to this subdivision shall apply to the court or to a board of review, as designated by the court, at the conclusion of the program to obtain the court's order of satisfaction. Only upon the granting of that order of satisfaction by the court may the program issue its certificate of successful completion and report the completion to the Department of Motor Vehicles. A failure to obtain an order of satisfaction at the conclusion of the driving-under-the-influence program is a violation of probation. In order to enable all required persons to participate, each person shall pay the program costs commensurate with the person's ability to pay as determined pursuant to Section 11837.4 of the Health and Safety Code. No condition of probation required pursuant to this subdivision is a basis for reducing any other probation requirement in this section or Section 23600 or for avoiding the mandatory license revocation provisions of paragraph (5) of subdivision (a) of Section 13352.

(c) In addition to the provisions of Section 23600 and subdivision (a), if the court grants probation to any person punished under Section 23546 who has not previously completed a treatment program pursuant to paragraph (4) of subdivision (b) of Section 23542 or paragraph (4) of subdivision (b) of Section 23562, and unless the person is ordered to participate in and complete a driving-under-the-influence program under subdivision (b), the court shall impose as a condition of probation that the person, subsequent to the date of the current violation, enroll and participate, for at least 18 months and in a manner satisfactory to the court, in a driving-under-the-influence program licensed pursuant to Section 11836 of the Health and Safety Code, as designated by the court.

The person shall complete the entire program subsequent to, and shall not be given any credit for program activities completed prior to, the date of the current violation. Any person who has previously completed a 12-month or 18-month program licensed pursuant to Section 11836 of the Health and Safety Code shall not be eligible for referral pursuant to this subdivision unless a 30-month licensed driving-under-the-influence program is not available for referral in the county of the person's residence or employment. The program shall provide for persons who cannot afford the program fee pursuant to paragraph (2) of subdivision (b) of Section 11837.4 of the Health and Safety Code in order to enable those persons to participate. No condition of probation required pursuant to this subdivision is a basis for reducing any other probation requirement in this section or Section 23600 or for avoiding the mandatory license revocation provisions of paragraph (5) of subdivision (a) of Section 13352.

SEC. 25. Section 23550 of the Vehicle Code is amended to read:

23550. (a) If any person is convicted of a violation of Section 23152 and the offense occurred within seven years of three or more separate violations of Section 23103, as specified in Section 23103.5, or Section 23152 or 23153, or any combination thereof, which resulted in convictions, that person shall be punished by imprisonment in the state prison, or in a county jail for not less than 180 days nor more than one year, and by a fine of not less than three hundred ninety dollars ($390) nor more than one thousand dollars ($1,000). The person's privilege to operate a motor vehicle shall be revoked by the Department of Motor Vehicles pursuant to paragraph (7) of subdivision (a) of Section 13352. The court shall require the person to surrender the driver's license to the court in accordance with Section 13550.

(b) Any person convicted of a violation of Section 23152 punishable under this section shall be designated as a habitual traffic offender for a period of three years, subsequent to the conviction. The person shall be advised of this designation pursuant to subdivision (b) of Section 13350.

SEC. 26. Section 23550.5 of the Vehicle Code is amended to read:

23550.5. (a) A person is guilty of a public offense, punishable by imprisonment in the state prison or confinement in a county jail for not more than one year and by a fine of not less than three hundred ninety dollars ($390) nor more than one thousand dollars ($1,000) if that person is convicted of a violation of Section 23152 or 23153, and the offense occurred within 10 years of any of the following:

(1) A prior violation of Section 23152 that was punished as a felony under Section 23550 or this section, or both, or under former Section 23175 or former Section 23175.5, or both.

(2) A prior violation of Section 23153 that was punished as a felony.

(3) A prior violation of paragraph (1) of subdivision (c) of Section 192 of the Penal Code that was punished as a felony.

(b) Every person who, having previously been convicted of a violation of Section 191.5 of the Penal Code or a felony violation of paragraph (3) of subdivision (c) of Section 192 of the Penal Code, is subsequently convicted of a violation of Section 23152 or 23153 is guilty of a public offense punishable by imprisonment in the state prison or confinement in a county jail for not more than one year and by a fine of not less than three hundred ninety dollars ($390) nor more than one thousand dollars ($1,000).

(c) The privilege to operate a motor vehicle of a person convicted of a violation that is punishable under subdivision (a) or (b) shall be revoked by the department under paragraph (7) of subdivision (a) of Section 13352, unless paragraph (6) of subdivision (a) of Section 13352 is also applicable, in which case the privilege shall be revoked under that provision. The court shall require the person to surrender the driver's license to the court in accordance with Section 13550.

(d) Any person convicted of a violation of Section 23152 or 23153 that is punishable under this section shall be designated as a habitual traffic offender for a period of three years, subsequent to the conviction. The person shall be advised of this designation under subdivision (b) of Section 13350.

SEC. 27. Section 23552 of the Vehicle Code is amended to read:

23552. (a) If the court grants probation to any person punished under Section 23550, in addition to the provisions of Section 23600 and any other terms and conditions imposed by the court, the court shall impose as conditions of probation that the person be confined in a county jail for at least 180 days but not more than one year and pay a fine of at least three hundred ninety dollars ($390) but not more than one thousand dollars ($1,000). The person's privilege to operate a motor vehicle shall be revoked by the Department of Motor Vehicles pursuant to paragraph (7) of subdivision (a) of Section 13352. The court shall require the person to surrender the driver's license to the court in accordance with Section 13550.

(b) In addition to subdivision (a), if the court grants probation to any person punished under Section 23550, the court may order as a condition of probation that the person participate, for at least 30 months subsequent to the underlying conviction and in a manner satisfactory to the court, in a driving-under-the-influence program licensed pursuant to Section 11836 of the Health and Safety Code. In lieu of the minimum term of imprisonment in subdivision (a), the court shall impose as a condition of probation under this subdivision that the person be confined in the county jail for at least 30 days but not more than one year. The court shall not order the treatment prescribed by this subdivision unless the

person makes a specific request and shows good cause for the order, whether or not the person has previously completed a treatment program pursuant to paragraph (4) of subdivision (b) of Section 23542 or paragraph (4) of subdivision (b) of Section 23562. A person ordered to treatment pursuant to this subdivision shall apply to the court or to a board of review, as designated by the court, at the conclusion of the program to obtain the court's order of satisfaction. Only upon the granting of that order of satisfaction by the court may the program issue its certificate of successful completion and report the completion to the Department of Motor Vehicles. A failure to obtain an order of satisfaction at the conclusion of the program is a violation of probation. In order to enable all required persons to participate, each person shall pay the program costs commensurate with the person's ability to pay as determined pursuant to Section 11837.4 of the Health and Safety Code. No condition of probation required pursuant to this subdivision is a basis for reducing any other probation requirement in this section or Section 23600 or for avoiding the mandatory license revocation provisions of paragraph (7) of subdivision (a) of Section 13352.

(c) In addition to the provisions of Section 23600 and subdivision (a), if the court grants probation to any person punished under Section 23550 who has not previously completed a treatment program pursuant to paragraph (4) of subdivision (b) of Section 23542 or paragraph (4) of subdivision (b) of Section 23562, and unless the person is ordered to participate in, and complete, a program under subdivision (b), the court shall impose as a condition of probation that the person, subsequent to the date of the current violation, enroll in and participate, for at least 18 months and in a manner satisfactory to the court, in a driving-under-the-influence program licensed pursuant to Section 11836 of the Health and Safety Code, as designated by the court. The person shall complete the entire program subsequent to, and shall not be given any credit for program activities completed prior to, the date of the current violation. Any person who has previously completed a 12-month or 18-month driving-under-the-influence program licensed pursuant to Section 11836 of the Health and Safety Code shall not be eligible for referral pursuant to this subdivision unless a 30-month driving-under-the-influence program licensed pursuant to Section 11836 of the Health and Safety Code is not available for referral in the county of the person's residence or employment. No condition of probation required pursuant to this subdivision is a basis for reducing any other probation requirement in this section or Section 23600 or for avoiding the mandatory license revocation provisions of paragraph (7) of subdivision (a) of Section 13352.

SEC. 28. Section 23554 of the Vehicle Code is amended to read:

23554. If any person is convicted of a first violation of Section 23153, that person shall be punished by imprisonment in the state prison, or in a county jail for not less than 90 days nor more than one year, and by a fine of not less than three hundred ninety dollars ($390) nor more than one thousand dollars ($1,000). The person's privilege to operate a motor vehicle shall be suspended by the Department of Motor Vehicles pursuant to paragraph (2) of subdivision (a) of Section 13352. The court shall require the person to surrender the driver's license to the court in accordance with Section 13550.

SEC. 29. Section 23556 of the Vehicle Code is amended to read:

23556. (a) If the court grants probation to any person punished under Section 23554, in addition to the provisions of Section 23600 and any other terms and conditions imposed by the court, the court shall impose as a condition of probation that the person be confined in the county jail for at least five days but not more than one year and pay a fine of at least three hundred ninety dollars ($390) but not more than one thousand dollars ($1,000). The person's privilege to operate a motor vehicle shall be suspended by the Department of Motor Vehicles pursuant to paragraph (2) of subdivision (a) of Section 13352. The court shall require the person to surrender the driver's license to the court in accordance with Section 13550.

(b) (1) In any county where the county alcohol program administrator has certified, and the board of supervisors has approved, such a program or programs, the court shall also impose as a condition of probation that the driver shall participate in, and successfully complete, an alcohol and other drug education and counseling program, established pursuant to Section 11837.3 of the Health and Safety Code, as designated by the court.

(2) In any county where the board of supervisors has approved and the State Department of Alcohol and Drug Programs has licensed an alcohol and other drug education and counseling program, the court shall also impose as a condition of probation that the driver enroll in, participate in, and successfully complete, driving-under-the-influence program licensed pursuant to Section 11836 of the Health and Safety Code, in the driver's county of residence or employment, as designated by the court.

(c) (1) The court shall revoke the person's probation pursuant to Section 23602, except for good cause shown, for the failure to enroll in, participate in, or complete a program specified in subdivision (b).

(2) The court, in establishing reporting requirements, shall consult with the county alcohol program administrator. The county alcohol program administrator shall coordinate the reporting requirements with the department and with the Department of Alcohol and Drug Programs. That reporting shall ensure that all persons who, after being ordered to attend and complete a program, may be identified for either (A) failure

to enroll in, or failure to successfully complete, the program, or (B) successful completion of the program as ordered.

(d) The court shall advise the person at the time of sentencing that the driving privilege shall not be restored until the person has provided proof satisfactory to the Department of Motor Vehicles of successful completion of a driving-under-the-influence program licensed pursuant to Section 11836 of the Health and Safety Code.

SEC. 30. Section 23560 of the Vehicle Code is amended to read:

23560. If any person is convicted of a violation of Section 23153 and the offense occurred within seven years of a separate violation of Section 23103, as specified in Section 23103.5, 23152, or 23153 which resulted in a conviction, that person shall be punished by imprisonment in the state prison, or in a county jail for not less than 120 days nor more than one year, and by a fine of not less than three hundred ninety dollars ($390) nor more than five thousand dollars ($5,000). The person's privilege to operate a motor vehicle shall be revoked by the Department of Motor Vehicles pursuant to paragraph (4) of subdivision (a) of Section 13352. The court shall require the person to surrender the driver's license to the court in accordance with Section 13550.

SEC. 31. Section 23562 of the Vehicle Code is amended to read:

23562. If the court grants probation to any person punished under Section 23560, in addition to the provisions of Section 23600 and any other terms and conditions imposed by the court, the court shall impose as conditions of probation that the person be subject to either subdivision (a) or (b), as follows:

(a) Be confined in the county jail for at least 120 days and pay a fine of at least three hundred ninety dollars ($390), but not more than five thousand dollars ($5,000). The person's privilege to operate a motor vehicle shall be revoked by the Department of Motor Vehicles pursuant to paragraph (4) of subdivision (a) of Section 13352. The court shall require the person to surrender the driver's license to the court in accordance with Section 13550.

(b) All of the following:

(1) Be confined in the county jail for at least 30 days, but not more than one year.

(2) Pay a fine of at least three hundred ninety dollars ($390), but not more than one thousand dollars ($1,000).

(3) The privilege to operate a motor vehicle shall be revoked by the Department of Motor Vehicles under paragraph (4) of subdivision (a) of Section 13352. The court shall require the person to surrender the driver's license to the court in accordance with Section 13550.

(4) Either of the following:

(A) Enroll and participate, for at least 18 months subsequent to the date of the underlying violation and in a manner satisfactory to the court,

in a driving-under-the-influence program licensed pursuant to Section 11836 of the Health and Safety Code, if available in the county of the person's residence or employment, as designated by the court. The person shall complete the entire program subsequent to, and shall not be given any credit for program activities completed prior to, the date of the current violation. The program shall provide for persons who cannot afford the program fee pursuant to paragraph (2) of subdivision (b) of Section 11837.4 of the Health and Safety Code in order to enable those persons to participate.

(B) Enroll and participate, for at least 30 months subsequent to the date of the underlying violation and in a manner satisfactory to the court, in a driving-under-the-influence program licensed pursuant to Section 11836 of the Health and Safety Code, if available in the county of the person's residence or employment. The person shall complete the entire program subsequent to, and shall not be given any credit for program activities completed prior to, the date of the current violation.

(c) The court shall advise the person at the time of sentencing that the driving privilege shall not be restored until the person has provided proof satisfactory to the Department of Motor Vehicles of successful completion of a driving-under-the-influence program licensed pursuant to Section 11836 of the Health and Safety Code.

SEC. 32. Section 23566 of the Vehicle Code is amended to read:

23566. (a) If any person is convicted of a violation of Section 23153 and the offense occurred within seven years of two or more separate violations of Section 23103, as specified in Section 23103.5, or Section 23152 or 23153, or any combination of these violations, which resulted in convictions, that person shall be punished by imprisonment in the state prison for a term of two, three, or four years and by a fine of not less than one thousand fifteen dollars ($1,015) nor more than five thousand dollars ($5,000). The person's privilege to operate a motor vehicle shall be revoked by the Department of Motor Vehicles pursuant to paragraph (6) of subdivision (a) of Section 13352. The court shall require the person to surrender the driver's license to the court in accordance with Section 13550.

(b) If any person is convicted of a violation of Section 23153, and the act or neglect proximately causes great bodily injury, as defined in Section 12022.7 of the Penal Code, to any person other than the driver, and the offense occurred within seven years of two or more separate violations of Section 23103, as specified in Section 23103.5, or Section 23152 or 23153, or any combination of these violations, which resulted in convictions, that person shall be punished by imprisonment in the state prison for a term of two, three, or four years and by a fine of not less than one thousand fifteen dollars ($1,015) nor more than five thousand dollars ($5,000). The person's privilege to operate a motor vehicle shall

be revoked by the Department of Motor Vehicles pursuant to paragraph (6) of subdivision (a) of Section 13352. The court shall require the person to surrender the driver's license to the court in accordance with Section 13550.

(c) If any person is convicted under subdivision (b), and the offense for which the person is convicted occurred within seven years of four or more separate violations of Section 23103, as specified in Section 23103.5, or Section 23152 or 23153, or any combination of these violations, that resulted in convictions, that person shall, in addition and consecutive to the sentences imposed under subdivision (b), be punished by an additional term of imprisonment in the state prison for three years.

The enhancement allegation provided in this subdivision shall be pleaded and proved as provided by law.

(d) Any person convicted of Section 23153 punishable under this section shall be designated as a habitual traffic offender for a period of three years, subsequent to the conviction. The person shall be advised of this designation pursuant to subdivision (b) of Section 13350.

(e) Any person confined in state prison under this section shall be ordered by the court to participate in an alcohol or drug program, or both, that is available at the prison during the person's confinement. Completion of an alcohol or drug program under this section does not meet the program completion requirement of paragraph (6) of subdivision (a) of Section 13352, unless the drug or alcohol program is licensed under Section 11836 of the Health and Safety Code, or is a program specified in Section 8001 of the Penal Code.

SEC. 33. Section 23568 of the Vehicle Code is amended to read:

23568. (a) If the court grants probation to any person punished under Section 23566, in addition to the provisions of Section 23600 and any other terms and conditions imposed by the court, the court shall impose as conditions of probation that the person be confined in the county jail for at least one year, that the person pay a fine of at least three hundred ninety dollars ($390) but not more than five thousand dollars ($5,000), and that the person make restitution or reparation pursuant to Section 1203.1 of the Penal Code. The person's privilege to operate a motor vehicle shall be revoked by the Department of Motor Vehicles pursuant to paragraph (6) of subdivision (a) of Section 13352. The court shall require the person to surrender the driver's license to the court in accordance with Section 13550.

(b) In addition to Section 23600 and subdivision (a), if the court grants probation to any person punished under Section 23566, the court shall impose as a condition of probation that the person enroll in and complete, subsequent to the date of the underlying violation and in a manner satisfactory to the court, an 18-month driving-under-the-influence program licensed pursuant to Section

11836 of the Health and Safety Code or, if available in the county of the person's residence or employment, a 30-month driving-under-the-influence program licensed pursuant to Section 11836 of the Health and Safety Code, as designated by the court. The person shall complete the entire program subsequent to, and shall not be given any credit for program activities completed prior to, the date of the current violation. In lieu of the minimum term of imprisonment in subdivision (a), the court shall impose as a minimum condition of probation under this subdivision that the person be confined in the county jail for at least 30 days but not more than one year. Except as provided in this subdivision, if the court grants probation under this section, the court shall order the treatment prescribed by this subdivision, whether or not the person has previously completed a treatment program pursuant to paragraph (4) of subdivision (b) of Section 23542 or paragraph (4) of subdivision (b) of Section 23562. A person ordered to treatment pursuant to this subdivision shall apply to the court or to a board of review, as designated by the court, at the conclusion of the program to obtain the court's order of satisfaction. Only upon the granting of that order of satisfaction by the court may the program issue its certificate of successful completion and report the completion to the Department of Motor Vehicles. A failure to obtain an order of satisfaction at the conclusion of the program is a violation of probation. In order to enable all required persons to participate, each person shall pay the program costs commensurate with the person's ability to pay as determined pursuant to Section 11837.4 of the Health and Safety Code. No condition of probation required pursuant to this subdivision is a basis for reducing any other probation requirement in this section or Section 23600 or for avoiding the mandatory license revocation provisions of paragraph (6) of subdivision (a) of Section 13352.

SEC. 34. Section 827.9 of the Welfare and Institutions Code is amended to read:

827.9. (a) It is the intent of the Legislature to reaffirm its belief that records or information gathered by law enforcement agencies relating to the taking of a minor into custody, temporary custody, or detention (juvenile police records) should be confidential. Confidentiality is necessary to protect those persons from being denied various opportunities, to further the rehabilitative efforts of the juvenile justice system, and to prevent the lifelong stigma that results from having a juvenile police record. Although these records generally should remain confidential, the Legislature recognizes that certain circumstances require the release of juvenile police records to specified persons and entities. The purpose of this section is to clarify the persons and entities entitled to receive a complete copy of a juvenile police record, to specify

the persons or entities entitled to receive copies of juvenile police records with certain identifying information about other minors removed from the record, and to provide procedures for others to request a copy of a juvenile police record. This section does not govern the release of police records involving a minor who is the witness to or victim of a crime who is protected by other laws including, but not limited to, Section 841.5 of the Penal Code, Section 11167 et seq. of the Penal Code, and Section 6254 of the Government Code.

(b) Except as provided in Sections 389 and 781 of this code or Section 1203.45 of the Penal Code, a law enforcement agency shall release, upon request, a complete copy of a juvenile police record, as defined in subdivision (m), without notice or consent from the person who is the subject of the juvenile police record to the following persons or entities:

(1) Other California law enforcement agencies including the office of the Attorney General of California, any district attorney, the Department of Corrections, the Department of the Youth Authority, and any peace officer as specified in subdivision (a) of Section 830.1 of the Penal Code.

(2) School district police.

(3) Child protective agencies as defined in Section 11165.9 of the Penal Code.

(4) The attorney representing the juvenile who is the subject of the juvenile police record in a criminal or juvenile proceeding.

(5) The Department of Motor Vehicles.

(c) Except as provided in Sections 389 and 781 of this code or Section 1203.45 of the Penal Code, law enforcement agencies shall release, upon request, a copy of a juvenile police record to the following persons and entities only if identifying information pertaining to any other juvenile, within the meaning of subdivision (n), has been removed from the record:

(1) The person who is the subject of the juvenile police record.

(2) The parents or guardian of a minor who is the subject of the juvenile police record.

(3) An attorney for a parent or guardian of a minor who is the subject of the juvenile police record.

(d) (1) (A) If a person or entity listed in subdivision (c) seeks to obtain a complete copy of a juvenile police record that contains identifying information concerning the taking into custody or detention of any other juvenile, within the meaning of subdivision (n), who is not a dependent child or a ward of the juvenile court, that person or entity shall submit a completed Petition to Obtain Report of Law Enforcement Agency, as developed pursuant to subdivision (i), to the appropriate law enforcement agency. The law enforcement agency shall send a notice to the following persons that a Petition to Obtain Report of Law Enforcement Agency has been submitted to the agency:

(i) The juvenile about whom information is sought.

(ii) The parents or guardian of any minor described in subparagraph (i). The law enforcement agency shall make reasonable efforts to obtain the address of the parents or guardian.

(B) For purposes of responding to a request submitted pursuant to this subdivision, a law enforcement agency may check the Juvenile Automated Index or may contact the juvenile court to determine whether a person is a dependent child or a ward of the juvenile court and whether parental rights have been terminated or the juvenile has been emancipated.

(C) The notice sent pursuant to this subdivision shall include the following information:

(i) The identity of the person or entity requesting a copy of the juvenile police record.

(ii) A copy of the completed Petition to Obtain Report of Law Enforcement Agency.

(iii) The time period for submitting an objection to the law enforcement agency, which shall be 20 days if notice is provided by mail or confirmed fax, or 15 days if notice is provided by personal service.

(iv) The means to submit an objection.

A law enforcement agency shall issue notice pursuant to this section within 20 days of the request. If no objections are filed, the law enforcement agency shall release the juvenile police record within 15 days of the expiration of the objection period.

(D) If any objections to the disclosure of the other juvenile's information are submitted to the law enforcement agency, the law enforcement agency shall send the completed Petition to Obtain Report of Law Enforcement Agency, the objections, and a copy of the requested juvenile police record to the presiding judge of the juvenile court or, in counties with no presiding judge of the juvenile court, the judge of the juvenile court or his or her designee, to obtain authorization from the court to release a complete copy of the juvenile police record.

(2) If a person or entity listed in subdivision (c) seeks to obtain a complete copy of a juvenile police record that contains identifying information concerning the taking into custody or detention of any other juvenile, within the meaning of subdivision (n), who is a dependent child or a ward of the juvenile court, that person or entity shall submit a Petition to Obtain Report of Law Enforcement Agency, as developed pursuant to subdivision (i), to the appropriate law enforcement agency. The law enforcement agency shall send that Petition to Obtain Report of Law Enforcement Agency and a completed petition for authorization to release the information to that person or entity along with a complete copy of the requested juvenile police record to the presiding judge of the juvenile court, or, in counties with no presiding judge of the juvenile

court, the judge of the juvenile court or his or her designees. The juvenile court shall provide notice of the petition for authorization to the following persons:

(A) If the person who would be identified if the information is released is a minor who is a dependent child of the juvenile court, notice of the petition shall be provided to the following persons:

(i) The minor.

(ii) The attorney of record for the minor.

(iii) The parents or guardian of the minor, unless parental rights have been terminated.

(iv) The child protective agency responsible for the minor.

(v) The attorney representing the child protective agency responsible for the minor.

(B) If the person who would be identified if the information is released is a ward of the juvenile court, notice of the petition shall be provided to the following:

(i) The ward.

(ii) The attorney of record for the ward.

(iii) The parents or guardian of the ward if the ward is under 18 years of age, unless parental rights have been terminated.

(iv) The district attorney.

(v) The probation department.

(e) Except as otherwise provided in this section or in Sections 389 and 781 of this code or Section 1203.45 of the Penal Code, law enforcement agencies shall release copies of juvenile police records to any other person designated by court order upon the filing of a Petition to Obtain Report of Law Enforcement Agency with the juvenile court. The petition shall be filed with the presiding judge of the juvenile court, or, in counties with no presiding judge of the juvenile court, the judge of the juvenile court or his or her designee, in the county where the juvenile police record is maintained.

(f) (1) After considering the petition and any objections submitted to the juvenile court pursuant to paragraph (1) or (2) of subdivision (d), the court shall determine whether the law enforcement agency may release a complete copy of the juvenile police record to the person or entity that submitted the request.

(2) In determining whether to authorize the release of a juvenile police record, the court shall balance the interests of the juvenile who is the subject of the record, the petitioner, and the public. The juvenile court may issue orders prohibiting or limiting the release of information contained in the juvenile police record. The court may also deny the existence of a juvenile police record where the record is properly sealed or the juvenile who is the subject of the record has properly denied its existence.

(3) Prior to authorizing the release of any juvenile police record, the juvenile court shall ensure that notice and an opportunity to file an objection to the release of the record has been provided to the juvenile who is the subject of the record or who would be identified if the information is released, that person's parents or guardian if he or she is under 18 years of age, and any additional person or entity described in subdivision (d), as applicable. The period for filing an objection shall be 20 days from the date notice is given if notice is provided by mail or confirmed fax and 15 days from the date notice is given if notice is provided by personal service. If review of the petition is urgent, the petitioner may file a motion with the presiding judge of the juvenile court showing good cause why the objection period should be shortened. The court shall issue a ruling on the completed petition within 15 days of the expiration of the objection period.

(g) Any out-of-state entity comparable to the California entities listed in paragraphs (1) to (5), inclusive, of subdivision (b) shall file a petition with the presiding judge of the juvenile court in the county where the juvenile police record is maintained in order to receive a copy of a juvenile police record. A petition from that entity may be granted on an ex parte basis.

(h) Nothing in this section shall require the release of confidential victim or witness information protected by other laws including, but not limited to, Section 841.5 of the Penal Code, Section 11167 et seq. of the Penal Code, and Section 6254 of the Government Code.

(i) The Judicial Council, in consultation with the California Law Enforcement Association of Record Supervisors (CLEARS), shall develop forms for distribution by law enforcement agencies to the public to implement this section. Those forms shall include, but are not limited to, the Petition to Obtain Report of Law Enforcement Agency. The material for the public shall include information about the persons who are entitled to a copy of the juvenile police record and the specific procedures for requesting a copy of the record if a petition is necessary. The Judicial Council shall provide law enforcement agencies with suggested forms for compliance with the notice provisions set forth in subdivision (d).

(j) Any information received pursuant to subdivisions (a) to (e), inclusive, and (g) of this section shall be received in confidence for the limited purpose for which it was provided and shall not be further disseminated. An intentional violation of the confidentiality provisions of this section is a misdemeanor, punishable by a fine not to exceed five hundred dollars ($500).

(k) A court shall consider any information relating to the taking of a minor into custody, if the information is not contained in a record which has been sealed, for purposes of determining whether an adjudication of

the commission of a crime as a minor warrants a finding that there are circumstances in aggravation pursuant to Section 1170 of the Penal Code or to deny probation.

(*l*) When a law enforcement agency has been notified pursuant to Section 1155 that a minor has escaped from a secure detention facility, the law enforcement agency shall release the name of, and any descriptive information about, the minor to a person who specifically requests this information. The law enforcement agency may release the information on the minor without a request to do so if it finds that release of the information would be necessary to assist in recapturing the minor or that it would be necessary to protect the public from substantial physical harm.

(m) For purposes of this section, a ''juvenile police record'' refers to records or information relating to the taking of a minor into custody, temporary custody, or detention.

(n) For purposes of this section, with respect to a juvenile police record, "any other juvenile'' refers to additional minors who were taken into custody or temporary custody, or detained and who also could be considered a subject of the juvenile police record.

(o) An evaluation of the efficacy of the procedures for the release of police records containing information about minors as described in this section shall be conducted by the juvenile court and law enforcement in Los Angeles County and the results of that evaluation shall be reported to the Legislature on or before December 31, 2006.

(p) This section shall only apply to Los Angeles County.

SEC. 35. 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.

SEC. 36. Any section of any act, other than Senate Bill 1316, that is enacted by the Legislature during the 2002 calendar year that takes effect on or before January 1, 2003, and that amends, amends and renumbers, adds, repeals and adds, or repeals any one or more of the sections affected by this act shall prevail over this act, whether that act is enacted prior to, or subsequent to, the enactment of this act. The repeal, or repeal and addition, of any article, chapter, part, title, or division of any code by this act shall not become operative if any section of any other act that is enacted by the Legislature during the 2002 calendar year and takes effect on or before January 1, 2003, amends, amends and

renumbers, adds, repeals and adds, or repeals any section contained in that article, chapter, part, title, or division.

CHAPTER 546

An act to amend Section 21023.5 of the Government Code, relating to public employees' retirement, and making an appropriation therefor.

[Approved by Governor September 13, 2002. Filed with Secretary of State September 15, 2002.]

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

SECTION 1. Section 21023.5 of the Government Code is amended to read:

21023.5. (a) "Public service" for purposes of this article also means time served, not to exceed three years, as a volunteer in the Peace Corps, AmeriCorps VISTA (Volunteers In Service To America), or AmeriCorps.

(b) This section shall not apply to any contracting agency nor to the employees of any contracting agency until the agency elects to be subject to this section by contract or by amendment to its contract made in the manner prescribed for approval of contracts.

(c) Any member electing to receive credit for service under this section shall make the contributions as specified in Sections 21050 and 21052. This section applies to past and future service in the Peace Corps, AmeriCorps VISTA (Volunteers In Service To America), or AmeriCorps.

CHAPTER 547

An act to amend Section 56857 of the Government Code, relating to local agency formation.

[Approved by Governor September 13, 2002. Filed with Secretary of State September 15, 2002.]

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

SECTION 1. Section 56857 of the Government Code is amended to read:

56857. (a) Upon receipt by the commission of a proposed change of organization or reorganization that includes the annexation of territory to any district, if the proposal is not filed by the district to which annexation of territory is proposed, the executive officer shall place the proposal on the agenda for the next commission meeting for information purposes only, and shall transmit a copy of the proposal to any district to which an annexation of territory is requested.

(b) No later than 60 days after the date that the proposal is on the commission's meeting agenda in accordance with subdivision (a), any district to which annexation of territory is proposed may adopt and transmit to the commission a resolution requesting termination of the proceedings. The resolution requesting termination of the proceedings shall be based upon written findings supported by substantial evidence in the record that the request is justified by financial or service related concern. Prior to the commission's termination of proceedings pursuant to subdivision (c), the resolution shall be subject to judicial review.

(c) If any district to which annexation of territory is proposed has adopted and transmitted to the commission a resolution requesting termination of proceedings within the time period prescribed by, and in accordance with, subdivision (b), and if the commission has not been served with notice that judicial review of that resolution is being sought pursuant to subdivision (b), then the commission shall terminate the proceedings no sooner than 30 days from receipt of the resolution from the district.

(d) For purposes of an annexation to a district pursuant to this section or Section 56668.3:

(1) ''Financial concerns'' means that the proposed uses within the territory proposed to be annexed do not have the capacity to provide sufficient taxes, fees, and charges, including connection fees, if any, to pay for the full cost of providing services, including capital costs. Cost allocation shall be based on generally accepted accounting principles and shall be subject to all constitutional and statutory limitations on the amount of the tax, fee, or charge.

(2) ''Service concerns'' means that a district will not have the ability to provide the services that are the subject of the application to the territory proposed to be annexed without imposing level of service reductions on existing and planned future uses in the district's current service area. ''Service concerns'' does not include a situation when a district has the ability to provide the services or the services will be available prior to the time that services will be required.

(3) A district may make findings regarding financial or service concerns based on information provided in the application and any additional information provided to the district by the commission or the applicant that is relevant to determining the adequacy of existing and

planned future services to meet the probable future needs of the territory. Findings related to service or financial concerns may be based on an urban water management plan, capital improvement plan, financial statement, comprehensive annual financial report, integrated resource management plan, or other information related to the ability of a district to provide services.

(4) Nothing in this section shall be construed to create a right or entitlement to water service or any specific level of water service.

(5) Nothing in this section is intended to change existing law concerning a public water system's obligation to provide water service to its existing customers or to any potential future customers.

(e) This section shall not apply if all districts to which annexation of territory is proposed have adopted and transmitted to the commission resolutions supporting the proposed change of organization or reorganization.

CHAPTER 548

An act to amend Sections 56026, 56035, 56048, 56068, 56103, 56133, 56157, 56300, 56375, 56375.3, 56383, 56386, 56427, 56661, 56663, 56668.3, 56708, 56710, 56751, 56759, 56857, 56886, 56895, 57002, 57007, 57025, 57077, 57078.5, 57080, 57102, 57108, 57109, 57119, 57302, and 57450 of, to amend and renumber Section 56746 of, and to repeal Section 56745 of, the Government Code, relating to local agency formation.

[Approved by Governor September 13, 2002. Filed with Secretary of State September 15, 2002.]

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

SECTION 1. Section 56026 of the Government Code is amended to read:

56026. "Clerk" means the clerk or secretary of a commission, county, city, or district, or the clerk or secretary of the legislative body of a county, city, or district. Where the office of county clerk is separate from the office of the clerk of the board of supervisors, "clerk" means the clerk of the board of supervisors. Where the office of county clerk is separate from the office of the registrar of voters, "clerk" means the registrar of voters with respect to all duties pertaining to the conduct of elections and the county clerk with respect to all other duties.

SEC. 2. Section 56035 of the Government Code is amended to read:

56035. ''Dissolution'' means the dissolution, disincorporation, extinguishment, and termination of the existence of a district and the cessation of all its corporate powers, except as the commission may otherwise provide pursuant to Section 56886 or for the purpose of winding up the affairs of the district.

SEC. 3. Section 56048 of the Government Code is amended to read:

56048. (a) Except as otherwise provided in subdivision (b) or (c), ''landowner'' or ''owner of land'' means all of the following:

(1) Any person shown as the owner of land on the most recent assessment roll being prepared by the county at the time the proponent adopts a resolution of application pursuant to Section 56654 or files a notice of intention to circulate a petition with the executive officer pursuant to subdivision (a) of Section 56700.4, except where that person is no longer the owner. Where that person is no longer the owner, the landowner or owner of land is any person entitled to be shown as owner of land on the next assessment roll.

(2) Where land is subject to a recorded written agreement of sale, any person shown in the agreement as purchaser.

(3) Any public agency owning land.

(b) ''Landowner'' or ''owner of land'' does not include a public agency which owns highways, rights-of-way, easements, waterways, or canals.

SEC. 4. Section 56068 of the Government Code is amended to read:

56068. ''Proponent'' means the person or persons who file a notice of intention to circulate a petition with the executive officer pursuant to subdivision (a) of Section 56700.4, or the affected local agency or agencies that adopt a resolution of application pursuant to Section 56654.

SEC. 5. Section 56103 of the Government Code is amended to read:

56103. An action to determine the validity of any change of organization, reorganization, or sphere of influence determination completed pursuant to this division shall be brought pursuant to Chapter 9 (commencing with Section 860) of Title 10 of Part 2 of the Code of Civil Procedure.

SEC. 6. Section 56133 of the Government Code is amended to read:

56133. (a) A city or district may provide new or extended services by contract or agreement outside its jurisdictional boundaries only if it first requests and receives written approval from the commission in the affected county.

(b) The commission may authorize a city or district to provide new or extended services outside its jurisdictional boundaries but within its sphere of influence in anticipation of a later change of organization.

(c) The commission may authorize a city or district to provide new or extended services outside its jurisdictional boundaries and outside its

sphere of influence to respond to an existing or impending threat to the public health or safety of the residents of the affected territory if both of the following requirements are met:

(1) The entity applying for the contract approval has provided the commission with documentation of a threat to the health and safety of the public or the affected residents.

(2) The commission has notified any alternate service provider, including any water corporation as defined in Section 241 of the Public Utilities Code, or sewer system corporation as defined in Section 230.6 of the Public Utilities Code, that has filed a map and a statement of its service capabilities with the commission.

(d) The executive officer, within 30 days of receipt of a request for approval by a city or district of a contract to extend services outside its jurisdictional boundary, shall determine whether the request is complete and acceptable for filing or whether the request is incomplete. If a request is determined not to be complete, the executive officer shall immediately transmit that determination to the requester, specifying those parts of the request that are incomplete and the manner in which they can be made complete. When the request is deemed complete, the executive officer shall place the request on the agenda of the next commission meeting for which adequate notice can be given but not more than 90 days from the date that the request is deemed complete, unless the commission has delegated approval of those requests to the executive officer. The commission or executive officer shall approve, disapprove, or approve with conditions the contract for extended services. If the contract is disapproved or approved with conditions, the applicant may request reconsideration, citing the reasons for reconsideration.

(e) This section does not apply to contracts or agreements solely involving two or more public agencies where the public service to be provided is an alternative to, or substitute for, public services already being provided by an existing public service provider and where the level of service to be provided is consistent with the level of service contemplated by the existing service provider. This section does not apply to contracts for the transfer of nonpotable or nontreated water. This section does not apply to contracts or agreements solely involving the provision of surplus water to agricultural lands and facilities, including, but not limited to, incidental residential structures, for projects that serve conservation purposes or that directly support agricultural industries. However, prior to extending surplus water service to any project that will support or induce development, the city or district shall first request and receive written approval from the commission in the affected county. This section does not apply to an extended service that a city or district was providing on or before January 1, 2001. This section does not apply to a local publicly owned electric utility, as defined by Section 9604 of

the Public Utilities Code, providing electric services that do not involve the acquisition, construction, or installation of electric distribution facilities by the local publicly owned electric utility, outside of the utility's jurisdictional boundaries.

SEC. 7. Section 56157 of the Government Code is amended to read:

56157. When mailed notice is required to be given to:

(a) A county, city, or district, it shall be addressed to the clerk of the county, city, or district.

(b) A commission, it shall be addressed to the executive officer.

(c) Proponents, it shall be addressed to the persons so designated in the petition at the address specified in the petition.

(d) Landowners, it shall be addressed to each person to whom land is assessed, as shown upon the most recent assessment roll being prepared by the county at the time the proponent adopts a resolution of application pursuant to Section 56654 or files a notice of intention to circulate a petition with the executive officer pursuant to subdivision (a) of Section 56700.4, at the address shown upon the assessment roll and to all landowners within 300 feet of the exterior boundary of the property that is the subject of the hearing at least 21 days prior to the hearing. This requirement may be waived if proof satisfactory to the commission is presented that shows that individual notices to landowners have already been provided by the initiating agency. Notice also shall be either posted or published in accordance with Section 56153 in a newspaper of general circulation that is circulated within the affected territory 21 days prior to the hearing. If this section would require more than 1,000 notices to be mailed, then notice may be provided instead pursuant to paragraph (3) of subdivision (a) of Section 65091.

(e) Persons requesting special notice, it shall be addressed to each person who has filed a written request for special notice with the executive officer or clerk at the mailing address specified in the request.

(f) To all registered voters within the affected territory, to the address as shown on the most recent index of affidavits prepared by the county elections official at the time the proponent adopts a resolution of application pursuant to Section 56654 or files a notice of intention to circulate a petition with the executive officer pursuant to subdivision (a) of Section 56700.4 and to all registered voters within 300 feet of the exterior boundary of the property that is the subject of the hearing at least 21 days prior to the hearing. This requirement may be waived if proof satisfactory to the commission is presented that shows that individual notices to registered voters have already been provided by the initiating agency. Notice shall also either be posted or published in accordance with Section 56153 in a newspaper of general circulation that is circulated within the affected territory 21 days prior to the hearing. If this section would require more than 1,000 notices to be mailed, then notice

may instead be provided pursuant to paragraph (3) of subdivision (a) of Section 65091.

SEC. 8. Section 56300 of the Government Code is amended to read:

56300. (a) It is the intent of the Legislature that each commission, not later than January 1, 2002, shall establish written policies and procedures and exercise its powers pursuant to this part in a manner consistent with those policies and procedures and that encourages and provides planned, well-ordered, efficient urban development patterns with appropriate consideration of preserving open-space and agricultural lands within those patterns.

(b) Each commission with a proposal pending on January 1, 2001, shall, by March 31, 2001, hold a public hearing to discuss the adoption of policies and procedures to require the disclosure of contributions, expenditures, and independent expenditures authorized by Section 56100.1. Reporting requirements adopted pursuant to this section shall be effective upon the date of adoption or a later date specified in the resolution. Any commission that does not have a proposal pending on January 1, 2001, shall hold a public hearing to discuss the adoption of those policies and procedures within 90 days of submission of a proposal or at any time prior to submission of a proposal. Once a hearing has taken place under this subdivision, no subsequent hearing shall be required except by petition of 100 or more registered voters residing in the county in which the commission is located.

(c) A commission may require, through the adoption of written policies and procedures, lobbying disclosure and reporting requirements for persons who attempt to influence pending decisions by commission members, staff, or consultants. Disclosure shall be made either to the commission's executive officer, in which case it shall be posted on the commission Web site, if applicable, or to the recorder, registrar of voters, or clerk of the board of supervisors of the county in which the commission is located. Each commission that on January 1, 2001, has a pending proposal, as defined in Section 56069 shall, by March 31, 2001, hold a public hearing to discuss the adoption of policies and procedures governing lobbying disclosure authorized by this subdivision. Reporting requirements adopted pursuant to this section shall be effective upon the date of adoption or on a later date specified in the resolution. Any commission that does not have a proposal pending on January 1, 2001, shall hold a public hearing to discuss the adoption of those policies and procedures within 90 days of submission of a proposal, or at any time prior to submission of a proposal.

(d) Any public hearings required by this section may be held concurrently.

(e) The written policies and procedures adopted by the commission shall include forms to be used for various submittals to the commission

including at a minimum a form for any protests to be filed with the commission concerning any proposed organization change.

(f) (1) On or before January 1, 2002, the commission shall establish and maintain, or otherwise provide access to notices and other commission information for the public through an Internet Web site.

(2) The written policies and procedures adopted by the commission shall require that, to the extent that the commission maintains an Internet Web site, notice of all public hearings and commission meetings shall be made available in electronic format on that site.

SEC. 9. Section 56375 of the Government Code is amended to read:

56375. The commission shall have all of the following powers and duties subject to any limitations upon its jurisdiction set forth in this part:

(a) To review and approve or disapprove with or without amendment, wholly, partially, or conditionally, proposals for changes of organization or reorganization, consistent with written policies, procedures, and guidelines adopted by the commission. The commission may initiate proposals for (1) consolidation of districts, as defined in Section 56036, (2) dissolution, (3) merger, or (4) establishment of a subsidiary district, or a reorganization that includes any of these changes of organization. A commission shall have the authority to initiate only a (1) consolidation of districts, (2) dissolution, (3) merger, (4) establishment of a subsidiary district, or (5) a reorganization that includes any of these changes of organization, if that change of organization or reorganization is consistent with a recommendation or conclusion of a study prepared pursuant to Section 56378, 56425, or 56430 and the commission makes the determinations specified in subdivision (b) of Section 56881. However, a commission shall not have the power to disapprove an annexation to a city, initiated by resolution, of contiguous territory that the commission finds is any of the following:

(1) Surrounded or substantially surrounded by the city to which the annexation is proposed or by that city and a county boundary or the Pacific Ocean if the territory to be annexed is substantially developed or developing, is not prime agricultural land as defined in Section 56064, is designated for urban growth by the general plan of the annexing city, and is not within the sphere of influence of another city.

(2) Located within an urban service area that has been delineated and adopted by a commission, which is not prime agricultural land, as defined by Section 56064, and is designated for urban growth by the general plan of the annexing city.

(3) An annexation or reorganization of unincorporated islands meeting the requirements of Section 56375.3.

As a condition to the annexation of an area that is surrounded, or substantially surrounded, by the city to which the annexation is proposed, the commission may require, where consistent with the

purposes of this division, that the annexation include the entire island of surrounded, or substantially surrounded, territory.

A commission shall not impose any conditions that would directly regulate land use density or intensity, property development, or subdivision requirements. When the development purposes are not made known to the annexing city, the annexation shall be reviewed on the basis of the adopted plans and policies of the annexing city or county. A commission shall require, as a condition to annexation, that a city prezone the territory to be annexed or present evidence satisfactory to the commission that the existing development entitlements on the territory are vested or are already at buildout, and are consistent with the city's general plan. However, the commission shall not specify how, or in what manner, the territory shall be prezoned. The decision of the commission with regard to a proposal to annex territory to a city shall be based upon the general plan and prezoning of the city.

(b) With regard to a proposal for annexation or detachment of territory to, or from, a city or district or with regard to a proposal for reorganization that includes annexation or detachment, to determine whether territory proposed for annexation or detachment, as described in its resolution approving the annexation, detachment, or reorganization, is inhabited or uninhabited.

(c) With regard to a proposal for consolidation of two or more cities or districts, to determine which city or district shall be the consolidated, successor city or district.

(d) To approve the annexation of unincorporated, noncontiguous territory, subject to the limitations of Section 56742, located in the same county as that in which the city is located, and that is owned by a city and used for municipal purposes and to authorize the annexation of the territory without notice and hearing.

(e) To approve the annexation of unincorporated territory consistent with the planned and probable use of the property based upon the review of general plan and prezoning designations. No subsequent change may be made to the general plan for the annexed territory or zoning that is not in conformance to the prezoning designations for a period of two years after the completion of the annexation, unless the legislative body for the city makes a finding at a public hearing that a substantial change has occurred in circumstances that necessitate a departure from the prezoning in the application to the commission.

(f) With respect to the incorporation of a new city or the formation of a new special district, to determine the number of registered voters residing within the proposed city or special district or, for a landowner-voter special district, the number of owners of land and the assessed value of their land within the territory proposed to be included in the new special district. The number of registered voters shall be

calculated as of the time of the last report of voter registration by the county elections official to the Secretary of State prior to the date the first signature was affixed to the petition. The executive officer shall notify the petitioners of the number of registered voters resulting from this calculation. The assessed value of the land within the territory proposed to be included in a new landowner-voter special district shall be calculated as shown on the last equalized assessment roll.

(g) To adopt written procedures for the evaluation of proposals, including written definitions not inconsistent with existing state law. The commission may adopt standards for any of the factors enumerated in Section 56668. Any standards adopted by the commission shall be written.

(h) To adopt standards and procedures for the evaluation of service plans submitted pursuant to Section 56653 and the initiation of a change of organization or reorganization pursuant to subdivision (a).

(i) To make and enforce regulations for the orderly and fair conduct of hearings by the commission.

(j) To incur usual and necessary expenses for the accomplishment of its functions.

(k) To appoint and assign staff personnel and to employ or contract for professional or consulting services to carry out and effect the functions of the commission.

(*l*) To review the boundaries of the territory involved in any proposal with respect to the definiteness and certainty of those boundaries, the nonconformance of proposed boundaries with lines of assessment or ownership, and other similar matters affecting the proposed boundaries.

(m) To waive the restrictions of Section 56744 if it finds that the application of the restrictions would be detrimental to the orderly development of the community and that the area that would be enclosed by the annexation or incorporation is so located that it cannot reasonably be annexed to another city or incorporated as a new city.

(n) To waive the application of Section 25210.90 or Section 22613 of the Streets and Highways Code if it finds the application would deprive an area of a service needed to ensure the health, safety, or welfare of the residents of the area and if it finds that the waiver would not affect the ability of a city to provide any service. However, within 60 days of the inclusion of the territory within the city, the legislative body may adopt a resolution nullifying the waiver.

(o) If the proposal includes the incorporation of a city, as defined in Section 56043, or the formation of a district, as defined in Section 2215 of the Revenue and Taxation Code, the commission shall determine the property tax revenue to be exchanged by the affected local agencies pursuant to Section 56810.

(p) To authorize a city or district to provide new or extended services outside its jurisdictional boundaries pursuant to Section 56133.

(q) To enter into an agreement with the commission for an adjoining county for the purpose of determining procedures for the consideration of proposals that may affect the adjoining county or where the jurisdiction of an affected agency crosses the boundary of the adjoining county.

SEC. 10. Section 56375.3 of the Government Code is amended to read:

56375.3. (a) In addition to those powers enumerated in Section 56375, a commission shall do either of the following:

(1) Approve, after notice and hearing, the annexation to a city, and waive protest proceedings pursuant to Part 4 (commencing with Section 57000) entirely, if all of the following are true:

(A) The annexation is initiated on or after January 1, 2000, and before January 1, 2007.

(B) The annexation is proposed by resolution adopted by the affected city.

(C) The commission finds that the territory contained in the annexation proposal meets all of the requirements set forth in subdivision (b).

(2) Approve, after notice and hearing, the annexation to a city, subject to subdivision (a) of Section 57080, if all of the following are true:

(A) The annexation is initiated on or after January 1, 2007.

(B) The annexation is proposed by resolution adopted by the affected city.

(C) The commission finds that the territory contained in the annexation proposal meets all of the requirements set forth in subdivision (b).

(b) Subdivision (a) applies to territory that meets all of the following requirements:

(1) It does not exceed 75 acres in area, that area constitutes the entire island, and that island does not constitute a part of an unincorporated area that is more than 100 acres in area.

(2) The territory constitutes an entire unincorporated island located within the limits of a city, or constitutes a reorganization containing a number of individual unincorporated islands.

(3) It is surrounded in either of the following ways:

(A) Surrounded, or substantially surrounded, by the city to which annexation is proposed or by the city and a county boundary or the Pacific Ocean.

(B) Surrounded by the city to which annexation is proposed and adjacent cities.

(C) This subdivision shall not be construed to apply to any unincorporated island within a city that is a gated community where services are currently provided by a community services district.

(D) Notwithstanding any other provision of law, at the option of either the city or the county, a separate property tax transfer agreement may be agreed to between a city and a county pursuant to Section 99 of the Revenue and Taxation Code regarding an annexation subject to this subdivision without affecting any existing master tax sharing agreement between the city and county.

(4) It is substantially developed or developing. The finding required by this subparagraph shall be based upon one or more factors, including, but not limited to, any of the following factors:

(A) The availability of public utility services.

(B) The presence of public improvements.

(C) The presence of physical improvements upon the parcel or parcels within the area.

(5) It is not prime agricultural land, as defined by Section 56064.

(6) It will benefit from the annexation or is receiving benefits from the annexing city.

(c) Notwithstanding any other provision of this subdivision, this subdivision shall not apply to all or any part of that portion of the development project area referenced in subdivision (e) of Section 33492.41 of the Health and Safety Code that as of January 1, 2000, meets all of the following requirements:

(1) Is unincorporated territory.

(2) Contains at least 100 acres.

(3) Is surrounded or substantially surrounded by incorporated territory.

(4) Contains at least 100 acres zoned for commercial or industrial uses or is designated on the applicable county general plan for commercial or industrial uses.

SEC. 11. Section 56383 of the Government Code is amended to read:

56383. (a) The commission may establish a schedule of fees for the costs of proceedings taken pursuant to this division, including, but not limited to, all of the following:

(1) Filing and processing applications filed with the commission.

(2) Proceedings undertaken by the commission and any reorganization committee.

(3) Amending a sphere of influence.

(4) Reconsidering a resolution making determinations.

(b) The schedule of fees shall not exceed the estimated reasonable cost of providing the service for which the fee is charged and shall be imposed pursuant to Section 66016.

(c) The commission may require that a fee be deposited with the executive officer before any further action is taken. The deposit of the fee shall be made within the time period specified by the commission. No petition shall be deemed filed until the fee has been deposited.

(d) The commission may waive a fee if it finds that payment would be detrimental to the public interest.

(e) The signatures on a petition submitted to the commission by registered voters shall be verified by the elections official of the county and the costs of verification shall be provided for in the same manner and by the same agencies which bear the costs of verifying signatures for an initiative petition in the same county.

(f) Waiver of fees is limited to those costs incurred by the commission in the processing of a proposal.

(g) For incorporation proceedings that have been initiated by the filing of a sufficient number of voter signatures on petitions that have been verified by the county registrar of voters, the commission may, upon the receipt of a certification by the proponents that they are unable to raise sufficient funds to reimburse fees for the proceedings, take no action on the proposal and request a loan from the General Fund of an amount sufficient to cover those expenses subject to availability of an appropriation for those purposes and in accordance with any provisions of the appropriation. Repayment of the loan shall be made a condition of approval of the incorporation, if successful, and shall become an obligation of the newly formed city. Repayment shall be made within two years of the effective date of incorporation. If the proposal is denied by the commission or defeated at an election, the loan shall be forgiven.

SEC. 12. Section 56386 of the Government Code is amended to read:

56386. (a) The officers and employees of a city, county, or special district, including any local agency, school district, community college district, and any regional agency, or state agency or department, as may be necessary, or any other public agency shall furnish the executive officer with any records or information in their possession which may be necessary to assist the commission and the executive officer in their duties, including, but not limited to, the preparation of reports pursuant to Sections 56665 and 56800.

(b) Upon request by the commission or the executive officer, the county surveyor, or any other county officer, county official, or employee as the board of supervisors may designate, shall examine and report to the commission or the executive officer upon any application or other document involving any of the matters specified in subdivision (*l*) of Section 56375.

SEC. 13. Section 56427 of the Government Code is amended to read:

56427. The commission shall adopt, amend, or revise spheres of influence after a public hearing called and held for that purpose. At least 21 days prior to the date of that hearing, the executive officer shall give mailed notice of the hearing to each affected local agency or affected county, and to any interested party who has filed a written request for notice with the executive officer. In addition, at least 21 days prior to the date of that hearing, the executive officer shall cause notice of the hearing to be published in accordance with Section 56153 in a newspaper of general circulation which is circulated within the territory affected by the sphere of influence proposed to be adopted. The commission may continue from time to time any hearing called pursuant to this section.

At any hearing called and held pursuant to this section, the commission shall hear and consider oral or written testimony presented by any affected local agency or affected county or any interested person who wishes to appear.

This section shall only apply to spheres of influence adopted by the commission after January 1, 1975.

SEC. 14. Section 56661 of the Government Code is amended to read:

56661. To the extent that the commission maintains an Internet Web site, notice of all public hearings shall be made available in electronic format on that site. The executive officer shall also give mailed notice of any hearing by the commission, as provided in Sections 56155 to 56157, inclusive, by mailing notice of the hearing or transmitting by electronic mail, if available to the recipient, to all of the following persons and entities:

(a) To each affected local agency by giving notice to the legislative body and the executive officer of the agency.

(b) To the proponents, if any.

(c) To each person who has filed a written request for special notice with the executive officer.

(d) If the proposal is for any annexation or detachment, or for a reorganization providing for the formation of a new district, to each city within three miles of the exterior boundaries of the territory proposed to be annexed, detached, or formed into a new district.

(e) If the proposal is to incorporate a new city or for the formation of a district, to the affected county.

(f) If the proposal includes the formation of, or annexation of territory to, a fire protection district formed pursuant to the Fire Protection District Law of 1987, Part 3 (commencing with Section 13800) of Division 12 of the Health and Safety Code, and all or part of the affected territory has been classified as a state responsibility area, to the Director of Forestry and Fire Protection.

(g) If the proposal would result in the annexation to a city of land that is subject to a contract executed pursuant to the Williamson Act (Chapter 7 (commencing with Section 51200) of Division 1), to the Director of Conservation.

(h) To all landowners within the affected territory pursuant to the provisions of subdivision (d) of Section 56157.

(i) To all registered voters within the affected territory pursuant to the provisions of subdivision (f) of Section 56157.

SEC. 15. Section 56663 of the Government Code is amended to read:

56663. (a) If a petition for an annexation, a detachment, or a reorganization consisting solely of annexations or detachments, or both, or the formation of a county service area is signed by all of the owners of land within the affected territory of the proposed change of organization or reorganization, or if a resolution of application by a legislative body of an affected district, affected county, or affected city making a proposal for an annexation or detachment, or for a reorganization consisting solely of annexations or detachments, or both, or the formation of a county service area is accompanied by proof, satisfactory to the commission, that all the owners of land within the affected territory have given their written consent to that change of organization or reorganization, the commission may approve or disapprove the change of organization or reorganization, without notice and hearing by the commission. In those cases, the commission may also approve and conduct proceedings for the change of organization or reorganization under any of the following conditions:

(1) Without notice and hearing.

(2) Without an election.

(3) Without notice, hearing, or an election.

(b) The executive officer shall give any affected agency mailed notice of the filing of the petition or resolution of application initiating proceedings by the commission. The commission shall not, without the written consent of the subject agency, take any further action on the petition or resolution of application for 10 days following that mailing. Upon written demand by an affected local agency, filed with the executive officer during that 10-day period, the commission shall make determinations upon the petition or resolution of application only after notice and hearing on the petition or resolution of application. If no written demand is filed, the commission may make those determinations without notice and hearing. By written consent, which may be filed with the executive officer at any time, a subject agency may do any of the following:

(1) Waive the requirement of mailed notice.

(2) Consent to the commission making determinations without notice and hearing.

(3) Waive the requirement of mailed notice and consent to the commission making determinations without notice and hearing.

(c) In the case of uninhabited territory, the commission may waive protest proceedings pursuant to Part 4 (commencing with Section 57000) entirely if both of the following conditions apply:

(1) All the owners of land within the affected territory have given their written consent to the change of organization or reorganization.

(2) All subject agencies have consented in writing to a waiver of protest proceedings.

(d) In the case of inhabited city and district annexations or detachments, or both, the commission may waive protest proceedings pursuant to Part 4 (commencing with Section 57000) entirely if both of the following conditions apply:

(1) The commission has provided written notice of commission proceedings to all registered voters and landowners within the affected territory and no written opposition from registered voters or landowners within the affected territory is received prior to the conclusion of the commission meeting. The written notice shall disclose to the registered voters and landowners that unless written opposition is received regarding the proposal or the commission's intention to waive protest proceedings, that there will be no subsequent protest and election proceedings.

(2) All subject agencies have consented in writing to a waiver of protest proceedings.

SEC. 16. Section 56668.3 of the Government Code is amended to read:

56668.3. (a) If the proposed change of organization or reorganization includes a city detachment or district annexation, except a special reorganization, and the proceeding has not been terminated based upon receipt of a resolution requesting termination pursuant to either Section 56751 or Section 56857, factors to be considered by the commission shall include all of the following:

(1) In the case of district annexation, whether the proposed annexation will be for the interest of landowners or present or future inhabitants within the district and within the territory proposed to be annexed to the district.

(2) In the case of a city detachment, whether the proposed detachment will be for the interest of the landowners or present or future inhabitants within the city and within the territory proposed to be detached from the city.

(3) Any factors which may be considered by the commission as provided in Section 56668.

(4) Any resolution raising objections to the action that may be filed by an affected agency.

(5) Any other matters which the commission deems material.

(b) The commission shall give great weight to any resolution raising objections to the action that is filed by a city or a district. The commission's consideration shall be based only on financial or service related concerns expressed in the protest. Except for findings regarding the value of written protests, the commission is not required to make any express findings concerning any of the factors considered by the commission.

SEC. 17. Section 56708 of the Government Code is amended to read:

56708. If a petition is signed by owners of land, the executive officer shall cause the names of the signers on the petition to be compared with the names of the persons shown as owners of land on the most recent assessment roll being prepared by the county at the time the proponent adopts a resolution of application pursuant to Section 56654 or files a notice of intention to circulate a petition with the executive officer pursuant to subdivision (a) of Section 56700.4 and ascertain, to the extent possible, both of the following:

(a) The total number of landowners within the territory and the total assessed valuation of all land within the affected territory.

(b) The total number of landowners represented by qualified signers and the total assessed valuation of land owned by qualified signers.

SEC. 18. Section 56710 of the Government Code is amended to read:

56710. For purposes of evaluating the sufficiency of any petition signed by owners of land:

(a) The assessed value to be given land exempt from taxation or owned by a public agency shall be determined by the county assessor, at the request of the executive officer, in the same amount as the county assessor would assess that land, if the land were not exempt from taxation or owned by a public agency.

(b) The value given land held in joint tenancy or tenancy in common shall be determined in proportion to the proportionate interest of the petitioner in that land.

(c) The executive officer shall disregard the signature of any person not shown as owner on the most recent assessment roll being prepared by the county at the time the proponent adopts a resolution of application pursuant to Section 56654 or files a notice of intention to circulate a petition with the executive officer pursuant to subdivision (a) of Section 56700.4, unless prior to certification the executive officer is furnished with written evidence, satisfactory to the executive officer, that the signer meets any of the following requirements:

(1) Is a legal representative of the owner.

(2) Is entitled to be shown as owner of land on the next assessment roll.

(3) Is a purchaser of land under a recorded written agreement of sale.

(4) Is authorized to sign for, and on behalf of, any public agency owning land.

SEC. 19. Section 56745 of the Government Code is repealed.

SEC. 20. Section 56746 of the Government Code is amended and renumbered to read:

56375.4. (a) The authority to initiate, conduct, and complete any proceeding pursuant to subdivision (a) of Section 56375.3 does not apply to any territory that, after January 1, 2000, became surrounded or substantially surrounded by the city to which annexation is proposed. The authority to initiate, conduct, and complete any proceeding pursuant to paragraph (1) of subdivision (a) of Section 56375.3 shall expire January 1, 2007. The period of time between January 1, 2000, and January 1, 2007, shall not include any period of time during which, in an action pending in any court, a local agency is enjoined from conducting proceedings pursuant to paragraph (1) of subdivision (a) of Section 56375.3. Upon final disposition of that case, the previously enjoined local agency may initiate, conduct, and complete proceedings pursuant to paragraph (1) of subdivision (a) of Section 56375.3 for the same period of time as was remaining under that seven-year limit at the time the injunction commenced. However, if the remaining time is less than six months, that authority shall continue for six months following final disposition of the action.

(b) Between January 1, 2000, and January 1, 2007, no new proposal involving the same or substantially the same territory as a proposal initiated pursuant to paragraph (1) of subdivision (a) of Section 56375.3 after January 1, 2000, shall be initiated for two years after the date of adoption by the commission of a resolution terminating proceedings.

SEC. 21. Section 56751 of the Government Code is amended to read:

56751. (a) Upon receipt by the commission of a proposed change of organization or reorganization, except a special reorganization, that includes the detachment of territory from any city, the executive officer shall place the proposal on the agenda for the next commission meeting for information purposes only and shall transmit a copy of the proposal to any city from which the detachment of territory is requested.

(b) No later than 60 days after the date that the proposal is on the commission's meeting agenda in accordance with subdivision (a), a city from which the detachment of territory is proposed may adopt and transmit to the commission a resolution requesting termination of the proceedings.

(c) If the city from which the detachment of territory is proposed has adopted and transmitted to the commission a resolution requesting termination of proceedings within the time period prescribed by this section, then the commission shall terminate the proceedings upon receipt of the resolution from the city.

(d) This section shall not apply if the city from which the detachment of territory is proposed has adopted and transmitted to the commission a resolution supporting the proposed change of organization or reorganization.

SEC. 22. Section 56759 of the Government Code is amended to read:

56759. In any order approving a proposal subject to an election for an annexation or a reorganization that includes annexation of inhabited territory to a city when the assessed value of land within that territory proposed to be annexed equals one-half, or more, of that within the city, as shown by the last equalized assessment rolls, or the number of registered voters of the territory equals one-half, or more, of the number of registered voters within the city, as shown by the county register of voters, the commission shall require that an election called upon the question of confirming the annexation or reorganization shall also be called, held, and conducted within the territory of the city to which territory is proposed to be annexed.

SEC. 23. Section 56857 of the Government Code is amended to read:

56857. (a) Upon receipt by the commission of a proposed change of organization or reorganization that includes the annexation of territory to any district, if the proposal is not filed by the district to which annexation of territory is proposed, the commission shall place the proposal on the agenda for the next commission meeting for information purposes only and shall transmit a copy of the proposal to any district to which an annexation of territory is requested.

(b) No later than 60 days after the date that the proposal is on the commission's meeting agenda in accordance with subdivision (a), any district to which annexation of territory is proposed may adopt and transmit to the commission a resolution requesting termination of the proceedings.

(c) If any district to which annexation of territory is proposed has adopted and transmitted to the commission a resolution requesting termination of proceedings within the time period prescribed by this section, then the commission shall terminate the proceedings upon receipt of the resolution from the district.

(d) This section shall not apply if all districts to which annexation of territory is proposed have adopted and transmitted to the commission a

resolution supporting the proposed change of organization or reorganization.

SEC. 24. Section 56886 of the Government Code is amended to read:

56886. Any change of organization or reorganization may provide for, or be made subject to one or more of, the following terms and conditions. If a change of organization or reorganization is made subject to one or more of the following terms and conditions in the commission's resolution making determinations, the terms and conditions imposed shall constitute the exclusive terms and conditions for the change of organization or reorganization, notwithstanding the general provisions of Part 5 (commencing with Section 57300). However, none of the following terms and conditions shall directly regulate land use, property development, or subdivision requirements:

(a) The payment of a fixed or determinable amount of money, either as a lump sum or in installments, for the acquisition, transfer, use or right of use of all or any part of the existing property, real or personal, of any city, county, or district.

(b) The levying or fixing and the collection of any of the following, for the purpose of providing for any payment required pursuant to subdivision (a):

(1) Special, extraordinary, or additional taxes or assessments.

(2) Special, extraordinary, or additional service charges, rentals, or rates.

(3) Both taxes or assessments and service charges, rentals, or rates.

(c) The imposition, exemption, transfer, division, or apportionment, as among any affected cities, affected counties, affected districts, and affected territory of liability for payment of all or any part of principal, interest, and any other amounts which shall become due on account of all or any part of any outstanding or then authorized but thereafter issued bonds, including revenue bonds, or other contracts or obligations of any city, county, district, or any improvement district within a local agency, and the levying or fixing and the collection of any (1) taxes or assessments, or (2) service charges, rentals, or rates, or (3) both taxes or assessments and service charges, rentals, or rates, in the same manner as provided in the original authorization of the bonds and in the amount necessary to provide for that payment.

(d) If, as a result of any term or condition made pursuant to subdivision (c), the liability of any affected city, affected county, or affected district for payment of the principal of any bonded indebtedness is increased or decreased, the term and condition may specify the amount, if any, of that increase or decrease which shall be included in, or excluded from, the outstanding bonded indebtedness of that entity for the purpose of the application of any statute or charter provision

imposing a limitation upon the principal amount of outstanding bonded indebtedness of the entity.

(e) The formation of a new improvement district or districts or the annexation or detachment of territory to, or from, any existing improvement district or districts.

(f) The incurring of new indebtedness or liability by, or on behalf of, all or any part of any local agency, including territory being annexed to any local agency, or of any existing or proposed new improvement district within that local agency. The new indebtedness may be the obligation solely of territory to be annexed if the local agency has the authority to establish zones for incurring indebtedness. The indebtedness or liability shall be incurred substantially in accordance with the laws otherwise applicable to the local agency.

(g) The issuance and sale of any bonds, including authorized but unissued bonds of a local agency, either by that local agency or by a local agency designated as the successor to any local agency which is extinguished as a result of any change of organization or reorganization.

(h) The acquisition, improvement, disposition, sale, transfer, or division of any property, real or personal.

(i) The disposition, transfer, or division of any moneys or funds, including cash on hand and moneys due but uncollected, and any other obligations.

(j) The fixing and establishment of priorities of use, or right of use, of water, or capacity rights in any public improvements or facilities or any other property, real or personal. However, none of the terms and conditions ordered pursuant to this subdivision shall modify priorities of use, or right of use, to water, or capacity rights in any public improvements or facilities that have been fixed and established by a court or an order of the State Water Resources Control Board.

(k) The establishment, continuation, or termination of any office, department, or board, or the transfer, combining, consolidation, or separation of any offices, departments, or boards, or any of the functions of those offices, departments, or boards, if, and to the extent that, any of those matters is authorized by the principal act.

(*l*) The employment, transfer, or discharge of employees, the continuation, modification, or termination of existing employment contracts, civil service rights, seniority rights, retirement rights, and other employee benefits and rights.

(m) The designation of a city, county, or district, as the successor to any local agency that is extinguished as a result of any change of organization or reorganization, for the purpose of succeeding to all of the rights, duties, and obligations of the extinguished local agency with respect to enforcement, performance, or payment of any outstanding

bonds, including revenue bonds, or other contracts and obligations of the extinguished local agency.

(n) The designation of (1) the method for the selection of members of the legislative body of a district or (2) the number of those members, or (3) both, where the proceedings are for a consolidation, or a reorganization providing for a consolidation or formation of a new district and the principal act provides for alternative methods of that selection or for varying numbers of those members, or both.

(o) The initiation, conduct, or completion of proceedings on a proposal made under, and pursuant to, this division.

(p) The fixing of the effective date of any change of organization, subject to the limitations of Section 57202.

(q) Any terms and conditions authorized or required by the principal act with respect to any change of organization.

(r) The continuation or provision of any service provided at that time, or previously authorized to be provided by an official act of the local agency.

(s) The levying of assessments, including the imposition of a fee pursuant to Section 50029 or 66484.3 or the approval by the voters of general or special taxes. For the purposes of this section, imposition of a fee as a condition of the issuance of a building permit does not constitute direct regulation of land use, property development, or subdivision requirements.

(t) The extension or continuation of any previously authorized charge, fee, assessment, or tax by the local agency or a successor local agency in the affected territory.

(u) The transfer of authority and responsibility among any affected cities, affected counties, and affected districts for the administration of special tax and special assessment districts, including, but not limited to, the levying and collecting of special taxes and special assessments, including the determination of the annual special tax rate within authorized limits; the management of redemption, reserve, special reserve, and construction funds; the issuance of bonds which are authorized but not yet issued at the time of the transfer, including not yet issued portions or phases of bonds which are authorized; supervision of construction paid for with bond or special tax or assessment proceeds; administration of agreements to acquire public facilities and reimburse advances made to the district; and all other rights and responsibilities with respect to the levies, bonds, funds, and use of proceeds that would have applied to the local agency that created the special tax or special assessment district.

(v) Any other matters necessary or incidental to any of the terms and conditions specified in this section. If a change of organization, reorganization, or special reorganization provides for, or is made subject

to one or more of, the terms and conditions specified in this section, those terms and conditions shall be deemed to be the exclusive terms and conditions for the change of organization, reorganization, or special reorganization, and shall control over any general provisions of Part 5 (commencing with Section 57300).

SEC. 25. Section 56895 of the Government Code is amended to read:

56895. (a) When a commission has adopted a resolution making determinations, any person or affected agency may file a written request with the executive officer requesting amendments to or reconsideration of the resolution. The request shall state the specific modification to the resolution being requested and shall state what new or different facts that could not have been presented previously are claimed to warrant the reconsideration. If the request is filed by a school district that received notification pursuant to Section 56658, the commission shall consider that request at a public hearing.

(b) Notwithstanding Section 56106, the deadlines set by this section are mandatory. The person or agency shall file the written request within 30 days of the adoption of the initial or superseding resolution by the commission making determinations. If no person or agency files a timely request, the commission shall not take any action pursuant to this section.

(c) Upon receipt of a timely request, the executive officer shall not take any further action until the commission acts on the request.

(d) Upon receipt of a timely request by the executive officer, the time to file any action, including, but not limited to, an action pursuant to Section 21167 of the Public Resources Code and any provisions of Part 4 (commencing with Section 57000) governing the time within which the commission is to act shall be tolled for the time that the commission takes to act on the request.

(e) The executive officer shall place the request on the agenda of the next meeting of the commission for which notice can be given pursuant to this subdivision. The executive officer shall give notice of the consideration of the request by the commission in the same manner as for the original proposal. The executive officer may give notice in any other manner as he or she deems necessary or desirable.

(f) At that meeting, the commission shall consider the request and receive any oral or written testimony. The consideration may be continued from time to time but not to exceed 35 days from the date specified in the notice. The person or agency that filed the request may withdraw it at any time prior to the conclusion of the consideration by the commission.

(g) At the conclusion of its consideration, the commission may approve or disapprove with or without amendment, wholly, partially, or

conditionally, the request. If the commission disapproves the request, it shall not adopt a new resolution making determinations. If the commission approves the request, with or without amendment, wholly, partially, or conditionally, the commission shall adopt a resolution making determinations that shall supersede the resolution previously issued.

(h) The determinations of the commission shall be final and conclusive. No person or agency shall make any further request for the same change or a substantially similar change, as determined by the commission.

(i) Notwithstanding subdivision (h), clerical errors or mistakes may be corrected pursuant to Section 56883.

SEC. 26. Section 57002 of the Government Code is amended to read:

57002. (a) Within 35 days following the adoption of the commission's resolution making determinations, the executive officer of the commission shall set the proposal for hearing and give notice of that hearing by mailing, publication, and posting, as provided in Chapter 4 (commencing with Section 56150) of Part 1. The hearing shall not be held prior to the expiration of the reconsideration period specified in subdivision (b) of Section 56895. The date of that hearing shall not be less than 21 days, or more than 60 days, after the date the notice is given.

(b) Notwithstanding subdivision (a), for any proposal that includes an incorporation, the executive officer of the commission shall set the proposal for hearing within 15 days following the adoption of the commission's resolution making determinations. The hearing shall be set for the next regularly scheduled hearing that provides sufficient time to give public notice of that hearing by mailing, publication, and posting, as provided in Chapter 4 (commencing with Section 56150) of Part 1.

(c) Where the proceeding is for the establishment of a district of limited powers as a subsidiary district of a city, upon the request of the affected district, the date of the hearing shall be at least 90 days, but no more than 135 days, from the date the notice is given.

(d) If authorized by the commission pursuant to Section 56663, a change of organization or reorganization may be approved without notice, hearing, and election.

SEC. 27. Section 57007 of the Government Code is amended to read:

57007. Protest proceedings for a district formation shall be conducted by the commission as the conducting authority, and the procedural requirements of this division shall apply and shall prevail in the event of a conflict with the procedural requirements of the principal act of the district proposed to be formed. In the event of a conflict, the

commission shall specify the procedural requirements that apply, consistent with the requirements of Section 56100.

SEC. 28. Section 57025 of the Government Code is amended to read:

57025. (a) The executive officer of the commission shall give notice of the protest hearing to be held on the proposal by publication pursuant to Sections 56153 and 56154 and by posting pursuant to Sections 56158 and 56159.

(b) The executive officer shall also give mailed notice to each affected city, affected district, or affected county, the proponents, if any, all landowners owning land within any territory proposed to be formed into, or to be annexed to, or detached from, an improvement district within any city or district, and to persons requesting special notice, in accordance with the provisions of Sections 56155 to 56157, inclusive.

(c) In the case of a proposed change of organization or reorganization that would result in the extension of any previously authorized special tax or benefit assessment to the affected territory, the executive officer of the commission shall give mailed notice to each landowner within the affected territory.

SEC. 29. Section 57077 of the Government Code is amended to read:

57077. (a) Where a change of organization consists of a dissolution, disincorporation, incorporation, establishment of a subsidiary district, consolidation, or merger, the commission, not more than 30 days after the conclusion of the hearing, shall make a finding regarding the value of written protests filed and not withdrawn, and take one of the following actions:

(1) Terminate proceedings if a majority protest exists in accordance with Section 57078.

(2) Order the change of organization subject to confirmation of the voters, or in the case of a landowner-voter district, subject to confirmation by the landowners, unless otherwise stated in the formation provisions of the enabling statute of the district or otherwise authorized pursuant to Section 56854.

(3) Order the change of organization without election if it is a change of organization that meets the requirements of Section 56854, 57081, 57102, or 57107; otherwise, the commission shall take the action specified in paragraph (2).

(b) Where a reorganization consists of one or more dissolutions, incorporations, formations, disincorporations, mergers, establishments of subsidiary districts, consolidations, or any combination of those proposals, the commission, not more than 30 days after the conclusion of the hearing, shall make a finding regarding the value of written protests filed and not withdrawn and take one of the following actions:

(1) Terminate proceedings if a majority protest exists in accordance with Section 57078.

(2) Order the reorganization subject to confirmation of the voters, or in the case of landowner-voter districts, subject to confirmation by the landowners, unless otherwise authorized pursuant to Section 56854.

(3) Order the reorganization without election if it is a reorganization that meets the requirements of Section 56854, 57081, 57102, 57107, or 57111; otherwise, the commission shall take the action specified in paragraph (2).

SEC. 30. Section 57078.5 of the Government Code is amended to read:

57078.5. If the affected territory with respect to a proposed annexation to a city consists of (a) territories that are not contiguous to one another and (b) two or more distinct communities, as defined in the county general plan, the census unincorporated places listing, or other commonly recognized community designation, as determined by the commission, and any one community has more than 250 registered voters, any protest filed pursuant to Section 57078 shall be accounted separately for that community, unless the annexation is proposed pursuant to Section 56375.3.

SEC. 31. Section 57080 of the Government Code is amended to read:

57080. (a) With respect to a proceeding initiated on or after January 1, 2007, when approved and authorized by the commission pursuant to Section 56375.3, Sections 57050, 57051, 57052, and 57078, shall apply and Section 57075 shall not apply.

(b) The commission, not more than 30 days after conclusion of the hearing, shall make a finding regarding the value of written protests filed and not withdrawn and shall do either of the following:

(1) Terminate proceedings if written protests have been filed and not withdrawn by 50 percent or more of the registered voters within the affected territory.

(2) Order the territory annexed without an election.

SEC. 32. Section 57102 of the Government Code is amended to read:

57102. (a) In any resolution ordering a dissolution, the commission shall make findings upon one or more of the following matters:

(1) That the corporate powers have not been used, as specified in Section 56871, and that there is a reasonable probability that those powers will not be used in the future.

(2) That the district is a registered-voter district and is uninhabited.

(3) That the board of directors of the district has, by unanimous resolution, consented to the dissolution of the district.

(4) That the commission has authorized, pursuant to Section 56854, the dissolution of the district without an election.

(b) If the commission makes any of the findings specified in subdivision (a), the commission may, except as otherwise provided in Section 57103, order the dissolution of the district without election.

SEC. 33. Section 57108 of the Government Code is amended to read:

57108. At any time prior to the conclusion of the protest hearing by the commission ordering the district to be merged with or established as a subsidiary district of a city, a petition may be filed with the executive officer referring, by date of adoption, to the commission's resolution making determinations and requesting that any election upon that question be called, held, and conducted only within that district. Any petition so filed shall be immediately examined and certified by the executive officer by the same method and in the same manner as provided in Sections 56707 to 56711, inclusive, for the examination of petitions by the executive officer. The commission shall forward the proposal to the affected city, and the affected city shall call, hold, and conduct any election upon the question of a merger or the establishment of a subsidiary district only within the district to be merged or established as a subsidiary district, if the executive officer certifies that any petition so filed was signed by either of the following:

(a) In the case of a registered voter district, by not less than 10 percent of the registered voters of the district.

(b) In the case of a landowner-voter district, by not less than 10 percent of the number of landowner-voters within the district who also own not less than 10 percent of the assessed value of land within the district.

SEC. 34. Section 57109 of the Government Code is amended to read:

57109. At any time prior to the completion of the protest hearing by the commission and the adoption of a resolution ordering a reorganization that includes an incorporation and the establishment of a subsidiary district or a merger, a petition may be filed with the executive officer referring, by date of adoption, to the commission's resolution making determinations and requesting that a separate election be called, held, and conducted only within that district on the establishment of the subsidiary district or the merger. That election shall be conducted at the same time as the election on the incorporation. Any petition so filed shall be immediately examined and certified by the executive officer by the same method and in the same manner as provided in Sections 56707 to 56711, inclusive, for the examination of petitions by the executive officer. The commission shall forward the proposal to the principal county and the principal county shall call, hold,

and conduct any election upon the question of a merger or the establishment of a subsidiary district only within the district to be merged or established as a subsidiary district, if the executive officer certifies that any petition so filed was signed by either of the following:

(a) In the case of a registered voter district, by not less than 10 percent of the registered voters of the district.

(b) In the case of a landowner-voter district, by not less than 10 percent of the number of landowner-voters within the district who also own not less than 10 percent of the assessed value of land within the district.

SEC. 35. Section 57119 of the Government Code is amended to read:

57119. Notwithstanding Section 57118, any resolution ordering a special reorganization shall require the principal county to call an election in both of the following territories:

(a) The territory ordered to be detached from the city.

(b) The entire territory of the city from which the detachment is ordered to occur.

SEC. 36. Section 57302 of the Government Code is amended to read:

57302. The general provisions of this part shall apply only if the commission does not impose terms and conditions on any change of organization or reorganization pursuant to Section 56886. If a change of organization or a reorganization specifically provides for, and is made subject to any of, the terms and conditions authorized by Section 56886, the specific terms and conditions shall be deemed to be the exclusive terms and conditions of the change of organization or reorganization and shall control over the general provisions of this part. Any of those terms and conditions may be provided for, and be made applicable to, any affected county, affected city, or affected district, to all or any part of the territory of the county, city, or district, to any territory proposed to be annexed to the county, city, or district and to the owner or owners of property within that territory. The general provisions of this part shall not be construed as limiting in any manner the authority of the commission to impose one or more of the terms and conditions set forth in Section 56886.

SEC. 37. Section 57450 of the Government Code is amended to read:

57450. On and after the effective date of the dissolution of a district, the district shall be dissolved, disincorporated, and extinguished, its existence shall be terminated, and all of its corporate powers shall cease, except as the commission may otherwise provide pursuant to Section 56886 or for the purpose of winding up the affairs of the district and as otherwise provided in this chapter. The general provisions of this chapter

shall not be construed as limiting in any manner the authority of the commission to impose one or more of the terms and conditions set forth in Section 56886.

SEC. 38. 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.

CHAPTER 549

An act to add Section 1366.1 to the Health and Safety Code, relating to health care service plans.

[Approved by Governor September 14, 2002. Filed with Secretary of State September 15, 2002.]

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

SECTION 1. Section 1366.1 is added to the Health and Safety Code, to read:

1366.1. (a) The department shall adopt regulations on or before July 1, 2003, that establish an extended geographic accessibility standard for access to health care providers served by a health care service plan in counties with a population of 500,000 or less, and that, as of January 1, 2002, have two or fewer health care service plans providing coverage to the entire county in the commercial market.

(b) This section shall not apply to specialized health care service plans or health care service plan contracts that provide benefits to enrollees through any of the following:

(1) Preferred provider contracting arrangements.

(2) The Medi-Cal program.

(3) The Healthy Families program.

(c) (1) At least 30 days before a health care service plan files for modification of its license with the department in order to withdraw from a county with a population of 500,000 or less, or a portion of that county, the health care service plan shall hold a public meeting in the county or portion of the county from which it intends to withdraw, and shall do all of the following:

(A) Provide notice announcing the public meeting at least 30 days prior to the public meeting to all affected enrollees, health care providers, advocates, public officials, and other interested parties.

(B) Provide notice announcing the public meeting at least 30 days prior to the public meeting in a newspaper of general circulation within the affected county or portion of the affected county.

(C) At the public meeting, allow testimony, which may be limited to a certain length of time by the health care service plan, of all interested parties.

(D) Send a summary of the comments received at the public meeting to the department.

(E) Send a summary of the comments received at the public meeting to the Centers for Medicare and Medicaid Services if the modification would affect Medicare beneficiaries.

(F) File with the department for review, no less than 30 days prior to the date of mailing or publication, the notices required under subparagraphs (A) and (B).

(2) A representative of the department shall attend the public meeting.

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.

CHAPTER 550

An act to amend Section 1599.74 of, and to add Chapter 4 (commencing with Section 123222.1) to Part 1 of Division 106 of, the Health and Safety Code, relating to public health.

[Approved by Governor September 14, 2002. Filed with Secretary of State September 15, 2002.]

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

SECTION 1. Section 1599.74 of the Health and Safety Code is amended to read:

1599.74. (a) The department shall translate both the statutory Patients' Bill of Rights, as provided in Chapter 3.9 (commencing with Section 1599), the regulatory Patients' Bill of Rights for Skilled Nursing Facilities (commencing with Section 72527 of Title 22 of the California Administrative Code), and, if appropriate, the regulatory Patients' Bill

of Rights for Intermediate Care Facilities (commencing with Section 73523 of Title 22 of the California Administrative Code), into Spanish and Chinese, and into other languages as needed for ethnic groups representing 1 percent or more of the nursing home population in the state. The department shall also translate the Patients' Bill of Rights into Braille or have it recorded for the use of blind patients, or both. These translations shall be sent to all long-term health care facilities in the state.

(b) Every contract of admission shall contain a complete copy of both the statutory and regulatory Patients' Bill of Rights. Notwithstanding any other provision of law, the text of the Patients' Bill of Rights shall be in legible print of no less than 12-point type. If a translation has been provided by the department, the text given to non-English-speaking residents shall be in their language.

(c) The contract shall also contain a separate written acknowledgement that the resident has been informed of the Patients' Bill of Rights.

Written acknowledgement by the resident or the resident's representative must be made either on a separate document or in the agreement itself next to the clause informing the resident of these regulatory rights. Written acknowledgement by use of the signature on the agreement as a whole does not meet this requirement.

SEC. 2. Chapter 4 (commencing with Section 123222.1) is added to Part 1 of Division 106 of the Health and Safety Code, to read:

CHAPTER 4. WRITTEN MATERIALS FOR PATIENTS

123222.1. (a) Notwithstanding any other provision of law, any printed materials specified in subdivision (b), that are provided to a patient by an employee or authorized agent on behalf of a general acute care hospital, as defined in subdivision (a) of, a skilled nursing facility, as defined in subdivision (c) of, an intermediate care facility as defined in subdivision (d) of, a nursing facility, as defined in subdivision (k) of, Section 1250, or a residential care facility for the elderly, as defined in subdivision (*l*) of Section 1569.2, shall be printed in at least a 12-point font that is clear and legible.

(b) The section shall apply only to the following:

(1) Admission and discharge papers and forms from general acute care hospitals, skilled nursing facilities, intermediate care facilities, and nursing facilities.

(2) Medical and therapeutic instructions prepared by the facility specifically for an individual upon his or her discharge from a general acute care hospital, a skilled nursing facility, an intermediate care facility, or a nursing facility.

(3) Any contract for consent for hospitalization, or agreement to assume financial responsibility between a patient and any of the facilities specified in paragraph (1).

(4) Instructions and forms for advance health care directives, as defined in Section 4605 of the Probate Code.

(5) Information produced by the hospital or facility regarding the rights and responsibilities of patients or residents while receiving care at the hospital or facility, and regarding grievances and appeals, including forms and instructions.

(6) Correspondence written, printed, or produced by any of the facilities specified in paragraph (1), or a residential care facility for the elderly.

(c) Any entity described in paragraph (1) of subdivision (b), and any residential care facility for the elderly, may continue to use its supply of materials that exists on January 1, 2003, until that supply is exhausted or until January 1, 2006, whichever occurs first, and thereafter shall comply with the requirements of this section.

(d) The hospital's or facility's policies and procedures are specifically excluded from the requirements of this section.

123222.2. (a) (1) Upon admission of a patient to a skilled nursing facility, as defined in subdivision (c) of, an intermediate care facility, as defined in subdivision (d) of, or a nursing facility, as defined in subdivision (k) of, Section 1250, the facility shall ask the patient if he or she would like the facility to provide the patient's next of kin or agent under a durable power of attorney for health care with materials regarding patients' rights and responsibilities. If the patient states that he or she would like these materials to be provided, the facility shall do so, in accordance with paragraph (2).

(2) (A) The materials provided by the facility pursuant to this subdivision shall include a comprehensive Patients' Bill of Rights, as described in subdivision (d) of Section 1599.61. Until subdivision (d) of Section 1599.61 is fully implemented by the State Department of Health Services, the Patients' Bill of Rights provided pursuant to this subdivision shall include all of the following:

(i) The rights contained in Chapter 3.9 (commencing with Section 1599) of Division 2.

(ii) The resident rights applicable to skilled nursing facilities, contained in Section 72527 of Title 22 of the California Code of Regulations.

(iii) The resident rights applicable to intermediate care facilities, contained in Section 73523 of Title 22 of the California Code of Regulations.

(iv) The resident rights applicable to long-term care facilities under Sections 483.10 to 483.25, inclusive, of Title 42 of the Code of Federal Regulations.

(B) The facility may also provide written materials regarding the facility's expectations of patients and patients' responsibilities while the patient is receiving care at the facility. This paragraph shall not be construed to require the facility to create any additional written materials regarding the facility's expectations of patients and patients' responsibilities.

(b) (1) Upon admission of a patient to a general acute care hospital, as defined in subdivision (a) of Section 1250, the hospital shall ask the patient if he or she would like the hospital to provide the patient's next of kin or agent under a durable power of attorney for health care with materials regarding patients' rights and responsibilities. If the patient states that he or she would like these materials to be provided, the hospital shall do so, in accordance with paragraph (2).

(2) (A) The materials provided by the hospital pursuant to this subdivision shall include a comprehensive Patients' Bill of Rights, including the regulatory patients' rights for general acute care hospitals contained in Section 70707 of Title 22 of the California Code of Regulations, and the rights afforded to patients under Section 482.13 of Title 42 of the Code of Federal Regulations.

(B) The hospital may also provide written materials regarding the hospital's expectations of patients and patients' responsibilities while the patient is receiving care at the hospital. This paragraph shall not be construed to require the hospital to create any additional written materials regarding the hospital's expectations of patients and patients' responsibilities.

(c) Upon the request of the patient, or of the patient's next of kin or agent under a durable power of attorney for health care, a representative of any facility or hospital providing patients' rights information or other documentation described in this section shall explain the materials provided.

(d) This section shall not be construed to require the disclosure of patient information that would otherwise be exempt from disclosure.

CHAPTER 551

An act to amend the heading of Chapter 3 (commencing with Section 105100) of, to add an article heading immediately preceding Section 105100 of Chapter 3 of, and to add Article 2 (commencing with Section

105145) to Chapter 3 of, Part 4 of Division 103 of the Health and Safety Code, relating to older adults.

[Approved by Governor September 14, 2002. Filed with Secretary of State September 15, 2002.]

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

SECTION 1. The heading of Chapter 3 (commencing with Section 105100) of Part 4 of Division 103 of the Health and Safety Code is amended to read:

CHAPTER 3. GERIATRICS AND GERONTOLOGY PROGRAMS

SEC. 2. An article heading is added immediately preceding Section 105100 of Chapter 3 of Part 4 of Division 103 of the Health and Safety Code, to read:

Article 1. University of California Programs

SEC. 3. Article 2 (commencing with Section 105145) is added to Chapter 3 of Part 4 of Division 103 of the Health and Safety Code, to read:

Article 2. California State University Programs

105145. (a) It is the intent of the Legislature that California State University students who are receiving training to provide services to the senior population complete a curriculum in the field of gerontology. It is the intent of the Legislature that this curriculum be designed to instill the attitudes, knowledge, and skills the students will need to provide competent and compassionate care for older persons.

(b) It is the intent of the Legislature that the California State University system shall be responsible for developing, implementing, maintaining, and evaluating the necessary content in the curriculum.

105145.3. (a) The California State University system shall provide academic courses and training in the field of gerontology for professional service delivery personnel providing services to the senior population. For purposes of this article, ‘‘professional service delivery personnel’’ includes, but is not limited to, all of the following:

(1) Social workers.
(2) Nurses.
(3) Gerontologists.
(4) Physical therapists.
(5) Psychologists.

(b) Each of the California State University campuses that educates professional service delivery personnel shall, through its established curriculum development processes, do both of the following:

(1) Develop and implement guidelines for training in gerontology.

(2) Establish a plan for the recruitment of students to enter fields of service for the maturing California population that will ultimately lead to a higher quality service delivery system for the senior population.

105145.5. On or before January 1, 2004, the Trustees of the California State University shall submit a progress report to the Legislature on the status of the establishment and implementation of curricula in gerontology in accordance with this article.

CHAPTER 552

An act to amend Sections 5328, 15633.5, and 15763 of the Welfare and Institutions Code, relating to adult abuse.

[Approved by Governor September 14, 2002. Filed with Secretary of State September 15, 2002.]

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

SECTION 1. Section 5328 of the Welfare and Institutions Code is amended to read:

5328. All information and records obtained in the course of providing services under Division 4 (commencing with Section 4000), Division 4.1 (commencing with Section 4400), Division 4.5 (commencing with Section 4500), Division 5 (commencing with Section 5000), Division 6 (commencing with Section 6000), or Division 7 (commencing with Section 7100), to either voluntary or involuntary recipients of services shall be confidential. Information and records obtained in the course of providing similar services to either voluntary or involuntary recipients prior to 1969 shall also be confidential. Information and records shall be disclosed only in any of the following cases:

(a) In communications between qualified professional persons in the provision of services or appropriate referrals, or in the course of conservatorship proceedings. The consent of the patient, or his or her guardian or conservator shall be obtained before information or records may be disclosed by a professional person employed by a facility to a professional person not employed by the facility who does not have the medical or psychological responsibility for the patient's care.

(b) When the patient, with the approval of the physician, licensed psychologist, social worker with a master's degree in social work, or licensed marriage and family therapist, who is in charge of the patient, designates persons to whom information or records may be released, except that nothing in this article shall be construed to compel a physician, licensed psychologist, social worker with a master's degree in social work, licensed marriage and family therapist, nurse, attorney, or other professional person to reveal information that has been given to him or her in confidence by members of a patient's family. Nothing in this subdivision shall be construed to authorize a licensed marriage and family therapist to provide services or to be in charge of a patient's care beyond his or her lawful scope of practice.

(c) To the extent necessary for a recipient to make a claim, or for a claim to be made on behalf of a recipient for aid, insurance, or medical assistance to which he or she may be entitled.

(d) If the recipient of services is a minor, ward, or conservatee, and his or her parent, guardian, guardian ad litem, or conservator designates, in writing, persons to whom records or information may be disclosed, except that nothing in this article shall be construed to compel a physician, licensed psychologist, social worker with a master's degree in social work, licensed marriage and family therapist, nurse, attorney, or other professional person to reveal information that has been given to him or her in confidence by members of a patient's family.

(e) For research, provided that the Director of Mental Health or the Director of Developmental Services designates by regulation, rules for the conduct of research and requires the research to be first reviewed by the appropriate institutional review board or boards. The rules shall include, but need not be limited to, the requirement that all researchers shall sign an oath of confidentiality as follows:

_____

Date

As a condition of doing research concerning persons who have received services from ____ (fill in the facility, agency or person), I, ____, agree to obtain the prior informed consent of such persons who have received services to the maximum degree possible as determined by the appropriate institutional review board or boards for protection of human subjects reviewing my research, and I further agree not to divulge any information obtained in the course of such research to unauthorized persons, and not to publish or otherwise make public any information regarding persons who have received services such that the person who received services is identifiable.

I recognize that the unauthorized release of confidential information may make me subject to a civil action under provisions of the Welfare and Institutions Code.

(f) To the courts, as necessary to the administration of justice.

(g) To governmental law enforcement agencies as needed for the protection of federal and state elective constitutional officers and their families.

(h) To the Committee on Senate Rules or the Committee on Assembly Rules for the purposes of legislative investigation authorized by the committee.

(i) If the recipient of services who applies for life or disability insurance designates in writing the insurer to which records or information may be disclosed.

(j) To the attorney for the patient in any and all proceedings upon presentation of a release of information signed by the patient, except that when the patient is unable to sign the release, the staff of the facility, upon satisfying itself of the identity of the attorney, and of the fact that the attorney does represent the interests of the patient, may release all information and records relating to the patient except that nothing in this article shall be construed to compel a physician, licensed psychologist, social worker with a master's degree in social work, licensed marriage and family therapist, nurse, attorney, or other professional person to reveal information that has been given to him or her in confidence by members of a patient's family.

(k) Upon written agreement by a person previously confined in or otherwise treated by a facility, the professional person in charge of the facility or his or her designee may release any information, except information that has been given in confidence by members of the person's family, requested by a probation officer charged with the evaluation of the person after his or her conviction of a crime if the professional person in charge of the facility determines that the information is relevant to the evaluation. The agreement shall only be operative until sentence is passed on the crime of which the person was convicted. The confidential information released pursuant to this subdivision shall be transmitted to the court separately from the probation report and shall not be placed in the probation report. The confidential information shall remain confidential except for purposes of sentencing. After sentencing, the confidential information shall be sealed.

(*l*) Between persons who are trained and qualified to serve on multidisciplinary personnel teams pursuant to subdivision (d) of Section 18951. The information and records sought to be disclosed shall be relevant to the prevention, identification, management, or treatment of

an abused child and his or her parents pursuant to Chapter 11 (commencing with Section 18950) of Part 6 of Division 9.

(m) To county patients' rights advocates who have been given knowing voluntary authorization by a client or a guardian ad litem. The client or guardian ad litem, whoever entered into the agreement, may revoke the authorization at any time, either in writing or by oral declaration to an approved advocate.

(n) To a committee established in compliance with Sections 4070 and 5624.

(o) In providing information as described in Section 7325.5. Nothing in this subdivision shall permit the release of any information other than that described in Section 7325.5.

(p) To the county mental health director or the director's designee, or to a law enforcement officer, or to the person designated by a law enforcement agency, pursuant to Sections 5152.1 and 5250.1.

(q) If the patient gives his or her consent, information specifically pertaining to the existence of genetically handicapping conditions, as defined in Section 341.5 of the Health and Safety Code, may be released to qualified professional persons for purposes of genetic counseling for blood relatives upon request of the blood relative. For purposes of this subdivision, "qualified professional persons" means those persons with the qualifications necessary to carry out the genetic counseling duties under this subdivision as determined by the genetic disease unit established in the State Department of Health Services under Section 309 of the Health and Safety Code. If the patient does not respond or cannot respond to a request for permission to release information pursuant to this subdivision after reasonable attempts have been made over a two-week period to get a response, the information may be released upon request of the blood relative.

(r) When the patient, in the opinion of his or her psychotherapist, presents a serious danger of violence to a reasonably foreseeable victim or victims, then any of the information or records specified in this section may be released to that person or persons and to law enforcement agencies as the psychotherapist determines is needed for the protection of that person or persons. For purposes of this subdivision, "psychotherapist" means anyone so defined within Section 1010 of the Evidence Code.

(s) To persons serving on an interagency case management council established in compliance with Section 5606.6 to the extent necessary to perform its duties. This council shall attempt to obtain the consent of the client. If this consent is not given by the client, the council shall justify in the client's chart why these records are necessary for the work of the council.

(t) (1) To the designated officer of an emergency response employee, and from that designated officer to an emergency response employee regarding possible exposure to HIV or AIDS, but only to the extent necessary to comply with provisions of the Ryan White Comprehensive AIDS Resources Emergency Act of 1990 (P.L. 101-381; 42 U.S.C. Sec. 201).

(2) For purposes of this subdivision, ''designated officer'' and ''emergency response employee'' have the same meaning as these terms are used in the Ryan White Comprehensive AIDS Resources Emergency Act of 1990 (P.L. 101-381; 42 U.S.C. Sec. 201).

(3) The designated officer shall be subject to the confidentiality requirements specified in Section 120980, and may be personally liable for unauthorized release of any identifying information about the HIV results. Further, the designated officer shall inform the exposed emergency response employee that the employee is also subject to the confidentiality requirements specified in Section 120980, and may be personally liable for unauthorized release of any identifying information about the HIV test results.

(u) (1) To a law enforcement officer who personally lodges with a facility, as defined in paragraph (2), a warrant of arrest or an abstract of such a warrant showing that the person sought is wanted for a serious felony, as defined in Section 1192.7 of the Penal Code, or a violent felony, as defined in Section 667.5 of the Penal Code. The information sought and released shall be limited to whether or not the person named in the arrest warrant is presently confined in the facility. This paragraph shall be implemented with minimum disruption to health facility operations and patients, in accordance with Section 5212. If the law enforcement officer is informed that the person named in the warrant is confined in the facility, the officer may not enter the facility to arrest the person without obtaining a valid search warrant or the permission of staff of the facility.

(2) For purposes of paragraph (1), a facility means all of the following:

(A) A state hospital, as defined in Section 4001.

(B) A general acute care hospital, as defined in subdivision (a) of Section 1250 of the Health and Safety Code, solely with regard to information pertaining to a mentally disordered person subject to this section.

(C) An acute psychiatric hospital, as defined in subdivision (b) of Section 1250 of the Health and Safety Code.

(D) A psychiatric health facility, as described in Section 1250.2 of the Health and Safety Code.

(E) A mental health rehabilitation center, as described in Section 5675.

(F) A skilled nursing facility with a special treatment program for chronically mentally disordered patients, as described in Sections 51335 and 72445 to 72475, inclusive, of Title 22 of the California Code of Regulations.

(v) Between persons who are trained and qualified to serve on multidisciplinary personnel teams pursuant to Sections 15610.55, 15753.5, or 15761. The information and records sought to be disclosed shall be relevant to the prevention, identification, management, or treatment of an abused elder or dependent adult pursuant to Chapter 13 (commencing with Section 15750) of Part 3 of Division 9.

(w) The amendment of subdivision (d) enacted at the 1970 Regular Session of the Legislature does not constitute a change in, but is declaratory of, the preexisting law.

(x) This section shall not be limited by Section 5150.05 or 5332.

SEC. 2. Section 15633.5 of the Welfare and Institutions Code is amended to read:

15633.5. (a) Information relevant to the incident of elder or dependent adult abuse may be given to an investigator from an adult protective services agency, a local law enforcement agency, the office of the district attorney, the office of the public guardian, the probate court, the bureau, or an investigator of the Department of Consumer Affairs, Division of Investigation who is investigating a known or suspected case of elder or dependent adult abuse.

(b) The identity of any person who reports under this chapter shall be confidential and disclosed only among the following agencies or persons representing an agency:

(1) An adult protective services agency.

(2) A long-term care ombudsperson program.

(3) A licensing agency.

(4) A local law enforcement agency.

(5) The office of the district attorney.

(6) The office of the public guardian.

(7) The probate court.

(8) The bureau.

(9) The Department of Consumer Affairs, Division of Investigation.

(10) Counsel representing an adult protective services agency.

(c) The identity of a person who reports under this chapter may also be disclosed under the following circumstances:

(1) To the district attorney in a criminal prosecution.

(2) When a person reporting waives confidentiality.

(3) By court order.

(d) Notwithstanding subdivisions (a), (b), and (c), any person reporting pursuant to Section 15631 shall not be required to include his or her name in the report.

SEC. 3. Section 15763 of the Welfare and Institutions Code is amended to read:

15763. (a) Each county shall establish an emergency response adult protective services program that shall provide in-person response, 24 hours per day, seven days per week, to reports of abuse of an elder or a dependent adult, for the purpose of providing immediate intake or intervention, or both, with regard to new reports involving immediate life threats or imminent danger and to crises in existing cases. The program shall include policies and procedures to accomplish all of the following:

(1) Provision of case management services that include investigation of the protection issues; assessment of the person's concerns, needs, strengths, problems, and limitation; stabilization and linking the person with community services; and development of a service plan to alleviate identified problems utilizing counseling, monitoring, followup, and reassessment.

(2) Provisions for emergency shelter or in-home protection to guarantee a safe place for the elder or dependent adult to stay until the dangers at home can be resolved.

(3) Establishment of multidisciplinary teams to develop interagency treatment strategies, ensure maximum coordination with existing community resources, ensure maximum access on behalf of elders and dependent adults, and avoid duplication of efforts.

(b) (1) A county shall respond immediately to any report of imminent danger to an elder or dependent adult residing in other than a long-term care facility, as defined in Section 9701, or a residential facility, as defined in Section 1502 of the Health and Safety Code. For reports involving persons residing in a long-term care facility or a residential care facility, the county shall report to the local long-term care ombudsman program. Adult protective services staff shall consult, coordinate, and support efforts of the ombudsman program to protect vulnerable residents. Except as specified in paragraph (2), the county shall respond to all other reports of danger to an elder or dependent adult in other than a long-term care facility or residential care facility within 10 calendar days or as soon as practicably possible.

(2) An immediate or 10-day in-person response is not required when the county, based upon an evaluation of risk, determines and documents that the elder or dependent adult is not in immediate or imminent danger and that an immediate or 10-day in-person response is not necessary to protect the health or safety of the elder or dependent adult.

(3) Until criteria and standards are developed to implement paragraph (2), the county's evaluation pursuant to paragraph (2) shall include and document all of the following:

(A) The factors that led to the county's decision that an in-person response was not required.

(B) The level of risk to the elder or dependent adult, including collateral contacts.

(C) A review of previous referrals and other relevant information as indicated for the purpose of resolving or ameliorating the protection issues identified in the service plan.

(D) The need for intervention at the time.

(E) The need for protective services.

(4) On or before April 1, 2001, and annually thereafter, the State Department of Social Services shall submit a report to the Legislature regarding the number of cases, by county, out of the total number of cases reported to the counties, that were determined not to require an immediate or 10-day in-person response pursuant to paragraph (2), and the disposition of those cases.

(c) A county shall not be required to report or respond to a report pursuant to subdivision (b) that involves danger to an elder or dependent adult residing in any facility for the incarceration of prisoners that is operated by or under contract to the Federal Bureau of Prisons, the Department of Corrections, the California Department of the Youth Authority, a county sheriff's department, a city police department, or any other law enforcement agency when the abuse reportedly has occurred in that facility.

(d) A county shall provide case management services to elders and dependent adults who are determined to be in need of adult protective services for the purpose of bringing about changes in the lives of victims and to provide a safety net to enable victims to protect themselves in the future. Case management services shall include the following, to the extent services are appropriate for the individual:

(1) Investigation of the protection issues, including, but not limited to, social, medical, environmental, physical, emotional, and developmental.

(2) Assessment of the concerns and needs of the person on whom the report has been made and the concerns and needs of other members of the family and household.

(3) Analysis of problems and strengths.

(4) Establishment of a service plan for each person on whom the report has been made to alleviate the identified problems.

(5) Client input and acceptance of proposed service plans.

(6) Counseling for each client on whom a report has been made and significant others to alleviate the identified problems and to implement the service plan.

(7) Stabilizing and linking each client on whom a report has been made with community services.

(8) Monitoring and followup.

(9) Reassessments, as appropriate.

(e) To the extent resources are available, each county shall provide emergency shelter in the form of a safe haven or in-home protection for victims. Shelter and care appropriate to the needs of the victim shall be provided for frail and disabled victims who are in need of assistance with activities of daily living.

(f) Each county shall designate an adult protective services agency to establish and maintain multidisciplinary teams including, but not limited to, adult protective services, law enforcement, home health care agencies, hospitals, adult protective services staff, the public guardian, private community service agencies, public health agencies, and mental health agencies, for the purpose of providing interagency treatment strategies.

(g) Each county shall provide tangible support services, to the extent resources are available, which may include, but not be limited to, emergency food, clothing, repair or replacement of essential appliances, plumbing and electrical repair, blankets, linens, other household goods, advocacy with utility companies, and emergency response units.

SEC. 4. Section 15763 of the Welfare and Institutions Code is amended to read:

15763. (a) Each county shall establish an emergency response adult protective services program that shall provide in-person response, 24 hours per day, seven days per week, to reports of abuse of an elder or a dependent adult, for the purpose of providing immediate intake or intervention, or both, with regard to new reports involving immediate life threats or imminent danger and to crises in existing cases. The program shall include policies and procedures to accomplish all of the following:

(1) Provision of case management services that include investigation of the protection issues; assessment of the person's concerns, needs, strengths, problems, and limitation; stabilization and linking the person with community services; and development of a service plan to alleviate identified problems utilizing counseling, monitoring, followup, and reassessment.

(2) Provisions for emergency shelter or in-home protection to guarantee a safe place for the elder or dependent adult to stay until the dangers at home can be resolved.

(3) Establishment of multidisciplinary teams develop interagency treatment strategies, to ensure maximum coordination with existing community resources, ensure maximum access on behalf of elders and dependent adults, and avoid duplication of efforts.

(b) (1) A county shall respond immediately to any report of imminent danger to an elder or dependent adult residing in other than a

long-term care facility, as defined in Section 9701, or a residential facility, as defined in Section 1502 of the Health and Safety Code. For reports involving persons residing in a long-term care facility or a residential care facility, the county shall report to the local long-term care ombudsman program. Adult protective services staff shall consult, coordinate, and support efforts of the ombudsman program to protect vulnerable residents. Except as specified in paragraph (2), the county shall respond to all other reports of danger to an elder or dependent adult in other than a long-term care facility or residential care facility within 10 calendar days or as soon as practicably possible.

(2) An immediate or 10-day in-person response is not required when the county, based upon an evaluation of risk, determines and documents that the elder or dependent adult is not in immediate or imminent danger and that an immediate or 10-day in-person response is not necessary to protect the health or safety of the elder or dependent adult.

(3) The State Department of Social Services, in consultation with the County Welfare Directors Association, shall develop requirements for implementation of paragraph (2), including, but not limited to, guidelines for determining appropriate application of this section and any applicable documentation requirements.

(4) Notwithstanding Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, the department shall implement the requirements developed pursuant to paragraph (3) by means of all-county letters or similar instructions prior to adopting regulations for that purpose. Thereafter, the department shall adopt regulations to implement those requirements in accordance with the requirements of Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

(c) A county shall not be required to report or respond to a report pursuant to subdivision (b) that involves danger to an elder or dependent adult residing in any facility for the incarceration of prisoners that is operated by or under contract to the Federal Bureau of Prisons, the Department of Corrections, the California Department of Youth Authority, a county sheriff's department, a city police department, or any other law enforcement agency when the abuse reportedly has occurred in that facility.

(d) A county shall provide case management services to elders and dependent adults who are determined to be in need of adult protective services for the purpose of bringing about changes in the lives of victims and to provide a safety net to enable victims to protect themselves in the future. Case management services shall include the following, to the extent services are appropriate for the individual:

(1) Investigation of the protection issues, including, but not limited to, social, medical, environmental, physical, emotional, and developmental.

(2) Assessment of the concerns and needs of the person on whom the report has been made and the concerns and needs of other members of the family and household.

(3) Analysis of problems and strengths.

(4) Establishment of a service plan for each person on whom the report has been made to alleviate the identified problems.

(5) Client input and acceptance of proposed service plans.

(6) Counseling for each client on whom a report has been made and significant others to alleviate the identified problems and to implement the service plan.

(7) Stabilizing and linking each client on whom a report has been made with community services.

(8) Monitoring and followup.

(9) Reassessments, as appropriate.

(e) To the extent resources are available, each county shall provide emergency shelter in the form of a safe haven or in-home protection for victims. Shelter and care appropriate to the needs of the victim shall be provided for frail and disabled victims who are in need of assistance with activities of daily living.

(f) Each county shall designate an adult protective services agency to establish and maintain multidisciplinary teams including, but not limited to, adult protective services, law enforcement, home health care agencies, hospitals, adult protective services staff, the public guardian, private community service agencies, public health agencies, and mental health agencies for the purpose of providing interagency treatment strategies.

(g) Each county shall provide tangible support services, to the extent resources are available, which may include, but not be limited to, emergency food, clothing, repair or replacement of essential appliances, plumbing and electrical repair, blankets, linens, other household goods, advocacy with utility companies, and emergency response units.

SEC. 5. Section 15763 of the Welfare and Institutions Code is amended to read:

15763. (a) Each county shall establish an emergency response adult protective services program that shall provide in-person response, 24 hours per day, seven days per week, to reports of abuse of an elder or a dependent adult, for the purpose of providing immediate intake or intervention, or both, with regard to new reports involving immediate life threats or imminent danger and to crises in existing cases. The program shall include policies and procedures to accomplish all of the following:

(1) Provision of case management services that include investigation of the protection issues ; assessment of the person's concerns, needs, strengths, problems, and limitation; stabilization and linking the person with community services ; and development of a service plan to alleviate identified problems utilizing counseling, monitoring, followup, and reassessment.

(2) Provisions for emergency shelter or in-home protection to guarantee a safe place for the elder or dependent adult to stay until the dangers at home can be resolved.

(3) Establishment of multidisciplinary teams develop interagency treatment strategies, to ensure maximum coordination with existing community resources, ensure maximum access on behalf of elders and dependent adults, and avoid duplication of efforts.

(b) (1) A county shall respond immediately to any report of imminent danger to an elder or dependent adult residing in other than a long-term care facility, as defined in Section 9701, or a residential facility, as defined in Section 1502 of the Health and Safety Code. For reports involving persons residing in a long-term care facility or a residential care facility, the county shall report to the local long-term care ombudsman program. Adult protective services staff shall consult, coordinate, and support efforts of the ombudsman program to protect vulnerable residents. Except as specified in paragraph (2), the county shall respond to all other reports of danger to an elder or dependent adult in other than a long-term care facility or residential care facility within 10 calendar days or as soon as practicably possible.

(2) An immediate or 10-day in-person response is not required when the county, based upon an evaluation of risk, determines and documents that the elder or dependent adult is not in immediate or imminent danger and that an immediate or 10-day in-person response is not necessary to protect the health or safety of the elder or dependent adult.

(3) The State Department of Social Services, in consultation with the County Welfare Directors Association, shall develop requirements for implementation of paragraph (2), including, but not limited to, guidelines for determining appropriate application of this section and any applicable documentation requirements.

(4) Notwithstanding Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, the department shall implement the requirements developed pursuant to paragraph (3) by means of all-county letters or similar instructions prior to adopting regulations for that purpose. Thereafter, the department shall adopt regulations to implement those requirements in accordance with the requirements of Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

(c) A county shall not be required to report or respond to a report pursuant to subdivision (b) that involves danger to an elder or dependent adult residing in any facility for the incarceration of prisoners that is operated by or under contract to the Federal Bureau of Prisons, the Department of Corrections, the California Department of Youth Authority, a county sheriff's department, a city police department, or any other law enforcement agency when the abuse reportedly has occurred in that facility.

(d) A county shall provide case management services to elders and dependent adults who are determined to be in need of adult protective services for the purpose of bringing about changes in the lives of victims and to provide a safety net to enable victims to protect themselves in the future. Case management services shall include the following, to the extent services are appropriate for the individual:

(1) Investigation of the protection issues, including, but not limited to, social, medical, environmental, physical, emotional, and developmental.

(2) Assessment of the concerns and needs of the person on whom the report has been made and the concerns and needs of other members of the family and household.

(3) Analysis of problems and strengths.

(4) Establishment of a service plan for each person on whom the report has been made to alleviate the identified problems.

(5) Client input and acceptance of proposed service plans.

(6) Counseling for each client on whom a report has been made and significant others to alleviate the identified problems and to implement the service plan.

(7) Stabilizing and linking each client on whom a report has been made with community services.

(8) Monitoring and followup.

(9) Reassessments, as appropriate.

(e) To the extent resources are available, each county shall provide emergency shelter in the form of a safe haven or in-home protection for victims. Shelter and care appropriate to the needs of the victim shall be provided for frail and disabled victims who are in need of assistance with activities of daily living.

(f) Each county shall designate an adult protective services agency to establish and maintain multidisciplinary teams including, but not limited to, adult protective services, law enforcement, home health care agencies, hospitals, adult protective services staff, the public guardian, private community service agencies, public health agencies, and mental health agencies for the purpose of providing interagency treatment strategies.

(g) Each county shall provide tangible support services, to the extent resources are available, which may include, but not be limited to, emergency food, clothing, repair or replacement of essential appliances, plumbing and electrical repair, blankets, linens, other household goods, advocacy with utility companies, and emergency response units.

SEC. 6. Section 15763 of the Welfare and Institutions Code is amended to read:

15763. (a) Each county shall establish an emergency response adult protective services program that shall provide in-person response, 24 hours per day, seven days per week, to reports of abuse of an elder or a dependent adult, for the purpose of providing immediate intake or intervention, or both, with regard to new reports involving immediate life threats or imminent danger and to crises in existing cases. The program shall include policies and procedures to accomplish all of the following:

(1) Provision of case management services that include investigation of the protection issues ; assessment of the person's concerns, needs, strengths, problems, and limitation; stabilization and linking the person with community services ; and development of a service plan to alleviate identified problems utilizing counseling, monitoring, followup, and reassessment.

(2) Provisions for emergency shelter or in-home protection to guarantee a safe place for the elder or dependent adult to stay until the dangers at home can be resolved.

(3) Establishment of multidisciplinary teams develop interagency treatment strategies, to ensure maximum coordination with existing community resources, ensure maximum access on behalf of elders and dependent adults, and avoid duplication of efforts.

(b) (1) A county shall respond immediately to any report of imminent danger to an elder or dependent adult residing in other than a long-term care facility, as defined in Section 9701, or a residential facility, as defined in Section 1502 of the Health and Safety Code. For reports involving persons residing in a long-term care facility or a residential care facility, the county shall report to the local long-term care ombudsman program. Adult protective services staff shall consult, coordinate, and support efforts of the ombudsman program to protect vulnerable residents. Except as specified in paragraph (2), the county shall respond to all other reports of danger to an elder or dependent adult in other than a long-term care facility or residential care facility within 10 calendar days or as soon as practicably possible.

(2) An immediate or 10-day in-person response is not required when the county, based upon an evaluation of risk, determines and documents that the elder or dependent adult is not in immediate or imminent danger

and that an immediate or 10-day in-person response is not necessary to protect the health or safety of the elder or dependent adult.

(3) The State Department of Social Services, in consultation with the County Welfare Directors Association, shall develop requirements for implementation of paragraph (2), including, but not limited to, guidelines for determining appropriate application of this section and any applicable documentation requirements.

(4) Notwithstanding Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, the department shall implement the requirements developed pursuant to paragraph (3) by means of all-county letters or similar instructions prior to adopting regulations for that purpose. Thereafter, the department shall adopt regulations to implement those requirements in accordance with the requirements of Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

(c) A county shall not be required to report or respond to a report pursuant to subdivision (b) that involves danger to an elder or dependent adult residing in any facility for the incarceration of prisoners that is operated by or under contract to the Federal Bureau of Prisons, the Department of Corrections, the California Department of Youth Authority, a county sheriff's department, a city police department, or any other law enforcement agency when the abuse reportedly has occurred in that facility.

(d) A county shall provide case management services to elders and dependent adults who are determined to be in need of adult protective services for the purpose of bringing about changes in the lives of victims and to provide a safety net to enable victims to protect themselves in the future. Case management services shall include the following, to the extent services are appropriate for the individual:

(1) Investigation of the protection issues, including, but not limited to, social, medical, environmental, physical, emotional, and developmental.

(2) Assessment of the concerns and needs of the person on whom the report has been made and the concerns and needs of other members of the family and household.

(3) Analysis of problems and strengths.

(4) Establishment of a service plan for each person on whom the report has been made to alleviate the identified problems.

(5) Client input and acceptance of proposed service plans.

(6) Counseling for each client on whom a report has been made and significant others to alleviate the identified problems and to implement the service plan.

(7) Stabilizing and linking each client on whom a report has been made with community services.

(8) Monitoring and followup.

(9) Reassessments, as appropriate.

(e) To the extent resources are available, each county shall provide emergency shelter in the form of a safe haven or in-home protection for victims. Shelter and care appropriate to the needs of the victim shall be provided for frail and disabled victims who are in need of assistance with activities of daily living.

(f) Each county shall designate an adult protective services agency to establish and maintain multidisciplinary teams including, but not limited to, adult protective services, law enforcement, home health care agencies, hospitals, adult protective services staff, the public guardian, private community service agencies, public health agencies, and mental health agencies for the purpose of providing interagency treatment strategies.

(g) Each county shall provide tangible support services, to the extent resources are available, which may include, but not be limited to, emergency food, clothing, repair or replacement of essential appliances, plumbing and electrical repair, blankets, linens, other household goods, advocacy with utility companies, and emergency response units.

SEC. 7. (a) Section 4 of this bill incorporates amendments to Section 15763 of the Welfare and Institutions Code proposed by both this bill and AB 444. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2003, (2) each bill amends Section 15763 of the Welfare and Institutions Code, and (3) SB 1845 is not enacted or as enacted does not amend that section, and (4) this bill is enacted after AB 444, in which case Section 15763 of the Welfare and Institutions Code, as amended by AB 444, shall remain operative only until the operative date of this bill, at which time Section 4 of this bill shall become operative and Sections 3, 5, and 6 of this bill shall not become operative.

(b) Section 5 of this bill incorporates amendments to Section 15763 of the Welfare and Institutions Code proposed by both this bill and SB 1845. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2003, (2) each bill amends Section 15763 of the Welfare and Institutions Code, (3) AB 444 is not enacted or as enacted does not amend that section, and (4) this bill is enacted after SB 1845, in which case Section 15763 of the Welfare and Institutions Code, as amended by SB 1845, shall remain operative only until the operative date of the bill, at which time Section 5 of this bill shall become operative and Sections 3, 4, and 6 of this bill shall not become operative.

(c) Section 6 of this bill incorporates amendments to Section 15763 of the Welfare and Institutions Code proposed by this bill, AB 444, and SB 1845. It shall only become operative if (1) all three bills are enacted

and become effective on or before January 1, 2003, (2) all three bills amend Section 15763 of the Welfare and Institutions Code, and (3) this bill is enacted after AB 444 and SB 1845, in which case Section 15763 of the Welfare and Institutions Code, as amended by AB 444, shall remain operative only until the operative date of this bill, at which time Section 6 of this bill shall become operative and Sections 3, 4, and 5 of this bill shall not become operative.

CHAPTER 553

An act to amend Sections 1771.7, 1771.8, 1776.3, 1777, and 1793.9 of the Health and Safety Code, relating to care facilities.

[Approved by Governor September 14, 2002. Filed with Secretary of State September 15, 2002.]

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

SECTION 1. Section 1771.7 of the Health and Safety Code is amended to read:

1771.7. (a) No resident of any continuing care retirement community shall be deprived of any civil or legal right, benefit, or privilege guaranteed by law, by the California Constitution, or by the United States Constitution solely by reason of status as a resident of a community. In addition, because of the discretely different character of residential living unit programs that are a part of continuing care retirement communities, this section shall augment Chapter 3.9 (commencing with Section 1599), Section 73523 of Title 22 of the California Code of Regulations, and applicable federal law and regulations.

(b) All residents in residential living units shall have all of the following rights:

(1) To live in an attractive, safe, and well maintained physical environment.

(2) To live in an environment that enhances personal dignity, maintains independence, and encourages self-determination.

(3) To participate in activities that meet individual physical, intellectual, social, and spiritual needs.

(4) To expect effective channels of communication between residents and staff, and between residents and the administration or provider's governing body.

(5) To receive a clear and complete written contract that establishes the mutual rights and obligations of the resident and the continuing care retirement community.

(6) To maintain and establish ties to the local community.

(7) To organize and participate freely in the operation of resident associations.

(c) A continuing care retirement community shall maintain an environment that enhances the residents' self-determination and independence. The provider shall do both of the following:

(1) Permit the formation of a resident association by interested residents who may elect a governing body. The provider shall 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 association may, among other things, make recommendations to management regarding resident issues that impact the residents' quality of life. Meetings shall be open to all residents to attend as well as to present issues. Executive sessions of the governing body shall be attended only by the governing body.

(2) Establish policies and procedures that promote the sharing of information, dialogue between residents and management, and access to the provider's governing body. The provider shall biannually conduct a resident satisfaction survey that shall be made available to the resident association or its governing body, or, if neither exists, to a committee of residents at least 14 days prior to the next semiannual meeting of residents and the governing board of the provider required by subdivision (c) of Section 1771.8. A copy of the survey shall be posted in a conspicuous location at each facility.

(d) In addition to any statutory or regulatory bill of rights required to be provided to residents of residential care facilities for the elderly or skilled nursing facilities, the provider shall provide a copy of the bill of rights prescribed by this section to each resident at or before the resident's admission to the community.

(e) The department may, upon receiving a complaint of a violation of 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 Advisory Committee for determination of compliance.

(f) Failure to comply with this section shall be grounds for suspension, condition, or revocation of the provisional certificate of authority or certificate of authority pursuant to Section 1793.21.

SEC. 2. Section 1771.8 of the Health and Safety Code is amended to read:

1771.8. (a) The Legislature finds and declares all of the following:

(1) The residents of continuing care retirement communities have a unique and valuable perspective on the operations of and services provided in the community in which they live.

(2) Resident input into decisions made by the provider is an important factor in creating an environment of cooperation, reducing conflict, and ensuring timely response and resolution to issues that may arise.

(3) Continuing care retirement communities are strengthened when residents know that their views are heard and respected.

(b) The Legislature encourages continuing care retirement communities to exceed the minimum resident participation requirements established by this section by, among other things, the following:

(1) Encouraging residents to form a resident association, and assisting the residents, the resident association, and its governing body to keep informed about the operation of the continuing care retirement community.

(2) Encouraging residents of a continuing care retirement community or their elected representatives to select residents to participate as board members of the governing body of the provider.

(3) Quickly and fairly resolving any dispute, claim, or grievance arising between a resident and the continuing care retirement community.

(c) The governing body of a provider, or the designated representative of the provider, shall hold, at a minimum, semiannual meetings with the residents of the continuing care retirement community, or the resident association or its governing body, for the purpose of the free discussion of subjects including, but not limited to, income, expenditures, and financial trends and issues as they apply to the continuing care retirement community and proposed changes in policies, programs, and services. Nothing in this section precludes a provider from taking action or making a decision at any time, without regard to the meetings required under this subdivision.

(d) At least 30 days prior to the implementation of any increase in the monthly care fee, the designated representative of the provider shall convene a meeting, to which all residents shall be invited, for the purpose of discussing the reasons for the increase, the basis for determining the amount of the increase, and the data used for calculating the increase. This meeting may coincide with the semiannual meetings provided for in subdivision (c). At least 14 days prior to the meeting to discuss any increase in the monthly care fee, the provider shall make available to each resident or resident household comparative data showing the budget for the upcoming year, the current year's budget, and actual and

projected expenses for the current year, and a copy shall be posted in a conspicuous location at each facility.

(e) The governing body of a provider or the designated representative of the provider shall provide residents with at least 14 days' advance notice of each meeting provided for in subdivisions (c) and (d), and shall permit residents attending the meeting to present issues orally and in writing. The governing body of a provider or the designated representative of the provider shall post the notice of, and the agenda for, the meeting in a conspicuous place in the continuing care retirement community at least 14 days prior to the meeting. The governing body of a provider or the designated representative of the provider shall make available to residents of the continuing care retirement community upon request the agenda and accompanying materials at least seven days prior to the meeting.

(f) Each provider shall make available to the resident association or its governing body, or if neither exists, to a committee of residents, a financial statement of activities for that facility comparing actual costs to budgeted costs broken down by expense category, not less than semiannually, and shall consult with the resident association or its governing body, or, if neither exists, with a committee of residents, during the annual budget planning process. The effectiveness of consultations during the annual budget planning process shall be evaluated at a minimum every two years by the continuing care retirement community administration. The evaluation, including any policies adopted relating to cooperation with residents, shall be made available to the resident association or its governing body, or, if neither exists, to a committee of residents at least 14 days prior to the next semiannual meeting of residents and the provider's governing body provided for in subdivision (c), and a copy of the evaluation shall be posted in a conspicuous location at each facility.

(g) Each provider shall, within 10 days after the annual report required pursuant to Section 1790 is submitted to the department, provide, at a central and conspicuous location in the community, a copy of the annual report, including the multifacility statement of activities, and including a copy of the annual audited financial statement, but excluding personal confidential information.

(h) Each provider shall maintain, as public information, available upon request to residents, prospective residents, and the public, minutes of the board of director's meetings and shall retain these records for at least three years from the date the records were filed or issued.

(i) The governing body of a provider that is not part of a multifacility organization with more than one continuing care retirement community in the state shall accept at least one resident of the continuing care

retirement community it operates to participate as a nonvoting resident representative to the provider's governing body.

(j) In a multifacility organization having more than one continuing care retirement community in the state, the governing body of the multifacility organization shall elect either to have at least one nonvoting resident representative to the provider's governing body for each California-based continuing care retirement community the provider operates or to have a resident-elected committee composed of representatives of the residents of each California-based continuing care retirement community that the provider operates select or nominate at least one nonvoting resident representative to the provider's governing body for every three California-based continuing care retirement communities or fraction thereof that the provider operates. If a multifacility organization elects to have one representative for every three communities that the provider operates, the provider shall provide to the president of the residents association of each of the communities that do not have a resident representative, the same notice of board meetings, board packets, minutes, and other materials as the resident representative. At the reasonable discretion of the provider, information related to litigation, personnel, competitive advantage, or confidential information that is not appropriate to disclose, may be withheld.

(k) In order to encourage innovative and alternative models of resident involvement, a resident selected pursuant to subdivision (i) to participate as a resident representative to the provider's governing body may, at the option of the resident association, be selected in any one of the following ways:

(1) By a majority vote of the resident association of a provider or by a majority vote of a resident-elected committee of residents of a multifacility organization.

(2) If no resident association exists, any resident may organize a meeting of the majority of the residents of the continuing care retirement community to select or nominate residents to represent them before the governing body.

(3) Any other method designated by the resident association.

(*l*) The resident association, or organizing resident, or in the case of a multifacility organization, the resident-elected committee of residents, shall give residents of the continuing care retirement community at least 30 days' advance notice of the meeting to select a resident representative and shall post the notice in a conspicuous place at the continuing care retirement community.

(m) (1) Except as provided in subdivision (n), the resident representative shall receive the same notice of board meetings, board packets, minutes, and other materials as members and shall be permitted to attend, speak, and participate in all meetings of the board.

(2) Resident representatives may share information from board meetings with other residents, unless the information is confidential or doing so would violate fiduciary duties to the provider. In addition, a resident representative shall be permitted to attend meetings of the board committee or committees that review the annual budget of the facility or facilities and recommend increases in monthly care fees. The resident shall receive the same notice of committee meetings, information packets, minutes, and other materials as committee members, and shall be permitted to attend, speak at, and participate in, committee meetings. Resident representatives shall perform their duties in good faith and with such care, including reasonable inquiry, as an ordinarily prudent person in a like position would use under similar circumstances.

(n) Notwithstanding subdivision (m), the governing body may exclude resident representatives from its executive sessions and from receiving board materials to be discussed during executive session. However, resident representatives shall be included in executive sessions and shall receive all board materials to be discussed during executive sessions related to discussions of the annual budgets, increases in monthly care fees, indebtedness, and expansion of new and existing continuing care retirement communities.

(o) The provider shall pay all reasonable travel costs for the resident representative.

(p) The provider shall disclose in writing the extent of resident involvement with the board to prospective residents.

(q) Nothing in this section prohibits a provider from exceeding the minimum resident participation requirements of this section by, for example, having more resident meetings or more resident representatives to the board than required or by having one or more residents on the provider's governing body who are selected with the active involvement of residents.

(r) On or before April 1, 2003, the department, with input from the Continuing Care Advisory Committee of the department established pursuant to Section 1777, shall do all of the following:

(1) Make recommendations to the Legislature as to whether any changes in current law regarding resident representation to the board is needed.

(2) Provide written guidelines available to residents and providers that address issues related to board participation, including rights and responsibilities, and that provide guidance on the extent to which resident representatives who are not voting members of the board have a duty of care, loyalty, and obedience to the provider and the extent to which providers can classify information as confidential and not subject to disclosure by resident representatives to other residents.

SEC. 3. Section 1776.3 of the Health and Safety Code is amended to read:

1776.3. (a) The Continuing Care Contracts Branch of the department shall enter and review each continuing care retirement community in the state at least once every three years to augment the branch's assessment of the provider's financial soundness.

(b) During its facility visits, the branch shall consider the condition of the facility, whether the facility is operating in compliance with applicable state law, and whether the provider is performing the services it has specified in its continuing care contracts.

(c) The branch shall issue guidelines that require each provider to adopt a comprehensive disaster preparedness plan, update that plan at least every three years, submit a copy to the department, and make copies available to residents in a prominent location in each continuing care retirement community facility.

(d) (1) The branch shall respond within 15 business days to residents' rights, service-related, and financially related complaints by residents, and shall furnish to residents upon request and within 15 business days any document or report filed with the department by a continuing care provider, except documents protected by privacy laws.

(2) The branch shall provide the Continuing Care Contracts Advisory Committee with a summary of all residents' rights, service-related, and financially related complaints by residents. The provider shall disclose any citation issued by the department pursuant to Section 1793.6 in its disclosure statement to residents as updated annually, and shall post a notice of the citation in a conspicuous location in the facility. The notice shall include a statement indicating that residents may obtain additional information regarding the citation from the provider and the department.

(e) The branch shall annually review, summarize, and report to the director on the work of the Continuing Care Contracts Advisory Committee, including any issues arising from its review of the condition of any continuing care retirement community or any continuing care retirement community provider, and including any recommendations for actions by the committee, the department, or the Legislature to improve oversight of continuing care retirement community.

SEC. 4. Section 1777 of the Health and Safety Code is amended to read:

1777. (a) The Continuing Care Advisory Committee of the department 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 in odd years. One member shall be appointed by the Speaker of the Assembly 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, all of whom shall be residents of continuing care retirement communities but not residents of the same provider. One senior citizen member shall be appointed by the Governor in even years. One senior citizen member shall be appointed by the Senate Committee on Rules in odd years. One senior citizen member shall be appointed by the Speaker of the Assembly in odd years.

(3) A certified public accountant with experience in the continuing 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.

(6) One representative of residents of continuing care retirement communities appointed by the senior citizen representatives on the committee.

(7) One representative of either nonprofit or for-profit providers appointed by the representatives of nonprofit and for-provider providers on the committee.

(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. The appointing power shall fill all vacancies on the committee within 60 days. All 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 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 travel expenses incurred in the course of their duties. Reimbursement of travel expenses shall be at rates not to exceed those applicable to comparable state employees under Department of Personnel Administration regulations.

(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 by the same power to fulfill the remainder of the term.

SEC. 5. Section 1793.9 of the Health and Safety Code is amended to read:

1793.9. (a) In the event of receivership or liquidation, all claims made against a provider based on the provider's continuing care contracts shall be preferred claims against all assets owned by the provider. However, these preferred claims shall be subject to any perfected claims secured by the provider's assets.

(b) If the provider is liquidated, residents who have executed a refundable continuing care contract shall have a preferred claim to liquid assets held in the refund reserve pursuant to Section 1792.6. This preferred claim shall be superior to all other claims from residents without refundable contracts or other creditors. If this fund and any other available assets are not sufficient to fulfill the refund obligations, each resident shall be distributed a proportionate amount of the refund reserve funds 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 are not required to be deducted from the value of real or personal property.

CHAPTER 554

An act to amend Section 1336.2 of the Health and Safety Code, relating to care facilities.

[Approved by Governor September 14, 2002. Filed with Secretary of State September 15, 2002.]

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

SECTION 1. Section 1336.2 of the Health and Safety Code is amended to read:

1336.2. (a) Before residents are transferred due to any change in the status of the license or operation of a facility, including a facility closure or voluntary or involuntary termination of a facility's Medi-Cal or Medicare certification, the facility shall take reasonable steps to transfer

affected residents safely and minimize possible transfer trauma by, at a minimum, doing all of the following:

(1) Be responsible for ensuring that the resident's attending physician, if available, or a facility medical director, if available, completes the medical assessment of the resident's condition and susceptibility to adverse health consequences, including psychosocial effects, prior to written notice of transfer being given to the resident. The assessment shall not be considered complete unless it provides, in accordance with these assessments, recommendations for counseling, followup visits, and other recommended services, by designated health professionals, and for preventing or ameliorating potential adverse health consequences in the event of transfer.

(2) Be responsible for ensuring that the facility nursing staff and activity director complete an assessment of the social and physical functioning of the resident based on the relevant portions of the minimum data set, as described in Section 14110.15 of the Welfare and Institutions Code, before written notice of transfer is given to the resident. The assessment shall not be considered complete unless it provides recommendations for preventing or ameliorating potential adverse health consequences in the event of transfer. The assessment may be amended because of a change in the resident's health care needs. The assessment shall also include a recommendation for the type of facility that would best meet the resident's needs.

(3) Be responsible for evaluating the relocation needs of the resident including proximity to the resident's representative and determine the most appropriate and available type of future care and services for the resident before written notice of transfer is given to the resident or the resident's representative. The health facility shall discuss the evaluation and medical assessment with the resident or the resident's representative and make the evaluation and assessment part of the medical records for transfer.

If the resident or resident's representative chooses to make a transfer prior to completion of assessments, the facility shall inform the resident or the resident's representative, in writing, of the importance of obtaining the assessments and followup consultation.

(4) At least 30 days in advance of the transfer, inform the resident or the resident's representative of alternative facilities that are available and adequate to meet resident and family needs.

(5) Arrange for appropriate future medical care and services, unless the resident or resident's representative has otherwise made these arrangements. This requirement does not obligate a facility to pay for future care and services.

(b) The facility shall provide an appropriate team of professional staff to perform the services required in subdivision (a).

(c) The facility shall also give written notice to affected residents or their representatives, advising them of the requirements in subdivision (a) at least 30 days in advance of transfer. If a facility is required to give written notice pursuant to Section 1336, then the notice shall advise the affected resident or resident's representative of the requirements in subdivision (a). If the transfer is made pursuant to subdivision (g), the notice shall include notification to the resident or resident's representative that the transfer plan is available to the resident or resident's representative free of charge upon request.

(d) In the event of a temporary suspension of a facility's license pursuant to Section 1296, the 30-day notice requirement in subdivision (c) shall not apply, but the facility shall provide the relocation services required in subdivision (a) unless the department provides the services pursuant to subdivision (f).

(e) The department may make available assistance for the placement of hard-to-place residents based on the department's determination of the benefit and necessity of that assistance. A hard-to-place resident is a resident whose level of care, physical malady, or behavioral management needs are substantially beyond the norm.

(f) The department may provide, or arrange for the provision of, necessary relocation services at a facility, including medical assessments, counseling, and placement of patients, if the department determines that these services are needed promptly to prevent adverse health consequences to patients, and the facility refuses, or does not have adequate staffing, to provide the services. In these cases, the facility or the licensee shall reimburse the department for the cost of providing the relocation services. The department's participation shall not relieve the facility of any responsibility under this section. If the department does not provide or arrange for the provision of the necessary relocation services, and the facility refuses to provide the relocation services required in subdivision (a), then the department shall request that the Attorney General's office or the local district attorney's office seek injunctive relief and damages in the same manner as provided for in Chapter 5 (commencing with Section 17200) of Part 2 of Division 7 of the Business and Professions Code.

(g) If 10 or more residents are likely to be transferred due to any voluntary or involuntary change in the status of the license or operation of a facility, including a facility closure or voluntary or involuntary termination of a facility's Medi-Cal or Medicare certification, the facility shall submit a proposed relocation plan for the affected residents to the department for approval at least 15 days prior to the written transfer notification given to any resident or resident's representative. The plan shall provide for implementation of the relocation services in subdivision (a) and shall describe the availability of beds in the area for

residents to be transferred, the proposed discharge process, and the staffing available to assist in the transfers. The plan shall become effective upon the date the department grants its approval. The department shall base its approval of a relocation plan on the standards specified in this section. The department shall promptly either approve or reject the plan within 10 working days of receipt from the facility. If the department rejects the plan, the facility may resubmit amended relocation plans, each of which the department shall promptly either approve or reject within 10 working days of receipt from the facility. Until one plan has been approved by the department, and until the facility complies with the requirements in subdivision (a), the facility may not issue a notice of transfer. The facility shall submit the relocation plan to the local long-term care ombudsman at the same time the plan is submitted to the department.

(h) The resident shall have the right to remain in the facility for up to 60 days after the approved written notice of the facility's intent to transfer the resident if an appropriate placement based on the relocation assessment and relocation recommendations has not been made. The facility shall be required to maintain an appropriate level of staffing in order to ensure the well-being of all the residents as they continue to reside in the facility. The department shall monitor the facility's staging of transfers, and, if it determines that the facility's staging of placements is causing a detrimental impact on those residents being transferred, then the department shall limit the number of residents being transferred per day until the department determines that it would be safe to increase the numbers.

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.

CHAPTER 555

An act to amend Sections 1358.11 and 1358.12 of the Health and Safety Code, and to amend Sections 10192.11 and 10192.12 of the Insurance Code, relating to health care coverage.

[Approved by Governor September 14, 2002. Filed with Secretary of State September 15, 2002.]

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

SECTION 1. Section 1358.11 of the Health and Safety Code is amended to read:

1358.11. (a) An issuer shall not deny or condition the offering or effectiveness of any Medicare supplement contract available for sale in this state, nor discriminate in the pricing of a contract because of the health status, claims experience, receipt of health care, or medical condition of an applicant in the case of an application for a contract that is submitted prior to or during the six-month period beginning with the first day of the first month in which an individual is both 65 years of age or older and is enrolled for benefits under Medicare Part B. Each Medicare supplement contract currently available from an issuer shall be made available to all applicants who qualify under this subdivision and are 65 years of age or older. Medicare supplement contracts A, B, C, F, and at least one letter-designated plan (H, I, or J, at the discretion of the issuer) that includes coverage for prescription medications, if currently available from an issuer, shall be made available to any applicant who qualifies under this subdivision who is 64 years of age or younger and who does not have End-Stage Renal Disease. This section and Section 1358.12 do not prohibit an issuer in determining subscriber rates from treating applicants who are under 65 years of age and are eligible for Medicare Part B as a separate risk classification.

(b) (1) If an applicant qualifies under subdivision (a) and submits an application during the time period referenced in subdivision (a) and, as of the date of application, has had a continuous period of creditable coverage of at least six months, the issuer shall not exclude benefits based on a preexisting condition.

(2) If the applicant qualifies under subdivision (a) and submits an application during the time period referenced in subdivision (a) and, as of the date of application, has had a continuous period of creditable coverage that is less than six months, the issuer shall reduce the period of any preexisting condition exclusion by the aggregate of the period of creditable coverage applicable to the applicant as of the enrollment date. The manner of the reduction under this subdivision shall be as specified by the director.

(c) Except as provided in subdivision (b) and Section 1358.23, subdivision (a) shall not be construed as preventing the exclusion of benefits under a contract, during the first six months, based on a preexisting condition for which the enrollee received treatment or was otherwise diagnosed during the six months before the coverage became effective.

(d) An individual enrolled in Medicare by reason of disability shall be entitled to open enrollment described in this section for six months

after he or she enrolled in Medicare Part B, or if notified retroactively of his or her eligibility for Medicare, for six months following notice of eligibility. Sales during the open enrollment period shall not be discouraged by any means, including the altering of the commission structure.

There shall be a one-time open enrollment period of 90 days commencing on January 1, 2004, for all individuals eligible for Medicare by reason of disability who do not have End-Stage Renal Disease and who did not use the prior one-time open enrollment that commenced on January 1, 2001. Notice of this one-time open enrollment right shall be publicized on the Web sites of the Department of Managed Health Care, the Department of Insurance, and the Department of Aging, through those departments' written materials directed to Medicare beneficiaries, and by the Health Insurance Counseling Advisory Program (HICAP), beginning January 1, 2003.

(e) An individual enrolled in Medicare Part B is entitled to open enrollment described in this section for six months following:

(1) Receipt of a notice of termination or loss of eligibility due to the divorce or death of a spouse or, if no notice is received, the effective date of termination or loss of eligibility due to the divorce or death of a spouse, from any employer-sponsored health plan including an employer-sponsored retiree health plan. For purposes of this section, ''employer-sponsored retiree health plan'' includes any coverage for medical expenses that is directly or indirectly sponsored or established by an employer for employees or retirees, their spouses, dependents, or other included covered persons.

(2) Termination of health care services for a military retiree or the retiree's Medicare eligible spouse or dependent as a result of a military base closure or loss of access to health care services because the base no longer offers services or because the individual relocates.

(f) An individual enrolled in Medicare Part B is entitled to open enrollment described in this section if the individual was covered under a policy, certificate, or contract providing Medicare supplement coverage but that coverage terminated because the individual established residence at a location not served by the issuer.

(g) (1) An individual whose coverage was terminated by a Medicare managed care plan shall be entitled to an additional 60-day open enrollment period to be added on to and run consecutively after any open enrollment period authorized by federal law or regulation, for any and all Medicare supplement coverage available on a guaranteed basis under state and federal law or regulations for persons terminated by their Medicare managed care plan.

(2) Health plans that terminate Medicare enrollees shall notify those enrollees in the termination notice of the additional open enrollment

period authorized by this subdivision. Health plan notices shall inform enrollees of the opportunity to secure advice and assistance from the HICAP in their area, along with the toll-free telephone number for HICAP.

(h) An individual shall be entitled to an annual open enrollment period lasting 30 days or more, commencing with the individual's birthday, during which time that person may purchase any Medicare supplement coverage, with the exception of a Medicare Select contract, that offers benefits equal to or lesser than those provided by the previous coverage. During this open enrollment period, no issuer that falls under this provision shall deny or condition the issuance or effectiveness of Medicare supplement coverage, nor discriminate in the pricing of coverage, because of health status, claims experience, receipt of health care, or medical condition of the individual if, at the time of the open enrollment period, the individual is covered under another Medicare supplement policy, certificate, or contract. An issuer that offers Medicare supplement contracts shall notify an enrollee of his or her rights under this subdivision at least 30 and no more than 60 days before the beginning of the open enrollment period.

SEC. 2. Section 1358.12 of the Health and Safety Code is amended to read:

1358.12. (a) (1) With respect to the guaranteed issue of a Medicare supplement contract, eligible persons are those individuals described in subdivision (b) who apply to enroll under the contract not later than 63 days after the date of the termination of enrollment described in subdivision (b), and who submit evidence of the date of termination or disenrollment with the application for a Medicare supplement contract.

(2) With respect to eligible persons, an issuer shall not deny or condition the issuance or effectiveness of a Medicare supplement contract described in subdivision (c) that is offered and is available for issuance to new enrollees by the issuer, shall not discriminate in the pricing of the Medicare supplement contract because of health status, claims experience, receipt of health care, or medical condition, and shall not impose an exclusion of benefits based on a preexisting condition under the Medicare supplement contract.

(3) Issuers shall issue coverage with an effective date not later than the date of termination of previous benefits or the date requested on the application, but in no event earlier than the date of application for coverage. Issuers shall issue coverage so that there is no duplication or overlap of coverage.

(b) An eligible person is an individual described in any of the following paragraphs:

(1) The individual is enrolled under an employee welfare benefit plan that provides health benefits that supplement the benefits under

Medicare, and the plan terminates, the individual loses his or her eligibility to continue benefits due to the divorce or death of a spouse, or the plan ceases to provide some, all, or substantially all of those supplemental health benefits to the individual and the employer no longer provides the individual with insurance that covers all of the payment for the Part B 20-percent coinsurance.

(2) The individual is enrolled with a Medicare+Choice organization under a Medicare+Choice plan under Medicare Part C, and any of the following apply:

(A) The organization's or plan's certification, under this part, has been terminated or the organization has terminated or otherwise discontinued providing the plan in the area in which the individual resides.

(B) The individual is no longer eligible to elect the plan because of a change in the individual's place of residence or other change in circumstances specified by the secretary, but not including termination of the individual's enrollment on the basis described in Section 1851(g)(3)(B) of the federal Social Security Act, where the individual has not paid premiums on a timely basis or has engaged in disruptive behavior as specified in standards under Section 1856 of that act, or the plan is terminated for all individuals within a residence area.

(C) The individual demonstrates, in accordance with guidelines established by the director, either of the following:

(i) The organization offering the plan substantially violated a material provision of the organization's contract under this article in relation to the individual, including the failure to provide an enrollee on a timely basis medically necessary care for which benefits are available under the plan or the failure to provide the covered care in accordance with applicable quality standards.

(ii) The organization, or agent or other entity acting on the organization's behalf, materially misrepresented the plan's provisions in marketing the plan to the individual.

(D) The Medicare+Choice plan in which the individual is enrolled reduces any of the benefits under the plan or increases the cost-sharing amount or discontinues for other than good cause relating to the quality of care under the plan, a provider who is currently furnishing services to the individual. However, with respect to eligibility under this subparagraph, an individual shall be eligible only for a Medicare supplement contract issued by the same health care service plan through which the individual is enrolled at the time the reduction, increase, or discontinuance described above occurs. The change to another plan contract may occur no more frequently than every two years.

(E) The individual meets other exceptional conditions as the director may provide.

(3) The individual meets both of the following conditions:

(A) The individual is enrolled with any of the following:

(i) An eligible organization under a contract under Section 1876 of the federal Social Security Act (Medicare risk or cost).

(ii) A similar organization operating under demonstration project authority, effective for periods before April 1, 1999.

(iii) An organization under an agreement under Section 1833(a)(1)(A) of the federal Social Security Act (health care prepayment plan).

(iv) An organization under a Medicare Select policy.

(B) The individual's enrollment ceases under the same circumstances that would permit discontinuance of an individual's election of coverage under the first sentence of Section 1851(e)(4) of the federal Social Security Act as delineated in paragraph (2) of subdivision (b).

(4) The individual is enrolled under a Medicare supplement contract and the enrollment ceases because of the following: the insolvency of the issuer or bankruptcy of the nonissuer organization; the involuntary termination of coverage or enrollment under the contract; the issuer of the contract substantially violated a material provision of the contract; or the issuer, or an agent or other entity acting on the issuer's behalf, materially misrepresented the contract's provisions in marketing the contract to the individual.

(5) The individual meets both of the following conditions:

(A) The individual was enrolled under a Medicare supplement contract and terminates enrollment and subsequently enrolls, for the first time, with any Medicare+Choice organization under a Medicare+Choice plan under Medicare Part C, any eligible organization under a contract under Section 1876 of the federal Social Security Act (Medicare risk or cost), any similar organization operating under demonstration project authority, an organization under an agreement under Section 1833(a)(1)(A) of the federal Social Security Act (health care prepayment plan), or a Medicare Select contract.

(B) The subsequent enrollment under subparagraph (A) is terminated by the enrollee during any period within the first 12 months of the subsequent enrollment (during which the enrollee is permitted to terminate the subsequent enrollment under Section 1851(e) of the federal Social Security Act).

(6) The individual, upon first becoming eligible for benefits under Medicare Part A who postpones enrollment in Medicare Part A or Part B while eligible for employer-sponsored coverage, enrolls in a Medicare+Choice plan under Medicare Part C, and disenrolls from the plan by not later than 12 months after the effective date of enrollment.

(c) (1) Under paragraphs (1), (2), (3), and (4) of subdivision (b), eligible persons are entitled to a Medicare supplement contract that has

a benefit package classified as plan A, B, C, F, and at least one letter-designated plan (H, I, or J, at the discretion of the issuer) that includes coverage for prescription medications, if currently available from an issuer.

(2) Under paragraph (5) of subdivision (b), eligible persons are entitled to the same Medicare supplement contract in which they were most recently previously enrolled, if available from the same issuer, or, if not so available, a contract described in paragraph (1) of subdivision (c).

(3) Under paragraph (6) of subdivision (b), eligible persons are entitled to any Medicare supplement contract offered by any issuer.

(d) (1) At the time of an event described in subdivision (b) because of which an individual loses coverage or benefits due to the termination of a contract or agreement, policy, or plan, the organization that terminates the contract or agreement, the issuer terminating the contract, or the administrator of the plan being terminated, respectively, shall notify the individual of his or her rights under this section, and of the obligations of issuers of Medicare supplement contracts under subdivision (a). That notice shall be communicated contemporaneously with the notification of termination.

(2) At the time of an event described in subdivision (b) because of which an individual ceases enrollment under a contract or agreement, policy, or plan, the organization that offers the contract or agreement, regardless of the basis for the cessation of enrollment, the issuer offering the contract, or the administrator of the plan, respectively, shall notify the individual of his or her rights under this section, and of the obligations of issuers of Medicare supplement contracts under subdivision (a). That notice shall be communicated within ten working days of the issuer receiving notification of disenrollment.

(e) Issuers shall refund any unearned monthly premium paid in advance and terminate coverage upon the request of any insured person.

SEC. 3. Section 10192.11 of the Insurance Code is amended to read:

10192.11. (a) An issuer shall not deny or condition the issuance or effectiveness of any Medicare supplement policy or certificate available for sale in this state, nor discriminate in the pricing of a policy or certificate because of the health status, claims experience, receipt of health care, or medical condition of an applicant in the case of an application for a policy or certificate that is submitted prior to or during the six-month period beginning with the first day of the first month in which an individual is both 65 years of age or older and is enrolled for benefits under Medicare Part B. Each Medicare supplement policy and certificate currently available from an issuer shall be made available to all applicants who qualify under this subdivision and are 65 years of age or older. Medicare supplement contracts A, B, C, F, and at least one

letter-designated plan (H, I, or J, at the discretion of the issuer) that includes coverage for prescription medications, if currently available from an issuer, shall be made available to any applicant who qualifies under this subdivision who is 64 years of age or younger and who does not have End-Stage Renal Disease. This section and Section 10192.12 do not prohibit an issuer in determining premium rates from treating applicants who are under 65 years of age and are eligible for Medicare Part B as a separate risk classification. This section shall not be construed as preventing the exclusion of benefits for preexisting conditions as defined in paragraph (1) of subdivision (a) of Section 10192.8.

(b) (1) If an applicant qualifies under subdivision (a) and submits an application during the time period referenced in subdivision (a) and, as of the date of application, has had a continuous period of creditable coverage of at least six months, the issuer shall not exclude benefits based on a preexisting condition.

(2) If the applicant qualifies under subdivision (a) and submits an application during the time period referenced in subdivision (a) and, as of the date of application, has had a continuous period of creditable coverage that is less than six months, the issuer shall reduce the period of any preexisting condition exclusion by the aggregate of the period of creditable coverage applicable to the applicant as of the enrollment date. The manner of the reduction under this subdivision shall be as specified by the commissioner.

(c) Except as provided in subdivision (b) and Section 10192.23, subdivision (a) shall not be construed as preventing the exclusion of benefits under a policy, during the first six months, based on a preexisting condition for which the policyholder or certificate holder received treatment or was otherwise diagnosed during the six months before the coverage became effective.

(d) An individual enrolled in Medicare by reason of disability will be entitled to open enrollment described in this section for six months after he or she enrolled in Medicare Part B, or if notified retroactively of his or her eligibility for Medicare, for six months following notice of eligibility. Every issuer shall make available to every applicant qualified for open enrollment all policies and certificates offered by that issuer at the time of application. Issuers shall not discourage sales during the open enrollment period by any means, including the altering of the commission structure.

There shall be a one-time open enrollment period of 90 days commencing on January 1, 2004, for all individuals eligible for Medicare by reason of disability who do not have End-Stage Renal Disease and who did not use the prior one-time open enrollment that commenced on January 1, 2001. Notice of this one-time open enrollment right shall be publicized on the Web sites of the Department of Managed

Health Care, the Department of Insurance, and the Department of Aging, through those departments' written materials directed to Medicare beneficiaries, and by HICAP, beginning January 1, 2003.

(e) An individual enrolled in Medicare Part B is entitled to open enrollment described in this section for six months following:

(1) Receipt of a notice of termination or loss of eligibility due to the divorce or death of a spouse or, if no notice is received, the effective date of termination or loss of eligibility due to the divorce or death of a spouse, from any employer-sponsored health plan including an employer-sponsored retiree health plan. For purposes of this section, ''employer-sponsored retiree health plan'' includes any coverage for medical expenses that is directly or indirectly sponsored or established by an employer for employees or retirees, their spouses, dependents, or other included insureds.

(2) Termination of health care services for a military retiree or the retiree's Medicare eligible spouse or dependent as a result of a military base closure or loss of access to health care services because the base no longer offers services or because the individual relocates.

(f) An individual enrolled in Medicare Part B is entitled to open enrollment described in this section if the individual was covered under a policy, certificate, or contract providing Medicare supplement coverage but that coverage terminated because the individual established residence at a location not served by the plan.

(g) An individual whose coverage was terminated by a Medicare managed care plan shall be entitled to an additional 60-day open enrollment period to be added on to and run consecutively after any open enrollment period authorized by federal law or regulation, for any Medicare supplement coverage provided by Medicare supplement insurers and available on a guaranteed basis under state and federal law or regulation for persons terminated by their Medicare managed care plan.

(h) An individual shall be entitled to an annual open enrollment period lasting 30 days or more, commencing with the individual's birthday, during which time that person may purchase any Medicare supplement policy, with the exception of a Medicare Select policy, that offers benefits equal to or lesser than those provided by the previous coverage. During this open enrollment period, no issuer that falls under this provision shall deny or condition the issuance or effectiveness of Medicare supplement coverage, nor discriminate in the pricing of coverage, because of health status, claims experience, receipt of health care, or medical condition of the individual if, at the time of the open enrollment period, the individual is covered under another Medicare supplement policy or contract. An issuer shall notify a policyholder of

his or her rights under this subdivision at least 30 and no more than 60 days before the beginning of the open enrollment period.

SEC. 4. Section 10192.12 of the Insurance Code is amended to read:

10192.12. (a) (1) With respect to the guaranteed issue of a Medicare supplement policy, eligible persons are those individuals described in subdivision (b) who apply to enroll under the policy not later than 63 days after the date of the termination of enrollment described in subdivision (b), and who submit evidence of the date of termination or disenrollment with the application for a Medicare supplement policy.

(2) With respect to eligible persons, an issuer shall not deny or condition the issuance or effectiveness of a Medicare supplement policy described in subdivision (c) that is offered and is available for issuance to new enrollees by the issuer, shall not discriminate in the pricing of that Medicare supplement policy because of health status, claims experience, receipt of health care, or medical condition, and shall not impose an exclusion of benefits based on a preexisting condition under that Medicare supplement policy.

(3) Issuers shall issue coverage with an effective date not later than the date of termination of previous benefits or the date requested on the application, but in no event earlier than the date of application for coverage. Issuers shall issue coverage so that there is no duplication or overlap of coverage.

(b) An eligible person is an individual described in any of the following paragraphs:

(1) The individual is enrolled under an employee welfare benefit plan that provides health benefits that supplement the benefits under Medicare, and the plan terminates, the individual loses his or her eligibility to continue benefits due to the divorce or death of a spouse, or the plan ceases to provide some, all, or substantially all of those supplemental health benefits to the individual and the employer no longer provides the individual with insurance that covers all of the payment for the Part B 20-percent coinsurance.

(2) The individual is enrolled with a Medicare+Choice organization under a Medicare+Choice plan Medicare Part C, and any of the following apply:

(A) The organization's or plan's certification, under this part, has been terminated or the organization has terminated or otherwise discontinued providing the plan in the area in which the individual resides.

(B) The individual is no longer eligible to elect the plan because of a change in the individual's place of residence or other change in circumstances specified by the secretary, but not including termination of the individual's enrollment on the basis described in Section

1851(g)(3)(B) of the federal Social Security Act, where the individual has not paid premiums on a timely basis or has engaged in disruptive behavior as specified in standards under Section 1856 of that act, or the plan is terminated for all individuals within a residence area.

(C) The individual demonstrates, in accordance with guidelines established by the commissioner, either of the following:

(i) The organization offering the plan substantially violated a material provision of the organization's contract under this article in relation to the individual, including the failure to provide an enrollee on a timely basis medically necessary care for which benefits are available under the plan or the failure to provide the covered care in accordance with applicable quality standards.

(ii) The organization, or agent or other entity acting on the organization's behalf, materially misrepresented the plan's provisions in marketing the plan to the individual.

(D) The Medicare+Choice plan in which the individual is enrolled reduces any of its benefits or increases the amount of cost-sharing or discontinues for other than good cause relating to the quality of care under the plan, a provider who is currently furnishing services to the individual. However, with respect to eligibility under this subparagraph, an individual shall be eligible only for a Medicare supplement policy issued by the same insurer through which the individual is enrolled at the time the reduction, increase, or discontinuance described above occurs. The change to another policy may occur no more frequently than every two years.

(E) The individual meets other exceptional conditions as the commissioner may provide.

(3) The individual meets both of the following conditions:

(A) The individual is enrolled with any of the following:

(i) An eligible organization under a contract under Section 1876 of the federal Social Security Act (Medicare risk or cost).

(ii) A similar organization operating under demonstration project authority, effective for periods before April 1, 1999.

(iii) An organization under an agreement under Section 1833(a)(1)(A) of the federal Social Security Act (health care prepayment plan).

(iv) An organization under a Medicare Select policy.

(B) The individual's enrollment ceases under the same circumstances that would permit discontinuance of an individual's election of coverage under the first sentence of Section 1851(e)(4) of the federal Social Security Act as delineated in paragraph (2) of subdivision (b).

(4) The individual is enrolled under a Medicare supplement policy and the enrollment ceases because of the following: the insolvency of the issuer or bankruptcy of the nonissuer organization; the involuntary

termination of coverage or enrollment under the policy; the issuer of the policy substantially violated a material provision of the policy; or the issuer, or an agent or other entity acting on the issuer's behalf, materially misrepresented the policy's provisions in marketing the policy to the individual.

(5) The individual meets both of the following conditions:

(A) The individual was enrolled under a Medicare supplement policy and terminates enrollment and subsequently enrolls, for the first time, with any Medicare+Choice organization under a Medicare+Choice plan under Medicare Part C, any eligible organization under a contract under Section 1876 of the federal Social Security Act (Medicare risk or cost), any similar organization operating under demonstration project authority, an organization under an agreement under Section 1833(a)(1)(A) of the federal Social Security Act (health care prepayment plan), or a Medicare Select policy.

(B) The subsequent enrollment under subparagraph (A) is terminated by the enrollee during any period within the first 12 months of the subsequent enrollment (during which the enrollee is permitted to terminate the subsequent enrollment under Section 1851(e) of the federal Social Security Act).

(6) The individual, upon first becoming eligible for benefits under Medicare Part A who postpones enrollment in Medicare Part A or Part B while eligible for employer-sponsored coverage, enrolls in a Medicare+Choice plan under Medicare Part C, and disenrolls from the plan by not later than 12 months after the effective date of enrollment.

(c) (1) Under paragraphs (1), (2), (3), and (4) of subdivision (b), eligible persons are entitled to a Medicare supplement policy that has a benefit package classified as plan A, B, C, F, and at least one letter-designated plan (H, I, or J, at the discretion of the issuer) that includes coverage for prescription medications, if currently available from an issuer.

(2) Under paragraph (5) of subdivision (b), eligible persons are entitled to the same Medicare supplement policy in which they were most recently previously enrolled, if available from the same issuer, or, if not so available, a policy described in paragraph (1) of subdivision (c).

(3) Under paragraph (6) of subdivision (b), eligible persons are entitled to any Medicare supplement policy offered by any issuer.

(d) (1) At the time of an event described in subdivision (b) because of which an individual loses coverage or benefits due to the termination of a contract or agreement, policy, or plan, the organization that terminates the contract or agreement, the issuer terminating the policy, or the administrator of the plan being terminated, respectively, shall notify the individual of his or her rights under this section, and of the obligations of issuers of Medicare supplement policies under

subdivision (a). That notice shall be communicated contemporaneously with the notification of termination.

(2) At the time of an event described in subdivision (b) because of which an individual ceases enrollment under a contract or agreement, policy, or plan, the organization that offers the contract or agreement, regardless of the basis for the cessation of enrollment, the issuer offering the policy, or the administrator of the plan, respectively, shall notify the individual of his or her rights under this section, and of the obligations of issuers of Medicare supplement policies under subdivision (a). That notice shall be communicated within ten working days of the issuer receiving notification of disenrollment.

(e) Issuers shall refund any unearned monthly premium paid in advance and terminate coverage upon the request of any insured person.

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.

CHAPTER 556

An act to add Section 14006.7 to the Welfare and Institutions Code, relating to Medi-Cal.

[Approved by Governor September 14, 2002. Filed with Secretary of State September 15, 2002.]

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

SECTION 1. Section 14006.7 is added to the Welfare and Institutions Code, to read:

14006.7. (a) At the time of application for Medi-Cal benefits, the department shall provide to any applicant who is aged, blind, or disabled, other than an individual applying for, or receiving, aid under Chapter 2 (commencing with Section 11200), Article 5 (commencing with Section 12200) of Chapter 3, or Article 7 (commencing with Section 12300) of Chapter 3, and to the applicant's spouse, legal representative, or agent, if any, a clear and simple statement, in writing, in a form and language specified by the department, that explains the

circumstances under which an interest in a home may be transferred for less than fair market value without affecting Medi-Cal eligibility.

(b) The statement required by subdivision (a) shall be in the following form:

"NOTICE REGARDING TRANSFER OF A HOME FOR BOTH A MARRIED AND AN UNMARRIED APPLICANT/BENEFICIARY

A transfer of property interest for less than fair market value in a Medi-Cal beneficiary's home will not cause ineligibility for Medi-Cal benefits if at the time of the transfer, the home would have been considered an exempt resource.

This is only a brief description of the Medi-Cal eligibility rules. For more detailed information, you should call your county welfare department. You will probably want to consult with an attorney, your local legal services program for seniors, or the local branch of the long-term care ombudsman program.

I have read the above notice and have received a copy.
Dated: _____ Signature: _____"

(c) The statement required by subdivision (a) shall be printed in at least 12-point type, shall be clearly separate from any other document or writing, and may be signed by the applicant, the applicant's spouse, legal representative, or agent, if any. Failure to sign this form shall not result in ineligibility for medical assistance.

(d) The department may revise this statement as necessary to maintain its consistency with state and federal law.

(e) In the case of an applicant applying for Medi-Cal reimbursement for nursing facility care, the statements required under Sections 14006.2 and 14006.3 shall apply, and the statement required by subdivision (a) shall not be provided.

CHAPTER 557

An act to add Sections 1569.651 and 1569.655 to the Health and Safety Code, relating to residential care facilities for the elderly.

[Approved by Governor September 14, 2002. Filed with Secretary of State September 15, 2002.]

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

SECTION 1. Section 1569.651 is added to the Health and Safety Code, to read:

1569.651. (a) A licensee of a residential care facility for the elderly may not require any form of preadmission fee or deposit from a recipient under the State Supplementary Program for the Aged, Blind and Disabled (Article 5 (commencing with Section 12200) of Chapter 3 of Part 3 of Division 9 of the Welfare and Institutions Code) who applies for admission to the facility.

(b) If a licensee charges a preadmission fee, the licensee shall provide the applicant or his or her representative with a written general statement describing costs associated with the preadmission fee charges and stating whether or not the preadmission fee is refundable. If the preadmission fee or some portion thereof is refundable, the statement shall describe the conditions for the refund. A licensee shall only charge a single preadmission fee as defined in subdivision (e) per resident admission.

(c) A licensee of a residential care facility for the elderly may not require, request, or accept any funds from a resident or a resident's representative that constitutes a deposit against any possible damages by the resident.

(d) Any fee charged by a licensee of a residential care facility for the elderly, whether prior to or after admission, shall be clearly specified in the admission agreement.

(e) For the purposes of this section, ''preadmission fee'' means an application fee, processing fee, admission fee, entrance fee, community fee, or other fee, however designated, that is requested or accepted by a licensee of a residential care facility for the elderly prior to admission.

(f) This section shall not apply to licensees of residential care facilities for the elderly that have obtained a certificate of authority to offer continuing care contracts, as defined in paragraph (8) of subdivision (c) of Section 1771.

SEC. 2. Section 1569.655 is added to the Health and Safety Code, to read:

1569.655. (a) If a licensee of a residential care facility for the elderly increases the rates of fees for residents or makes increases in any of its rate structures for services, the licensee shall provide no less than 60 days' prior written notice to the residents or the residents' representatives setting forth the amount of the increase, the reason for the increase, and a general description of the additional costs, except for an increase in the rate due to a change in the level of care of the resident. This subdivision shall not apply to optional services that are provided

by individuals, professionals, or organizations under a separate fee-for-service arrangement with residents.

(b) No licensee shall charge nonrecurring lump-sum assessments. The notification requirements contained in subdivision (a) shall apply to increases specified in this subdivision. For purposes of this subdivision, ''nonrecurring lump-sum assessments'' mean rate increases due to unavoidable and unexpected costs that financially obligate the licensee. In lieu of the lump-sum payment, all increases in rates shall be to the monthly rate amortized over a 12-month period. The prohibition against a lump-sum assessment shall not apply to charges for specific goods or services provided to an individual resident.

(c) If a licensee increases rates for a recipient under the State Supplementary Program for the Aged, Blind and Disabled, described in Article 5 (Commencing with Section 12200) of Chapter 3 of Part 3 of Division 9 of the Welfare and Institutions Code, the licensee shall meet the requirements for SSI/SSP rate increases, as prescribed by law.

(d) This section shall not apply to licensees of residential care facilities for the elderly that have obtained a certificate of authority to offer continuing care contracts, as defined in paragraph (5) of subdivision (c) of Section 1771.

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.

CHAPTER 558

An act to amend Sections 15399.45, 15399.46, and 15399.48 of the Government Code, relating to rural programs.

[Approved by Governor September 14, 2002. Filed with Secretary of State September 15, 2002.]

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

SECTION 1. Section 15399.45 of the Government Code is amended to read:

15399.45. (a) The California Rural Policy Task Force is hereby established within the Office of Planning and Research in the Governor's

office, to be composed of the following state officers, or their representatives:

(1) The Secretary of the California Health and Human Services Agency.

(2) The Secretary of the Resources Agency.

(3) The Secretary of the Technology, Trade, and Commerce Agency.

(4) The Secretary of the Department of Veterans Affairs.

(5) The Secretary of the Business, Transportation and Housing Agency.

(6) The Secretary for Environmental Protection.

(7) The Secretary for Education.

(8) The Secretary of the Youth and Adult Correctional Agency.

(9) The Director of Housing and Community Development.

(10) The Director of the Department of Transportation.

(11) The Secretary of the Department of Food and Agriculture.

(12) The Lieutenant Governor.

(13) The Director of the California Rural Policy Task Force.

(14) The Executive Director of the Native American Heritage Commission.

(15) The State Historic Preservation Officer.

(b) The agencies and departments represented on the task force shall provide, from existing resources, staff for the work of the task force as necessary.

(c) The task force shall oversee the mobilization and effective delivery of the state's resources to rural California.

(d) The task force shall act as an internal policy advisory board to the Governor on issues related to rural areas. The task force shall be responsible for assisting the Governor, as the Governor deems appropriate, in reviewing, analyzing, developing, and facilitating the implementation of policies, programs, services, and legislation related to rural communities.

(e) In addition to its other duties, the task force shall work closely with the Rural Development Council to ensure that recommendations of the council are reviewed and acted upon as determined appropriate by the task force.

(f) Members of the task force shall individually and collectively hold meetings, conferences, and other types of events to provide rural areas with an opportunity to voice issues and concerns regarding program and service delivery in rural areas.

(g) The task force shall report annually to the Governor and the Legislature on its efforts in implementing this section.

SEC. 2. Section 15399.46 of the Government Code is amended to read:

15399.46. (a) The task force shall develop by June 1, 2004, a strategic plan for improving program and service delivery to rural areas that includes an analysis of how statewide and rural focused programs, services, and resources are being made available to rural areas.

(b) The plan shall include individual components from each of the agencies and departments represented on the task force. Each individual component shall do all of the following:

(1) Identify rural program and service delivery regions consistent with the organization and administration of the agency or department.

(2) Identify the economic and community development problems and opportunities facing communities in each rural program and service delivery area serviced by the agency or department.

(c) In addition to the individual components, the plan shall identify programs and services that could be used singularly or in combination with other state, federal, local, and private resources to meet the economic and community needs identified in paragraph (2) of subdivision (b). The plan shall also provide a four-year plan of action that will coordinate the activities of the programs and services identified in paragraph (3) in such a manner as to assist rural communities in meeting their economic and community development needs. The plan of action shall include the identification of local and federal agencies that may assist the agency or department in effectively serving rural areas and other specific annual actions that the agency or department will take to further the purposes of this chapter.

(d) The task force shall disseminate preliminary plans for public comment and, to the fullest extent possible, hold public hearings in rural communities and solicit comments from all affected cities and counties, and organizations whose purpose is economic and community development, to assist the agencies and departments in finalizing their plans.

(e) The relevant annual actions identified in the four-year plan of action required under paragraph (4) of subdivision (b) shall be incorporated within the annual work plan of each agency and department represented on the task force.

SEC. 3. Section 15399.48 of the Government Code is amended to read:

15399.48. This chapter shall remain in effect only until January 1, 2007, and as of that date is repealed, unless a later enacted statute that is enacted before January 1, 2007, deletes or extends that date.

CHAPTER 559

An act to amend Sections 94, 2859, 7058, 7071, 7072, 7090, 7650, 8510, and 8587.1 of, and to repeal Section 7057 of, the Fish and Game Code, relating to fisheries, and making an appropriation therefor.

[Approved by Governor September 14, 2002. Filed with Secretary of State September 15, 2002.]

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

SECTION 1. Section 94 of the Fish and Game Code is amended to read:

94. ''Fishery'' means both of the following:

(a) One or more populations of marine fish or marine plants that may be treated as a unit for purposes of conservation and management and that are identified on the basis of geographical, scientific, technical, recreational, and economic characteristics.

(b) Fishing for, harvesting, or catching the populations described in (a).

SEC. 2. Section 2859 of the Fish and Game Code is amended to read:

2859. (a) On or before January 1, 2005, the department shall submit to the commission a draft of the master plan prepared pursuant to this chapter.

(b) On or before April 1, 2005, after public review, not less than three public meetings, and appropriate modifications of the draft plan, the department shall submit a proposed final master plan to the commission. On or before December 1, 2005, the commission shall adopt a final master plan and a Marine Life Protection Program with regulations based on the plan and shall implement the program, to the extent funds are available. The commission's adoption of the plan and a program based on the plan shall not trigger an additional review under the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code).

(c) The commission shall hold at least two public hearings on the master plan and the Marine Life Protection Program prior to adopting the plan and program. The commission may adopt the plan and the program immediately following the second public hearing or at any duly noticed subsequent meeting.

(d) Upon the commission's adoption of the program, the commission shall submit the master plan and program description, including marine life reserve and other MPA designations, to the Joint Committee on Fisheries and Aquaculture for review and comment. Upon receipt of the plan, the joint committee shall have 60 days to review the plan and to

submit written recommendations to the commission regarding the plan and program. The joint committee shall only submit a recommendation to the commission if a majority of the members agree to that recommendation. The commission shall consider all recommendations submitted by the joint committee, and may amend the program to incorporate the recommendations. If the commission does not incorporate any recommendations submitted by the joint committee, the commission shall set forth, in writing, its reasons for not incorporating that recommendation.

SEC. 3. Section 7057 of the Fish and Game Code is repealed.

SEC. 4. Section 7058 of the Fish and Game Code is amended to read:

7058. Any fishery management regulation adopted by the commission shall, to the extent practicable, conform to the policies of Sections 7055 and 7056.

SEC. 5. Section 7071 of the Fish and Game Code is amended to read:

7071. (a) Any white seabass fishery management plan adopted by the commission on or before January 1, 1999, shall remain in effect until amended pursuant to this part.

Notwithstanding paragraph (2) of subdivision (b) of Section 7073, any white seabass fishery management plan adopted by the commission and in existence on January 1, 1999, shall be amended to comply with this part on or before January 1, 2002.

(b) In the case of any fishery for which the commission has management authority, including white seabass, regulations that the commission adopts to implement a fishery management plan or plan amendment for that fishery may make inoperative, in regard to that fishery, any fishery management statute that applies to that fishery, including, but not limited to, statutes that govern allowable catch, restricted access programs, permit fees, and time, area, and methods of taking.

(c) On and after January 1, 2000, the commission may adopt regulations as it determines necessary, based on the advice and recommendations of the department, and in a process consistent with Section 7059, to regulate all emerging fisheries, consistent with Section 7090, all fisheries for nearshore fish stocks, and all fisheries for white seabass. Regulations adopted by the commission may include, but need not be limited to, establishing time and area closures, requiring submittal of landing and permit information, regulating fishing gear, permit fees, and establishing restricted access fisheries.

SEC. 6. Section 7072 of the Fish and Game Code is amended to read:

7072. (a) Fishery management plans shall form the primary basis for managing California's sport and commercial marine fisheries.

(b) Fishery management plans shall be based on the best scientific information that is available, on other relevant information that the department possesses, or on the scientific information or other relevant information that can be obtained without substantially delaying the preparation of the plan.

(c) To the extent that conservation and management measures in a fishery management plan either increase or restrict the overall harvest or catch in a fishery, fishery management plans shall allocate those increases or restrictions fairly among recreational and commercial sectors participating in the fishery.

(d) Consistent with Article 17 (commencing with Section 8585), the commission shall adopt a fishery management plan for the nearshore fishery on or before January 1, 2002, if funds are appropriated for that purpose in the annual Budget Act or pursuant to any other law.

SEC. 7. Section 7090 of the Fish and Game Code is amended to read:

7090. (a) The Legislature finds and declares that a proactive approach to management of emerging fisheries will foster a healthy marine environment and will benefit both commercial and sport fisheries and other marine-dependent activities. Therefore, the commission, based upon the advice and recommendations of the department, shall encourage, manage, and regulate emerging fisheries consistent with the policies of this part.

(b) ''Emerging fishery,'' in regard to a marine fishery, means both of the following:

(1) A fishery that the director has determined is an emerging fishery, based on criteria that are approved by the commission and are related to a trend of increased landings or participants in the fishery and the degree of existing regulation of the fishery.

(2) A fishery that is not an established fishery. ''Established fishery,'' in regard to a marine fishery, means, prior to January 1, 1999, one or more of the following:

(A) A restricted access fishery has been established in this code or in regulations adopted by the commission.

(B) A fishery, for which a federal fishery management plan exists, and in which the catch is limited within a designated time period.

(C) A fishery for which a population estimate and catch quota is established annually.

(D) A fishery for which regulations for the fishery are considered at least biennially by the commission.

(E) A fishery for which this code or regulations adopted by the commission prescribes at least two management measures developed for

the purpose of sustaining the fishery. Management measures include minimum or maximum size limits, seasons, time, gear, area restriction, and prohibition on sale or possession of fish.

(c) The department shall closely monitor landings and other factors it deems relevant in each emerging fishery and shall notify the commission of the existence of an emerging fishery.

(d) The commission, upon the recommendation of the department, may do either, or both, of the following:

(1) Adopt regulations that limit taking in the fishery by means that may include, but not be limited to, restricting landings, time, area, gear, or access. These regulations may remain in effect until a fishery management plan is adopted.

(2) Direct the department to prepare a fishery management plan for the fishery and regulations necessary to implement the plan.

(e) A fishery management plan for an emerging fishery shall comply with the requirements for preparing and adopting fishery management plans contained in this part. In addition to those requirements, to allow for adequate evaluation of the fishery and the acquisition of essential fishery information, the fishery management plan shall provide an evaluation period, which shall not exceed three years unless extended by the commission. During the evaluation period, the plan shall do both of the following:

(1) In order to prevent excess fishing effort during the evaluation period, limit taking in the fishery by means that may include, but need not be limited to, restricting landings, time, area, gear, or access to a level that the department determines is necessary for evaluation of the fishery.

(2) Contain a research plan that includes objectives for evaluating the fishery, a description of the methods and data collection techniques for evaluating the fishery, and a timetable for completing the evaluation.

(f) The commission is authorized to impose a fee on an emerging fishery in order to pay the costs of implementing this chapter. The fees may include, but need not be limited to, ocean fishing stamps and permit fees. The fees may not be levied in excess of the necessary costs to implement and administer this chapter. The commission may reduce fees annually if it determines that sufficient revenues exist to cover costs incurred by the department in administering this chapter. The commission and the department, with the advice of fishery participants and other interested parties, shall consider alternative ways to fund the evaluation of emerging fisheries.

(g) An emerging fishery is subject to this section unless the department incorporates the fishery into a fishery management plan developed under Sections 7070 to 7088, inclusive.

(h) In the event that this section is found to conflict with Section 8606, 8614, or 8615, this section shall prevail.

SEC. 8. Section 7650 of the Fish and Game Code is amended to read:

7650. As used in this article:

(a) ''Act'' means the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. Sec. 1801 et seq.).

(b) ''Council'' means the Pacific Fishery Management Council established pursuant to the act, or its successor agency.

(c) ''Fishery'' has the same meaning as defined in Section 1802(13) of Title 16 of the United States Code.

(d) ''Joint committee'' means the Joint Committee on Fisheries and Aquaculture created pursuant to Resolution Chapter 88 of the Statutes of 1981.

(e) ''Optimum,'' with respect to the yield from a fishery, has the same meaning as defined in Section 1802(28) of Title 16 of the United States Code.

(f) ''Secretary'' means the federal Secretary of Commerce.

SEC. 9. Section 8510 of the Fish and Game Code is amended to read:

8510. (a) It is unlawful to take or land krill of any species of euphausiid for commercial purposes except under regulations adopted by the commission.

(b) Notwithstanding subdivision (a), krill of any species of euphausiid shall not be taken or landed for commercial purposes before January 1, 2011.

SEC. 10. Section 8587.1 of the Fish and Game Code is amended to read:

8587.1. (a) The commission may adopt regulations as it determines necessary, based on the advice and recommendations of the department, to regulate nearshore fish stocks and fisheries. Regulations adopted by the commission pursuant to this section may include, but are not limited to, requiring submittal of landing and permit information, including logbooks; establishing a restricted access program; establishing permit fees; and establishing limitations on the fishery based on time, area, type, and amount of gear, and amount of catch, species, and size of fish.

(b) Regulations adopted by the commission pursuant to this section may make inoperative any fishery management statute relevant to the nearshore fishery. Any regulation adopted by the commission pursuant to this subdivision shall specify the particular statute to be made inoperative.

(c) The circumstances, restrictions, and requirements of Section 219 do not apply to regulations adopted pursuant to this section.

(d) Any regulations adopted pursuant to this section shall be adopted following consultation with fishery participants and other interested persons consistent with Section 7059.

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.

CHAPTER 560

An act to amend Section 35401 of the Vehicle Code, relating to vehicles.

[Approved by Governor September 14, 2002. Filed with Secretary of State September 15, 2002.]

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

SECTION 1. Section 35401 of the Vehicle Code is amended to read:

35401. (a) Except as provided in subdivisions (b), (c), and (d), no combination of vehicles coupled together, including any attachments, may exceed a total length of 65 feet.

(b) (1) A combination of vehicles coupled together, including any attachments, which consists of a truck tractor, a semitrailer, and a semitrailer or trailer, may not exceed a total length of 75 feet, if the length of neither the semitrailers nor the trailer in the combination of vehicles exceeds 28 feet 6 inches.

(2) A B-train assembly is excluded from the measurement of semitrailer length when used between the first and second semitrailers of a truck tractor-semitrailer-semitrailer combination of vehicles. However, if there is no second semitrailer mounted to the B-train assembly, it shall be included in the length measurement of the semitrailer to which it is attached.

(3) A combination of vehicles coupled together, including any attachments, may have a total length of not more than 75 feet, if all of the following apply:

(A) The combination of vehicles consists of a motortruck and two trailers.

(B) No trailer in the combination exceeds 28 feet 6 inches in length.

(C) The combination is used exclusively to transport agricultural products from the field to the first point of handling and return, and each direction of transport does not exceed 80 miles.

(D) The combination is not operated on a highway designated by the United States Department of Transportation as a national network route.

(E) The Department of the California Highway Patrol, in consultation with the Department of Transportation, shall conduct a study of the effect that the exemption provided in paragraph (3) has on public safety. The Department of the California Highway Patrol shall report the results of the study to the Legislature and the Governor on or before April 1, 2005.

(F) This paragraph shall become inoperative on January 1, 2006, unless a later enacted statute deletes or extends that date.

(c) A tow truck in combination with any of the following vehicles authorized to travel on the highway by this chapter is exempt from subdivision (a) when operating under a valid annual transportation permit and within a 100-mile radius of the location specified in the permit:

(1) A disabled vehicle.

(2) An abandoned vehicle.

(3) A disabled or abandoned combination of vehicles.

A tow truck in combination with the above vehicles may exceed the 100-mile radius restriction if a single trip permit is obtained from the Department of Transportation.

(d) Any city or county may, by ordinance, prohibit a combination of vehicles of a total length in excess of 60 feet upon highways under its respective jurisdiction. The ordinance may not be effective until appropriate signs are erected indicating either the streets affected by the ordinance or the streets not affected, as the local authority determines will best serve to give notice of the ordinance.

(e) Any city or county, upon a determination that a highway or portion of highway under its jurisdiction cannot, in consideration of public safety, sustain the operation of trailers or semitrailers of the maximum kingpin to rearmost axle distances permitted under Section 35400, may, by ordinance, establish lesser distances consistent with the maximum distances that the highway or highway portion can sustain, except that a city or county may not restrict the kingpin to rearmost axle measurement to less than 38 feet on those highways or highway portions. Any city or county considering the adoption of an ordinance shall consider, but not be limited to, consideration of, all of the following:

(1) A comparison of the operating characteristics of the vehicles to be limited as compared to operating characteristics of other vehicles regulated by this code.

(2) Actual traffic volume.

(3) Frequency of accidents.

(4) Any other relevant data.

In addition, the city or county may appoint an advisory committee consisting of local representatives of those interests which are likely to

be affected and shall consider the recommendations of the advisory committee in adopting the ordinance. The ordinance may not be effective until appropriate signs are erected indicating the highways or highway portions affected by the ordinance.

This subdivision shall only become operative upon the adoption of an enabling ordinance by a city or county.

(f) Whenever, in the judgment of the Department of Transportation, any state highway cannot, in consideration of public safety, sustain the operation of trailers or semitrailers of the maximum kingpin to rearmost axle distances permitted under Section 35400, the director, in consultation with the Department of the California Highway Patrol, shall compile data on total traffic volume, frequency of use by vehicles covered by this subdivision, accidents involving these vehicles, and other relevant data to assess whether these vehicles are a threat to public safety and should be excluded from the highway or highway segment. The study, containing the conclusions and recommendations of the director, shall be submitted to the Secretary of the Business, Transportation and Housing Agency. Unless otherwise notified by the secretary, the director shall hold public hearings in accordance with the procedures set forth in Article 3 (commencing with Section 35650) of Chapter 5 for the purpose of determining the maximum kingpin to rear axle length, which shall be not less than 38 feet, that the highway or highway segment can sustain without unreasonable threat to the safety of the public. Upon the basis of the findings, the Director of Transportation shall declare in writing the maximum kingpin to rear axle lengths which can be maintained with safety upon the highway. Following the declaration of maximum lengths as provided by this subdivision, the Department of Transportation shall erect suitable signs at each end of the affected portion of the highway and at any other points that the Department of Transportation determines to be necessary to give adequate notice of the length limits.

The Department of Transportation, in consultation with the Department of the California Highway Patrol, shall compile traffic volume, geometric, and other relevant data, to assess the maximum kingpin to rearmost axle distance of vehicle combinations appropriate for those state highways or portion of highways, affected by this section, that cannot safely accommodate trailers or semitrailers of the maximum kingpin to rearmost axle distances permitted under Section 35400. On or before January 1, 1989, the department shall erect suitable signs appropriately restricting truck travel on those highways, or portions of highways, and report its findings and recommendations to the Legislature.

CHAPTER 561

An act to add Section 14684.1 to the Government Code, relating to solar energy.

[Approved by Governor September 14, 2002. Filed with Secretary of State September 15, 2002.]

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

SECTION 1. Section 14684.1 is added to the Government Code, to read:

14684.1. (a) The department, in consultation with the State Energy Resources Conservation and Development Commission, shall ensure that solar energy equipment is installed, no later than January 1, 2007, on all state buildings and state parking facilities, where feasible. The department shall establish a schedule designating when solar energy equipment will be installed on each building and facility, with priority given to buildings and facilities where installation is most feasible, both for state building and facility use and consumption and local publicly owned electric utility use, where feasible.

(b) Solar energy equipment shall be installed, where feasible, as part of the construction of all state buildings and state parking facilities for which construction commences on or after January 1, 2003.

(c) For purposes of this section, it is feasible to install solar energy equipment if adequate space on or adjacent to a building is available, if the solar energy equipment is cost-effective, and if funding is available.

(d) Any solar energy equipment installed pursuant to this section shall meet applicable standards and requirements imposed by state and local permitting authorities, including, but not limited to, all of the following:

(1) Certification by the Solar Rating Certification Corporation, which is a nonprofit third party supported by the Department of Energy, or any other nationally recognized certification agency.

(2) All applicable safety and performance standards established by the National Electrical Code, the Institute of Electrical and Electronics Engineers, and accredited testing laboratories, such as the Underwriters Laboratories.

(3) Where applicable, the regulations adopted by the Public Utilities Commission regarding safety and reliability.

(e) This section does not exempt the state from the payment of any applicable fee or requirement imposed by the Public Utilities Commission.

(f) The department may adopt regulations for the purposes of this section as emergency regulations in accordance with Chapter 3.5

(commencing with Section 11340) of Part 1. For purposes of that chapter, including, but not limited to, Section 11349.6, 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, safety, and general welfare. Notwithstanding the 120-day limit specified in subdivision (e) of Section 11346.1, the regulations shall be repealed 180 days after their effective date, unless the department complies with Chapter 3.5 (commencing with Section 11340) of Part 1 as provided in subdivision (e) of Section 11346.1.

(g) Any solar energy equipment installed pursuant to this section shall be subject to the provisions of the California Solar Rights Act of 1978 (Chapter 1154 of the Statutes of 1978), as amended.

(h) For purposes of this section, the following terms have the following meanings:

(1) ''Cost-effective'' means that the present value of the savings generated over the life of the solar energy system, including consideration of the value of the energy produced during peak and off-peak demand periods and the value of a reliable energy supply not subject to price volatility, shall exceed the present value cost of the solar energy equipment by not less than 10 percent. The present value cost of the solar energy equipment does not include the cost of unrelated building components. The department, in making the present value assessment, shall obtain interest rates, discount rates, and consumer price index figures from the Treasurer, and shall take into consideration air emission reduction benefits and the value of stable energy costs.

(2) ''Local publicly owned electric utility'' means a local publicly owned electric utility as defined in subdivision (d) of Section 9604 of the Public Utilities Code.

(3) ''Solar energy equipment'' means equipment whose primary purpose is to provide for the collection, conversion, storage, or control of solar energy for the purpose of heat production.

CHAPTER 562

An act to add Section 4306.6 to the Business and Professions Code, relating to pharmacists.

[Approved by Governor September 14, 2002. Filed with Secretary of State September 15, 2002.]

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

SECTION 1. Section 4306.6 is added to the Business and Professions Code, to read:

4306.6. If the board disciplines a pharmacist-in-charge for the violation of a state or federal law or regulation committed by another person and the pharmacist-in-charge reported to the board that violation or suspected violation, the board shall use the report as a mitigating factor if all of the following conditions are met:

(a) The pharmacist-in-charge did not engage, either directly or indirectly, in any conduct that violated any state or federal law or regulation pertaining to the practice of pharmacy.

(b) The pharmacist-in-charge did not permit, encourage, approve of, either tacitly or implicitly or through willful ignorance, any conduct committed by another person that violated state or federal law or regulation pertaining to the practice of pharmacy.

(c) The pharmacist-in-charge reported the violation, or suspected violation, of any state or federal law or regulation pertaining to the practice of pharmacy to the board as soon as reasonably possible following the discovery of the violation.

(d) The pharmacist-in-charge took all actions reasonably necessary to stop and remedy the violation, or suspected violation, of any state or federal law or regulation pertaining to the practice of pharmacy as soon as reasonably possible following the discovery of the violation.

CHAPTER 563

An act to amend Sections 5010, 5090.01, 5090.06, 5090.11, 5090.15, 5090.17, 5090.19, 5090.22, 5090.23, 5090.24, 5090.32, 5090.34, 5090.35, 5090.36, 5090.43, 5090.44, 5090.50, 5090.53, 5090.60, 5090.61, and 5090.64 of, to amend the heading of Article 5 (commencing with Section 5090.50) of Chapter 1.25 of Division 5 of, to amend and renumber Sections 5090.45 and 5090.47 of, to add an article heading to Chapter 1.25 of Division 5 immediately preceding Section 5090.44 of, to repeal Sections 5090.13, 5090.25, 5090.33, 5090.40, 5090.52, 5090.55, 5090.56, and 5090.62 of, and to repeal and add Section 5090.12 of, the Public Resources Code, to amend Section 8352.8 of the Revenue and Taxation Code, and to amend Sections 38001, 38007, 38026, 38225, 38231.5, 38240, 38286, 38370, and 42204 of, and to repeal Section 38240.1 of, the Vehicle Code, relating to off-highway motor vehicle recreation.

[Approved by Governor September 14, 2002. Filed with
Secretary of State September 15, 2002.]

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

SECTION 1. Section 5010 of the Public Resources Code is amended to read:

5010. (a) The department may collect fees, rents, and other returns for the use of any state park system area, the amounts to be determined by the department. The department may accept a credit card as a method of payment for fees collected through the department's reservation system. Any contract executed by the department with credit card issuers or draft purchasers shall be consistent with Section 6159 of the Government Code. Notwithstanding Title 1.3 (commencing with Section 1747) of Part 4 of Division 3 of the Civil Code, the department may impose a surcharge in an amount to cover the cost of providing the reservation service, including reimbursement for any fee or discount charged by the credit card issuer.

(b) All revenues received by the department during each fiscal year shall be paid into the State Treasury to the credit of the State Parks and Recreation Fund, which is hereby created.

(c) Notwithstanding subdivision (b), all revenues received by the department from the state vehicular recreation area and trail system shall be paid into the State Treasury to the credit of the Off-Highway Vehicle Trust Fund, as required by Section 38225 of the Vehicle Code.

(d) All revenues received by the department for the entry or launching of boats shall be paid into the State Treasury to the credit of the State Parks and Recreation Fund and shall be used for boating safety, enforcement, operation, and maintenance programs of the department.

(e) On July 1, 1980, all existing balances, including unappropriated balances and encumbered and unencumbered balances, of the following funds and accounts shall be transferred to the State Parks and Recreation Fund:

(1) Park and Recreation Revolving Account (Section 5098, Public Resources Code, as added by Chapter 1222, Statutes of 1972).

(2) The Resources Protection Account (Section 8600, Public Resources Code, as added by Chapter 1052, Statutes of 1969).

(3) Collier Park Preservation Fund (Section 5010, Public Resources Code, as added by Chapter 1502, Statutes of 1974).

(4) San Francisco Maritime State Historic Park Account (Section 2, Chapter 1764, Statutes of 1971).

(5) State Park Highway Account, Bagley Conservation Fund (Section 2107.7, Streets and Highways Code, as added by Chapter 1032, Statutes of 1973).

(6) All funds received by the department pursuant to Division 21 (commencing with Section 31000).

(7) Hostel Facilities Use Fees Account (Section 2, Chapter 265, Statutes of 1974).

(8) All funds, other than expended funds, previously appropriated to the department from the Bagley Conservation Fund.

(f) On and after July 1, 1980, all funds, other than those specified in subdivisions (g) and (h), in the State Parks and Recreation Fund shall be available for expenditure for state park planning, acquisition, and development projects, operation of the state park system, and resource and property management and protection, when appropriated by the Legislature.

(g) All funds in the State Parks and Recreation Fund which had previously been appropriated and have become encumbered, may be used, without further appropriation, for liquidation of those encumbrances, upon the same terms and conditions as made by those previous appropriations.

(h) The balance of any unencumbered funds in the State Park Highway Account in the Bagley Conservation Fund shall be transferred to the State Parks and Recreation Fund and shall be available for expenditure as provided in subdivisions (b) and (c) of Section 2107.7 of the Streets and Highways Code.

(i) All funds received by the Department of Parks and Recreation from the auction sales conducted pursuant to Section 2080.6 of the Civil Code shall be paid into the State Treasury to the credit of the State Parks and Recreation Fund and shall be used for training department employees in the Ranger/Lifeguard classification, including, but not limited to, resource management and protection, law enforcement, interpretation, first aid, cardiopulmonary resuscitation, and medical technical training.

SEC. 2. Section 5090.01 of the Public Resources Code is amended to read:

5090.01. This chapter shall be known and may be cited as the Off-Highway Motor Vehicle Recreation Act of 2003.

SEC. 3. Section 5090.06 of the Public Resources Code is amended to read:

5090.06. ''Fund'' means the Off-Highway Vehicle Trust Fund created by subdivision (c) of Section 38225 of the Vehicle Code.

SEC. 4. Section 5090.11 of the Public Resources Code is amended to read:

5090.11. ''Restoration'' means, upon closure of the unit or any portion thereof, the restoration of land to the contours, the plant communities, and the plant covers comparable to those on surrounding lands or at least those that existed prior to off-highway motor vehicle use.

SEC. 5. Section 5090.12 is added to the Public Resources Code, to read:

5090.12. "Grant program" means the local assistance grant program and the cooperative agreement program.

SEC. 6. Section 5090.12 of the Public Resources Code is repealed.

SEC. 7. Section 5090.13 of the Public Resources Code is repealed.

SEC. 8. Section 5090.15 of the Public Resources Code is amended to read:

5090.15. (a) There is in the department the Off-Highway Motor Vehicle Recreation Commission, consisting of seven members, three of whom shall be appointed by the Governor, two of whom shall be appointed by the Senate Committee on Rules, and two of whom shall be appointed by the Speaker of the Assembly.

(b) In order to be appointed to the commission, a nominee shall represent one or more of the following groups:

(1) Off-highway vehicle recreation interests.

(2) Biological or soil scientists.

(3) Groups or associations of predominantly rural landowners.

(4) Law enforcement.

(5) Environmental protection organizations.

(6) Nonmotorized recreationist interests.

It is the intent of the Legislature that appointees to the commission represent all of the groups delineated in paragraphs (1) to (6), inclusive, to the extent possible.

(c) Whenever any reference is made to the State Park and Recreation Commission pertaining to a duty, power, purpose, responsibility, or jurisdiction of the State Park and Recreation Commission with respect to the state vehicular recreation areas, as established by this chapter, it shall be deemed to be a reference to, and to mean, the Off-Highway Motor Vehicle Recreation Commission.

(d) Based on the findings in the 2004 Off-Highway Vehicle Fuel Tax Study, the division shall, not later than January 1, 2005, prepare and submit to the Legislature a report that identifies the principal reasons why people are using off-road trails, as a means of assisting in the determination of how fuel tax funds should be expended.

SEC. 9. Section 5090.17 of the Public Resources Code is amended to read:

5090.17. (a) The terms of the members of the commission shall be four years.

(b) Appointments to the commission shall comply with the qualifications for membership specified in Sections 5090.15 and 5090.16.

SEC. 10. Section 5090.19 of the Public Resources Code is amended to read:

5090.19. The members of the commission shall elect a chairperson from their number who shall serve as chairperson for one year and until his or her successor is elected.

SEC. 11. Section 5090.22 of the Public Resources Code is amended to read:

5090.22. The chairperson of the commission may appoint committees composed of members of the commission and prescribe the jurisdiction of each.

SEC. 12. Section 5090.23 of the Public Resources Code is amended to read:

5090.23. The commission shall establish policies for the general guidance of the director and the division regarding all aspects of the system and the program.

SEC. 13. Section 5090.24 of the Public Resources Code is amended to read:

5090.24. The commission has the following particular duties and responsibilities:

(a) Be fully informed regarding all governmental activities affecting the program.

(b) Meet at least four times per year at various locations throughout the state to receive comments on the implementation of the program. Establish an annual calendar of proposed meetings at the beginning of each calendar year.

(c) Consider, upon the request of any owner or tenant, whose property is in the vicinity of any land in the system, any alleged adverse impacts occurring on that person's property from the operation of off-highway motor vehicles and recommend to the division suitable measures for the prevention of any adverse impact determined by the commission to be occurring, and suitable measures for the restoration of adversely impacted property.

(d) Review and comment annually to the director on the proposed budget of expenditures from the fund.

(e) Review and approve all minor and major capital outlay expenditures from the fund proposed for inclusion in the budget.

(f) Conduct one public meeting annually, prior to the start of each grant program cycle, to collect public input concerning the program, recommendations for program improvements, and specific project needs for the system and grant program areas.

(g) Prepare and submit a program report to the Governor, 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 July 1, 2005, and every two years thereafter. The report shall address the status of the program and off-highway motor vehicle recreation, the results of the strategic planning process

completed pursuant to subdivision (n) of Section 5090.32, the condition of natural and cultural resources of areas and trails receiving state off-highway motor vehicle funds, the resolution of conflicts of use in those areas and trails, the status of, and the accomplishments of expenditures from, the Conservation and Enforcement Services Account, a summary of resource monitoring data compiled and rehabilitative work concluded, and other relevant program-related environmental issues that have arisen over the preceding two calendar years.

The program report shall be adopted by the commission after discussing its contents during two or more public hearings.

(h) The commission shall hold a public hearing in an area in close proximity to any proposed substantial acquisition or development project unless a hearing consistent with federal law or regulation is held in close proximity to the proposed project.

SEC. 14. Section 5090.25 of the Public Resources Code is repealed.

SEC. 15. Section 5090.32 of the Public Resources Code is amended to read:

5090.32. The division has the following duties and responsibilities:

(a) Planning, acquisition, development, conservation, and restoration of lands in the state vehicular recreation areas.

(b) Direct management, maintenance, administration, and operation of lands in the state vehicular recreation areas.

(c) Provide for law enforcement and appropriate public safety activities.

(d) Implementation of all aspects of the program.

(e) Ensure program compliance with the California Environmental Quality Act (Division 13 (commencing with Section 21000)) in state vehicular recreation areas.

(f) Implement the policies established by the commission.

(g) Provide staff assistance to the commission.

(h) Prepare and implement plans for lands in, or proposed to be included in, state vehicular recreation areas, including new state vehicular recreation areas. However, no plan shall be prepared in any instance specified in subdivision (c) of Section 5002.2.

(i) Conduct, or cause to be conducted, surveys and prepare, or cause to be prepared, studies that are necessary or desirable for implementing the program.

(j) Recruit and utilize volunteers to further the objectives of the program.

(k) Prepare and coordinate safety and education programs.

(*l*) Conduct, or cause to be conducted, an annual audit of grants and cooperative agreements, and the performance of any recipient in

expending a grant or cooperative agreement made pursuant to Article 5 (commencing with Section 5090.50).

(m) Provide for the enforcement of Division 16.5 (commencing with Section 38000) of the Vehicle Code and other laws regulating the use or equipment of off-highway motor vehicles in all areas acquired, maintained, or operated by funds from the fund; however, the Department of the California Highway Patrol shall have responsibility for enforcement on highways.

(n) Complete by January 1, 2005, a strategic planning process that will identify future off-highway vehicle recreational needs, including, but not limited to, potential off-highway vehicle parks in urban areas to properly direct vehicle operators away from illegal or environmentally sensitive areas. This strategic planning process shall take into consideration, at a minimum, environmental constraints, infrastructure requirements, demographic limitations, and local, state, and federal land use planning processes. The initial strategic plan shall be updated periodically.

(o) Prepare and submit a report to the Legislature on or before January 1, 2005, that examines the effectiveness of the current noise standard, enforcement efforts, public outreach and education programs, the feasibility of improving the off-highway vehicle noise standard, and reassessment of the dates specified in paragraph (1) of subdivision (h) of Section 38370 of the Vehicle Code. The report shall also consider future reporting needs and appropriate reporting intervals.

SEC. 16. Section 5090.33 of the Public Resources Code is repealed.

SEC. 17. Section 5090.34 of the Public Resources Code is amended to read:

5090.34. Under the direction of the commission, the division shall publish and update periodically, a guidebook, including the text of this chapter, other laws and regulations relating to the program, and detailed maps of areas and trails in the system. The guidebook may include other public areas, trails, and facilities for the use of off-highway motor vehicles. The guidebook shall include information regarding the responsibility of users of the system and shall set forth pertinent laws, rules, and regulations, including particular provisions and other information intended to prevent trespass and damage to public and private property. The guidebook shall be prepared at minimal cost to facilitate the broadest possible distribution and may be offered for sale at a price only sufficient to meet all costs of preparation, printing, and distribution.

SEC. 18. Section 5090.35 of the Public Resources Code is amended to read:

5090.35. (a) The protection of public safety, the appropriate utilization of lands in the system, and the conservation of land resources

in the system are of the highest priority in the management of the system; and, accordingly, the division shall promptly repair and continuously maintain areas and trails, anticipate and prevent accelerated and unnatural erosion, and restore lands damaged by erosion to the extent possible.

(b) Notwithstanding Section 5090.23, the department, in consultation with the United States Soil Conservation Service, the United States Forest Service, the Bureau of Land Management, and the Department of Conservation shall adopt a generic soil loss standard by January 1, 1991, at least sufficient to allow restoration of off-highway motor vehicle areas and trails. The requirements of this chapter that are dependent upon the adoption of this soil loss standard shall not become operative until the standard is adopted. The department shall also make an inventory of wildlife populations and their habitats in each area in the system and shall prepare a wildlife habitat protection program to sustain a viable species composition specific to each area, by July 1, 1989.

(c) The division shall monitor the condition of soils and wildlife habitat in each area of the system each year in order to determine whether the soil loss standards and habitat protection plans are being met.

(d) Upon a determination that the soil loss standard and habitat protection plans are not being met in any area in the system, the department shall direct the division to close temporarily and repair, to prevent accelerated erosion, that area, or portion thereof funded by the Off-Highway Vehicle Trust Fund, until the soil loss standard and habitat protection plans are capable of being met.

(e) Upon a determination that the soil loss standard and habitat protection plans cannot be met in any area in the system, the department shall direct the division to close that area, or any portion thereof funded from the Off-Highway Vehicle Trust Fund, and to reclaim and rehabilitate the area.

(f) The division may not fund trail construction unless it complies with the conservation specifications prescribed in subdivision (b). The division may not fund trail construction where conservation is not feasible.

SEC. 19. Section 5090.36 of the Public Resources Code is amended to read:

5090.36. The division may enter into contracts with concessionaires and grants or cooperative agreements with other public agencies, pursuant to laws and procedures specified in this division, for the care and maintenance of lands in the system, including law enforcement services with public agencies having law enforcement authority.

SEC. 20. Section 5090.40 of the Public Resources Code is repealed.

SEC. 21. Section 5090.43 of the Public Resources Code is amended to read:

5090.43. (a) State vehicular recreation areas shall be established on lands where there are quality recreational opportunities for off-highway motor vehicles and in accordance with the requirements of Section 5090.35. Areas shall be developed, managed, and operated for the purpose of making the fullest public use of the outdoor recreational opportunities present. The natural and cultural elements of the environment may be managed or modified to enhance the recreational experience consistent with the requirements of Section 5090.35.

(b) Lands for state vehicular recreation areas shall be selected for acquisition so as to minimize the need for establishing sensitive areas.

(c) After January 1, 1988, no new cultural or natural preserves or state wildernesses shall be established within state vehicular recreation areas. To protect natural and cultural values, sensitive areas within state vehicular recreation areas may be designated by the division if the Off-Highway Motor Vehicle Recreation Commission holds a public hearing and makes a recommendation therefor. These sensitive areas shall be managed by the division in accordance with Sections 5019.71 and 5019.74, which define the purpose and management of natural and cultural preserves.

If off-highway motor vehicle use results in damage to any natural or cultural values, appropriate measures shall be taken to protect these lands from any further damage. These measures may include the erection of physical barriers and shall include the restoration of natural resources and the repair of damage to cultural resources.

SEC. 22. An article heading is added to Chapter 1.25 of Division 5 of the Public Resources Code, immediately preceding Section 5090.44, to read:

Article 4.5. California Statewide Motorized Trail

SEC. 23. Section 5090.44 of the Public Resources Code is amended to read:

5090.44. The division shall assist in the designation of corridors for a California Statewide Motorized Trail. The California Statewide Motorized Trail shall consist of corridors that are designated and maintained for recreational travel by off-highway motor vehicles, as defined in Section 38006 of the Vehicle Code, and that are designated for off-highway motor vehicle travel by the owner of, or other person or public entity having control over, the property traversed by the corridor. Portions of the California Statewide Motorized Trail may include lands designated and maintained as trailheads. The California Statewide Motorized Trail shall be selected and managed in accordance with this chapter. Trails designated pursuant to this section may be known as the California Statewide Motorized Trail.

SEC. 24. Section 5090.45 of the Public Resources Code is amended and renumbered to read:

5090.37. Eminent domain shall not be exercised to acquire any interest in property for a state vehicular recreation area, the California Motorized Trail, or any grant program area or trail by the division or any public agency that has entered into a grant or cooperative agreement with the division.

SEC. 25. Section 5090.47 of the Public Resources Code is amended and renumbered to read:

5090.65. Money in the fund shall be used to pay for the repair of any boundary fence that segregates off-highway vehicle use from adjoining landowners and is adjacent to an off-highway vehicle site that is funded by the fund, when the fence has become broken or damaged by off-highway vehicle users.

SEC. 26. The heading of Article 5 (commencing with Section 5090.50) of Chapter 1.25 of Division 5 of the Public Resources Code is amended to read:

Article 5. Local Assistance Grants, Grants to Nonprofit Organizations and Educational Institutions, and Cooperative Agreements with Federal Agencies

SEC. 27. Section 5090.50 of the Public Resources Code is amended to read:

5090.50. (a) Grants may be made to cities, counties, and appropriate districts if the grant applicant has approval to apply for grant funds, in the form of a resolution from its governing body.

(b) The division may enter into cooperative agreements with agencies of the United States and federally recognized Native American tribes.

(c) Grants and cooperative agreements may be awarded for the planning, acquisition, development, maintenance, administration, operation, enforcement, restoration, and conservation of trails, trailheads, areas, and other facilities associated with the use of off-highway motor vehicles, and programs involving off-highway motor vehicle safety or education.

(d) Grant and cooperative agreement applications shall be in accordance with local or federal plans and any plans for off-highway motor vehicle recreation prepared by the division.

(e) Notwithstanding subdivision (c), funds may be used for law enforcement and repairing damage caused by the use of off-highway motor vehicles on property being used by off-highway motor vehicles where the operation of those vehicles is prohibited by federal, state, or local law.

(f) Notwithstanding subdivision (c), grants may be awarded to educational institutions and nonprofit organizations for eligible projects that are designed to sustain a managed off-highway motor vehicle recreation program. Eligible projects shall be limited to scientific research, natural resource conservation activities, as defined in Section 5090.10, cultural resource conservation activities, and programs involving off-highway motor vehicle safety or education. If the application for grant funds involves activities on any public lands, the applicant shall obtain approval from the affected land management agency and submit that approval with the application for grant funds. All projects shall comply with the requirements of subdivisions (g) and (h).

(g) Every applicant for a grant shall comply with the California Environmental Quality Act (Division 13 (commencing with Section 21000)). The division shall ensure that all cooperative agreement applications have completed environmental review procedures that are at least comparable to those of the California Environmental Quality Act.

(h) All cooperative agreements shall be subject to the uniform application of soil, wildlife, and wildlife habitat protection standards specified in Section 5090.53.

(i) Subdivision (h) does not apply to applicants that apply solely for law enforcement funding.

(j) No grant may be made or cooperative agreement entered into under this section without the approval of the commission.

SEC. 28. Section 5090.52 of the Public Resources Code is repealed.

SEC. 29. Section 5090.53 of the Public Resources Code is amended to read:

5090.53. (a) Money in the fund may be granted or expended pursuant to Section 5090.50 for projects to fulfill the conditions outlined below and for public health and safety facilities.

(b) However, no funds may be granted or encumbered pursuant to Section 5090.50 for the acquisition of land for, or the development of, a trail, trailhead, area, or other facility for the use of off-highway motor vehicles after July 1, 1989, unless all of the following conditions are met:

(1) The recipient has completed wildlife habitat and soil surveys and has prepared a wildlife habitat protection program to sustain a viable species composition for the project area.

(2) The recipient agrees to monitor the condition of soils and wildlife in the project area each year in order to determine whether the soil loss standard adopted pursuant to Section 5090.35 and the wildlife habitat protection programs are being met.

(3) The recipient agrees that, whenever the soil loss standard adopted pursuant to Section 5090.35 and the wildlife habitat protection programs are not being met in any project area, the recipient will temporarily close

and repair, to prevent accelerated erosion, that area, or any portion thereof, until the soil loss standard adopted pursuant to Section 5090.35 and the wildlife habitat protection program are capable of being met.

(4) The recipient agrees to enforce the registration of off-highway motor vehicles and the other provisions of Division 16.5 (commencing with Section 38000) of the Vehicle Code and to enforce the other applicable laws regarding the equipping and use of off-highway motor vehicles.

SEC. 30. Section 5090.55 of the Public Resources Code is repealed.

SEC. 31. Section 5090.56 of the Public Resources Code is repealed.

SEC. 32. Section 5090.60 of the Public Resources Code is amended to read:

5090.60. The fund consists of deposits from the following sources:

(a) Revenues transferred from the Motor Vehicle Fuel Account in the Transportation Tax Fund.

(b) Fees paid pursuant to subdivision (b) of Section 38225 of the Vehicle Code.

(c) Unexpended service fees.

(d) Fees and other proceeds collected at state vehicular recreation areas, as provided in subdivision (c) of Section 5010.

(e) Reimbursements.

(f) Revenues and income from any other source required by law to be deposited in the fund.

SEC. 33. Section 5090.61 of the Public Resources Code is amended to read:

5090.61. Money in the fund shall be available, upon appropriation by the Legislature, for allocation by the commission as follows:

(a) An amount, not to exceed 50 percent of the revenues from the special fee required by subdivision (b) of Section 38225 of the Vehicle Code, the revenues transferred from the Motor Vehicle Fuel Account, and revenue received from interest, is available for local assistance grants or cooperative agreements pursuant to Article 5 (commencing with Section 5090.50).

(b) The remainder of the revenues from the special fee required by subdivision (b) of Section 38225 of the Vehicle Code and the remainder of the revenues transferred from the Motor Vehicle Fuel Account, together with all other moneys in the fund, shall be available for the support of the division in implementing the program and for the planning, acquisition, development, construction, maintenance, administration, operation, and conservation of lands in the system. As used in this subdivision, ‘‘support of the division’’ includes functions performed outside the division by others on behalf of the division, including costs incurred on behalf of the division for personnel management and training, accounting and fiscal analysis, records,

purchasing, public information activities, consultation of professional scientists and reclamation experts for purposes of Section 5090.35, and legal services.

"Support of the division" does not include any costs incurred by, or attributable to, the director or the director's immediate staff or their salaries.

SEC. 34. Section 5090.62 of the Public Resources Code is repealed.

SEC. 35. Section 5090.64 of the Public Resources Code is amended to read:

5090.64. (a) Thirty percent of the funds allocated pursuant to Section 8352.8 of the Revenue and Taxation Code shall be expended solely for restoration activities, as defined in Section 5090.11.

(b) Seventy percent of the funds allocated pursuant to Section 8352.8 of the Revenue and Taxation Code shall be expended solely for the following activities related to the use of off-highway motor vehicles:

(1) Conservation activities carried out for the prevention or reduction of soil loss, wildlife loss, and habitat loss as described in Sections 5090.10, 5090.35, 5090.50, and 5090.53.

(2) Enforcement activities consisting of employing, equipping, and supervising law enforcement personnel for the purpose of protecting natural and cultural resources, enforcement of Division 16.5 (commencing with Section 38000) of the Vehicle Code, enforcement of Sections 4442 and 4442.5 of this code, and enforcement of other laws regulating the equipment and use of off-highway motor vehicles.

(3) The construction of physical barriers and other means of traffic control regulating the use of off-highway motor vehicles.

SEC. 36. Section 8352.8 of the Revenue and Taxation Code is amended to read:

8352.8. (a) The Conservation and Enforcement Services Account is hereby established as an account in the Off-Highway Vehicle Trust Fund. Subject to Sections 8352 and 8352.1, on the first day of every month there shall be transferred from money deposited in the Motor Vehicle Fuel Account to the Conservation and Enforcement Services Account the total amount determined on the basis of the estimates contained in this section.

(b) On or before August 15, 1987, and every two years thereafter, the Department of Transportation shall prepare, or cause to be prepared, in cooperation with the Department of Parks and Recreation, a report setting forth the current estimate of the amount of money credited to the Motor Vehicle Fuel Account that is attributable to taxes imposed upon distributions of motor vehicle fuel estimated to have been used in the off-highway operation of vehicles required to be registered as off-highway vehicles by Division 16.5 (commencing with Section

38000) of the Vehicle Code, but which were not so registered, and shall submit a copy of the report to the Legislature.

(c) Funds in the Conservation and Enforcement Services Account shall be allocated to the Division of Off-Highway Motor Vehicle Recreation of the Department of Parks and Recreation for expenditure when appropriated by the Legislature for the purposes of Section 5090.64 of the Public Resources Code.

(d) On or before January 1, 2005, the Division of Off-Highway Motor Vehicle Recreation in the Department of Parks and Recreation shall submit a report to the Legislature that identifies the appropriate level of funding necessary to sustain conservation and enforcement needs, grant areas, state vehicular recreation areas, capital outlay, and division support, based upon an analysis of program income and expenditures during the preceding five fiscal years and the fundings contained in the most recent fuel tax study.

SEC. 37. Section 38001 of the Vehicle Code is amended to read:

38001. (a) Except as otherwise provided, this division applies to off-highway motor vehicles, as defined in Section 38006, on lands, other than a highway, that are open and accessible to the public, including any land acquired, developed, operated, or maintained, in whole or in part, with money from the Off-Highway Vehicle Trust Fund, except private lands under the immediate control of the owner or his or her agent where permission is required and has been granted to operate a motor vehicle. For purposes of this division, the term ''highway'' does not include fire trails, logging roads, service roads regardless of surface composition, or other roughly graded trails and roads upon which vehicular travel by the public is permitted.

(b) Privately owned and maintained parking facilities that are generally open to the public are exempt from this division, unless the facilities are specifically declared subject to this division by the procedure specified in Section 21107.8.

SEC. 38. Section 38007 of the Vehicle Code is amended to read:

38007. The Off-Highway Motor Vehicle Recreation Division of the Department of Parks and Recreation shall adopt courses of instruction in off-highway motor vehicle safety, operation, and principles of environmental preservation by January 1, 2005. For this purpose the division shall consult with the Department of the California Highway Patrol and other public and private agencies or organizations. The division shall make this course of instruction available directly, through contractual agreement, or through volunteers authorized by the division to conduct a course of instruction.

SEC. 39. Section 38026 of the Vehicle Code is amended to read:

38026. (a) In addition to Section 38025 and after complying with subdivision (c) of this section, if a local authority, an agency of the

federal government, or the Director of Parks and Recreation finds that a highway, or a portion thereof, under the jurisdiction of the authority, agency, or the director, as the case may be, is located in a manner that provides a connecting link between off-highway motor vehicle trail segments, between an off-highway motor vehicle recreational use area and necessary service facilities, or between lodging facilities and an off-highway motor vehicle recreational facility and if it is found that the highway is designed and constructed so as to safely permit the use of regular vehicular traffic and also the driving of off-highway motor vehicles on that highway, the local authority, by resolution or ordinance, agency of the federal government, or the Director of Parks and Recreation, as the case may be, may designate that highway, or a portion thereof, for combined use and shall prescribe rules and regulations therefor. No highway, or portion thereof, shall be so designated for a distance of more than three miles. No freeway shall be designated under this section.

(b) The Off-Highway Motor Vehicle Recreation Commission may propose highway segments for consideration by local authorities, an agency of the federal government, or the Director of Parks and Recreation for combined use.

(c) Prior to designating a highway or portion thereof on the motion of the local authority, an agency of the federal government, or the Director of Parks and Recreation, or as a recommendation of the Off-Highway Motor Vehicle Recreation Commission, a local authority, an agency of the federal government, or the Director of Parks and Recreation shall notify the Commissioner of the California Highway Patrol, and shall not designate any segment pursuant to subdivision (a) which, in the opinion of the commissioner, would create a potential traffic safety hazard.

(d) A designation of a highway, or a portion thereof, under subdivision (a) shall become effective upon the erection of appropriate signs of a type approved by the Department of Transportation on and along the highway, or portion thereof.

The cost of the signs shall be reimbursed from the Off-Highway Vehicle Trust Fund, when appropriated by the Legislature, or by expenditure of funds from a grant or cooperative agreement made pursuant to Section 5090.50 of the Public Resources Code.

SEC. 40. Section 38225 of the Vehicle Code is amended to read:

38225. (a) A service fee of seven dollars ($7) 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 eight dollars ($8) 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 Section 5090.50 of the Public Resources Code.

(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, 2007, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2007, deletes or extends that date. Any unencumbered funds remaining in the Off-Highway Vehicle Trust Fund on January 1, 2007, shall be transferred to the General Fund.

SEC. 41. Section 38231.5 of the Vehicle Code is amended to read:

38231.5. (a) The fee for a special permit issued under Section 38087.5 shall be not less than twenty dollars ($20), as established by the Department of Parks and Recreation. The Department of Parks and Recreation may adjust the special permit fee for a permit issued to a nonresident of this state under Section 38087.5, as necessary, to recover the costs of this program. After deducting its administrative and vendor costs, the Department of Parks and Recreation shall deposit the fees received under this section in the Off-Highway Vehicle Trust Fund. Money in the fund shall be allocated, upon appropriation, as provided in Sections 5090.50 and 5090.64 of the Public Resources Code.

(b) The Department of Parks and Recreation shall print the special permits required by Section 38087.5 and shall supervise the sale of those permits throughout the state.

(c) The Department of Parks and Recreation shall either distribute and sell the special permits directly or contract with vendors according to rules and regulations established by that department. The vendors

shall receive a commission in an amount not to exceed 5 percent of the fee imposed pursuant to subdivision (a) for each special permit sold. The Department of Parks and Recreation may solicit the participation of qualified retail commercial enterprises engaged in the sale or rental of off-highway vehicles, equipment, accessories, or supplies to act as authorized vendors of the special permits and may authorize local and federal agencies that provide off-highway vehicle opportunities to act as authorized vendors of the special permits.

SEC. 42. Section 38240 of the Vehicle Code is amended to read:

38240. (a) The Controller shall allocate the fees collected under Section 38230 in July and January of each fiscal year in the same manner as fees are allocated under subdivisions (c) and (d) of Section 11005 of the Revenue and Taxation Code.

(b) The funds collected under Section 38230 shall be used for the purposes set forth in Sections 5090.50 and 5090.64 of the Public Resources Code.

(c) Funds received by a city or county pursuant to this section may be expended for facilities located outside the limits of the city or county if both of the following conditions are met:

(1) The funds are expended for the purposes of acquiring, developing, and constructing trails, areas, or other facilities for the use of off-highway motor vehicles.

(2) The funds are expended pursuant to agreement with the city in which the facility is located or with the county in which the facility is located if the facility is located in an unincorporated territory.

SEC. 43. Section 38240.1 of the Vehicle Code is repealed.

SEC. 44. Section 38286 of the Vehicle Code is amended to read:

38286. The provisions of Article 3 (commencing with Section 38305), Article 4 (commencing with Section 38312), Article 5 (commencing with Section 38316), Section 38319 of this chapter, and subdivision (h) of Section 38370 shall not apply to a motor vehicle being operated in an organized racing event that is conducted under the auspices of a recognized sanctioning body or by permit issued by the governmental authority having jurisdiction.

SEC. 45. Section 38370 of the Vehicle Code is amended to read:

38370. (a) The Department of Motor Vehicles shall not identify any new off-highway motor vehicle, which is subject to identification and which produces a maximum noise level that exceeds the following noise limit, at a distance of 50 feet from the centerline of travel, under test procedures established by the Department of the California Highway Patrol.

(1) Any such vehicle manufactured before January 1, 1973 . .	92 dbA
(2) Any such vehicle manufactured on or after January 1, 1973, and before January 1, 1975	88 dbA
(3) Any such vehicle manufactured on or after January 1, 1975, and before January 1, 1986	86 dbA
(4) Any such vehicle manufactured on or after January 1, 1986	82 dbA

(b) The department may accept a dealer's certificate as proof of compliance with this section.

(c) Test procedures for compliance with this section shall be established by the Department of the California Highway Patrol, taking into consideration the test procedures of the Society of Automotive Engineers.

(d) No person shall sell or offer for sale any new off-highway motor vehicle which is subject to identification and which produces a maximum noise level that exceeds the noise limits in subdivision (a), and for which noise emission standards or regulations have not been adopted by the Administrator of the Environmental Protection Agency pursuant to the Federal Noise Control Act of 1972 (P.L. 92-574).

(e) No person shall sell or offer for sale any new off-highway motor vehicle which is subject to identification and which produces a noise level that exceeds, or in any way violates, the noise emission standards or regulations adopted for such a motor vehicle by the Administrator of the Environmental Protection Agency pursuant to the Federal Noise Control Act of 1972 (P.L. 92-574).

(f) As used in this section, the term ''identify'' is equivalent to the term "licensing'' as used in Section 6(e)(2) of the Federal Noise Control Act of 1972 (P.L. 92-574).

(g) Any off-highway motor vehicle, when operating pursuant to Section 38001, shall at all times be equipped with a silencer, or other device, which limits noise emissions to not more than 101 dbA if manufactured on or after January 1, 1975, or 105 dbA if manufactured before January 1, 1975, when measured from a distance of 20 inches using test procedures established by the Society of Automotive Engineers under Standard J-1287. This subdivision shall only be operative until January 1, 2003.

(h) On and after January 1, 2003, off-highway motor vehicles, when operating pursuant to Section 38001, shall at all times be equipped with a silencer, or other device, which limits noise emissions.

(1) Noise emissions of competition off-highway vehicles manufactured on or after January 1, 1998, shall be limited to not more than 96 dbA, and if manufactured prior to January 1, 1998, to not more

than 101 dbA, when measured from a distance of 20 inches using test procedures established by the Society of Automotive Engineers under Standard J-1287, as applicable. Noise emissions of all other off-highway vehicles shall be limited to not more than 96 dbA if manufactured on or after January 1, 1986, and not more than 101 dbA if manufactured prior to January 1, 1986, when measured from a distance of 20 inches using test procedures established by the Society of Automotive Engineers under Standard J-1287, as applicable.

(2) The Off-Highway Motor Vehicle Recreation Division of the Department of Parks and Recreation shall evaluate and reassess the dates specified in paragraph (1) and include the findings and recommendations in the noise report required in subdivision (o) of Section 5090.32 of the Public Resources Code.

(i) Off-highway vehicle manufacturers or their agents prior to the sale to the general public in California of any new off-highway vehicle model manufactured after January 1, 2003, shall provide to the Off-Highway Motor Vehicle Recreation Division of the California Department of Parks and Recreation rpm data needed to conduct the J-1287 test, where applicable.

SEC. 46. Section 42204 of the Vehicle Code is amended to read:

42204. Notwithstanding any other provisions of law, all fines and forfeitures collected for violations of Division 16.5 (commencing with Section 38000) shall be deposited in the appropriate fund in the county where the violation occurred and distributed in the same manner as specified in Section 42201.5, and shall be used for enforcing laws related to the operation of off-highway motor vehicles.

CHAPTER 564

An act to amend Sections 1 and 32 of the Ventura County Flood Control Act (Chapter 44 of the Statutes of the 1944 Fourth Extraordinary Session), relating to the Ventura County Flood Control Act.

[Approved by Governor September 14, 2002. Filed with Secretary of State September 15, 2002.]

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

SECTION 1. Section 1 of the Ventura County Flood Control Act (Chapter 44 of the Statutes of the 1944 Fourth Extraordinary Session) is amended to read:

Section 1. (a) A flood control district is hereby created to be called "Ventura County Watershed Protection District." The boundaries and

territory of that district shall be as follows: All the territory of the County of Ventura lying within the exterior boundaries thereof, excluding the islands of Anacapa and San Nicholas.

(b) Any reference in this act to the Ventura County Flood Control District means the Ventura County Watershed Protection District.

SEC. 2. Section 32 of the Ventura County Flood Control Act (Chapter 44 of the Statutes of 1944, Fourth Extraordinary Session) is amended to read:

Sec. 32. This act may be known and may be cited as the Ventura County Watershed Protection Act.

CHAPTER 565

An act to amend Section 5006.1 of the Public Resources Code, relating to public resources.

[Approved by Governor September 14, 2002. Filed with Secretary of State September 15, 2002.]

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

SECTION 1. Section 5006.1 of the Public Resources Code is amended to read:

5006.1. (a) (1) Prior to submitting a proposal pursuant to subdivision (f) of Section 5006, for an appropriation for the acquisition of real property in excess of five million dollars ($5,000,000) in value for any state park system project, the department shall hold a public hearing within the county in which the proposed project is located at which interested members of the public may comment on the proposed project. Notice of the hearing shall be published at least twice in a newspaper of general circulation within that county.

(2) (A) The department shall provide written notice of its intent to acquire the real property to the city or county, or both, having jurisdiction over the property, as early as possible in the acquisition process, but not less than 90 days from the date of acquisition. Within 30 days of receipt of the written notice by the city or county, or both, notifying the city or county, or both, of the proposed acquisition, a member of the city council or board of supervisors of the respective city or county may request the department to hold a public hearing regarding the acquisition of the property, if the acquisition is between five hundred thousand dollars ($500,000) and five million dollars ($5,000,000).

(B) The written notice of intent shall describe any potential impact that the acquisition may have on the department's efforts to provide park and recreational opportunities.

(b) With respect to real property in excess of five million dollars ($5,000,000) that is not proposed to be acquired pursuant to subdivision (f) of Section 5006, the department shall hold a public hearing within the county in which the real property is located at which interested members of the public may comment on the proposed acquisition. Notice of the hearing shall be published at least twice in a newspaper of general circulation within the county. The department shall provide written notice of its intent to acquire the real property to the city or county, or both, having jurisdiction over the property, as early as possible in the acquisition process.

(c) This section does not apply to any real property to be acquired by grant, gift, devise, or bequest.

CHAPTER 566

An act to amend Section 10759.5 of the Revenue and Taxation Code, relating to taxation, to take effect immediately, tax levy.

[Approved by Governor September 14, 2002. Filed with Secretary of State September 15, 2002.]

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

SECTION 1. Legislature finds and declares:

(a) There is a wide disparity on fees levied on owners of vehicles operated on alternative fuels when compared to those same taxes and fees levied on owners of comparable conventional fuel vehicles.

(b) In some cases, the fees on alternative fuel vehicles are more than twice as much as those for conventional fuel vehicles.

(c) The disparity in fees exists even though the alternative fuel vehicle may look identical to the conventional fuel vehicle and provide the same or lesser utility to the individual owner.

(d) The existing California vehicle license fee on motor vehicles that operate on alternative fuels is higher than for comparable conventional fuel vehicles because alternative fuel vehicles generally have higher sales prices. The higher sales prices are largely due to the fact that these vehicles are produced in extremely low volumes (many assembled by hand), such that their production has not achieved the economies of scale that would significantly reduce their cost; and they use many new advanced materials and technologies that also have not yet achieved

economies of scale, and therefore have a temporarily greater cost to consumers.

(e) The higher sales prices for these alternative fuel vehicles are expected to be a short-term, temporary situation because prices are expected to decline significantly to competitive levels as volume increases. If this does not occur, these vehicles may never be competitive, and automakers would likely withdraw them from the market. The current vehicle license fee mechanism does not reflect these temporary, short-term pricing situations. Instead they intrinsically, but incorrectly, assume that these short-term higher prices reflect true long-term market value of the vehicles.

(f) Alternative fuel vehicles provide benefits to California citizens that are external to, or not reflected in, their cost to the purchaser. These benefits include: increasing our national independence from foreign energy sources; providing more transportation choices for consumers and businesses, thus reducing our economic vulnerability to sudden fuel price increases caused by external or internal events; reducing air pollution from mobile sources; reducing future pressures for additional environmental controls on existing and new businesses and industries in California; and creating new advanced transportation technology jobs and industries in California.

(g) It is the public policy of the State of California, the federal government, and many local governments, to encourage the development and use of alternative fuel vehicles, for the purpose of providing the benefits described above to all California citizens.

(h) Existing vehicle license fee structures, as they relate to the determination of market value of alternative fuel vehicles, do not reflect the critical short-term pricing issues described above, nor the external benefits that accrue to all California citizens. Additionally, these existing fees act as a significant disincentive to potential purchasers of alternative fuel vehicles, and as such, are contrary to existing public policies at all levels of government.

(i) It is the intent of the Legislature to equalize the vehicle license fee between alternative fuel vehicles and conventional fuel vehicles for a period of four years, beginning January 1, 1999, and ending December 31, 2008. During this time period it is the intent of the Legislature that the incremental or differential cost between an alternative fuel vehicle and a comparable conventional fuel vehicle, as determined by the State Energy Resources Conservation and Development Commission, should be exempt from the vehicle license fee.

(j) To ensure that the alternative fuel vehicles subject to these provisions provide significant reduction in air pollution, eligible vehicles must meet, at a minimum, the standard for ultra-low-emission vehicles as determined by the State Air Resources Board.

SEC. 2. Section 10759.5 of the Revenue and Taxation Code is amended to read:

10759.5. (a) For purposes of determining the vehicle license fee imposed by this part, there are exempted from the determination of market value, the incremental costs of new light-duty motor vehicles propelled by alternative fuels, and certified by the State Air Resources Board as producing emissions that meet the emission standard for ultra-low-emission vehicles or lower as defined by the board. This exemption shall apply to the subsequent payments of the vehicle license fee.

(b) For purposes of this section, ''incremental cost'' means the amount determined by the State Energy Resources Conservation and Development Commission as the reasonable difference between the cost of the motor vehicle defined in subdivision (a) and the cost of a comparable gasoline or diesel fuel vehicle. This determination shall constitute the maximum incremental cost for purposes of the exemption in subdivision (a), and may be reduced by the actual sales price of the vehicle. The actual incremental cost shall be stated in the contract for sale or lease with the purchaser, and shall be reported to the commission quarterly.

(c) This section shall become operative on January 1, 1999, and shall remain in effect only until January 1, 2009, and as of that date is repealed.

SEC. 3. This act provides for a tax levy within the meaning of Article IV of the Constitution and shall go into immediate effect.

CHAPTER 567

An act to amend Section 25534 of the Public Resources Code, relating to energy resources.

[Approved by Governor September 14, 2002. Filed with Secretary of State September 15, 2002.]

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

SECTION 1. The Legislature finds and declares all of the following:

(a) Reliable, reasonably priced electricity service is essential for California's economic growth and for the health and welfare of its citizens.

(b) The Legislature, through Assembly Bill 970 of the 1999-2000 Regular Session and Senate Bill 28 of the 2001–02 First Extraordinary Session, and the Governor, through Executive orders issued pursuant to his emergency powers, have acted to expedite the construction of in-state

electric generation facilities by accelerating the State Energy Resources Conservation and Development Commission's powerplant certification process, signing long-term contracts for the electricity production of planned facilities, and offering incentives for rapid powerplant construction.

(c) However, because it is critical for the welfare of the state and its citizens that entities that obtain certification to construct new powerplants do so with all due speed, it is the policy of the state to condition the issuance of powerplant certification to require prompt, continuous, good faith efforts to construct the certified project within its original construction schedule.

(d) It is further the policy of the state that, in the event a certificate holder fails to demonstrate prompt, continuous, good faith efforts to construct new powerplants, the commission may revoke the certification of the original project owner and issue a new certification to the California Consumer Power and Conservation Financing Authority to construct the project if the authority demonstrates to the commission that it is willing and able to construct the project either independently or in conjunction with any other public or private entity, including the original licensee.

SEC. 2. Section 25534 of the Public Resources Code is amended to read:

25534. (a) The commission may, after one or more hearings, amend the conditions of, or revoke the certification for, any facility for any of the following reasons:

(1) Any material false statement set forth in the application, presented in proceedings of the commission, or included in supplemental documentation provided by the applicant.

(2) Any significant failure to comply with the terms or conditions of approval of the application, as specified by the commission in its written decision.

(3) A violation of this division or any regulation or order issued by the commission under this division.

(4) The owner of a project does not start construction of the project within 12 months after the date all permits necessary for the project become final and all administrative and judicial appeals have been resolved provided the California Consumer Power and Conservation Financing Authority notifies the commission that it is willing and able to construct the project pursuant to subdivision (g). The project owner may extend the 12-month period by 24 additional months pursuant to subdivision (f). This paragraph applies only to projects with a project permit application deemed complete by the commission after January 1, 2003.

(b) The commission may also administratively impose a civil penalty for a violation of paragraph (1) or (2) of subdivision (a). Any civil penalty shall be imposed in accordance with Section 25534.1 and may not exceed seventy-five thousand dollars ($75,000) per violation, except that the civil penalty may be increased by an amount not to exceed one thousand five hundred dollars ($1,500) per day for each day in which the violation occurs or persists, but the total of the per day penalties may not exceed fifty thousand dollars ($50,000).

(c) A project owner shall commence construction of a project subject to the start-of-construction deadline provided by paragraph (4) of subdivision (a) within 12 months after the project has been certified by the commission and after all accompanying project permits are final and administrative and judicial appeals have been completed. The project owner shall submit construction and commercial operation milestones to the commission within 30 days after project certification. Construction milestones shall require the start of construction within the 12-month period established by this subdivision. The commission shall approve milestones within 60 days after project certification. If the 30-day deadline to submit construction milestones to the commission is not met, the commission shall establish milestones for the project.

(d) The failure of the owner of a project subject to the start-of-construction deadline provided by paragraph (4) of subdivision (a) to meet construction or commercial operation milestones, without a finding by the commission of good cause, shall be cause for revocation of certification or the imposition of other penalties by the commission.

(e) A finding by the commission that there is good cause for failure to meet the start-of-construction deadline required by paragraph (4) of subdivision (a) or any subsequent milestones of subdivision (c) shall be made if the commission determines that any of the following criteria are met:

(1) The change in any deadline or milestone does not change the established deadline or milestone for the start of commercial operation.

(2) The deadline or milestone is changed due to circumstances beyond the project owner's control, including, but not limited to, administrative and legal appeals.

(3) The deadline or milestone will be missed but the project owner demonstrates a good faith effort to meet the project deadline or milestone.

(4) The deadline or milestone will be missed due to unforeseen natural disasters or acts of God that prevent timely completion of the project deadline or milestone.

(5) The deadline or milestone will be missed for any other reason determined reasonable by the commission.

(f) The commission shall extend the start of the construction deadline required by paragraph (4) of subdivision (a) by an additional 24 months, if the owner reimburses the commission's actual cost of licensing the project. For the purposes of this section, the commission's actual cost of licensing the project shall be based on a certified audit report filed by the commission staff within 180 days of the commission's certification of the project. The certified audit shall be filed and served on all parties to the proceeding, is subject to public review and comment, and is subject to at least one public hearing if requested by the project owner. Any reimbursement received by the commission pursuant to this subdivision shall be deposited in the General Fund.

(g) If the owner of a project subject to the start-of-construction deadline provided by paragraph (4) of subdivision (a) fails to commence construction, without good cause, within 12 months after the project has been certified by the commission and has not received an extension pursuant to subdivision (f), the commission shall provide immediate notice to the California Consumer Power and Conservation Financing Authority. The authority shall evaluate whether to pursue the project independently or in conjunction with any other public or private entity, including the original certificate holder. If the authority demonstrates to the commission that it is willing and able to construct the project either independently or in conjunction with any other public or private entity, including the original certificate holder, the commission may revoke the original certification and issue a new certification for the project to the authority, unless the authority's statutory authorization to finance or approve new programs, enterprises, or projects has expired. If the authority declines to pursue the project, the permit shall remain with the current project owner until it expires pursuant to the regulations adopted by the commission.

(h) If the commission issues a new certification for a project subject to the start-of-construction deadline provided by paragraph (4) of subdivision (a) to the authority, the commission shall adopt new milestones for the project that allow the authority up to 24 months to start construction of the project or to start to meet the applicable deadlines or milestones. If the authority fails to begin construction in conformity with the deadlines or milestones adopted by the commission, without good cause, the certification may be revoked.

(i) (1) If the commission issues a new certification for a project subject to the start-of-construction deadline provided by paragraph (4) of subdivision (a) to the authority and the authority pursues the project, without participation of the original certificate holder, the authority shall offer to reimburse the original certificate holder for the actual costs the original certificate holder incurred in permitting the project and in procuring assets associated with the license, including, but not limited

to, major equipment and the emission offsets. In order to receive reimbursement, the original certificate holder shall provide to the commission documentation of the actual costs incurred in permitting the project. The commission shall validate those costs. The certificate holder may refuse to accept the offer of reimbursement for any asset associated with the license and retain the asset. To the extent the certificate holder chooses to accept the offer for an asset, it shall provide the authority with the asset.

(2) If the authority reimburses the original certificate holder for the costs described in paragraph (1), the original certificate holder shall provide the authority with all of the assets for which the original certificate holder received reimbursement.

(j) This section does not prevent a certificate holder from selling its license to construct and operate a project prior to its revocation by the commission. In the event of a sale to an entity that is not an affiliate of the certificate holder, the commission shall adopt new deadlines or milestones for the project that allow the new certificate holder up to 12 months to start construction of the project or to start to meet the applicable deadlines or milestones.

(k) Paragraph (4) of subdivision (a) and subdivisions (c) to (j), inclusive, do not apply to licenses issued for the modernization, repowering, replacement, or refurbishment of existing facilities or to a qualifying small power production facility or a qualifying cogeneration facility within the meaning of Sections 201 and 210 of Title II of the federal Public Utility Regulatory Policies Act of 1978 (16 U.S.C. Secs. 796(17), 796(18), and 824a-3), and the regulations adopted pursuant to those sections by the Federal Energy Regulatory Commission (18 C.F.R. Parts 292.101 to 292.602, inclusive), nor shall those provisions apply to any other generation units installed, operated, and maintained at a customer site exclusively to serve that facility's load. For the purposes of this subdivision, ''replacement'' of an existing facility includes, but is not limited to, a comparable project at a location different than the facility being replaced, provided that the commission certifies that the new project will result in the decommissioning of the existing facility.

(*l*) Paragraph (4) of subdivision (a) and subdivisions (c) to (j), inclusive, do not apply to licenses issued to ''local publicly owned electric utilities'' as defined in subdivision (d) of Section 9604 of the Public Utilities Code whose governing bodies certify to the commission that the project is needed to meet the projected native load of the local publicly owned utility.

(m) To implement this section, the commission and the California Consumer Power and Conservation Financing Authority may, in consultation with each other, adopt emergency regulations in accordance with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division

3 of Title 2 of the Government Code. For purposes of that chapter, including, without limitation, 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, or general welfare.

CHAPTER 568

An act to repeal Sections 25401.1, 25553, 25604, and 25698 of, and to repeal and add Chapter 4 (commencing with Section 25300) of Division 15 of, the Public Resources Code, relating to energy.

[Approved by Governor September 14, 2002. Filed with Secretary of State September 15, 2002.]

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

SECTION 1. Chapter 4 (commencing with Section 25300) of Division 15 of the Public Resources Code is repealed.

SEC. 2. Chapter 4 (commencing with Section 25300) is added to Division 15 of the Public Resources Code, to read:

CHAPTER 4. INTEGRATED ENERGY POLICY REPORTING

25300. (a) The Legislature finds and declares that clean and reliable energy is essential to the health of the California economy and of vital importance to the health and welfare of the citizens of the state and to the environment.

(b) The Legislature further finds and declares that government has an essential role to ensure that a reliable supply of energy is provided consistent with protection of public health and safety, promotion of the general welfare, maintenance of a sound economy, conservation of resources, and preservation of environmental quality.

(c) The Legislature further finds and declares that the state government requires at all times a complete and thorough understanding of the operation of energy markets, including electricity, natural gas, petroleum, and alternative energy sources, to enable it to respond to possible shortages, price shocks, oversupplies, or other disruptions.

(d) The Legislature further finds and declares that timely reporting, assessment, forecasting, and data collection activities are essential to serve the information and policy development needs of the Governor, the Legislature, public agencies, market participants, and the public.

(e) The Legislature further finds and declares that one of the objectives of this act is to encourage cooperation among the various state agencies with energy responsibilities.

25301. (a) At least every two years, the commission shall conduct assessments and forecasts of all aspects of energy industry supply, production, transportation, delivery and distribution, demand, and prices. The commission shall use these assessments and forecasts to develop energy policies that conserve resources, protect the environment, ensure energy reliability, enhance the state's economy, and protect public health and safety. To perform these assessments and forecasts, the commission may require submission of demand forecasts, resource plans, market assessments, and related outlooks from electric and natural gas utilities, transportation fuel and technology suppliers, and other market participants. These assessments and forecasts shall be done in consultation with the appropriate state and federal agencies including, but not limited to, the Public Utilities Commission, the Office of Ratepayer Advocates, the Air Resources Board, the Electricity Oversight Board, the Independent System Operator, the Department of Water Resources, the California Consumer Power and Conservation Financing Authority, the Department of Transportation, and the Department of Motor Vehicles.

(b) In developing the assessments and forecasts prepared pursuant to subdivision (a), the commission shall do all of the following:

(1) Provide information about the performance of energy industries.

(2) Develop and maintain the analytical capability sufficient to answer inquiries about energy issues from government, market participants, and the public.

(3) Analyze and develop energy policies.

(4) Provide an analytical foundation for regulatory and policy decisionmaking.

(5) Facilitate efficient and reliable energy markets.

25302. (a) Beginning November 1, 2003, and every two years thereafter, the commission shall adopt an integrated energy policy report. This integrated report shall contain an overview of major energy trends and issues facing the state, including, but not limited to, supply, demand, pricing, reliability, efficiency, and impacts on public health and safety, the economy, resources, and the environment. Energy markets and systems shall be grouped and assessed in three subsidiary volumes:

(1) Electricity and natural gas markets.

(2) Transportation fuels, technologies, and infrastructure.

(3) Public interest energy strategies.

(b) The commission shall compile the integrated energy policy report prepared pursuant to subdivision (a) by consolidating the analyses and findings of the subsidiary volumes in paragraphs (1), (2), and (3) of

subdivision (a). The integrated energy policy report shall present policy recommendations based on an indepth and integrated analysis of the most current and pressing energy issues facing the state. The analyses supporting this integrated energy policy report shall explicitly address interfuel and intermarket effects to provide a more informed evaluation of potential tradeoffs when developing energy policy across different markets and systems.

(c) The integrated energy policy report shall include an assessment and forecast of system reliability and the need for resource additions, efficiency, and conservation that considers all aspects of energy industries and markets that are essential for the state economy, general welfare, public health and safety, energy diversity, and protection of the environment. This assessment shall be based on determinations made pursuant to this chapter.

(d) Beginning November 1, 2004, and every two years thereafter, the commission shall prepare an energy policy review to update analyses from the integrated energy policy report prepared pursuant to subdivisions (a), (b), and (c), or to raise energy issues that have emerged since the release of the integrated energy policy report. The commission may also periodically prepare and release technical analyses and assessments of energy issues and concerns to provide timely and relevant information for the Governor, the Legislature, market participants, and the public.

(e) In preparation of the report, the commission shall consult with the following entities: the Public Utilities Commission, the Office of Ratepayer Advocates, the State Air Resources Board, the Electricity Oversight Board, the Independent System Operator, the Department of Water Resources, the California Consumer Power and Conservation Financing Authority, the Department of Transportation, and the Department of Motor Vehicles, and any federal, state, and local agencies it deems necessary in preparation of the integrated energy policy report. To assure collaborative development of state energy policies, these agencies shall make a good faith effort to provide data, assessment, and proposed recommendations for review by the commission.

(f) The commission shall provide the report to the Public Utilities Commission, the Office of Ratepayer Advocates, the State Air Resources Board, the Electricity Oversight Board, the Independent System Operator, the Department of Water Resources, the California Consumer Power and Conservation Financing Authority, and the Department of Transportation. For the purpose of ensuring consistency in the underlying information that forms the foundation of energy policies and decisions affecting the state, those entities shall carry out their energy-related duties and responsibilities based upon the information and analyses contained in the report. If an entity listed in this

subdivision objects to information contained in the report, and has a reasonable basis for that objection, the entity shall not be required to consider that information in carrying out its energy-related duties.

(g) The commission shall make the report accessible to state, local, and federal entities and to the general public.

25303. (a) The commission shall conduct electricity and natural gas forecasting and assessment activities to meet the requirements of paragraph (1) of subdivision (a) of Section 25302, including, but not limited to, all of the following:

(1) Assessment of trends in electricity and natural gas supply and demand, and the outlook for wholesale and retail prices for commodity electricity and natural gas under current market structures and expected market conditions.

(2) Forecasts of statewide and regional electricity and natural gas demand including annual, seasonal, and peak demand, and the factors leading to projected demand growth including, but not limited to, projected population growth, urban development, industrial expansion and energy intensity of industries, energy demand for different building types, energy efficiency, and other factors influencing demand for electricity. With respect to long-range forecasts of the demand for natural gas, the report shall include an evaluation of average conditions, as well as best and worst case scenarios, and an evaluation of the impact of the increasing use of renewable resources on natural gas demand.

(3) Evaluation of the adequacy of electricity and natural gas supplies to meet forecasted demand growth. Assessment of the availability, reliability, and efficiency of the electricity and natural gas infrastructure and systems including, but not limited to, natural gas production capability both in and out of state, natural gas interstate and intrastate pipeline capacity, storage and use, and western regional and California electricity and transmission system capacity and use.

(4) Evaluation of potential impacts of electricity and natural gas supply, demand, and infrastructure and resource additions on the electricity and natural gas systems, public health and safety, the economy, resources, and the environment.

(5) Evaluation of the potential impacts of electricity and natural gas load management efforts, including end user response to market price signals, as a means to ensure reliable operation of electricity and natural gas systems.

(6) Evaluation of whether electricity and natural gas markets are adequately meeting public interest objectives including the provision of all of the following: economic benefits; competitive, low-cost reliable services; customer information and protection; and environmentally sensitive electricity and natural gas supplies. This evaluation may consider the extent to which California is an element within western

energy markets, the existence of appropriate incentives for market participants to provide supplies and for consumers to respond to energy prices, appropriate identification of responsibilities of various market participants, and an assessment of long-term versus short-term market performance. To the extent this evaluation identifies market shortcomings, the commission shall propose market structure changes to improve performance.

(7) Identification of impending or potential problems or uncertainties in the electricity and natural gas markets, potential options and solutions, and recommendations.

(b) Commencing November 1, 2003, and every two years thereafter, to be included in the integrated energy policy report prepared pursuant to Section 25302, the commission shall assess the current status of the following:

(1) The environmental performance of the electric generation facilities of the state, to include all of the following:

(A) Generation facility efficiency.

(B) Air emission control technologies in use in operating plants.

(C) The extent to which recent resource additions have, and expected resource additions are likely to, displace or reduce the operation of existing facilities, including the environmental consequences of these changes.

(2) The geographic distribution of statewide environmental, efficiency, and socioeconomic benefits and drawbacks of existing generation facilities, including, but not limited to, the impacts on natural resources including wildlife habitat, air quality, and water resources, and the relationship to demographic factors. The assessment shall describe the socioeconomic and demographic factors that existed when the facilities were constructed and the current status of these factors. In addition, the report shall include how expected or recent resource additions could change the assessment through displaced or reduced operation of existing facilities.

25304. The commission shall conduct transportation forecasting and assessment activities to meet the requirements of paragraph (2) of subdivision (a) of Section 25302 including, but not limited to:

(a) Assessment of trends in transportation fuels, technologies, and infrastructure supply and demand and the outlook for wholesale and retail prices for petroleum, petroleum products, and alternative transportation fuels under current market structures and expected market conditions.

(b) Forecasts of statewide and regional transportation energy demand, both annual and seasonal, and the factors leading to projected demand growth including, but not limited to, projected population growth, urban development, vehicle miles traveled, the type, class, and

efficiency of personal vehicles and commercial fleets, and shifts in transportation modes.

(c) Evaluation of the sufficiency of transportation fuel supplies, technologies, and infrastructure to meet projected transportation demand growth. Assessment of crude oil and other transportation fuel feedstock supplies; in-state, national, and worldwide production and refining capacity; product output storage availability; and transportation and distribution systems capacity and use.

(d) Assessments of the risks of supply disruptions, price shocks, or other events and the consequences of these events on the availability and price of transportation fuels and effects on the state's economy.

(e) Evaluation of the potential for needed changes in the state's energy shortage contingency plans to increase production and productivity, improve efficiency of fuel use, increase conservation of resources, and other actions to maintain sufficient, secure, and affordable transportation fuel supplies for the state.

(f) Evaluation of alternative transportation energy scenarios, in the context of least environmental and economic costs, to examine potential effects of alternative fuels usage, vehicle efficiency improvements, and shifts in transportation modes on public health and safety, the economy, resources, the environment, and energy security.

(g) Examination of the success of introduction, prices, and availability of advanced transportation technologies, low- or zero-emission vehicles, and clean-burning transportation fuels, including their potential future contributions to air quality, energy security, and other public interest benefits.

(h) Recommendations to improve the efficiency of transportation energy use, reduce dependence on petroleum fuels, decrease environmental impacts from transportation energy use, and contribute to reducing congestion, promoting economic development, and enhancing energy diversity and security.

25305. The commission shall rely upon forecasting and assessments performed in accordance with Sections 25301 to 25304, inclusive, as the basis for analyzing the success of and developing policy recommendations for public interest energy strategies. Public interest energy strategies include, but are not limited to, achieving energy efficiency and energy conservation; implementing load management; pursuing research, development, demonstration, and commercialization of new technologies; promoting renewable generation technologies; reducing statewide greenhouse gas emissions and addressing the impacts of climate change on California; stimulating California's energy-related business activities to contribute to the state's economy; and protecting and enhancing the environment. Additional assessments

to address public interest energy strategies shall include, but are not limited to, all of the following:

(a) Identification of emerging trends in energy efficiency in the residential, commercial, industrial, agricultural, and transportation sectors of the state's economy, including, but not limited to, evaluation of additional achievable energy efficiency measures and technologies. Identification of policies that would permit fuller realization of the potential for energy efficiency, either through direct programmatic actions or facilitation of the market.

(b) Identification of emerging trends in the renewable energy industry. In addition, the commission shall evaluate progress in ensuring the operation of existing facilities, and the development of new and emerging, in-state renewable resources.

(c) Identification of emerging trends in energy research, development, and demonstration activities that advance science or technology to produce public benefits.

(d) Identification of progress in reducing statewide greenhouse gas emissions and addressing the effects of climate change on California.

25305.5. The commission shall include in its report prepared pursuant to Sections 25301 to 25304, inclusive, a description of international energy market prospects and an evaluation of its export promotion activities, as well as an assessment of the state of the California energy technology and energy conservation industry's efforts to enter foreign markets. The report shall also include recommendations for state government initiatives to foster the California energy technology and energy conservation industry's competition in world markets.

25306. The commission shall conduct workshops, hearings, and other forums to gain the perspectives of the public and market participants for purposes of the integrated energy policy report prepared pursuant to Section 25302 and the forecasting and assessments prepared pursuant to Sections 25301, 25303, 25304, and 25305. The commission shall include the comments, as well as responses to those comments, of governmental agencies, industry representatives, market participants, private groups, and any other person concerning the commission's proposals and recommendations in the docket for the integrated energy policy report.

25307. (a) The Governor shall review the integrated energy policy report prepared pursuant to Section 25302 and shall, on or before 90 days after receipt of the report, report further to the Legislature the Governor's agreement or disagreement with the policy recommendations contained in that report. The Governor's report to the Legislature shall cover the information required to be included in the integrated energy policy report and may cover any additional item that is necessary or

appropriate. If the Governor disagrees with one or more recommendations in the integrated energy policy report, the Governor shall, in each instance, indicate the reason for disagreement and shall specify the alternate policy the Governor finds appropriate.

(b) The Governor's report to the Legislature pursuant to this section is the Governor's official statement of energy policy.

25320. (a) The commission shall manage a data collection system for obtaining information necessary to develop the policy reports and analyses required by Sections 25301 to 25307, inclusive, the energy shortage contingency planning efforts in Chapter 8 (commencing with Section 25700), and to support other duties of the commission.

(b) The data collection system, adopted by regulation under Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, and managed by the commission shall:

(1) Include a timetable for the submission of this information, so that the integrated energy policy report required by Section 25302 can be completed in an accurate and timely manner.

(2) Require a person to submit only information that is reasonably relevant, and that the person can either be expected to acquire through his or her market activities, or possesses or controls. Information collected pursuant to this section shall relate to the functional role of each category of market participant in that industry and the consumers within that industry.

(3) To the extent it satisfies the information needs of the commission, rely on the use of estimates and proxies, to the maximum extent practicable, for some data elements using survey and research techniques, while for other information it shall obtain data from market participants using submissions consistent with their accounting records. In determining whether to rely upon estimates or participant provided data, the commission shall weigh the burden of compliance upon industry participants and energy consumers against the benefit of participant provided data for the public interest.

(4) To the extent it satisfies the information needs of the commission, rely on data, to the maximum extent practicable, that is reported to other government agencies or is otherwise available to the commission.

(c) Pursuant to the requirements of subdivision (b), the data collection system for electricity and natural gas shall enumerate specific requirements for each category of market participants, including, but not limited to, private market participants, energy service providers, energy service companies, natural gas marketers, electric utility and natural gas utility companies, independent generators, electric transmission entities, natural gas producers, natural gas pipeline operators, importers and exporters of electricity and natural gas, and specialized electric or natural gas system operators. The commission may also collect

information about consumers' natural gas and electricity use from their voluntary participation in surveys and other research techniques.

(d) Pursuant to the requirements of subdivision (b), the data collection system for nonpetroleum fuels and transportation technologies shall enumerate specific requirements for each category of market participant, including, but not limited to, fuel importers and exporters, fuel distributors and retailers, fuel pipeline operators, natural gas liquid producers, and transportation technology providers. The commission may also collect information about consumers' nonpetroleum fuel and transportation technology use from their voluntary participation in surveys and other research techniques.

(e) The commission shall collect data for petroleum fuel pursuant to Chapter 4.5 (commencing with Section 25350). The commission may also collect information about consumers' petroleum fuel use from consumers' participation in surveys and other research techniques.

25321. In order to ensure timely and accurate compliance with the data collection system adopted under Section 25320, the commission may use any of the following enforcement measures:

(a) If any person fails to comply with an applicable provision of the data collection system, the commission shall notify the person. If, after five working days from being notified of the violation, the person continues to fail to comply, the person shall be subject to a civil penalty, to be imposed by the commission after a hearing that complies with constitutional requirements.

(1) The civil penalty shall not be less than five hundred dollars ($500) nor more than two thousand dollars ($2,000) for each category of data the person did not provide and for each day the violation has existed and continues to exist.

(2) In the case of a person who willfully makes any false statement, representation, or certification in any record, report, plan, or other document filed with the commission, the civil penalty shall not be less than five hundred dollars ($500) nor more than two thousand dollars ($2,000) per day applied to each day in the interval between the original due date and the date when corrected information is submitted.

(b) For the purposes of this section, ''person'' means, in addition to the definition contained in Section 25116, any responsible corporate officer.

(c) Enforcement measures for petroleum and other fuels shall be those contained in Section 25362.

25322. (a) The data collection system managed pursuant to Section 25320 shall include the following requirements regarding the confidentiality of the information collected by the commission:

(1) Any person required to present information to the commission pursuant to this section may request that specific information be held in

confidence. The commission shall grant the request in any of the following circumstances:

(A) The information is exempt from disclosure under the California Public Records Act, Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code.

(B) The information satisfies the confidentiality requirements of Article 2 (commencing with Section 2501) of Chapter 7 of Division 2 of Title 20 of the California Code of Regulations, as those regulations existed on January 1, 2002.

(C) On the facts of the particular case, the public interest served by not disclosing the information clearly outweighs the public interest served by disclosure of the information.

(2) The commission may, by regulation, designate certain categories of information as confidential, which removes the obligation to request confidentiality for that information.

(3) Any confidential information pertinent to the responsibilities of the commission specified in this chapter that is obtained by another state agency, or the California Independent System Operator or its successor, shall be available to the commission and shall be treated in a confidential manner.

(4) Information presented to or developed by the commission and deemed confidential pursuant to this section shall be held in confidence by the commission. Confidential information shall be aggregated or masked to the extent necessary to assure confidentiality if public disclosure of the specific information would result in an unfair competitive disadvantage to the person supplying the information.

(b) Requests for records of information shall be handled as follows:

(1) If the commission receives a written request to publicly disclose information that is being held in confidence pursuant to paragraph (1) or (2) of subdivision (a), the commission shall provide the person making the request with written justification for the confidential designation and a description of the process to seek disclosure.

(2) If the commission receives a written request to publicly disclose a disaggregated or unmasked record of information designated as confidential under paragraph (1) or (2) of subdivision (a), notice of the request shall be provided to the person that submitted the record. Upon receipt of the notice, the person that submitted the record may, within five working days of receipt of the notice, provide a written justification of the claim of confidentiality.

(3) The commission or its designee shall rule on a request made pursuant to paragraph (2) on or before 20 working days after its receipt. The commission shall deny the request if the disclosure will result in an unfair competitive disadvantage to the person that submitted the information.

(4) If the commission grants the request pursuant to paragraph (3), it shall withhold disclosure for a reasonable amount of time, not to exceed 14 working days, to allow the submitter of the information to seek judicial review.

(c) No information submitted to the commission pursuant to this section is confidential if the person submitting the information has made it public.

(d) The commission shall establish, maintain, and use appropriate security practices and procedures to ensure that the information it has designated as confidential, or received with a confidential designation from another government agency, is protected against disclosure other than that authorized using the procedures in subdivision (b). The commission shall incorporate the following elements into its security practices and procedures:

(1) Commission employees shall sign a confidential data disclosure agreement providing for various remedies, including, but not limited to, fines and termination for wrongful disclosure of confidential information.

(2) Commission employees, or contract employees of the commission, shall only have access to confidential information when it is appropriate to their job assignments and if they have signed a nondisclosure agreement.

(3) Computer data systems that hold confidential information shall include sufficient security measures to protect the data from inadvertent or wrongful access by unauthorized commission employees and the public.

(e) Data collected by the commission on petroleum fuels in Section 25320 shall be subject to the confidentiality provisions of Sections 25364 to 25366, inclusive.

25323. Nothing in this division shall authorize the commission in the performance of its analytical, planning, siting, or certification responsibilities to mandate a specified supply plan for any utility.

SEC. 3. Section 25401.1 of the Public Resources Code is repealed.

SEC. 4. Section 25553 of the Public Resources Code is repealed.

SEC. 5. Section 25604 of the Public Resources Code is repealed.

SEC. 6. Section 25698 of the Public Resources Code is repealed.

CHAPTER 569

An act to amend Section 44014 of the Health and Safety Code, and to amend Sections 27150.1, 27150.2, and 27150.7 of the Vehicle Code, relating to vehicles.

[Approved by Governor September 14, 2002. Filed with Secretary of State September 15, 2002.]

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

SECTION 1. Section 44014 of the Health and Safety Code is amended to read:

44014. (a) Except as otherwise provided in this chapter, the testing and repair portion of the program shall be conducted by smog check stations licensed by the department, and by smog check technicians who have qualified pursuant to this chapter.

(b) (1) A smog check station may be licensed by the department as a smog check test-only station and, when so licensed, need not comply with the requirement for onsite availability of current service and adjustment procedures specified in paragraph (3) of subdivision (b) of Section 44030. A smog check technician employed by a smog check test-only station shall be qualified in accordance with this section.

(2) The department may authorize the placement of referees in qualified test-only stations to provide referee services as a matter of convenience to the public. The department shall supply those referees directly or through a contractor. A referee shall have no ownership interest in the facility at which the referee is located. Referees shall be solely responsible for issuing repair cost waivers, certificates of compliance or noncompliance, and hardship extensions, in accordance with regulations adopted by the department, and for issuing exhaust system certificates of compliance in accordance with Section 27150.2 of the Vehicle Code.

The department may adopt regulations to establish qualification standards and any special administrative, operational, and licensure standards that the department determines to be necessary for test-only stations that perform referee services.

(c) A smog check station may also be licensed as a repair-only station, and if so licensed, may perform repairs to reduce excessive emissions on vehicles which have failed the smog check test. Repair procedures and equipment requirements shall be established by the department. Technicians employed by a smog check repair-only station shall be qualified in accordance with this section.

(d) Smog check technicians are qualified to test and repair only those classes and categories of vehicles for which they have passed a qualification test administered by the department. The department shall provide for smog check technicians to be qualified for different categories of motor vehicle inspection based on vehicle classification and model-year.

(e) The consumer protection-oriented quality assurance portion of the program may be conducted by one or more private entities pursuant to contracts with the department.

SEC. 2. Section 27150.1 of the Vehicle Code is amended to read:

27150.1. No person engaged in a business that involves the selling of motor vehicle exhaust systems, or parts thereof, including, but not limited to, mufflers, shall offer for sale, sell, or install, a motor vehicle exhaust system, or part thereof, including, but not limited to, a muffler, unless it meets the regulations and standards applicable pursuant to this article. Motor vehicle exhaust systems or parts thereof include, but are not limited to, nonoriginal exhaust equipment.

A violation of this section is a misdemeanor.

SEC. 3. Section 27150.2 of the Vehicle Code is amended to read:

27150.2. (a) Stations providing referee functions pursuant to Section 44036 of the Health and Safety Code shall provide for the testing of vehicular exhaust systems and the issuance of certificates of compliance only for those vehicles that have received a citation for a violation of Section 27150 or 27151.

(b) A certificate of compliance for a vehicular exhaust system shall be issued pursuant to subdivision (a) if the vehicle complies with Sections 27150 and 27151. Exhaust systems installed on motor vehicles, other than motorcycles, with a manufacturer's gross vehicle weight rating of less than 6,000 pounds comply with Sections 27150 and 27151 if they emit no more than 95 dbA when tested in accordance with Society of Automotive Engineers Standard J1169 May 1998.

(c) An exhaust system certificate of compliance issued pursuant to subdivision (a) shall identify, to the extent possible, the make, model, year, license number, and vehicle identification number of the vehicle tested, and the make and model of the exhaust system installed on the vehicle.

(d) The station shall charge a fee for the exhaust system certificate of compliance issued pursuant to subdivision (a). The fee charged shall be calculated to recover the costs incurred by the Department of Consumer Affairs to implement this section. The fees charged by the station shall be deposited in the Vehicle Inspection and Repair Fund established by Section 44062 of the Health and Safety Code.

(e) Vehicular exhaust systems are exempt from the requirements of Sections 27150 and 27151 if compliance with those sections, or the regulations adopted pursuant thereto, would cause an unreasonable hardship without resulting in a sufficient corresponding benefit with respect to noise level control.

SEC. 4. Section 27150.7 of the Vehicle Code is amended to read:

27150.7. A court may dismiss any action in which a person is prosecuted for operating a vehicle in violation of Section 27150 or 27151

if a certificate of compliance has been issued by a station pursuant to Section 27150.2, or if the defendant had reasonable grounds to believe that the exhaust system was in good working order and had reasonable grounds to believe that the vehicle was not operated in violation of Section 27150 or 27151.

CHAPTER 570

An act to amend Section 714 of the Civil Code, relating to solar energy systems.

[Approved by Governor September 14, 2002. Filed with Secretary of State September 15, 2002.]

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

SECTION 1. Section 714 of the Civil Code is amended to read:

714. (a) Any covenant, restriction, or condition contained in any deed, contract, security instrument, or other instrument affecting the transfer or sale of, or any interest in, real property that effectively prohibits or restricts the installation or use of a solar energy system is void and unenforceable.

(b) This section shall not apply to provisions which impose reasonable restrictions on solar energy systems. However, it is the policy of the state to promote and encourage the use of solar energy systems and to remove obstacles thereto. Accordingly, reasonable restrictions on a solar energy system are those restrictions that do not significantly increase the cost of the system or significantly decrease its efficiency or specified performance, or that allow for an alternative system of comparable cost, efficiency, and energy conservation benefits.

(c) Solar collectors shall meet applicable standards and requirements imposed by state and local permitting authorities. Specifically, solar energy systems shall be certified by the Solar Rating Certification Corporation (SRCC) or other nationally recognized certification agencies. SRCC is a nonprofit third party supported by the United States Department of Energy. The certification shall be for the entire solar energy system and installation. A solar energy system shall also meet all applicable safety and performance standards established by the National Electrical Code, the Institute of Electrical and Electronics Engineers, and accredited testing laboratories such as Underwriters Laboratories and, where applicable, rules of the Public Utilities Commission regarding safety and reliability.

(d) For the purposes of this section:

(1) ''Significantly'' means an amount exceeding 20 percent of the cost of the system or decreasing the efficiency of the solar energy system by an amount exceeding 20 percent, as originally specified and proposed.

(2) ''Solar energy system'' has the same meaning as defined in Section 801.5.

(e) Whenever approval is required for the installation or use of a solar energy system, the application for approval shall be processed and approved by the appropriate approving entity in the same manner as an application for approval of an architectural modification to the property, and shall not be willfully avoided or delayed.

(f) Any entity, other than a public entity, that willfully violates this section shall be liable to the applicant or other party for actual damages occasioned thereby, and shall pay a civil penalty to the applicant or other party in an amount not to exceed one thousand dollars ($1,000).

(g) In any action to enforce compliance with this section, the prevailing party shall be awarded reasonable attorney's fees.

CHAPTER 571

An act to amend Sections 4005, 4152, and 4180 of the Fish and Game Code, relating to trapping, and making an appropriation therefor.

[Approved by Governor September 14, 2002. Filed with Secretary of State September 15, 2002.]

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

SECTION 1. Section 4005 of the Fish and Game Code is amended to read:

4005. (a) Except as otherwise provided in this section, every person, other than a fur dealer, who traps fur-bearing mammals or nongame mammals, designated by the commission or who sells raw furs of those mammals, shall procure a trapping license. ''Raw fur'' means any fur, pelt, or skin that has not been tanned or cured, except that salt-cured or sun-cured pelts are raw furs.

(b) The department shall develop standards that are necessary to ensure the competence and proficiency of applicants for a trapping license. No person shall be issued a license until he or she has passed a test of his or her knowledge and skill in this field.

(c) Persons trapping mammals in accordance with Section 4152 or 4180 are not required to procure a trapping license except when providing trapping services for profit.

(d) No raw furs taken by persons providing trapping services for profit may be sold.

(e) Officers or employees of federal, county, or city agencies or the department, when acting in their official capacities, or officers or employees of the Department of Food and Agriculture when acting pursuant to the Food and Agricultural Code pertaining to pests or pursuant to Article 6 (commencing with Section 6021) of Chapter 9 of Part 1 of Division 4 of the Food and Agricultural Code, are exempt from the license requirement of this section.

SEC. 2. Section 4152 of the Fish and Game Code is amended to read:

4152. Except as provided in Section 4005, nongame mammals and black-tailed jackrabbits, muskrats, and red fox squirrels that are found to be injuring growing crops or other property may be taken at any time or in any manner in accordance with this code by the owner or tenant of the premises or employees thereof, except that if leghold steel-jawed traps are used to take those mammals, the traps and the use thereof shall be in accordance with subdivisions (a), (b), and (d) of Section 4004. They may also be taken by officers or employees of the Department of Food and Agriculture or by federal, county, or city, officers or employees when acting in their official capacities pursuant to the provisions of the Food and Agricultural Code pertaining to pests, or pursuant to Article 6 (commencing with Section 6021) of Chapter 9 of Part 1 of Division 4 of the Food and Agricultural Code. Persons taking mammals in accordance with this section are exempt from the requirements of Section 3007. Raw furs, as defined in Section 4005, that are taken under this section, may not be sold.

Traps used pursuant to this section shall be inspected and all animals in the trap shall be removed at least once daily. The inspection and removal shall be done by the person who sets the trap or the owner of the land where the trap is set or an agent of either.

SEC. 3. Section 4180 of the Fish and Game Code is amended to read:

4180. Except as provided for in Section 4005, fur-bearing mammals that are injuring property may be taken at any time and in any manner in accordance with this code, except that if leghold steel-jawed traps are used to take those mammals, the traps and the use thereof shall be in accordance with subdivisions (a), (b), and (d) of Section 4004. Raw furs, as defined in Section 4005, that are taken under this section, may not be sold.

Traps used pursuant to this section shall be inspected and all animals in the trap shall be removed at least once daily. The inspection and removal shall be done by the person who sets the trap or the owner of the land where the trap is set or an agent of either.

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.

CHAPTER 572

An act to amend Section 44321 of the Health and Safety Code, relating to air resources.

[Approved by Governor September 14, 2002. Filed with Secretary of State September 15, 2002.]

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

SECTION 1. Section 44321 of the Health and Safety Code is amended to read:

44321. For the purposes of Section 44320, the state board shall compile and maintain a list of substances that contains, but is not limited to, all of the following:

(a) Substances identified by reference in paragraph (1) of subdivision (b) of Section 6382 of the Labor Code and substances placed on the list prepared by the National Toxicology Program and issued by the United States Secretary of Health and Human Services pursuant to paragraph (4) of subsection (b) of Section 241 of Title 42 of the United States Code. For the purposes of this subdivision, the state board may remove from the list any substance which meets both of the following criteria:

(1) No evidence exists that it has been detected in air.

(2) The substance is not manufactured or used in California, or, if manufactured or used in California, because of the physical or chemical characteristics of the substance or the manner in which it is manufactured or used, there is no possibility that it will become airborne.

(b) Carcinogens and reproductive toxins referenced in or compiled pursuant to Section 25249.8, except those which meet both of the criteria identified in subdivision (a).

(c) Substances designated by the state board as toxic air contaminants pursuant to subdivision (b) of Section 39657 and substances on the candidate list of potential toxic air contaminants and the list of designated toxic air contaminants prepared by the state board pursuant

to Article 3 (commencing with Section 39660) of Chapter 3.5 of Part 2, including, but not limited to, all substances currently under review and scheduled or nominated for review and substances identified and listed for which health effects information is limited.

(d) Substances for which an information or hazard alert has been issued by the repository of current data established pursuant to Section 147.2 of the Labor Code.

(e) Substances reviewed, under review, or scheduled for review as air toxics or potential air toxics by the Office of Air Quality Planning and Standards of the Environmental Protection Agency, including substances evaluated in all of the following categories or their equivalent: preliminary health and source screening, detailed assessment, intent to list, decision not to regulate, listed, standard proposed, and standard promulgated.

(f) Any additional substances recognized by the state board as presenting a chronic or acute threat to public health when present in the ambient air, including, but not limited to, any neurotoxicants or chronic respiratory toxicants not included within subdivision (a), (b), (c), (d), or (e).

CHAPTER 573

An act to amend Sections 7153, 8113, 8282, 8387, 8395, and 10667 of, and to repeal Section 8210 of, the Fish and Game Code, and to amend Sections 8670.2, 8670.31, and 8670.33 of the Government Code, relating to public resources, and making an appropriation therefor.

[Approved by Governor September 14, 2002. Filed with Secretary of State September 15, 2002.]

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

SECTION 1. Section 7153 of the Fish and Game Code is amended to read:

7153. (a) A sport fishing license is not required to take fish by any legal means, for any purpose other than profit, from a public pier, as defined by the commission, in the ocean waters of the state.

(b) For purposes of this section, ‘‘ocean waters’’ include, but are not limited to, the open waters adjacent to the ocean and any island; the waters of any open or enclosed bay contiguous to the ocean; the San Francisco and San Pablo Bays, with any tidal bay belonging thereto; and any slough or estuary, if found between the Golden Gate Bridge and the Benicia-Martinez Bridge.

SEC. 2. Section 8113 of the Fish and Game Code is amended to read:

8113. (a) Prior to departure from any port in the United States for the purpose of taking fish in the far offshore fishery, the operator of any vessel landing fish in California that will be taken in the far offshore fishery shall file a declaration with the department on forms prescribed by the department.

(b) The declaration shall be valid when signed by the vessel operator and completed with information prescribed by the department.

(c) Upon completion of the trip and within 12 hours of arrival at a port in this state, the operator of the vessel shall complete and submit the return portion of the declaration to the department.

(d) This section does not apply to any commercial fisherman using or possessing only troll lines, as defined in subdivision (b) of Section 9025.5, or gear for angling, as defined in Section 15, for the taking or possession of albacore only.

SEC. 3. Section 8210 of the Fish and Game Code is repealed.

SEC. 4. Section 8282 of the Fish and Game Code is amended to read:

8282. (a) Subject to this article and Article 1 (commencing with Section 9000) of Chapter 4, and subject to the regulation of the commission authorized under subdivision (c), rock crab may be taken in traps in any waters of the state at any time, except in Districts 9, 19A, 19B, and 21 and those portions of District 20 lying on the north and east sides of Santa Catalina Island north of Southeast Rock. Rock crab (Cancer antennarius), red crab (Cancer productus), or yellow crab (Cancer anthonyi), which is less than $4^1/_4$ inches, measured in a straight line through the body, from edge of shell to edge of shell at the widest part, shall not be taken, possessed, bought, or sold.

(b) Any person taking rock crab shall carry a measuring device and shall measure any rock crab immediately upon removal from the trap. If the person determines that the rock crab is undersize, the person shall return it to the water immediately.

(c) Upon the recommendation of the director regarding rock crab fishery management measures, and following a public hearing on the matter, at which findings are adopted, the commission may adopt regulations to manage the rock crab resource consistent with Part 1.7 (commencing with Section 7050).

SEC. 5. Section 8387 of the Fish and Game Code is amended to read:

8387. From May 1st to August 31st, inclusive, all of the following are unlawful:

(a) For any one person to have in his or her possession on any boat, barge, or other vessel more than 500 pounds of yellowtail.

(b) For any two or more persons to have in their possession on any boat, barge, or other vessel a combined weight of more than 500 pounds of yellowtail per person.

(c) For any five or more persons to have in their possession on any boat, barge, or other vessel a combined weight of more than 2,500 pounds of yellowtail.

SEC. 6. Section 8395 of the Fish and Game Code is amended to read:

8395. (a) Upon the recommendation of the director regarding management measures for surfperch of the family Embiotocidae, the commission may adopt regulations to manage the commercial surfperch resource and fisheries consistent with Part 1.7 (commencing with Section 7050), including, but not limited to, adoption of changes to the prohibitions imposed under subdivision (b).

(b) Except as may be authorized under subdivision (a), surfperch of the family Embiotocidae may be taken only between July 16th and April 30th, except shiner surfperch (Cymatogaster aggregata), which may be taken, sold, or purchased at any time. Surfperch may be sold or purchased only between July 16th and May 10th, except as may be authorized under subdivision (a). South of a line drawn east and west through Point Arguello, barred surfperch, redtail surfperch, and calico surfperch may not be taken for commercial purposes, except as may be authorized under subdivision (a). Surfperch of these three species that have been taken north of the line during the open season and shipped south of the line may be sold or purchased under those regulations that the commission may prescribe.

SEC. 7. Section 10667 of the Fish and Game Code is amended to read:

10667. (a) In the Dana Point Marine Life Refuge below the intertidal zone, the following fish, mollusks, and crustaceans may be taken under the authority of a sportfishing license as authorized by this code: abalone (subject to the moratorium imposed under Section 5521), lobster, rockfish (Scorpaenidae), greenling, ling cod, cabezon, yellowtail, mackerel, bluefin tuna, kelp bass, spotted sand bass, barred sand bass, sargo, croaker, queenfish, corbina, white seabass, opaleye, halfmoon, surfperch (Embiotocidae), blacksmith, barracuda, sheephead, bonito, California halibut, sole, turbot, and sanddab. Fin fish shall be taken only by hook and line or by spearfishing gear. All other fish and forms of aquatic life are protected and may not be taken without a written permit from the department.

(b) Except as expressly provided in this section, it is unlawful to enter the intertidal zone in the Dana Point Marine Life Refuge for the purpose of taking or possessing, or to take or possess, any species of fish, plant, or invertebrate, or part thereof, to use or have in possession any

contrivance designed to be used for catching fish, to disturb any native plant, fish, wildlife, aquatic organism, or to take or disturb any natural geological feature. This subdivision does not prohibit persons from entering the intertidal zone for the purpose of entertainment, recreation, and education while having a minimum impact on the intertidal environment and the living organisms therein. For this purpose, minimum impact includes foot traffic, general observation of organisms in their environment with immediate replacement of any unattached organisms to their natural location after temporary lifting for examination, and photography. Minimum impact does not include removal of attached organisms from their environment, gathering of fishing bait, littering, collecting rocks and shells, or turning rocks or other acts destructive to the environment.

(c) For the purposes of this section, ''intertidal zone'' means the area of the refuge between the mean lower low-water mark and the mean high-tide line described in Section 10907.

(d) Notwithstanding subdivision (a) or (b), the Director of the Dana Point Marine Life Refuge, or any person, who has a scientific collector's permit from the department, to whom the Director of the Dana Point Marine Life Refuge has issued a permit pursuant to Section 10502.6, may take, for scientific purposes, any fish or specimen of marine plant life under the conditions prescribed by the department pursuant to Section 10502.6.

(e) This section does not prohibit the entry of state and local law enforcement officers, fire suppression agencies, and employees of the department in the performance of their official duties. This section does not prohibit or restrict navigation in the Dana Point Marine Life Refuge pursuant to federal law.

SEC. 8. Section 8670.2 of the Government Code is amended to read:

8670.2. The Legislature finds and declares as follows:

(a) Each year, billions of gallons of crude oil and petroleum products are transported by vessel or pipeline across and through the marine waters of this state.

(b) Recent accidents in southern California, Alaska, and other parts of the nation have shown that marine transportation of oil can be a significant threat to the environment of sensitive coastal areas.

(c) Existing prevention programs are not able to reduce sufficiently the risk of significant discharge of petroleum into marine waters.

(d) Response and cleanup capabilities and technology are unable to remove consistently the majority of spilled oil when major oil spills occur in marine waters.

(e) California's coastal waters, estuaries, bays, and beaches are treasured environmental and economic resources which the state cannot afford to place at undue risk from an oil spill.

(f) Because of the inadequacy of existing cleanup and response measures and technology, the emphasis must be put on prevention, if the risk and consequences of oil spills are to be minimized.

(g) Improvements in the design, construction, and operation of tank ships, terminals, and pipelines; improvements in marine safety; maintenance of emergency response stations and personnel; and stronger inspection and enforcement efforts are necessary to reduce the risks of and from a major oil spill.

(h) A major oil spill in marine waters is extremely expensive because of the need to clean up discharged oil, protect sensitive environmental areas, and restore ecosystem damage.

(i) Immediate action must be taken to improve control and cleanup technology in order to strengthen the capabilities and capacities of cleanup operations.

(j) California government should improve its response and management of oil spills that occur in marine waters.

(k) Those who transport oil through the marine waters of the state must meet minimum safety standards and demonstrate financial responsibility.

(*l*) The federal government plays an important role in preventing and responding to petroleum spills and it is in the interests of the state to coordinate with agencies of the federal government, including the Coast Guard, to the greatest degree possible.

(m) California has approximately 1,100 miles of coast, including four marine sanctuaries which occupy 88,767 square miles. The weather, topography, and tidal currents in and around California's coastal ports and waterways make vessel navigation challenging. The state's major ports are among the busiest in the world. Approximately 700 million barrels of oil are consumed annually by California, with over 500 million barrels being transported by vessel. The peculiarities of California's maritime coast require special precautionary measures regarding oil pollution.

SEC. 9. Section 8670.31 of the Government Code is amended to read:

8670.31. (a) Each oil spill contingency plan required under this article shall be submitted to the administrator within 90 days after the effective date of the rules, regulations, and policies adopted pursuant to Sections 8670.28 and 8670.29 or before a tank vessel, nontank vessel, or vessel carrying oil as secondary cargo operates in the marine waters of the state, or before a marine facility, small marine fueling facility, or mobile transfer unit, operates in the marine waters of the state or where an oil spill therefrom could impact marine waters, if those operations commence after the effective date of those rules, regulations, or policies.

(b) The administrator shall review each submitted contingency plan to determine whether it complies with the administrator's rules, policies, and regulations adopted pursuant to Section 8670.28 and 8670.29.

(c) Each contingency plan submitted shall be approved or disapproved within 180 days after receipt by the administrator. The administrator may approve or disapprove portions of a plan. A plan is not deemed approved until all portions are approved pursuant to this section. The disapproved portion shall be subject to the procedures contained in subdivision (d).

(d) If the administrator finds the submitted contingency plan is inadequate under the rules, policies, and regulations of the administrator, the plan shall be returned to the submitter with written reasons why the plan was found inadequate and, if practicable, suggested modifications or alternatives, if appropriate. The submitter shall submit a new or modified plan within 90 days after the earlier plan was returned, responding to the findings and incorporating any suggested modifications. The resubmittal shall be treated as a new submittal and processed according to the provisions of this section, except that the resubmitted plan shall be deemed approved unless the administrator acts pursuant to subdivision (c). Failure to gain approval after the second submission may be determined by the administrator to be a violation of this chapter.

(e) The administrator may make inspections and require drills of any oil spill contingency plan that is submitted.

(f) After the plan has been approved, it shall be resubmitted every five years thereafter. The administrator may require earlier or more frequent resubmission, if warranted. Circumstances that would require an earlier resubmission include, but are not limited to, changes in regulations, new oil spill response technologies, deficiencies identified in the evaluation conducted pursuant to Section 8670.19, or a need for a different oil spill response because of increased need to protect endangered species habitat. The administrator may deny approval of the resubmitted plan if it is no longer considered adequate according to the adopted rules, regulations, and policies of the administrator at the time of resubmission.

(g) (1) Each operator of a tank vessel, vessel carrying oil as a secondary cargo, or marine facility who is required to file an oil spill response plan or update pursuant to provisions of federal law regulating marine oil spill response plans shall, for informational purposes only, submit a copy of that plan or update to the administrator at the time that it is approved by the relevant federal agency.

(2) A tank vessel, vessel carrying oil as a secondary cargo, or marine facility operator is not required to submit a copy of the response plan or update specified in paragraph (1) to the administrator if either the vessel

or facility is exempt from having to file a response plan with the state, or if the content of the plan submitted by the operator pursuant to Section 8670.29 is substantially the same as the federal response plan or update.

SEC. 10. Section 8670.33 of the Government Code is amended to read:

8670.33. (a) If the operator of a tank ship or tank barge for which a contingency plan has not been approved desires to have the tank ship or tank barge enter marine waters of the state, the administrator may give approval by telephone or facsimile machine for the entry of the tank ship or tank barge into marine waters under an approved contingency plan applicable to a terminal or tank ship, if all of the following are met:

(1) The terminal or tank ship is the destination of the tank ship or tank barge.

(2) The operator of the terminal or the tank ship provides the administrator advance written assurance that the operator assumes all responsibility for the operations of the tank ship or tank barge while it is in marine waters traveling to or from the terminal. The assurance may be delivered by hand or by mail or may be sent by facsimile machine, followed by delivery of the original.

(3) The approved terminal or tank ship contingency plan includes all conditions the administrator requires for the operations of tank ship or tank barges traveling to and from the terminal.

(4) The tank ship or tank barge and its operations meet all requirements of the contingency plan for the tank ship or terminal that is the destination of the tank ship or tank barge.

(5) The tank ship or tank barge without an approved contingency plan has not entered marine waters more than once in the 12-month period preceding the request made under this section.

(b) At all times that a tank ship or tank barge is in marine waters pursuant to subdivision (a), its operators and all their agents and employees shall operate the vessel in accordance with the applicable operations manual or, if there is an oil spill, in accordance with the directions of the administrator and the applicable contingency plan.

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.

CHAPTER 574

An act to add and repeal Division 22.9 (commencing with Section 32630) of the Public Resources Code, relating to the San Diego River Conservancy.

[Approved by Governor September 13, 2002. Filed with Secretary of State September 16, 2002.]

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

SECTION 1. Division 22.9 (commencing with Section 32630) is added to the Public Resources Code, to read:

DIVISION 22.9 SAN DIEGO RIVER CONSERVANCY

Article 1. General Provisions and Definitions

32630. This division shall be known, and may be cited, as the San Diego River Conservancy Act.

32631. (a) The San Diego River is a natural, historic, and recreational resource in the heart of San Diego. From its headwaters near the town of Julian in east San Diego County, it runs 52 miles through Mission Valley before it empties into the Pacific at Ocean Beach. The river has been subjected to intense development in some parts; it runs through one of San Diego's most populated neighborhoods and is in need of restoration, conservation, and enhancement all along its length. The area presents excellent opportunities for recreation, scientific research, and educational and cultural activities, of value to California and the nation.

(b) Given the opportunities available, the state recognizes the importance of holding this land in trust to be preserved and enhanced for the enjoyment of present and future generations.

(c) The San Diego River Parkway Coalition's Policy Committee and Citizen's Advisory Committee, representing diverse state and local interests, is developing a San Diego River Parkway Concept Plan that will, in concept, outline and provide a structural framework for ideas for establishing a San Diego River Parkway Master Plan. It is the intent of the Legislature that the San Diego River Conservancy consider the recommendations in that concept plan when implementing the provisions of this division.

32632. For the purposes of this division, the following terms have the following meanings:

(a) "Conservancy" means the San Diego River Conservancy established by this division.

(b) ''Fund'' means the San Diego River Conservancy Fund established pursuant to Section 32657.

(c) ''Governing board'' means the governing board of the conservancy.

(d) ''Local public agency'' means a city, county, district, or joint powers agency.

(e) ''Nonprofit organization'' means any private, nonprofit organization that qualifies for exempt status under Section 501(c)(3) of the Internal Revenue Code, as amended, and that has among its principal charitable purposes the preservation of land for scientific, historic, educational, recreational, scenic, or open-space opportunities, the protection of the natural environment, or preservation or enhancement of wildlife.

(f) ''San Diego River Area'' or ''area'' means those lands or other areas that are donated to, or otherwise acquired by, or operated by, the conservancy, which are located within one-half mile on either side of the thread of the river from its headwaters near Julian to the Pacific Ocean at Dog Beach in San Diego.

Article 2. The San Diego River Conservancy

32633. There is in the Resources Agency, the San Diego River Conservancy, which is created for the following purposes:

(a) To acquire and manage public lands within the San Diego River Area, and to provide recreational opportunities, open space, wildlife habitat and species restoration and protection, wetland protection and restoration, and protection and maintenance of the quality of the waters in the San Diego River for all beneficial uses, lands for educational uses within the area, and natural floodwater conveyance.

(b) To provide for the public's enjoyment, and to enhance the recreational and educational experience on public lands in the territory in a manner consistent with the protection of land and natural resources, as well as economic resources, in the area.

32634. (a) The governing board of the conservancy shall consist of nine voting members and two nonvoting members.

(b) The voting members of the board shall consist of the following:

(1) The Secretary of the Resources Agency, or his or her designee.

(2) The Director of Finance, or his or her designee.

(3) Five members of the public at large, three of whom shall be appointed by the Governor, one of whom shall be appointed by the Senate Committee on Rules, and one of whom shall be appointed by the Speaker of the Assembly.

(4) The Mayor of San Diego.

(5) One member of the City Council of San Diego, elected by a majority of the membership of the council.

(c) The two nonvoting members shall consist of the following:

(1) The Executive Director of the Wildlife Conservation Board, or his or her designee.

(2) A representative selected by the San Diego Regional Water Quality Control Board.

(d) Two of the three initial appointments by the Governor pursuant to paragraph (3) of subdivision (b) shall be for three-year terms and the third appointment shall be for a two-year term. All subsequent appointments shall be for four-year terms.

(e) No person shall continue as a member of the governing board if that person ceases to hold the office that qualifies that person for membership. Upon the occurrence of those events, the person's membership on the governing board shall automatically terminate.

32635. The members of the conservancy that are not full-time public employees may be compensated for attendance at regular meetings of the conservancy at the rate of one hundred dollars ($100) per regular meeting, not to exceed 12 regular meetings a year. All members of the conservancy may be reimbursed the actual amount of the reasonable and necessary expenditures incurred in attending meetings of the conservancy and carrying out the duties of their office.

32636. The governing board shall elect from its own members a chairperson and vice chairperson, whose terms of office shall be two years, and who may serve more than one term. In the event of a vacancy, a new chairperson or vice chairperson may be elected by the governing body before the expiration of the two-year term to fill out the remainder of that two-year term.

32637. (a) A majority of the total voting membership of the governing body shall constitute a quorum for the transaction of the business of the conservancy. If a quorum is present, a majority vote of the members present is sufficient to transact the business of the governing board.

32638. The governing board shall adopt its own rules and procedures necessary to conduct its business.

Article 3. Powers and Duties

32639. The conservancy shall establish and maintain an office within the area. The conservancy may rent or own real and personal property and equipment pursuant to applicable statutes and regulations.

32640. All meetings of the governing board are subject to the Bagley-Keene Open Meeting Act (Chapter 9 (commencing with Section 54950) of Part 1 of Division 2 of Title 5 of the Government Code).

32641. The governing body shall determine the qualification of, and shall appoint, the executive officer of the conservancy and shall employ other necessary staff persons to execute the powers and duties of the conservancy in accordance with the State Civil Service Act (Part 2 (commencing with Section 18500) of Division 5 of Title 1 of the Government Code).

32642. The conservancy may do any of the following to assist in the decisionmaking process for the purposes of this division:

(a) Establish advisory boards or committees.

(b) Engage in public outreach.

32643. The conservancy may do both of the following to provide necessary services:

(a) Select and hire private consultants or contractors.

(b) Enter into memorandums of understanding with state and local public agencies.

32644. The jurisdiction of the conservancy is limited to the San Diego River Area.

32645. The conservancy may take any of the following actions for the purposes of this division:

(a) Select and acquire real property or interests in real property in the name of the state.

(b) Acquire interests in land by various means, including, but not limited to, land exchanges, easements, development rights, life estates, leases, and leaseback agreements.

(c) Accept and hold real property or any interest in real property that is acquired through gift, exchange, donation, or dedication.

32646. Notwithstanding any other provision of law, the conservancy has the first right of refusal to acquire any public lands that are suitable for park and open space within the conservancy's jurisdiction when those lands become available.

32647. The conservancy may designate or enter into an agreement with any public agency to provide real estate services, and may assign authority to execute agreements for the acquisition or disposal of real property or interests in real property.

32648. Notwithstanding any other provision of law, the conservancy may not enter into an option to purchase land in fee simple or a lesser interest for an amount in excess of three hundred thousand dollars ($300,000).

32649. (a) The conservancy may award grants to any local public agency, state agency, and nonprofit organization consistent with the purposes of this division.

(b) A grant from the conservancy to a nonprofit organization for the acquisition of real property or an interest in real property is subject to all of the following conditions:

(1) The purchase price of any interest in land acquired may not exceed fair market value, as established by an appraisal that is approved by the conservancy.

(2) The conservancy shall approve the terms under which the interest in land is acquired.

(3) An interest in land acquired through the use of a grant may not be used as security for any debt to be incurred by the nonprofit organization.

(4) A transfer of land acquired through the use of a grant is subject to the approval of the conservancy and the execution of an agreement between the conservancy and the transferee sufficient to protect the interest of the people of the state.

(5) The state shall have the right of entry and power of termination over any interest in real property acquired with state funds, and may exercise those rights if any material term or condition of the grant is violated.

(6) If the nonprofit organization ceases to exist for any reason, the title to all interests in real property acquired with state funds shall immediately vest in the state, except that, prior to that termination, any other public agency or nonprofit organization may receive, upon approval by the conservancy, title to all or a portion of that interest, by recording a written acceptance of title and the conservancy's written approval with the county recorder's office of the county with jurisdiction over the property.

(c) Any deed or other instrument of conveyance evidencing the final acquisition of real property by a nonprofit organization pursuant to this section shall be recorded with the county recorder's office in the county with jurisdiction over the property, and shall detail the states right of entry and power of termination of any interest in the property.

32650. Notwithstanding any other provision of law, the conservancy may lease, rent, sell, exchange, or otherwise transfer any real property or interest in real property that is acquired under this division to a local public agency, state agency, federal agency, nonprofit organization, individual, corporate entity, or partnership for management purposes pursuant to terms and conditions approved by the conservancy. The conservancy may request the Director of General Services to undertake these actions on its behalf.

32651. The conservancy may take any of the following actions for the purposes of this division:

(a) Initiate, negotiate, and participate in agreements for the management of land under its ownership or control with a local public agency, state agency, federal agency, nonprofit organization, individual, corporate entity, and partnership, and enter into any other agreement authorized by state or federal law.

(b) Improve and develop lands for the purpose of protecting the natural environment or otherwise meeting the purposes of this division.

(c) Merge or split parcels, adjust boundary lines, or take similar actions as part of the acquisition of land, or as needed in order to facilitate the management of land under its ownership or control.

(d) Fix and collect fees for any service rendered by the conservancy. The amount of the fee may not exceed the reasonable cost of providing the service rendered by the conservancy.

32652. The conservancy may receive any gift, donation, subvention, grant, rent, royalty, and other financial aid and funds from any private or public source, or both.

32653. (a) The conservancy may develop and coordinate an integrated program of resource stewardship to manage the entire San Diego River Area in a manner that balances the recreational needs of the surrounding communities with strong protection of the area's natural resources.

(b) The conservancy shall establish policies and priorities within the San Diego River Area, and conduct any necessary planning activities in accordance with the purposes of this division.

(c) The conservancy shall establish priorities to be given to projects that create or enhance opportunities that provide recreation, aesthetic improvement, wildlife habitat, wetlands protection, water quality, and natural flood control in the San Diego River Area.

32654. (a) The conservancy, in consultation with other public agencies with appropriate jurisdiction and expertise, may do all of the following for any degraded area:

(1) Undertake site improvement projects.

(2) Regulate public access.

(3) Provide for restoration and rehabilitation.

(b) The conservancy may upgrade deteriorating facilities, and construct new facilities as needed for outdoor recreation, nature appreciation and interpretation, and natural resource protection.

32655. The conservancy has, and may exercise, all rights and powers, expressed or implied, necessary to carry out the purposes of this division, except as otherwise provided.

32656. The conservancy may sue and be sued.

Article 4. San Diego River Conservancy Fund

32657. The San Diego River Conservancy Fund is hereby created. Moneys in the fund shall be available, upon appropriation, for the purposes of this division.

32658. Proceeds or income from any lease, rental, sale, exchange, transfer of land, or interest in real property shall be deposited in the fund

and shall be available for expenditure for the purposes of this division, upon appropriation by the Legislature.

Article 5. Repeal

32661. (a) Notwithstanding any other provision of this division, Sections 32635, 32639, 32641, 32643, 32645, 32646, 32647, 32648, 32649, 32650, 32651, 32654, 32655, 32656, and 32658 shall not become operative until the Legislature appropriates funds necessary to implement this division, or until a bond act approved by the voters of this state includes an allocation of funds for the purposes of this division.

(b) This division shall remain in effect only until January 1, 2010, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2010, deletes or extends that date.

CHAPTER 575

An act to add Chapter 6 (commencing with Section 12400) to Part 2 of Division 2 of the Public Contract Code, relating to public contracts.

[Approved by Governor September 14, 2002. Filed with Secretary of State September 16, 2002.]

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

SECTION 1. The Legislature finds and declares all of the following:

(a) It is the policy of the state to protect human health and environmental well-being.

(b) The purpose of environmentally preferable purchasing is to protect human health and environmental well-being by reducing the procurement of goods and services that result in larger volumes of waste and pollutants.

(c) Goods and services, that result in reduced volumes of waste and pollutants, have additional value when considering future environmental and health costs.

(d) The state, through environmentally preferable purchasing, has the ability to to protect human health and environmental well-being by promoting goods and services that result in reduced waste and pollutants.

(e) The Legislature declares that the responsibility of environmentally preferable purchasing shall be that of any agency that does procuring on behalf of the state.

(f) It is the intent of the Legislature, whenever economically feasible and as markets allow, to continually expand the policies of environmentally preferable purchasing in the daily operations of the state.

SEC. 2. Chapter 6 (commencing with Section 12400) is added to Part 2 of Division 2 of the Public Contract Code, to read:

CHAPTER 6. ENVIRONMENTALLY PREFERABLE PURCHASING

12400. For purposes of this chapter, ''environmentally preferable purchasing'' means the procurement or acquisition of goods and services that have a lesser or reduced effect on human health and the environment when compared with competing goods or services that serve the same purpose. This comparison shall take into consideration, to the extent feasible, raw materials acquisition, production, manufacturing, packaging, distribution, reuse, operation, maintenance, disposal, energy efficiency, product performance, durability, safety, the needs of the purchaser, and cost.

12401. The Department of General Services, in consultation with the California Environmental Protection Agency, members of the public, industry, and public health and environmental organizations, shall provide state agencies with information and assistance regarding environmentally preferable purchasing including, but not limited to, the following:

(a) The promotion of environmentally preferable purchasing.

(b) The development and implementation of a strategy to increase environmentally preferable purchasing. This may include the development of statewide policies, guidelines, programs, and regulations.

(c) The coordination with other state and federal agencies, task forces, workgroups, regulatory efforts, research and data collection efforts, and other programs and services relating to environmentally preferable purchasing.

(d) The development and implementation, to the extent fiscally feasible, of training programs designed to instill the importance and value of environmentally preferable purchasing.

(e) The development, to the extent fiscally feasible, of an environmentally preferable purchasing best practices manual for state purchasing employees.

12401.5. Within existing resources, the Department of General Services shall designate a single point of contact for state agencies, suppliers, and other interested parties to contact regarding environmentally preferable purchasing issues.

12402. Nothing contained in this chapter shall prohibit, limit, or supersede recycled content requirements pursuant to any other provision of law.

12403. Nothing contained in any policy regarding environmentally preferable purchasing may be construed as requiring the acquisition of goods or services that do not perform adequately for their intended use, exclude adequate competition, or are not available at a reasonable price in a reasonable period of time.

12404. Manufacturers, vendors, or other nongovernmental entities contracting with the Department of General Services shall certify in writing that any environmental attribute claims they make concerning their products and services are consistent with the Federal Trade Commission's Guidelines for the Use of Environmental Marketing Terms.

CHAPTER 576

An act to amend Section 101.7 of the Streets and Highways Code, relating to highways.

[Approved by Governor September 14, 2002. Filed with Secretary of State September 16, 2002.]

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

SECTION 1. Section 101.7 of the Streets and Highways Code is amended to read:

101.7. (a) The department shall adopt rules and regulations which allow the placement near exits on freeways located in rural areas, of information signs identifying specific roadside businesses offering fuel, food, lodging, or camping services and which prescribe the standards for those signs.

(b) The department shall provide equal access to all business applicants.

(c) The department shall not approve the placement of any sign within any urban area designated by the United States Bureau of the Census as having a population of 5,000 or more.

The department may not remove an information sign that was placed before January 1, 2003, due solely to population growth in an urban area that results in a population of 5,000 or more but less than 10,000.

(d) The information signs may be placed near the freeway exits in addition to, or in lieu of, other highway signs of the department, but not

in lieu of on-premises or off-premises highway oriented business signs and directional signs.

(e) The department shall establish and charge a fee to place and maintain information signs in an amount not less than 25 percent above its estimated cost in placing and maintaining the information signs. The department shall annually review the amount of that fee and revise it as necessary. Funds derived from the imposition of the fee, after deduction of the cost to the department for the placement and maintenance of the information signs, shall be available, upon appropriation by the Legislature, for safety roadside rest purposes.

CHAPTER 577

An act to add Section 4001.5 to the Business and Professions Code, relating to pharmacy.

[Approved by Governor September 14, 2002. Filed with Secretary of State September 16, 2002.]

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

SECTION 1. The Legislature finds and declares as follows:

(a) The United States Department of Health and Human Services has found a nationwide shortage of pharmacists that is attributable to the increasing demand for pharmacists and a restricted supply. This shortage is linked to both the increasing prescription volume and the increasing demand for pharmacists to provide clinical care in hospitals and other care settings and is likely to persist for the foreseeable future.

(b) California has significantly fewer pharmacists per capita than the national average and the annual growth rate in the number of pharmacists is expected to be 1.4 percent per year between 2000 and 2010.

(c) The volume of prescriptions filled nationally is expected to double between 1999 and 2004.

(d) Forty-nine of California's 58 counties are below the national average in the ratio of pharmacists to the population, and the rural and hard-to-serve urban areas are most affected by the pharmacist shortage.

(e) California is the only state in the nation and the United States territories to administer its own pharmacist licensing examination.

(f) Other examinations may exist to provide alternatives to increase the availability of pharmacists in California.

SEC. 2. Section 4001.5 is added to the Business and Professions Code, to read:

4001.5. The Joint Legislative Sunset Review Committee shall review the state's shortage of pharmacists and make recommendations on a course of action to alleviate the shortage, including, but not limited to, a review of the current California pharmacist licensure examination.

CHAPTER 578

An act to amend Sections 2560.5, 2561.3, and 2561.5 of, to amend and renumber Section 2562 of, and to add Section 2562.2 to, the Streets and Highways Code, relating to transportation, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 14, 2002. Filed with Secretary of State September 16, 2002.]

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

SECTION 1. Section 2560.5 of the Streets and Highways Code is amended to read:

2560.5. (a) The purpose of this chapter is to provide for permanent implementation of a freeway service patrol system using a formula-based allocation on traffic-congested urban freeways throughout the state, involving a cooperative effort between state and local agencies.

(b) In addition to the formula-based allocation program established, subject to funds being appropriated in the annual Budget Act, in subdivision (a), there is hereby established a Competitive Freeway Service Patrol Grant Program to provide funding of a freeway service patrol system to reduce traffic congestion.

SEC. 2. Section 2561.3 of the Streets and Highways Code is amended to read:

2561.3. The freeway service patrol in any particular area shall be operated pursuant to an agreement between the Department of the California Highway Patrol, the department, and the appropriate regional or local entity.

SEC. 3. Section 2561.5 of the Streets and Highways Code is amended to read:

2561.5. (a) Funding for the freeway service patrols established pursuant to this chapter shall be provided, upon appropriation in the annual Budget Act, from the State Highway Account in the State Transportation Fund. In addition, the appropriate regional or local entity shall ensure that local resources are expended on freeway service patrols

in an amount not less than 25 percent of the amount provided from the State Highway Account.

(b) In locations where there already is a freeway service patrol, the department shall coordinate and integrate the funds appropriated pursuant to this section into the existing program. In the allocation of these funds, no local entity may be penalized for having an existing freeway service patrol program.

(c) No state funding may be released prior to the execution of the agreement developed under Section 2561.3.

(d) No program funded under this chapter may supplant emergency response towing services provided by the department as of January 1, 1992.

(e) It is the intent of the Legislature that funding provided under subdivision (a) of Section 2560.5 be consistent from year to year in order to facilitate the awarding of multiyear contracts between participating regional and local entities and providers of freeway patrol services.

SEC. 4. Section 2562 of the Streets and Highways Code is amended and renumbered to read:

2562.1. Funding for the program established in subdivision (a) of Section 2560.5 in a participating area shall be based 25 percent on the number of urban freeway lane miles in the participating area to the total number of freeway lane miles in all the participating areas, 50 percent on the basis of the ratio of the population of the participating area to the total population of all the participating areas, and 25 percent on the basis of traffic congestion as ascertained by the department pursuant to the most recent Statewide Highway Traffic Congestion Monitoring Program.

SEC. 5. Section 2562.2 is added to the Streets and Highways Code, to read:

2562.2. (a) Not later than 90 days after the effective date of this section, the department shall prepare guidelines for the implementation of a Competitive Freeway Service Patrol Grant Program and shall submit those guidelines to each regional or local agency operating a freeway service patrol. Not later than 30 days after receipt of the guidelines, the regional or local agency shall submit its written comments to the department.

(b) Not later than 150 days after the effective date of this section, the department shall publish the final guidelines for the Competitive Freeway Service Patrol Grant Program and commence implementation of the program. The guidelines shall not constitute a regulation for the purposes of Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

(c) The guidelines prepared pursuant to this section shall comply with the following requirements:

(1) Grants to be awarded to a regional or local agency applicant on a competitive basis for contracting with an employer for the provision of a new or expanded freeway service patrol service and for contracting with the Department of the California Highway Patrol for the provision of only direct supervisory services warranted by workload standards to reduce traffic congestion.

(2) The grant to require a matching share by the regional or local agency equaling not less than 25 percent of the amount provided from the State Highway Account.

(3) The grant to be awarded on the basis of project need and effectiveness calculated on a cost benefit analysis.

(4) The amount of a grant to be made to a regional or local agency shall not exceed 35 percent of the total amount of the available grant funds.

(5) The regional or local agency demonstrates that the services it proposes to fund with the grant are new freeway service patrol services that were not previously provided in its jurisdiction.

(6) The regional or local agency demonstrates its ability to support and supervise the new or expanded services provided by the Department of the California Highway Patrol.

(d) This section shall be operative only if funds are appropriated for its purposes in the annual Budget Act.

SEC. 6. 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 Competitive Freeway Service Patrol Grant Program created by this act at the earliest possible time, it is necessary for the act to take effect immediately.

CHAPTER 579

An act to amend Sections 23055 and 24045.7 of the Business and Professions Code, relating to alcoholic beverages.

[Approved by Governor September 14, 2002. Filed with Secretary of State September 16, 2002.]

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

SECTION 1. Section 23055 of the Business and Professions Code is amended to read:

23055. On or before March 1 of each year, the director shall prepare and submit to the Legislature an annual report on the department's activities. The report shall include, but not be limited to, the following information for the previous calendar year:

(a) The amount of funds allocated and spent by the department for licensing, enforcement, and administration.

(b) The number of licenses issued, renewed, denied, suspended, and revoked, by license category.

(c) The average time for processing license applications, by license category.

(d) The number and type of enforcement activities conducted by the department and by local law enforcement agencies in conjunction with the department.

(e) The number, type, and amount of penalties, fines, and other disciplinary actions taken by the department.

(f) Recommendations for legislation to improve the ability of the department to expeditiously and effectively administer this division.

SEC. 2. Section 24045.7 of the Business and Professions Code is amended to read:

24045.7. (a) (1) The department may issue a special on-sale general license to any nonprofit theater company that is exempt from the payment of income taxes under Section 23701d of the Revenue and Taxation Code and Section 501(c)(3) of the Internal Revenue Code of the United States. Any special on-sale general license issued to a nonprofit theater company pursuant to this subdivision shall be for a single specified premises only.

(2) Theater companies holding a license under this subdivision may, subject to Section 25631, sell and serve alcoholic beverages to ticketholders only during, and two hours prior to and one hour after, a bona fide theater performance of the company.

(3) Notwithstanding any other provision in this division, a licensed manufacturer, winegrower, manufacturer's agent, California winegrower's agent, rectifier, distiller, bottler, importer, or wholesaler, or any officer, director, employee, or agent of that person, may serve on the board of trustees or as an officer, director, or employee of a nonprofit theater company operating a theater in Napa County licensed pursuant to this subdivision.

(4) An applicant for such a license shall accompany the application with an original issuance fee of one thousand dollars ($1,000) and shall pay an annual renewal fee as provided in Section 23320.

(5) The Legislature finds that it is necessary and proper to require a separation between manufacturing interests, wholesale interests, and retail interests in the production and distribution of alcoholic beverages in order to prevent suppliers from dominating local markets through

vertical integration and to prevent excessive sales of alcoholic beverages produced by overly aggressive marketing techniques. The Legislature further finds that the exceptions established by this subdivision to the general prohibition against tied interests must be limited to their express terms so as not to undermine the general prohibition, and intends that this section be construed accordingly.

(b) (1) The department may issue a special on-sale beer and wine license to any nonprofit theater company which has been in existence for at least eight years, which for at least six years has performed in facilities leased or rented from a local county fair association, and which is exempt from the payment of income taxes under Section 23701d of the Revenue and Taxation Code and Section 501(c)(3) of the Internal Revenue Code of the United States.

(2) Theater companies holding a license under this subdivision may, subject to Section 25631, sell and serve beer and wine to ticketholders only during, and two hours prior to, a bona fide theater performance of the company. Beer and wine may be sold from an open-air concession stand which is not attached to the theater building itself, if the concession stand is located on fair association property within 30 feet of the theater building and the alcoholic beverages sold are consumed only in the theater building itself, or within a designated outdoor area in front of and between the concession stand and the main public entrance to the theater building. Nothing in this section permits a theater company to sell beer or wine during the run of a county fair.

(3) An applicant for a license under this subdivision shall accompany the application with an original issuance fee equal to the annual renewal fee and shall pay an annual renewal fee as provided in Section 23320.

CHAPTER 580

An act to amend Section 7337.5 of the Business and Professions Code, relating to barbering and cosmetology.

[Approved by Governor September 14, 2002. Filed with Secretary of State September 16, 2002.]

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

SECTION 1. Section 7337.5 of the Business and Professions Code is amended to read:

7337.5. (a) The bureau shall adopt regulations providing for the submittal of applications for admission to examination of students of approved cosmetology, electrology, or barbering schools who have

completed at least 75 percent of the required course clock hours and curriculum requirements (60 percent for students of the manicurist course), or any person licensed as an apprentice in barbering, cosmetology, skin care, or nail care who has completed at least 75 percent of the required apprenticeship training hours. The regulations shall include provisions that ensure that all proof of qualifications of the applicant is received by the bureau before the applicant is examined.

(b) An application for examination submitted by a student of an approved cosmetology, electrology, or barbering school under this section shall be known as a ''school preapplication'' and an additional preapplication fee may be required.

(c) An application for examination submitted by a person licensed as an apprentice in barbering, cosmetology, skin care, or nail care shall be known as an ''apprenticeship preapplication'' and an additional fee may be required.

(d) The bureau shall administer the licensing examination not later than 10 working days after graduation from an approved cosmetology, electrology, or barbering school to students who have submitted an application for admission for examination under the preapplication procedure, or not later than 10 working days after completion of an approved barbering, cosmetology, skin care, or nail care apprenticeship program for a person licensed as an apprentice.

CHAPTER 581

An act to amend Sections 94931, 94945, 94950, 94952, 94955, 94957, 94965, 94975, 94980, and 94995 of, and to add Section 94960.5 to, the Education Code, relating to private postsecondary and vocational institutions.

[Approved by Governor September 14, 2002. Filed with Secretary of State September 16, 2002.]

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

SECTION 1. Section 94931 of the Education Code is amended to read:

94931. (a) No private postsecondary educational institution, except those offering degrees and approved under Article 8 (commencing with Section 94900) or offering vocational and nondegree granting programs and approved under Article 9 (commencing with Section 94915), or those that are exempt from this chapter, may offer

educational services or programs unless the institution has been registered by the bureau as meeting the requirements of this section.

(b) An institution approved to offer degrees under Article 8 (commencing with Section 94900) or approved to offer vocational and nondegree granting programs under Article 9 (commencing with Section 94915) may offer registered programs without affecting its status under either of those articles so long as the registered program is disclosed in its approval to operate application or the institution completes a registration application and receives specific authorization for the program, maintains compliance for all registered programs in conformity with this article, and maintains a set of student records for registered programs separate from its approved programs. Any registered institution that offers an educational program not specified in subdivision (c) or not otherwise exempt from this chapter shall be approved under Article 8 (commencing with Section 94900) or Article 9 (commencing with Section 94915) and shall comply with this chapter.

(c) Except as otherwise provided in this article, this chapter does not apply to an educational service that qualifies for registration status and that complies with this article. The educational services that qualify for registration status are limited to:

(1) An educational service, as defined in Section 94733, that is offered to provide an intensive English language program.

(2) An educational service, as defined in Section 94742.1, that is offered to provide short-term career training.

(3) An educational service, as defined in Section 94742.2, that is offered to provide short-term seminar training.

(4) An educational service that is offered to assist students to prepare for an examination for licensure, except as provided in Section 94787.

(5) An educational service that consists of continuing education not otherwise exempt from this chapter.

(d) An institution that qualifies under any of paragraphs (1) to (4), inclusive, of subdivision (c) shall complete a registration form provided by the bureau, including a signed declaration by the chief executive officer of the institution under penalty of perjury, and provide all of the following information for public disclosure:

(1) The owner's legal name, headquarters address, and the name of an agent for the service of process within California.

(2) All names, whether real or fictitious, under which the owner is doing and will do business.

(3) The names and addresses of the principal officers of the institution.

(4) A list of all California locations at which the institution operates, its offerings, and, if previously registered, the number of students enrolled in California during the preceding year.

(5) A copy of the registration form or agreement that enrolls the student in the educational service that contains all of the following:

(A) The name and address of the location where instruction will be provided.

(B) The title of the educational program.

(C) The total amount the student is obligated to pay for the educational service.

(D) A clear and conspicuous statement that the enrollment form or agreement is a legally binding instrument when signed by the student and accepted by the institution.

(E) The refund policy developed by the institution unless this article specifies a different refund policy.

(F) Unless this article specifies that the institution is required to participate in the Student Tuition Recovery Fund, a statement that the institution does not participate in that fund.

(G) In 10-point boldface type or larger, the following statement: ''Any questions or problems concerning this school that have not been satisfactorily answered or resolved by the school should be directed to the Bureau for Private Postsecondary and Vocational Education in the Department of Consumer Affairs (insert city, address, CA ZIP Code number, and telephone number).''

(H) Schools approved under paragraph (1) of subdivision (c) of Section 94931 shall also include with the statement required by subparagraph (G) information referring the student to a consulate of his or her country and the United States Immigration and Naturalization Service.

(6) A brochure or catalog and a sample advertisement used to promote the educational service.

(7) A copy of its certificate of completion.

(8) If the educational service offers short-term career training, the institution shall comply with the requirements of Sections 94804 and 94806.

(9) If the institution assists students in obtaining financing from a third party for the cost of the educational services at the institution, a copy of the contract or finance agreement reflecting that financing.

(e) The bureau shall establish the initial registration fee and the annual fee to be paid by institutions registered under this article. No institution shall be registered pursuant to this article unless it has paid the appropriate fees required by the bureau. Upon receipt of an institution's initial application for registration for a program, the bureau may conduct a site visit pursuant to subdivision (c) of Section 94915.

(f) For the purposes of communication with other state agencies, any organization or individual registered to offer short-term seminar training may state that they are ''authorized'' by the State of California.

(g) (1) Except as provided by subdivision (f), any institution registered pursuant to this article shall be restricted to stating that their training is ''registered'' with the State of California and is prohibited from using the words ''approval,'' ''approved,'' ''approval to operate,'' ''approved to operate,'' ''authorized,'' ''licensed,'' or ''licensed to operate.''

(2) The institution shall place the following statement in all brochures, catalogues, enrollment agreements, and registration forms, in a conspicuous location in at least 12-point boldfaced type:

''We are registered with the State of California. Registration means we have met certain minimum standards imposed by the state for registered schools on the basis of our written application to the state. Registration does not mean we have met all of the more extensive standards required by the state for schools that are approved to operate or licensed or that the state has verified the information we submitted with our registration form.''

(h) The bureau may require, at least every three years following the initial registration date, that a registered institution verify all or part of the information required to be provided with the registration form under subdivision (d).

(i) Sections 94812 and 94818, Sections 94822 to 94825, inclusive, and Sections 94829 to 94838, inclusive, and Sections 94841 and 94846 shall apply to any institution registered pursuant to this article.

(j) Article 1 (commencing with Section 94700), Article 2 (commencing with Section 94710), Article 3 (commencing with Section 94750), Article 3.5 (commencing with Section 94760), Article 4 (commencing with Section 94770), and Article 13 (commencing with Section 94950) shall apply to any institution registered pursuant to this article.

SEC. 2. Section 94945 of the Education Code is amended to read:

94945. (a) The bureau shall assess each institution, except for an institution that receives all of its students' total charges, as defined in subdivision (k) of Section 94852, from third-party payers. A third-party payer, for the purposes of this section, means an employer, government program, or other payer that pays a student's total charges directly to the institution when no separate agreement for the repayment of that payment exists between the third-party payer and the student. A student who receives third-party payer benefits for his or her institutional charges is not eligible for benefits from the Student Tuition Recovery Fund.

(1) (A) The amount assessed each institution shall be calculated only for those students who are California residents and who are eligible to be reimbursed from the fund. It shall be based on the actual amount charged each of these students for total tuition cost, regardless of the

portion that is prepaid, and shall be assessed as tuition is paid or loans are funded on behalf of the student, based upon academic term. The amount of the assessment on an institution shall be determined in accordance with paragraphs (2) and (3).

(B) Each institution shall collect the amount assessed by the bureau in the form of a Student Tuition Recovery Fund fee from its new students, and remit these fees to the bureau during the quarter immediately following the quarter in which the fees were collected from the students, or from loans funded on behalf of the students, except that an institution may waive collection of the Student Tuition Recovery Fund fee and assume the fee as a debt of the institution. The student's subsequent disenrollment at the institution shall not relieve the institution of the obligation to pay the fee to the bureau, nor be the basis for refund of the fee to the student. An institution may not charge a fee of any kind for the collection of the Student Tuition Recovery Fund fee. An institution may refuse to enroll a student who has not paid, or made provisions to pay, the appropriate Student Tuition Recovery Fund fee.

(C) For the purposes of this section, a ''new student'' means a student that signs their enrollment agreement on or after January 1, 2002. Those students who sign their enrollment agreement prior to January 1, 2002, are not ''new students'' for purposes of this section, and shall be assessed the Student Tuition Recovery Fund fee in effect prior to January 1, 2002, except that an institution may waive collection of the Student Tuition Recovery Fund fee in effect prior to January 1, 2002. Institutions electing to waive collection of the Student Tuition Recovery Fund fee shall disclose this fact to the student in the enrollment agreement, along with the amount of the fee paid on the student's behalf to the bureau.

(2) The amount collected from a new student by an institution shall be calculated on the basis of the course tuition paid over the current calendar year, based upon the assessment rate in effect when the student enrolled at the institution, without regard to the length of time the student's program of instruction lasts. For purposes of annualized payment, a new student enrolled in a course of instruction that is longer than one calendar year in duration shall pay fees for the Student Tuition Recovery Fund based on the amount of tuition collected during the current calendar year.

(3) The assessment made pursuant to this section shall be made in accordance with both of the following:

(A) Each new student shall pay a Student Tuition Recovery Fund assessment for the period of January 1, 2002, to December 31, 2002, inclusive, at the rate of three dollars ($3) per thousand dollars of tuition paid, rounded to the nearest thousand dollars.

(B) Commencing January 1, 2003, Student Tuition Recovery Fund fees shall be collected from new students at the rate of two dollars and

fifty cents ($2.50) per thousand dollars of tuition charged, rounded to the nearest thousand dollars. For new students signing enrollment agreements between January 1, 2002 and December 31, 2002, inclusive, the assessment rate of three dollars ($3) per thousand dollars of tuition paid, rounded to the nearest thousand dollars, as provided in subparagraph (A) of this paragraph, shall remain the assessment rate for the duration of the student's enrollment agreement.

(4) The bureau may levy additional reasonable special assessments on an institution under this section only if these assessments are required to ensure that sufficient funds are available to satisfy the anticipated costs of paying student claims pursuant to Section 94944.

(5) (A) The bureau may not levy a special assessment unless the balance in any account in the Student Tuition Recovery Fund falls below two hundred fifty thousand dollars ($250,000), as certified by the Secretary of the State and Consumer Services Agency.

(B) A special assessment is a surcharge, collected by each institution from newly enrolled students, of up to 100 percent of that institution's regular assessment for four consecutive quarters. The affected student shall pay the surcharge simultaneously with his or her regular quarterly payment to the Student Tuition Recovery Fund.

(C) The bureau shall provide at least 90 days' notice of an impending special assessment to each affected institution. This notice shall also be posted on the bureau's Internet Web site.

(D) The bureau may apply any special assessment payments that it receives from an institution as a credit toward that institution's current or future obligations to the Student Tuition Recovery Fund.

(6) The assessments shall be paid into the Student Tuition Recovery Fund and credited to the appropriate account in the fund, and the deposits shall be allocated, except as otherwise provided for in this chapter, solely for the payment of valid claims to students. Unless additional reasonable assessments are required, no assessments for the degree-granting postsecondary educational institution account shall be levied during any fiscal year if, as of June 30 of the prior fiscal year, the balance in that account of the fund exceeds one million five hundred thousand dollars ($1,500,000). Unless additional reasonable assessments are required, no assessments for the vocational educational institution account shall be levied during any fiscal year if, as of June 30 of the prior fiscal year, the balance in that account exceeds four million five hundred thousand dollars ($4,500,000). However, regardless of the balance in the fund, assessments shall be made on any newly approved institution. Notwithstanding Section 13340 of the Government Code, the moneys so deposited in the fund are continuously appropriated to the bureau for the purpose of paying claims to students pursuant to Section 94944.

(b) The bureau may deduct from the fund the reasonable costs of administration of the tuition recovery program authorized by Section 94944 and this section. The maximum amount of administrative costs that may be deducted from the fund, in a fiscal year, shall not exceed one hundred thousand dollars ($100,000) from the degree-granting postsecondary educational institution account and three hundred thousand dollars ($300,000) from the vocational educational institution account, plus the interest earned on money in the fund that is credited to the fund. Prior to the bureau's expenditure of any amount in excess of one hundred thousand dollars ($100,000) from the fund for administration of the tuition recovery program, the bureau shall develop a plan itemizing that expenditure. The plan shall be subject to the approval of the Department of Finance. Institutions, except for schools of cosmetology licensed pursuant to Article 8 (commencing with Section 7362) of Chapter 10 of Division 3 of the Business and Professions Code and institutions that offer vocational or job training programs, that meet the student tuition indemnification requirements of a California state agency, that secure a policy of surety or insurance from an admitted insurer protecting their students against loss of paid tuition, or that demonstrate to the bureau that an acceptable alternative method of protecting their students against loss of prepaid tuition has been established, shall be exempted from this section.

(c) Reasonable costs in addition to those permitted under subdivision (b) may be deducted from the fund for any of the following purposes:

(1) To make and maintain copies of student records from institutions that close.

(2) To reimburse the bureau or a third party serving as the custodian of records.

(d) In the event of a closure by any approved institution under this chapter, any assessments that have been made against those institutions, but have not been paid into the fund, shall be recovered. Any payments from the fund made to students on behalf of any institution shall be recovered from that institution.

(e) In addition to civil remedies, the bureau may order an institution to pay previously unpaid assessments or to reimburse the bureau for any payments made from the fund in connection with the institution. Before any order is made pursuant to this section, the bureau shall provide written notice to the institution and notice of the institution's right to request a hearing within 30 days of the service of the notice. If a hearing is not requested within 30 days of the service of the notice, the bureau may order payment. If a hearing is requested, Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code shall apply, and the bureau shall have all powers prescribed in that chapter. Within 30 days after the effective date of the issuance of the

order, the bureau may enforce the order in the same manner as if it were a money judgment pursuant to Title 9 (commencing with Section 680.010) of Part 2 of the Code of Civil Procedure.

(f) In addition to any other action that the bureau may take under this chapter, the bureau may suspend or revoke an institution's approval to operate because of the institution's failure to pay assessments when due or failure to pay reimbursement for any payments made from the fund within 30 days of the bureau's demand for payment.

(g) The moneys deposited in the fund shall be exempt from execution and shall not be the subject of litigation or liability on the part of creditors of those institutions or students.

SEC. 3. Section 94950 of the Education Code is amended to read:

94950. (a) The procedures set forth in Section 94965 or, alternatively, in Section 94975, govern the following types of administrative actions:

(1) Denial of an application for an approval or renewal of an approval.

(2) Suspension or revocation of an existing approval.

(3) Appeals of conditional approvals.

(b) In lieu of the procedures set forth in Section 94965 or 94975, an institution may voluntarily elect to utilize the procedures set forth in Section 94980 if it appeals a conditional approval by the bureau.

(c) The procedures set forth in Section 94970 govern emergency suspensions of an institution's approval to operate initiated by the bureau.

(d) Sections 94952 and 94955 authorize the bureau and the Attorney General to seek various forms of judicial relief in order to enforce this chapter.

(e) Section 94960 governs actions based on student complaints.

(f) Section 94985 authorizes civil remedies for individual students in addition to those available under other provisions of law.

(g) Procedures established pursuant to regulations adopted by the bureau shall govern the following types of administrative appeals:

(1) Probationary actions.

(2) Decisions by the bureau denying an institution's claim for an exemption or exclusion from this chapter or any provision thereof.

SEC. 4. Section 94952 of the Education Code is amended to read:

94952. (a) The Attorney General, or any district attorney, or city attorney, may make investigations as may be necessary to carry out this chapter, including, but not necessarily limited to, investigations of complaints. The bureau may jointly bring actions as necessary to enforce this chapter, including, but not necessarily limited to, civil actions for injunctive relief. In actions brought pursuant to this subdivision, the bureau shall be represented by the Attorney General.

(b) The Attorney General shall represent the bureau in the following administrative proceedings arising under this chapter:

(1) Suspension or revocation of an institution's approval.

(2) Denial of an institution's application for approval.

(3) An appeal of a conditional approval to operate issued following a review of an institution's application for approval.

(c) Nothing in this section or this chapter shall preclude the Attorney General, or any district attorney or city attorney, from any of the following:

(1) Bringing any action on behalf of the people as he or she is empowered by law to bring, including, but not necessarily limited to, actions based upon alleged violations of Chapter 5 (commencing with Section 17200) of Part 2, and Chapter 1 (commencing with Section 17500) of Part 3, of Division 7 of the Business and Professions Code.

(2) Conducting investigations necessary to determine whether there have been violations of law specified in paragraph (1).

(3) Conducting any investigations that he or she is authorized to conduct, including, but not necessarily limited to, investigations authorized under Section 11180 of the Government Code.

(4) In the case of the Attorney General, delegating his or her representation authority under subdivision (b) to staff attorneys of the bureau.

(5) Entering into an agreement or understanding with the bureau with respect to representation in any judicial or administrative proceeding not expressly enumerated herein.

SEC. 5. Section 94955 of the Education Code is amended to read:

94955. (a) The bureau may bring an action for equitable relief for any violation of this chapter. The equitable relief may include restitution, a temporary restraining order, the appointment of a receiver, and a preliminary or permanent injunction. The action may be brought in the county in which the defendant resides or in which any violation has occurred or may occur.

(b) The remedies provided in this section supplement, and do not supplant, the remedies and penalties under other provisions of law.

(c) In actions brought pursuant to this section, the bureau shall be represented by the Attorney General.

SEC. 6. Section 94957 of the Education Code is amended to read:

94957. (a) In addition to or in lieu of any other remedy or penalty, the bureau may issue a citation to an institution for committing any violation of this chapter or regulation adopted under this chapter.

(b) The citation may contain an order of abatement or the assessment of an administrative fine. The administrative fine may not exceed two thousand five hundred dollars ($2,500) for each violation. The bureau shall base its assessment of the administrative fine on the nature and

seriousness of the violation, the persistence of the violation, the good faith of the institution, the history of previous violations, and the purposes of this chapter.

(c) The citation shall be in writing and shall describe the nature of the violation and the specific provision of law determined to have been violated. The citation shall inform the institution of its right to request a hearing in writing within 15 days of the date that the citation was issued. If a hearing is not requested, payment of the administrative fine shall not constitute an admission of the violation charged. If a hearing is requested, the bureau shall provide a hearing as described in Section 94965, 94975, or 94980. Payment of the administrative fine is due 15 days after the citation was issued if a hearing is not requested, or when a final order is entered if a hearing is requested. The bureau may enforce the administrative fine as if it were a money judgment pursuant to Title 9 (commencing with Section 680.10) of Part 2 of the Code of Civil Procedure.

(d) All administrative fines shall be deposited in the Private Postsecondary and Vocational Education Administration Fund.

SEC. 7. Section 94960.5 is added to the Education Code, to read:

94960.5. The bureau shall include in its annual report to the Legislature made pursuant to Section 94995, a statistical summary of complaints filed pursuant to Section 94960, that includes, but is not necessarily limited to, all of the following:

(a) The number of complaints filed.

(b) The nature of the complaint, by appropriate categories.

(c) The disposition of the complaints.

(d) The actions taken by the bureau, under subdivision (c) of Section 94960, to enforce a prevailing complaint.

SEC. 8. Section 94965 of the Education Code is amended to read:

94965. (a) Proceedings in connection with the denial of an application to operate, the grant of a conditional approval to operate, or the revocation of an approval to operate 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 bureau shall have all of the powers granted in that chapter. Any action by the bureau to place an institution on probation shall be subject to appeal, and the bureau shall establish procedures that provide the institution with adequate notice and an opportunity to be heard and to present evidence as to why the action recommended by staff or by a visiting committee shall not be taken.

(b) Upon taking any action to suspend or revoke an institution's approval to operate, or to deny an application for renewal of an approval to operate, the bureau shall provide written notice to the Student Aid

Commission, the United States Department of Education, and to any appropriate accrediting association.

SEC. 9. Section 94975 of the Education Code is amended to read:

94975. (a) This section establishes the procedure for notice and hearing required under this chapter and, except as provided in Section 94970, 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 bureau 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) That, if the party subject to the notice does not request a hearing in writing within the time period expressed in the notice, he or she will waive or forfeit his or her right to an administrative hearing and the action will become final.

(c) If a party subject to a notice provided pursuant to subdivision (b) requests a hearing in writing within the time period specified in subparagraph (3) of paragraph (b), then within 30 days of receiving this request, the bureau shall schedule a hearing. The hearing shall be held in a location determined pursuant to Section 11508 of the Government Code. The bureau shall serve reasonable notice of the time and place for the hearing at least 10 days before the hearing. The bureau may continue the date of the hearing upon a showing of good cause.

(d) (1) Any party, including the bureau, 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 basis 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 in this paragraph shall affect the bureau'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 bureau's office, or other mutually agreed reasonable place, the requested writings and things. The bureau 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 bureau 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 are subject to Section 11510 of the Government Code.

(f) (1) The bureau 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 bureau'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) Neither a hearing officer nor any person who has a direct or indirect interest in the outcome of the hearing shall communicate directly or indirectly with each other regarding any issue involved in the hearing while the proceeding is pending without notice and opportunity for all parties to participate in the communication. A hearing officer who

receives any ex parte communication shall immediately disclose the communication to the bureau and all other parties. The bureau may disqualify the hearing officer if necessary to eliminate the effect of the ex parte communication. If the bureau finds that any party willfully violated, or caused the violation of, this paragraph, the bureau 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 bureau 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 that 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 bureau 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 bureau. The bureau 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 bureau.

(h) (1) At any time before the matter is submitted for decision, the bureau 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 bureau may amend the notice after the case is submitted for decision. The bureau 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 bureau 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 bureau, the hearing officer shall submit a written statement of decision setting forth a recommendation for a final decision and explaining the factual and legal basis for the decision as to each of the grounds for the administrative action set forth in the notice or amended notice. The bureau 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 director 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 director also shall issue a statement of decision explaining the factual and legal basis for the final decision as to each of the grounds for the administrative action set forth in the notice or amended notice. The director shall issue an order based on its decision which shall be effective upon service or at any other time designated by the director. The director,

or his or her agent, shall serve a copy of the final decision and order, within 10 days of their issuance, on each party and its counsel.

(3) The bureau 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 bureau, 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 bureau 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 bureau.

(k) (1) Any party aggrieved by the director'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 director'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 director's findings of fact and legal conclusions supporting the final 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 director 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 bureau, and the fund, from any loss.

(*l*) The bureau 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 the purposes of this section, ''good cause'' shall require sufficient ground or reason for the determination to be made by the bureau.

SEC. 10. Section 94980 of the Education Code is amended to read:

94980. (a) If the bureau, through the director, denies an institution's application for approval, grants a conditional approval, or initiates a proceeding to suspend or revoke an institution's approval to operate, the institution may request a hearing pursuant to this section in lieu of the

hearing procedure designated by the bureau under Section 94965 or 94975.

(b) At the time the bureau provides notice to an institution of its right to a hearing under Section 94965 or 94975 in connection with the denial of an application for approval to operate, the issuance of a conditional approval to operate, or a proposed suspension or revocation of approval to operate, the bureau also shall provide notice of the provisions of this section.

(c) Within 15 days after service of the notice described in subdivision (b), the institution may request in writing a hearing under this section in lieu of the hearing procedure in Section 94965 or 94975. The request shall acknowledge that, by electing to proceed under this section, the institution is knowingly waiving all rights under the hearing procedure otherwise provided by the bureau.

(d) After receiving the institution's request for a hearing under this section, the bureau shall provide the institution or its representative with copies of all the documents, testimony in declaration form, and written arguments on which the bureau relies to support its proposed administrative action.

(e) The institution shall have 30 days from the service of the bureau's written evidence and arguments to submit all the documents, testimony in declaration form, and written arguments on which the institution relies in opposition to the bureau's proposed administrative action.

(f) Neither the bureau nor the institution has any right to discovery or to compel the production of documents or the testimony of witnesses by subpoena.

(g) The director shall review all of the documents, declarations, and arguments, and shall render a proposed decision in writing, based solely on the written evidence and arguments that set forth the proposed administrative action and the factual and legal bases for it.

(h) The bureau shall serve the institution with a written decision setting forth the administrative action taken and the legal and factual bases for it. The decision shall become final within 30 days unless another time is specified by the bureau.

(i) The bureau shall serve a certified copy of the complete record, or any part thereof designated by an institution, within 30 days after receiving the institution's written request and payment of the cost of preparing the requested record or portions thereof. The complete record shall consist of all notices and orders of the bureau, the documents, declarations, and written argument submitted, a transcript of any oral argument, and the final decision and order.

(j) Any party aggrieved by the bureau's final decision and order may seek judicial review as provided in, and subject to, the requirements of subdivision (k) of Section 94975.

(k) All documents required by this section to be served by the bureau shall be served on the institution, its counsel, or authorized representative by any means authorized for service pursuant to Chapter 5 (commencing with Section 1010) of Title 14 of Part 2 of the Code of Civil Procedure.

SEC. 11. Section 94995 of the Education Code is amended to read:

94995. (a) Notwithstanding Section 7550.5 of the Government Code, on or before January 31 of each calendar year, the bureau shall submit a written report to the Legislature and to the California Postsecondary Education Commission, summarizing its activities during the previous fiscal year.

(b) Annual reports prepared pursuant to this section shall include, but shall not necessarily be limited to, all of the following:

(1) Timely information relating to the enforcement activities of the bureau pursuant to this chapter.

(2) Statistics providing a composite picture of the private postsecondary educational community, including data on how many schools, as classified by subject matter, and how many students there are within the scope of the activities of the bureau.

(c) Any reports submitted by the bureau to the Joint Legislative Sunset Review Committee pursuant to Division 1.2 (commencing with Section 473) of the Business and Professions Code during any calendar year shall satisfy the reporting requirements of this section for that year.

SEC. 12. The Legislature finds and declares that the amendments to Section 94945 of the Education Code made by Section 2 of this act do not constitute a change in, but are declaratory of, existing law.

CHAPTER 582

An act to add Chapter 8.9 (commencing with Section 52295.10) to Part 28 of the Education Code, relating to public schools, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 14, 2002. Filed with Secretary of State September 16, 2002.]

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

SECTION 1. Chapter 8.9 (commencing with Section 52295.10) is added to Part 28 of the Education Code, to read:

CHAPTER 8.9. THE EDUCATION TECHNOLOGY GRANT ACT OF 2002

52295.10. (a) This chapter shall be known, and may be cited, as the Education Technology Grant Act of 2002.

(b) For the purposes of this chapter, ''school district'' means a school district, a county office of education, or a charter school.

52295.15. The Legislature finds and declares all of the following:

(a) The federal Enhancing Education Through Technology Act of 2001, Part D of Title II of the No Child Left Behind Act of 2001 (Public Law 107-110), provides resources to California with the primary goal to improve pupil academic achievement through the use of technology in elementary schools and secondary schools.

(b) It is the intent of the Legislature that California use the funding provided under the federal Enhancing Education Through Technology Act in a manner consistent with federal law to improve pupil academic achievement, with emphasis on using the funding to prepare pupils to enter high school with the academic and technology literacy skills to support success in high school, as well as to assist in the acquisition, development, interconnection, implementation, improvement, and maintenance of an effective educational technology infrastructure in a manner that expands access to technology for pupils, particularly for disadvantaged pupils, and teachers.

52295.20. (a) The Education Technology Grant Program of 2002 is hereby established to provide grants to eligible school districts, county offices of education, or charter schools for purposes of implementing and supporting a comprehensive system that effectively uses technology to improve pupil academic achievement.

(b) As used in this chapter, ''using technology to improve pupil academic achievement'' means using technology as a fundamental tool for both teaching and learning throughout the curriculum to help pupils meet or exceed the state academic content standards adopted by the State Board of Education.

52295.25. (a) Eligibility for a grant pursuant to this chapter shall be limited to a school district or a consortium of school districts that meet all of the following criteria:

(1) They are among the school districts in the state with the highest number or percentage of children from families with an income below the poverty line established by the federal Director of the Office of Management and Budget, as annually revised by the Secretary of Health and Human Services.

(2) They meet either of the following criteria:

(A) They operate one or more schools identified under Section 1116 of the federal No Child Left Behind Act of 2001 (Public Law 107-110).

(B) They have a substantial need for assistance in acquiring and using technology.

(b) A grant pursuant to this chapter may only be used to serve pupils in grades 4 to 8, inclusive, except as specified in subdivision (c) of Section 52295.35.

52295.30. (a) The Superintendent of Public Instruction shall administer this program and the application process for the award of grants. The Superintendent of Public Instruction, with the approval of the State Board of Education, shall award grants on a competitive basis. All grants funded pursuant to this chapter shall comply with the requirements of Part D of Title II of the federal No Child Left Behind Act of 2001 (Public Law 107-110). The amount of each grant shall be calculated as described in Section 52295.35.

(b) The priority for awarding grants to school districts shall be as follows:

(1) First priority shall be middle and junior high schools.

(2) Second priority shall be elementary schools.

(3) Third priority shall be other schools that serve pupils in grades 4 to 8, inclusive.

(c) The Superintendent of Public Instruction shall be authorized to adopt emergency regulations in order to administer the Education Technology Grant Program and allocate program funds.

(d) This chapter shall be implemented only to the extent of moneys from federal funds appropriated for the purposes of this chapter in the annual Budget Act or other legislation.

52295.35. (a) Applicants within each of the 11 California Technology Assistance Project regions shall compete against other applicants from that region. The amount of funding for grants available to each region shall be determined based upon the proportionate enrollment of pupils in grades 4 to 8, inclusive, in eligible schools from that region.

(b) Grants shall be awarded to a school district for a school or schools specified in the program application. All grant funds shall be spent in a manner consistent with the local education agency technology plan, pursuant to subdivision (a) of Section 51871.5 and subdivision (a) of Section 2414 of Part D of Title II of the No Child Left Behind Act of 2001 (Public Law 107-110), and program application and shall be used for the specific school or schools included in the approved application.

(c) The initial one-time implementation grant for a school selected to receive a grant shall be calculated based upon three hundred dollars ($300) per pupil for pupils in grades 4 to 8, inclusive. An additional three hundred dollars ($300) per pupil for pupils in grade 9 may be allocated if the school includes grade 9 pupils and the school did not receive funding for these pupils under the Digital High School Education

Technology Grant Act of 1997 (Chapter 8.5 (commencing with Section 52250)). Upon recommendation from the State Department of Education, the State Board of Education may adopt criteria that establish fixed minimum grant levels for a small school.

(d) Subject to availability of federal funding appropriated for competitive grants under Part D of Title II of the federal No Child Left Behind Act of 2001 (Public Law 107-110), any grant recipient that successfully completes the initial grant shall receive an additional one-time grant of forty-five dollars ($45) per pupil in grades 4 to 8, inclusive, at the school or schools selected for funding. The purpose of this funding shall be to continue implementation of the grant recipients' approved technology plan in a manner consistent with the requirements of Part D of Title II of the federal No Child Left Behind Act of 2001 (Public Law 107-110), including plans to sustain the use of technology as a tool in improving teaching and pupil academic achievement once the grant period ends.

52295.40. Grant funds shall be expended by each school included in the program application, as follows:

(a) A minimum of 25 percent of the total grant shall be spent on high-quality professional development that provides school teachers, principals, and administrators with the capacity to integrate technology effectively into curricula and instruction that are aligned with state academic content standards adopted by the State Board of Education and the applicable curriculum framework content standards adopted by the State Board of Education.

(b) Remaining funds, if any, shall be expended in a manner consistent with the approved application.

52295.45. The grant application and criteria for scoring grants shall address all of the following:

(a) Implementation and support of a comprehensive system based on research that effectively uses technology to improve pupil academic achievement in a manner consistent with other school district and school efforts to improve pupil academic achievement.

(b) The acquisition, development, interconnection, implementation, improvement, and maintenance of an effective educational technology infrastructure in a manner that expands access to technology for pupils, particularly for disadvantaged pupils, and teachers.

(c) The ongoing professional development of teachers, principals, and administrators by providing ongoing access to training and support, as well as updated research in teaching and learning through electronic means.

(d) The utilization of electronic networks and other innovative methods, including, but not limited to, distance learning, to deliver specialized or rigorous academic courses and curricula for pupils in areas

that would not otherwise have access to those courses and curricula, particularly in geographically isolated regions.

(e) The rigorous evaluation of grant activities, particularly regarding the impact of the program on pupil academic achievement. This evaluation process shall include a process and accountability measures that will be used to evaluate the extent to which activities funded under a grant are effective in all of the following areas:

(1) Integrating technology into teaching and learning.

(2) Increasing the ability of teachers to teach.

(3) Assisting pupils in meeting state academic content standards.

(f) The use of technology to extend learning beyond the traditional schoolday.

(g) The use of technology to promote parent and family involvement in education and communication among pupils, parents, teachers, and administrators.

52295.50. Each school that receives funding from a grant awarded pursuant to this chapter shall collect and provide evaluation data and reports to the State Department of Education that are necessary to satisfy state and United States Department of Education evaluation and reporting requirements to ensure that grant recipients comply with statutory requirements and to examine the extent to which they have effectively expended funds to meet the goals of Part D of Title II of the No Child Left Behind Act of 2001 (Public Law 107-110).

52295.55. In consultation with the State Department of Education and consistent with the requirements of the No Child Left Behind Act of 2001 (Public Law 107-110), the California Technology Assistance Project shall provide assistance to school districts in the application process and shall assist grant recipients with the implementation and evaluation of their grants, subject to federal funding being allocated in the state budget for this technical assistance.

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 enable the Superintendent of Public Instruction to begin to distribute to eligible school districts the federal funds that it has received through the federal No Child Left Behind Act of 2001 (Public Law 107-110) for the purpose of improving pupil academic achievement through the use of technology in elementary and secondary schools, it is necessary that this act take effect immediately as an urgency statute.

CHAPTER 583

An act relating to the payment of judgments and settlement claims against the State of California, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 14, 2002. Filed with Secretary of State September 16, 2002.]

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

SECTION 1. The sum of one million three hundred sixty thousand seven hundred two dollars and seventy-four cents ($1,360,702.74) is hereby appropriated from the General Fund to the Attorney General for allocation to pay the following judgments and settlement claims pursuant to the following schedule:

(a) Nine hundred ninety-nine thousand eighty-five dollars and forty-five cents ($999,085.45) for the judgment in the case of Jesus Doe, et al. v. Regents of the University of California, et al. (San Francisco Superior Court No. 965090).

(b) Three hundred sixty-one thousand six hundred seventeen dollars and twenty-nine cents ($361,617.29) for the judgment in the case of Gregorio T, et al. v. Wilson, et al. and Ayala et al. v. Wilson, et al. (D.C., C.D. Cal. No. 94-7652 MRP).

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 pay judgments and settlement claims against the state and end hardship to claimants as quickly as possible, it is necessary for this act to take effect immediately.

CHAPTER 584

An act to amend Section 8617 of the Business and Professions Code, relating to pest control.

[Approved by Governor September 14, 2002. Filed with Secretary of State September 16, 2002.]

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

SECTION 1. Section 8617 of the Business and Professions Code is amended to read:

8617. (a) The board or county agricultural commissioners, when acting pursuant to Section 8616.4, may suspend the right of a structural pest control licensee or registered company to work in a county for up to three working days or, for a licensee, registered company, or an unlicensed individual acting as a licensee, may levy an administrative fine up to one thousand dollars ($1,000) or direct the licensee to attend and pass a board-approved course of instruction at a cost not to exceed the administrative fine, or both, for each violation of this chapter, or any regulations adopted pursuant to this chapter, or Chapter 2 (commencing with Section 12751), Chapter 3 (commencing with Section 14001), Chapter 3.5 (commencing with Section 14101), or Chapter 7 (commencing with Section 15201) of Division 7 of the Food and Agricultural Code, or any regulations adopted pursuant to those chapters, relating to pesticides. Fines collected shall be paid to the Education and Enforcement Account in the Structural Pest Control Education and Enforcement Fund. Suspension may include all or part of the registered company's business within the county based on the nature of the violation, but shall, whenever possible, be restricted to that portion of a registered company's business in a county that was in violation.

(b) A licensee who passes a course pursuant to this section shall not be awarded continuing education credit for that course.

(c) Before a suspension action is taken, a fine levied, or a licensee is required to attend and pass a board-approved course of instruction, the person charged with the violation shall be provided a written notice of the proposed action, including the nature of the violation, the amount of the proposed fine or suspension, or the requirement to attend and pass a board-approved course of instruction. The notice of proposed action shall inform the person charged with the violation that if he or she desires a hearing before the commissioner issuing the proposed action to contest the finding of a violation, that hearing shall be requested by written notice to the commissioner within 20 days of the date of issuance of the written notice of proposed action.

A notice of the proposed action that is sent by certified mail to the last known address of the person charged shall be considered received even if delivery is refused or the notice is not accepted at that address.

If a hearing is requested, notice of the time and place of the hearing shall be given at least 10 days before the date set for the hearing. At the hearing, the person shall be given an opportunity to review the commissioner's evidence and a right to present evidence on his or her own behalf. If a hearing is not requested within the prescribed time, the commissioner may take the action proposed without a hearing.

(d) If the person upon whom the commissioner imposed a fine or suspension or required attendance at a board-approved course of instruction requested and appeared at a hearing before the commissioner,

the person may appeal the commissioner's decision to the Disciplinary Review Committee and shall be subject to the procedures in Section 8662.

(e) If a suspension or fine is ordered, it may not take effect until 20 days after the date of the commissioner's decision if no appeal is filed. If an appeal pursuant to Section 8662 is filed, the commissioner's order shall be stayed until 20 days after the Disciplinary Review Committee has ruled on the appeal.

(f) Failure of a licensee or registered company to pay a fine within 30 days of the date of assessment or to comply with the order of suspension, unless the citation is being appealed, may result in disciplinary action being taken by the board.

Where a citation containing a fine is issued to a licensee and it is not contested or the time to appeal the citation has expired and the fine is not paid, the full amount of the assessed fine shall be added to the fee for renewal of that license. A license shall not be renewed without payment of the renewal fee and fine.

Where a citation containing a fine is issued to a registered company and it is not contested or the time to appeal the citation has expired and the fine is not paid, the board shall not sell to the registered company any inspection stamps, notice of completion stamps, or pesticide use stamps until the assessed fine has been paid.

Where a citation containing the requirement that a licensee attend and pass a board-approved course of instruction is not contested or the time to appeal the citation has expired and the licensee has not attended and passed the required board-approved course of instruction, the licensee's license shall not be renewed without proof of attendance and passage of the required board-approved course of instruction.

(g) Once final action pursuant to this section is taken, no other administrative or civil action may be taken by any state governmental agency for the same violation. However, action taken pursuant to this section may be used by the board as evidence of prior discipline, and multiple local actions may be the basis for statewide disciplinary action by the board pursuant to Section 8620. A certified copy of the order of suspension or fine issued pursuant to this section or Section 8662 shall constitute conclusive evidence of the occurrence of the violation.

(h) Where the board is the party issuing the notice of proposed action to suspend or impose a fine pursuant to subdivision (a) of this section, "commissioner" as used in subdivisions (c), (d), and (e) includes the board's registrar.

CHAPTER 585

An act to amend Section 56475 of, and to add Sections 56476 and 56480 to, the Education Code, and to amend Section 7579 of the Government Code, relating to special education.

[Approved by Governor September 14, 2002. Filed with Secretary of State September 16, 2002.]

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

SECTION 1. Section 56475 of the Education Code is amended to read:

56475. (a) The superintendent and the directors of the State Department of Health Services, the State Department of Mental Health, the State Department of Developmental Services, the State Department of Social Services, the Department of Rehabilitation, the Department of the Youth Authority, and the Employment Development Department shall develop written interagency agreements or adopt joint regulations that include responsibilities, in accordance with paragraph (12) of subsection (a) of Section 1412 of Title 20 of the United States Code and Section 300.142 of Title 34 of the Code of Federal Regulations, for the provision of special education and related services to individuals with exceptional needs in the State of California.

(b) The superintendent shall develop interagency agreements with other state and local public agencies, as deemed necessary by the superintendent, to carry out the provisions of state and federal law.

(c) (1) Each interagency agreement shall be submitted by the superintendent to each legislative fiscal committee, education committee, and policy committee, responsible for legislation relating to those individuals with exceptional needs that will be affected by the agreement if it is effective.

(2) An interagency agreement shall not be effective sooner than 30 days after it has been submitted to each of the legislative committees specified in paragraph (1).

SEC. 2. Section 56476 is added to the Education Code, to read:

56476. The Governor or designee of the Governor, in accordance with paragraph (12) of subsection (a) of Section 1412 of Title 20 of the United States Code and Section 300.142 of Title 34 of the Code of Federal Regulations, shall ensure that each agency under the Governor's jurisdiction enters into an interagency agreement with the superintendent to ensure that all services that are needed to ensure a free appropriate public education are provided.

SEC. 3. Section 7579 of the Government Code is amended to read:

7579. (a) Prior to placing a disabled child or a child suspected of being disabled in a residential facility, outside the child's home, a court, regional center for the developmentally disabled, or public agency other than an educational agency, shall notify the administrator of the special education local plan area in which the residential facility is located. The administrator of the special education local plan area shall provide the court or other placing agency with information about the availability of an appropriate public or nonpublic, nonsectarian special education program in the special education local plan area where the residential facility is located.

(b) Notwithstanding Section 56159 of the Education Code, the involvement of the administrator of the special education local plan area in the placement discussion, pursuant to subdivision (a), shall in no way obligate a public education agency to pay for the residential costs and the cost of noneducational services for a child placed in a licensed children's institution or foster family home.

(c) It is the intent of the Legislature that this section will encourage communication between the courts and other public agencies that engage in referring children to, or placing children in, residential facilities, and representatives of local educational agencies. It is not the intent of this section to hinder the courts or public agencies in their responsibilities for placing disabled children in residential facilities when appropriate.

(d) Any public agency other than an educational agency that places a disabled child or a child suspected of being disabled in a facility out of state without the involvement of the school district, special education local plan area, or county office of education in which the parent or guardian resides, shall assume all financial responsibility for the child's residential placement, special education program, and related services in the other state unless the other state or its local agencies assume responsibility.

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.

CHAPTER 586

An act to amend Section 47614.5 of, and to add Section 47605.3 to, the Education Code, relating to charter schools, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 14, 2002. Filed with Secretary of State September 16, 2002.]

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

SECTION 1. Section 47605.3 is added to the Education Code, to read:

47605.3. Notwithstanding subdivision (d) of Section 47605, a charter school with a schoolsite physically located in the attendance area of a public elementary school in which 50 percent or more of the pupil enrollment is eligible for free or reduced price meals may give a preference in admissions to pupils who are currently enrolled in that public elementary school, and to pupils who reside in the elementary school attendance area where the charter schoolsite is located. This section is not intended to effect the requirement contained in subdivision (d) of Section 47605 that a public school converting partially or entirely to a charter school adopt and maintain a policy that gives an admission preference to pupils who reside within the former attendance area of that public school.

SEC. 2. Section 47614.5 of the Education Code is amended to read:

47614.5. (a) The Charter School Facility Grant Program is hereby established and shall be administered by the State Department of Education. This grant program is intended to provide assistance with facilities rent and lease costs for pupils in charter schools.

(b) Subject to the annual Budget Act, eligible schools shall receive an amount of up to, but no more than, seven hundred fifty dollars ($750) per unit of average daily attendance, as certified at the second principal apportionment, to reimburse an amount of up to, but no more than, 75 percent of the annual facilities rent and lease costs for the charter school. In any fiscal year, if the funds appropriated for the purposes of this section by the annual Budget Act are insufficient to fund the approved amounts fully, the Superintendent of Public Instruction shall apportion the available funds on a pro rata basis.

(c) The State Department of Education shall do all of the following:

(1) Inform charter schools of this program.

(2) Upon application by a charter school, determine eligibility, based on the geographic location of the charter schoolsite, pupil eligibility for free or reduced price meals, and a preference in admissions, as appropriate. Eligibility for funding may not be limited to the grade level

or levels served by the school whose attendance area is used to determine eligibility. Charter schoolsites are eligible for funding pursuant to this section if the charter schoolsite meets either of the following conditions:

(A) The charter schoolsite is physically located in the attendance area of a public elementary school in which 70 percent or more of the pupil enrollment is eligible for free or reduced priced meals and the schoolsite gives a preference in admissions to pupils who are currently enrolled in that public elementary school, and to pupils who reside in the elementary school attendance area where the charter schoolsite is located.

(B) Seventy percent or more of the pupil enrollment at the charter schoolsite is eligible for free or reduced price meals.

(3) Inform charter schools of their grant eligibility.

(4) Reimburse charter schools for eligible expenditures in a timely manner.

(5) No later than June 30, 2005, report to the Legislature on the number of charter schools that have participated in this grant program under the expanded eligibility prescribed in paragraph (2). In addition, the report shall provide recommendations and suggestions on improving the program.

(d) Funding pursuant to this section shall not be apportioned for the following:

(1) Units of average daily attendance generated through nonclassroom-based instruction as defined by paragraph (2) of subdivision (d) of Section 47612.5 or that does not comply with conditions or limitations set forth in regulations adopted by the State Board of Education pursuant to this section.

(2) Charter schools occupying existing school district or county office of education facilities.

(3) Charter schools receiving reasonably equivalent facilities from their chartering authority pursuant to Section 47614.

(e) Funds made available pursuant to this section shall be used for costs associated with facilities rents and leases, consistent with the definitions used in the California School Accounting Manual. These funds may also be used for costs, including, but not limited to, costs associated with remodeling buildings, deferred maintenance, initially installing or extending service systems and other built-in equipment, and improving sites.

(f) If an existing charter school located in an elementary attendance area in which less than 50 percent of pupil enrollment is eligible for free or reduced price meals relocates to an attendance area identified in paragraph (2) of subdivision (c), admissions preference shall be given to pupils who reside in the elementary school attendance area into which the charter school is relocating.

(g) For each fiscal year, the Superintendent of Public Instruction shall annually report to the State Board of Education regarding the use of any funds that have been made available to each charter school from the grant program established pursuant to this section.

(h) It is the intent of the Legislature that ten million dollars ($10,000,000) be appropriated for the Charter School Facility Grant Program for the grants authorized under this section for the 2001–02, 2002–03, and 2003–04 fiscal years.

SEC. 3. 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 allow certain charter schools to become eligible for school facility funding under the Charter School Facility Grant Program, it is necessary that this act take effect immediately as an urgency statute.

CHAPTER 587

An act to add and repeal Chapter 2.6 (commencing with Section 48200) of Part 7 of Division 30 of the Public Resources Code, relating to solid waste.

[Approved by Governor September 15, 2002. Filed with Secretary of State September 16, 2002.]

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

SECTION 1. Chapter 2.6 (commencing with Section 48200) is added to Part 7 of Division 30 of the Public Resources Code, to read:

CHAPTER 2.6. LANDFILL CLOSURE LOAN PROGRAM

48200. The Legislature hereby finds that some solid waste landfill operators, particularly those of older-technology, unlined landfills located in rural areas, want to pursue early landfill closure as it is not economically feasible to upgrade their landfills to current environmental design standards, even though there may be significant landfill capacity remaining. The Legislature declares that it is necessary to establish a financial assistance program to assist these operators in early closure of their landfills.

48201. For the purposes of this chapter, "program" means the Landfill Closure Loan Program.

48202. (a) The Legislature hereby establishes the Landfill Closure Loan Program to provide financial assistance to operators of older-technology, unlined landfills, who want to pursue early landfill closure in order to mitigate potential environmental problems.

(b) The board may expend funds from the Integrated Waste Management Fund, upon appropriation by the Legislature, to make loans to operators of solid waste landfills to assist them in the early closure of their landfills. In granting loans, the board shall give highest priority to operators of small, rural, unlined landfills that, if not closed, would represent the most serious potential threat to the public health and safety, or the environment, in the opinion of the board.

(c) The board may expend money in the fund, upon appropriation by the Legislature, for program administration.

(d) All funds received from the operation of the program, including, but not limited to, principal repayments, recovery of collection costs, income earned on any asset recovered pursuant to loan default, and funds collected through foreclosure actions, shall be deposited in the fund and may be used for purposes authorized by this chapter.

(e) The board may set aside moneys in the fund for the purposes of paying costs necessary to protect the state's position as a lender-creditor. These costs shall include, but not be limited to, foreclosure expenses, environmental reports, auction fees, title searches, appraisals, real estate brokerage fees, attorney fees, mortgage payments, insurance payments, utility costs, repair costs, removal and storage costs for repossessed equipment and inventory, and expenditures to purchase a senior lien in foreclosure or bankruptcy proceedings.

48204. Loans made pursuant to this chapter shall be subject to all of the following requirements:

(a) The terms of any approved loan shall be specified in a loan agreement between the borrower and the board. All money received as repayment on a loan shall be deposited in the fund.

(b) The board shall approve only those loan applications that demonstrate the applicant's financial ability to repay the loan.

(c) Loans may be made only to applicants who are using trust funds or enterprise funds as financial assurance mechanisms to finance landfill closure and postclosure maintenance and who are in compliance with financial assurance requirements for landfill closure and post-closure maintenance.

(d) The term of any loan made pursuant to this section shall be not more than 10 years.

(e) The interest rate of any loan made pursuant to this section may be zero percent.

(f) The board may not finance more than five hundred thousand dollars ($500,000) for each landfill closure project.

(g) The Department of Finance may audit the expenditure of the proceeds of any loan made pursuant to this chapter.

48205. The board, the California Pollution Control Financing Authority, the Treasurer, and other appropriate state officers and agencies shall, to the extent feasible and as appropriate, coordinate activities that will leverage financing for the program and encourage joint activities to protect the public health and the environment.

48206. The board shall adopt regulations to implement this chapter.

48207. (a) (1) Except as provided in paragraph (2), this chapter shall become inoperative on July 1, 2012, and as of January 1, 2013, is repealed, unless a later enacted statute, that becomes effective on or before January 1, 2013, deletes or extends the dates when it becomes inoperative and is repealed.

(2) The repeal of this chapter pursuant to paragraph (1) does not extinguish any loan obligation or the authority of the state to pursue appropriate action for the collection of a loan.

CHAPTER 588

An act to add and repeal Section 14038.4 to the Government Code, relating to transportation.

[Approved by Governor September 15, 2002. Filed with Secretary of State September 16, 2002.]

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

SECTION 1. This act shall be known as the Passenger Rail Project Delivery Demonstration Act.

SEC. 2. The Legislature finds and declares all of the following:

(a) The development of rail projects that increase passenger and freight rail capacity, thereby enabling the operation of additional train service, benefits the environment and improves mobility in congested transportation corridors.

(b) It is necessary to consider the effectiveness of an alternative approach to prepare environmental documents and act on permits for passenger rail projects under a demonstration program within the Department of Transportation for agencies to cooperate to deliver passenger rail projects.

SEC. 3. Section 14038.4 is added to the Government Code, to read:

14038.4. (a) (1) On or before July 1, 2005, the department shall identify, and the commission shall select, three passenger rail demonstration projects for the coordinated environmental review and

permit process authorized by this section. Candidates identified for selection shall meet all of the following criteria:

(A) The project will increase capacity on rail corridors shared by intercity and commuter rail passenger service and rail freight service.

(B) The project will improve rail operations and reliability of service by increasing the capacity of the rail corridor.

(C) The project will result in an overall benefit to the environment by improving rail passenger service.

(D) The project requires environmental review and consultation in order to address potential environmental impacts.

(E) The project is programmed in the State Transportation Improvement Program.

(F) The project sponsor consents to the selection and to contract with the department for preparation of the environmental document, as required pursuant to Division 13 (commencing with Section 21000) of the Public Resources Code, for the project.

(2) In addition to the selection criteria in paragraph (1), the projects shall be located throughout the state, as follows:

(A) One project shall be located in one or more of the counties described in Section 66502.

(B) One project shall be located in one or more of the counties identified in County Group No. 2, pursuant to Section 187 of the Streets and Highways Code.

(C) One project shall be located in one or more counties that are not covered by the descriptions in paragraph (A) or (B).

(b) The department may be designated as the consolidated permit agency pursuant to Part 1 (commencing with Section 71000) of Division 34 of the Public Resources Code.

(c) The department shall seek and invite participation by applicable federal agencies when preparing the environmental document and during the permit process.

(d) To the extent that funds are identified for this purpose, staff support for the demonstration projects shall be made available by the department.

(e) The department shall report to the Legislature upon the conclusion of the demonstration projects. The report shall include an assessment of the timeliness and the project delivery performance of the projects that were authorized to be delivered under this section.

(f) This section shall remain in effect only until January 1, 2007, and as of that date is repealed.

CHAPTER 589

An act to add Sections 48022 and 48022.5 to the Public Resources Code, relating to solid waste, and making an appropriation therefor.

[Approved by Governor September 15, 2002. Filed with Secretary of State September 16, 2002.]

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

SECTION 1. Section 48022 is added to the Public Resources Code, to read:

48022. The Legislature finds and declares all of the following:

(a) Pursuant to the legal framework and definitions pertaining to solid waste contained in this division, the board and the local enforcement agencies have general authority and responsibility for responding to environmental conditions at solid waste disposal sites to ensure protection of the public health and safety and the environment.

(b) The definitions of ''solid waste,'' ''solid waste disposal,'' and ''solid waste landfill'' establish some of the parameters for the general authority and responsibility of the board and the local enforcement agencies.

(c) The Solid Waste Disposal and Codisposal Site Cleanup Program established under this article establishes a mechanism for funding the cleanup of solid waste disposal sites and the solid waste at codisposal sites under specified conditions and circumstances.

(d) A burn dump site is a solid waste disposal site and, as such, is a site that is eligible for funding pursuant to the program, provided all other criteria for program eligibility are met.

(e) Pursuant to the Health and Safety Code, the Department of Toxic Substances Control has general jurisdiction, authority, and responsibility regarding hazardous substance release sites.

(f) Pursuant to the Water Code, the State Water Resources Control Board and the regional water quality control boards have general jurisdiction, authority, and responsibility regarding protection of the waters of the state, including, but not limited to, solid waste and hazardous waste discharges.

(g) Most burn dump sites impact multiple media. Burn dump sites usually contain hazardous substances and, therefore, most can be characterized generally as hazardous substance release sites. Burn dump sites also contain predominantly solid waste and, therefore, can be characterized generally as solid waste disposal sites. Some burn dump sites impact, or have the potential to impact, waters of the state.

(h) Burn dump sites are presumed to be solid waste disposal sites, subject to the general authority and responsibility of the board and the

local enforcement agencies. In addition to this general presumption, it is the intent of the Legislature to require that the procedures set forth in Section 48022.5 be followed to ensure that hazardous substances and hazardous wastes at burn dump sites are adequately characterized and safely managed and remediated in consultation with, or under the direct oversight of, the department or the appropriate regional water quality control board, or both.

SEC. 2. Section 48022.5 is added to the Public Resources Code, to read:

48022.5. (a) For the purposes of this section, the following terms have the following meanings, unless the context clearly requires otherwise:

(1) ''Burn dump site'' means a solid waste disposal site that meets all of the following conditions:

(A) Was operated prior to 1972.

(B) Is closed.

(C) Prior to closure, was a site where open burning was conducted.

(2) ''Department'' means the Department of Toxic Substances Control.

(3) ''Regional board'' means a California regional water quality control board.

(4) ''Remediation oversight agency'' means the entity responsible for environmental oversight on a burn dump site remediation project.

(5) ''Sensitive land use'' means either of the following:

(A) Use for residences, schools, day care facilities, hospitals and hospices, and other facilities or structures that have a high density of occupation on a daily basis.

(B) Use as a park, golf course, or any other, similar open-space area that is made available for public use, when the park, golf course, or open-space area has a potential for human exposure to hazardous substances.

(b) On or before June 30, 2003, the department, in consultation with the board and the State Water Resources Control Board, shall develop protocols to be utilized by the board and the local enforcement agencies for site investigation and characterization of hazardous substances at burn dump sites.

(1) The protocols shall include, but need not be limited to, both of the following items:

(A) Sampling and analysis protocols to be utilized by the board and the local enforcement agencies for site investigation and characterization of hazardous substances at burn dump sites.

(B) Appropriate abatement measures for nonsensitive land uses.

(2) In addition, the protocols may include either or both of the following items:

(A) Cleanup guidelines, levels, or thresholds for one or more typical constituents of concern based on nonsensitive land uses.

(B) Specifications for confirmation sampling on partial and complete clean-closed sites.

(c) Whenever the board receives an application for funding under this article for a burn dump site, the board shall use the protocols developed by the department under subdivision (b) to investigate and characterize hazardous substances at the site.

(d) Once sufficient site information is available, the board shall notify the department and the appropriate regional board of the board's interest in providing funding and remediation oversight for the site.

(e) For a nonsensitive land use site, the board shall proceed as the remediation oversight agency, following the notification required under subdivision (d), unless the department or regional board requests a site consultation meeting under subdivision (g).

(f) For an existing or proposed sensitive land use site, the board shall request a site consultation meeting under subdivision (g).

(g) For sites with existing or proposed sensitive land uses or water quality impacts, or where otherwise requested by the department or a regional board, the board, the department, the State Water Resources Control Board, and the appropriate regional board shall hold a site consultation meeting to determine which agency will provide remediation oversight. If, following a review of the site information, the department or a regional board requests to provide remediation oversight, that request shall be granted. If the department or a regional board does not request to provide remediation oversight, remediation oversight of the site shall remain with the board. In cases where the board requested the meeting, the determination of remediation oversight agency shall be made within 30 days of the board's request for the meeting.

(h) The board may require the imposition of an environmental restriction on any burn dump site where solid waste or residuals from the burning of solid waste is left in place. The environmental restriction shall meet the requirements described in Section 1471 of the Civil Code, and the restrictions shall run with the land.

(i) On or before March 30, 2003, the board and the department shall enter into an agreement relating to the funding of any activities of the department appropriately conducted pursuant to this section.

(j) Nothing in this section is intended to limit the authority of the board, the department, the State Water Resources Control Board, or a regional board pursuant to other provisions of law.

(k) Nothing in this section is intended to preclude any qualifying entity from applying for and receiving funding assistance under any other provision of law.

CHAPTER 590

An act to add and repeal Section 45452 of the Education Code, to add and repeal Section 1463.21 of the Penal Code, and to add and repeal Section 42011 of the Vehicle Code, relating to vehicles.

[Approved by Governor September 15, 2002. Filed with Secretary of State September 16, 2002.]

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

SECTION 1. Section 45452 is added to the Education Code, to read:

45452. (a) The County of Alameda, the County of Santa Barbara, the County of Ventura, or any city within any of these counties, in collaboration with local school districts within those jurisdictions, may establish a school pedestrian-bicyclist safety program and receive funds from a special account in the county treasury established pursuant to Section 1463.21 of the Penal Code if those funds are used to fund programs that enhance the safety of students traveling to and from school on foot or by bicycle. Any funds obtained by a city or county from this source are to supplement any funds already expended by that agency for pedestrian or bicycle safety programs and may not be used to supplant any existing expenditures for those purposes.

(b) If a program is established pursuant to subdivision (a) and the services of a law enforcement agency are requested by the program administrator, those services shall be provided by the law enforcement agency having primary traffic investigative authority.

(c) This section shall remain in effect only until January 1, 2007, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2007, deletes or extends that date.

SEC. 2. Section 1463.21 is added to the Penal Code, to read:

1463.21. (a) Notwithstanding Section 1463.001, out of moneys deposited with the county treasurer pursuant to Section 1463.001, the enhanced portion of the fine imposed pursuant to Section 42011 of the Vehicle Code shall be deposited in a special account in the county treasury which shall be used exclusively to pay for the cost of school pedestrian-bicyclist safety programs administered in accordance with Section 45452 of the Education Code by a city or county that has adopted Section 42011 of the Vehicle Code.

(b) This section shall remain in effect only until January 1, 2007, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2007, deletes or extends that date.

SEC. 3. Section 42011 is added to the Vehicle Code, to read:

42011. (a) For any offense specified in subdivision (b) that is committed by the driver of a vehicle under either of the following conditions, the fine in a misdemeanor case shall be double the base amount otherwise prescribed, not including any penalty assessments or other fees or additions, 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, not including any penalty assessments or other fees or additions:

(1) When passing a school building or the grounds thereof, if the building or grounds are contiguous to a highway and posted with a standard "SCHOOL" warning sign and an accompanying sign notifying motorists that increased penalties apply for traffic violations that are committed within that school zone, and children are going to or leaving the school either during school hours or during the noon recess period.

(2) When passing any school grounds that are not separated from the highway by a fence, gate, or other physical barrier while the grounds are in use by children, and the highway is posted with a standard "SCHOOL" warning sign and an accompanying sign notifying motorists that increased penalties apply for traffic violations that are committed within that school zone.

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

(1) Article 3 (commencing with Section 21450) of Chapter 2 of Division 11, relating to obedience to traffic devices.

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

(3) Chapter 4 (commencing with Section 21800) of Division 11, relating to yielding the right-of-way.

(4) Chapter 6 (commencing with Section 22100) of Division 11, relating to turning and stopping and turn signals.

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

(6) Chapter 8 (commencing with Section 22450) of Division 11, relating to special traffic stops.

(7) Section 23103, relating to reckless driving.

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

(9) Section 23109, relating to speed contests.

(10) 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.

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

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

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

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

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

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

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

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

(c) (1) This section applies only in Alameda County, Santa Barbara County, Ventura County, or in a city in any of these counties, and only if that jurisdiction has adopted this section by a vote of the city council or county board of supervisors, as appropriate.

(2) The increased fines authorized by subdivision (a) may only be imposed and collected once per offense or notwithstanding the fact that the offense occurred within more than one jurisdiction all of which have adopted this section. Furthermore, no increased fine shall be imposed if an increased fine is imposed under Section 42009 or 42010 because the offense occurred within a highway construction or maintenance area or safety enhancement area.

(d) Any city or county that adopts this section shall promptly notify the California Highway Patrol and the law enforcement agency having the primary traffic investigative authority of that fact.

(e) This section shall remain in effect only until January 1, 2007, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2007, deletes or extends that date.

SEC. 4. The California Highway Patrol, using existing department resources, shall report to the Legislature on or before July 1, 2006, on the effectiveness of the school pedestrian-bicyclist safety programs and whether the added fines improved traffic and pedestrian safety within the participating school zones.

SEC. 5. The Legislature finds and declares that, because of unique circumstances applicable only to Alameda County Santa Barbara County, and Ventura County, and because of the need to test this model in a pilot program, a statute of general applicability cannot be enacted

within the meaning of subdivision (b) of Section 16 of Article IV of the California Constitution. Therefore, this special statute is necessary.

SEC. 6. 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.

CHAPTER 591

An act to add Article 18 (commencing with Section 13190) to Chapter 2 of Division 7 of the Food and Agricultural Code, relating to solid waste.

[Approved by Governor September 15, 2002. Filed with Secretary of State September 16, 2002.]

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

SECTION 1. The Legislature finds and declares the following:

(a) The California Integrated Waste Management Act of 1989 requires all cities and counties to develop source reduction, recycling, and composting programs to achieve a 50 percent reduction in the amount of solid waste disposed of in California. Local governments and waste haulers divert 6,000,000 tons of yard waste annually from landfills to composting facilities, making composting a principal means by which local governments meet the state's landfill diversion requirements.

(b) The success of the state's composting programs, and the economic viability of the California composting industry, are imminently threatened if residential, agricultural, commercial, and public users of compost lose confidence in the quality and safety of the product.

(c) During 2000 and 2001, the herbicide clopyralid was detected in compost produced at composting facilities in Spokane and at Washington State University.

(d) Sampling conducted by an independent laboratory at 29 compost facilities in California in 2002 found clopyralid in compost at 19 of the sites at levels up to 13 ppb. Sampling conducted at composting facilities operated by the Cities of Los Angeles and San Diego detected clopyralid levels as high as 28 ppb.

(e) In a March 6, 2002, statement before the California Integrated Waste Management Board, the department declared that "[R]esidue levels will not need to be at phytotoxic levels in order for [the department] to initiate regulatory action. DPR's goal is to prevent the problem from occurring."

(f) On March 28, 2002, the department initiated cancellation of products containing clopyralid that are registered for use on residential lawns. The department did not cancel the use of products registered for other nonresidential lawn and turf uses.

(g) According to a 1999 Waste Characterization study prepared by the Integrated Waste Management Board, 50.5 percent of leaf and grass waste generated in California comes from residential sites and 49.5 percent comes from nonresidential sites, including, but not limited to, sites such as commercial offices and grounds, public parks, golf courses, and cemeteries.

(h) Lawn care companies typically provide their services to both residential and commercial accounts and dispose of lawn clippings from both residential and nonresidential sites in a similar manner. Many lawn care companies dispose of lawn clippings at a composting facility or at a transfer station for delivery to a composting facility. Because it costs approximately 50 percent less to dispose of lawn clippings at a composting facility instead of a landfill, lawn care companies have a further economic incentive to compost their lawn clippings.

SEC. 2. The Legislature further finds and declares:

(a) The composting industry is of vital importance to the well-being of the state because it produces a product that is important and beneficial to the production of agricultural commodities and to the horticultural industry and home gardening. It further produces its product from materials that are diverted from landfills in the state, in furtherance of the state's requirement to divert 50 percent of solid waste from landfills.

(b) Section 12825 of the Food and Agricultural Code authorizes the department to cancel the registration of, or refuse to register, any pesticide that is of less value or greater detriment to the environment than the benefit received by its use; for which there is a reasonable, effective, and practicable alternate material or procedure that is demonstrably less destructive to the environment; or that, when properly used, is detrimental to vegetation, except weeds.

(c) There is an urgent need for the state to take all necessary steps to ensure that pesticides applied to lawn and turf do not persist in compost.

SEC. 3. Article 18 (commencing with Section 13190) is added to Chapter 2 of Division 7 of the Food and Agricultural Code, to read:

Article 18. Contamination of Compost

13190. (a) ''Clopyralid'' means 3,6-dichloro-2-pyridinecarboxylic acid.

(b) ''Compost'' means the product resulting from the controlled biological decomposition of organic wastes that are source separated from the municipal solid waste stream, or that are separated at a centralized facility.

(c) ''Department'' means the Department of Pesticide Regulation.

(d) ''Herbicide'' means a pesticide, as defined in Section 12753, that is intended to kill weeds.

(e) ''Lawn and turf use'' means a residential or nonresidential use of an herbicide on lawn and turf, including, but not limited to, lawn and turf located at schools, parks, office buildings and golf courses. Lawn and turf use does not include use of an herbicide on lawn and turf located in turf farms, uncultivated open space, agricultural rangeland or cultivated farmland.

(f) ''Persistent residues in compost'' means residues of an herbicide in compost at levels and in a form with the potential to be toxic or injurious to plants.

(g) ''Plants'' means desirable vegetation, except weeds.

(h) ''Weed'' means any plant that grows where not wanted, as defined in Section 12759.

13191. (a) No person, except a pest control dealer licensed pursuant to Chapter 7 (commencing with Section 12101) of Division 6 of the Food and Agricultural Code, may sell a pesticide that contains the active ingredient clopyralid.

(b) Pesticides containing the active ingredient clopyralid that are labeled for use on lawns and turf, including golf courses, may only be sold to qualified applicators licensed pursuant to Chapter 8(commencing with Section 12201) of Division 6 of the Food and Agricultural Code or issued a certificate pursuant to Chapter 3 (commencing with Section 14151) of Division 7 of the Food and Agricultural Code.

13192. Not later than April 1, 2003, the department shall, pursuant to Sections 12824 and 12825, do both of the following:

(a) Determine in writing those lawn and turf uses of the herbicide clopyralid for which there is no reasonable likelihood that the specified use will result in persistent residues in compost.

(b) Take either of the following actions:

(1) Impose appropriate restrictions on the lawn and turf uses of the herbicide clopyralid that are not identified in the determination made pursuant to subdivision (a).

(2) Cancel any lawn and turf use that the department determines is likely to result in persistent residues in compost.

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.

CHAPTER 592

An act to amend Section 1471 of the Civil Code, to add Section 57012 to the Health and Safety Code, and to amend Section 13307.1 of the Water Code, relating to the environment.

[Approved by Governor September 15, 2002. Filed with Secretary of State September 16, 2002.]

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

SECTION 1. Section 1471 of the Civil Code is amended to read:

1471. (a) Notwithstanding Section 1468 or any other provision of law, a covenant made by an owner of land or by the grantee of land to do or refrain from doing some act on his or her own land, which doing or refraining is expressed to be for the benefit of the covenantee, regardless of whether or not it is for the benefit of land owned by the covenantee, shall run with the land owned by or granted to the covenantor if all the following requirements are met:

(1) The land of the covenantor that is to be affected by the covenant is particularly described in the instrument containing the covenant.

(2) The successive owners of the land are expressed to be bound thereby for the benefit of the covenantee in the instrument containing the covenant.

(3) Each act that the owner or grantee will do or refrain from doing relates to the use of land and each act is reasonably necessary to protect present or future human health or safety or the environment as a result of the presence on the land of hazardous materials, as defined in Section 25260 of the Health and Safety Code.

(4) The instrument containing the covenant is recorded in the office of the recorder of each county in which the land or some portion thereof is situated and the instrument includes in its title the words: ‘‘Environmental Restriction.’’

(b) Except as provided by Section 1466 or as specifically provided in the instrument creating a covenant made pursuant to this section, the covenant shall be binding upon each successive owner, during his or her ownership, of any portion of the land affected thereby and upon each person having any interest therein derived through any owner thereof.

(c) If several persons are subject to the burden of a covenant recorded pursuant to this section, it shall be apportioned among them pursuant to Section 1467, except if only a portion of the land is so affected thereby, the apportionment shall be only among the several owners of that portion.

(d) This section shall apply to the mortgagee, trustee, or beneficiary of a mortgage or deed of trust upon the land or any part thereof while, but only while, he or she, in that capacity, is in possession thereof.

(e) (1) If an instrument containing a covenant is recorded pursuant to paragraph (4) of subdivision (a) as an ''Environmental Restriction,'' in accordance with this section, the office of the recorder of the county may send a certified copy of the instrument to the California Environmental Protection Agency, for posting on its Web site, for informational purposes only, pursuant to Section 57012 of the Health and Safety Code, unless the instrument indicates that it is required by a board or department specified in paragraphs (1) to (3), inclusive, of subdivision (d) of Section 57012 of the Health and Safety Code.

(2) Notwithstanding any provision of law, the office of the recorder of the county and any of its employees shall not be subject to any liability under any state law or in any action for damages if the office of the recorder does not send a certified copy of the instrument pursuant to paragraph (1).

(f) The office of the recorder of the county may assess a reasonable fee, as determined by resolution of its governing body, to cover the costs of taking the action authorized by subdivision (e).

SEC. 2. Section 57012 is added to the Health and Safety Code, to read:

57012. (a) Each agency listed in subdivision (d) shall maintain a list of all instruments and agreements restricting land uses imposed by that agency under Section 1471 of the Civil Code or any provision of law that is administered by that agency, in accordance with all of the following requirements:

(1) The list shall provide a description of location for each property that, at a minimum, provides the street address and the assessor's parcel number. If a street address or assessor's parcel number is not available, or if a street address or assessor's parcel number does not adequately describe the property affected by the instrument or agreement restricting land use, the list shall include a description of location or the location's geographic coordinates.

(2) The list shall provide a description of any restricted uses of the property, contaminants known to be present, and any remediation of the property, if known, that would be required to allow for its unrestricted use. The recorded instrument or agreement restricting land uses may be provided in lieu of the description required by this paragraph.

(3) Each agency shall update its list as new instruments and agreements restricting land uses are recorded and as instruments and agreements restricting land uses on properties are changed.

(b) Each agency listed in subdivision (d) shall display the list required under subdivision (a) on that agency's Web site, and shall make the list available to the public upon request.

(c) The California Environmental Protection Agency shall oversee the implementation of this section. In overseeing the implementation of this section, the California Environmental Protection Agency shall do all of the following:

(1) Maintain on its Web site hyperlinks to the individual lists posted pursuant to this section.

(2) Provide a search function that is able to search and retrieve information from each of the individual lists posted pursuant to this section.

(3) Create and post a list of all instruments and agreements restricting land uses that have been sent pursuant to subdivision (e) of Section 1471 of the Civil Code. The list created and posted pursuant to this paragraph shall meet all of the following requirements:

(A) The list shall identify the entity or jurisdiction that imposed the instrument or agreement restricting land uses.

(B) The list shall include the information required by paragraphs (1) and (2) of subdivision (a).

(C) The list shall be maintained for informational purposes only.

(D) The list shall contain a notation that information regarding the listed properties has been provided voluntarily, that the list is not all-inclusive, and that there may be additional sites where instruments or agreements restricting land uses have been imposed by other entities that have not been included on the list.

(d) This section applies to the California Environmental Protection Agency and to all of the following entities within the agency:

(1) The California Integrated Waste Management Board.

(2) The State Water Resources Control Board, and each California regional water quality control board.

(3) The Department of Toxic Substances Control.

SEC. 3. Section 13307.1 of the Water Code is amended to read:

13307.1. (a) The state board and the regional boards shall not consider cleanup or site closure proposals from the primary or active responsible discharger, issue a closure letter, or make a determination

that no further action is required with respect to a site subject to a cleanup or abatement order pursuant to Section 13304, unless all current record owners of fee title to the site of the proposed action have been notified of the proposed action by the state board or regional board.

(b) The state board and regional boards shall take all reasonable steps necessary to accommodate responsible landowner participation in the cleanup or site closure process and shall consider all input and recommendations from any responsible landowner wishing to participate.

(c) In addition to the requirements of subdivision (a), if the state board or the regional board finds that the property is not suitable for unrestricted use and that a land use restriction is necessary for the protection of public health, safety or the environment, then the state board and the regional boards may not issue a closure letter, or make a determination that no further action is required, with respect to a site that is subject to a cleanup or abatement order pursuant to Section 13304 and that is not an underground storage tank site, unless a land restriction is recorded or required to be recorded pursuant to Section 1471 of the Civil Code.

CHAPTER 593

An act to amend Sections 6011 and 6012 of the Revenue and Taxation Code, relating to taxation, to take effect immediately, tax levy.

[Approved by Governor September 15, 2002. Filed with Secretary of State September 16, 2002.]

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

SECTION 1. Section 6011 of the Revenue and Taxation Code is amended to read:

6011. (a) ''Sales price'' means the total amount for which tangible personal property is sold or leased or rented, as the case may be, valued in money, whether paid in money or otherwise, without any deduction on account of any of the following:

(1) The cost of the property sold.

(2) The cost of materials used, labor or service cost, interest charged, losses, or any other expenses.

(3) The cost of transportation of the property, except as excluded by other provisions of this section.

(b) The total amount for which the property is sold or leased or rented includes all of the following:

(1) Any services that are a part of the sale.

(2) Any amount for which credit is given to the purchaser by the seller.

(3) The amount of any tax imposed by the United States upon producers and importers of gasoline and the amount of any tax imposed pursuant to Part 2 (commencing with Section 7301) of this division.

(c) ''Sales price'' does not include any of the following:

(1) Cash discounts allowed and taken on sales.

(2) The amount charged for property returned by customers when that entire amount is refunded either in cash or credit, but this exclusion shall not apply in any instance when the customer, in order to obtain the refund, is required to purchase other property at a price greater than the amount charged for the property that is returned. For the purpose of this section, refund or credit of the entire amount shall be deemed to be given when the purchase price less rehandling and restocking costs are refunded or credited to the customer. The amount withheld for rehandling and restocking costs may be a percentage of the sales price determined by the average cost of rehandling and restocking returned merchandise during the previous accounting cycle.

(3) The amount charged for labor or services rendered in installing or applying the property sold.

(4) (A) The amount of any tax (not including, however, any manufacturers' or importers' excise tax, except as provided in subparagraph (B)) imposed by the United States upon or with respect to retail sales whether imposed upon the retailer or the consumer.

(B) The amount of manufacturers' or importers' excise tax imposed pursuant to Section 4081 or 4091 of the Internal Revenue Code for which the purchaser certifies that he or she is entitled to either a direct refund or credit against his or her income tax for the federal excise tax paid or for which the purchaser issues a certificate pursuant to Section 6245.5.

(5) The amount of any tax imposed by any city, county, city and county, or rapid transit district within the State of California upon or with respect to retail sales of tangible personal property, measured by a stated percentage of sales price or gross receipts, whether imposed upon the retailer or the consumer.

(6) The amount of any tax imposed by any city, county, city and county, or rapid transit district within the State of California with respect to the storage, use or other consumption in that city, county, city and county, or rapid transit district of tangible personal property measured by a stated percentage of sales price or purchase price, whether the tax is imposed upon the retailer or the consumer.

(7) Separately stated charges for transportation from the retailer's place of business or other point from which shipment is made directly to the purchaser, but the exclusion shall not exceed a reasonable charge

for transportation by facilities of the retailer or the cost to the retailer of transportation by other than facilities of the retailer. However, if the transportation is by facilities of the retailer, or the property is sold for a delivered price, this exclusion shall be applicable solely with respect to transportation which occurs after the purchase of the property is made.

(8) Charges for transporting landfill from an excavation site to a site specified by the purchaser, either if the charge is separately stated and does not exceed a reasonable charge or if the entire consideration consists of payment for transportation.

(9) The amount of any motor vehicle, mobilehome, or commercial coach fee or tax imposed by and paid the State of California that has been added to or is measured by a stated percentage of the sales or purchase price of a motor vehicle, mobilehome, or commercial coach.

(10) (A) The amount charged for intangible personal property transferred with tangible personal property in any technology transfer agreement, if the technology transfer agreement separately states a reasonable price for the tangible personal property.

(B) If the technology transfer agreement does not separately state a price for the tangible personal property, and the tangible personal property or like tangible personal property has been previously sold or leased, or offered for sale or lease, to third parties at a separate price, the price at which the tangible personal property was sold, leased, or offered to third parties shall be used to establish the retail fair market value of the tangible personal property subject to tax. The remaining amount charged under the technology transfer agreement is for the intangible personal property transferred.

(C) If the technology transfer agreement does not separately state a price for the tangible personal property, and the tangible personal property or like tangible personal property has not been previously sold or leased, or offered for sale or lease, to third parties at a separate price, the retail fair market value shall be equal to 200 percent of the cost of materials and labor used to produce the tangible personal property subject to tax. The remaining amount charged under the technology transfer agreement is for the intangible personal property transferred.

(D) For purposes of this paragraph, "technology transfer agreement" means any agreement under which a person who holds a patent or copyright interest assigns or licenses to another person the right to make and sell a product or to use a process that is subject to the patent or copyright interest.

(11) The amount of any tax imposed upon diesel fuel pursuant to Part 31 (commencing with Section 60001).

(12) (A) The amount of tax imposed by any Indian tribe within the State of California with respect to a retail sale of tangible personal

property measured by a stated percentage of the sales or purchase price, whether the tax is imposed upon the retailer or the consumer.

(B) The exclusion authorized by subparagraph (A) shall only apply to those retailers who are in substantial compliance with this part.

SEC. 2. Section 6012 of the Revenue and Taxation Code is amended to read:

6012. (a) ''Gross receipts'' mean the total amount of the sale or lease or rental price, as the case may be, of the retail sales of retailers, valued in money, whether received in money or otherwise, without any deduction on account of any of the following:

(1) The cost of the property sold. However, in accordance with any rules and regulations as the board may prescribe, a deduction may be taken if the retailer has purchased property for some other purpose than resale, has reimbursed his or her vendor for tax which the vendor is required to pay to the state or has paid the use tax with respect to the property, and has resold the property prior to making any use of the property other than retention, demonstration, or display while holding it for sale in the regular course of business. If that deduction is taken by the retailer, no refund or credit will be allowed to his or her vendor with respect to the sale of the property.

(2) The cost of the materials used, labor or service cost, interest paid, losses, or any other expense.

(3) The cost of transportation of the property, except as excluded by other provisions of this section.

(4) The amount of any tax imposed by the United States upon producers and importers of gasoline and the amount of any tax imposed pursuant to Part 2 (commencing with Section 7301) of this division.

(b) The total amount of the sale or lease or rental price includes all of the following:

(1) Any services that are a part of the sale.

(2) All receipts, cash, credits and property of any kind.

(3) Any amount for which credit is allowed by the seller to the purchaser.

(c) ''Gross receipts'' do not include any of the following:

(1) Cash discounts allowed and taken on sales.

(2) Sale price of property returned by customers when that entire amount is refunded either in cash or credit, but this exclusion shall not apply in any instance when the customer, in order to obtain the refund, is required to purchase other property at a price greater than the amount charged for the property that is returned. For the purpose of this section, refund or credit of the entire amount shall be deemed to be given when the purchase price less rehandling and restocking costs are refunded or credited to the customer. The amount withheld for rehandling and restocking costs may be a percentage of the sales price determined by the

average cost of rehandling and restocking returned merchandise during the previous accounting cycle.

(3) The price received for labor or services used in installing or applying the property sold.

(4) (A) The amount of any tax (not including, however, any manufacturers' or importers' excise tax, except as provided in subparagraph (B)) imposed by the United States upon or with respect to retail sales whether imposed upon the retailer or the consumer.

(B) The amount of manufacturers' or importers' excise tax imposed pursuant to Section 4081 or 4091 of the Internal Revenue Code for which the purchaser certifies that he or she is entitled to either a direct refund or credit against his or her income tax for the federal excise tax paid or for which the purchaser issues a certificate pursuant to Section 6245.5.

(5) The amount of any tax imposed by any city, county, city and county, or rapid transit district within the State of California upon or with respect to retail sales of tangible personal property measured by a stated percentage of sales price or gross receipts whether imposed upon the retailer or the consumer.

(6) The amount of any tax imposed by any city, county, city and county, or rapid transit district within the State of California with respect to the storage, use or other consumption in that city, county, city and county, or rapid transit district of tangible personal property measured by a stated percentage of sales price or purchase price, whether the tax is imposed upon the retailer or the consumer.

(7) Separately stated charges for transportation from the retailer's place of business or other point from which shipment is made directly to the purchaser, but the exclusion shall not exceed a reasonable charge for transportation by facilities of the retailer or the cost to the retailer of transportation by other than facilities of the retailer. However, if the transportation is by facilities of the retailer, or the property is sold for a delivered price, this exclusion shall be applicable solely with respect to transportation which occurs after the sale of the property is made to the purchaser.

(8) Charges for transporting landfill from an excavation site to a site specified by the purchaser, either if the charge is separately stated and does not exceed a reasonable charge or if the entire consideration consists of payment for transportation.

(9) The amount of any motor vehicle, mobilehome, or commercial coach fee or tax imposed by and paid to the State of California that has been added to or is measured by a stated percentage of the sales or purchase price of a motor vehicle, mobilehome, or commercial coach.

(10) (A) The amount charged for intangible personal property transferred with tangible personal property in any technology transfer

agreement, if the technology transfer agreement separately states a reasonable price for the tangible personal property.

(B) If the technology transfer agreement does not separately state a price for the tangible personal property, and the tangible personal property or like tangible personal property has been previously sold or leased, or offered for sale or lease, to third parties at a separate price, the price at which the tangible personal property was sold, leased, or offered to third parties shall be used to establish the retail fair market value of the tangible personal property subject to tax. The remaining amount charged under the technology transfer agreement is for the intangible personal property transferred.

(C) If the technology transfer agreement does not separately state a price for the tangible personal property, and the tangible personal property or like tangible personal property has not been previously sold or leased, or offered for sale or lease, to third parties at a separate price, the retail fair market value shall be equal to 200 percent of the cost of materials and labor used to produce the tangible personal property subject to tax. The remaining amount charged under the technology transfer agreement is for the intangible personal property transferred.

(D) For purposes of this paragraph, "technology transfer agreement" means any agreement under which a person who holds a patent or copyright interest assigns or licenses to another person the right to make and sell a product or to use a process that is subject to the patent or copyright interest.

(11) The amount of any tax imposed upon diesel fuel pursuant to Part 31 (commencing with Section 60001).

(12) (A) The amount of tax imposed by any Indian tribe within the State of California with respect to a retail sale of tangible personal property measured by a stated percentage of the sales or purchase price, whether the tax is imposed upon the retailer or the consumer.

(B) The exclusion authorized by subparagraph (A) shall only apply to those retailers who are in substantial compliance with this part.

For purposes of the sales tax, if the retailers establish to the satisfaction of the board that the sales tax has been added to the total amount of the sale price and has not been absorbed by them, the total amount of the sale price shall be deemed to be the amount received exclusive of the tax imposed. Section 1656.1 of the Civil Code shall apply in determining whether or not the retailers have absorbed the sales tax.

SEC. 3. Notwithstanding Section 2230 of the Revenue and Taxation Code, no appropriation is made by this act and the state shall not reimburse any local agency for any sales and use tax revenues lost by it under this act.

SEC. 4. This act provides for a tax levy within the meaning of Article IV of the Constitution and shall go into immediate effect.

However, the provisions of this act shall become operative on the first day of the first calendar quarter commencing more than 90 days after the effective date of this act.

CHAPTER 594

An act to amend Sections 7380 and 7381 of, to add Section 7382 to, and to repeal Article 6 (commencing with Section 7380) of Chapter 2 of Division 6 of, the Fish and Game Code, and to add Article 5 (commencing with Section 18741) to Chapter 3 of Part 10.2 of the Revenue and Taxation Code, relating to fish and game.

[Approved by Governor September 15, 2002. Filed with Secretary of State September 16, 2002.]

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

SECTION 1. Section 7380 of the Fish and Game Code is amended to read:

7380. (a) In addition to a valid California sportfishing license issued pursuant to Section 7149 or 7149.05 and any applicable sport license stamp issued pursuant to this code, after January 1, 1993, a person taking steelhead trout in inland waters shall have in his or her possession a nontransferable steelhead trout catch report-restoration card issued by the department. The cardholder shall record certain fishing information on the card as designated by the department. The information shall immediately be recorded whenever the cardholder finishes fishing for the day, moves to another river or stream, or retains steelhead trout. The cardholder shall return the card to the department on a schedule or date established by the department.

(b) The cost of the card shall be three dollars ($3), as adjusted pursuant to Section 713. The funds received by the department from the sale of the card shall be deposited in the Fish and Game Preservation Fund and shall be available for expenditure upon appropriation by the Legislature. The department shall maintain the internal accountability necessary to ensure that all restrictions and requirements pertaining to the expenditure of these funds are met.

(c) The commission shall adopt regulations necessary to implement this section. These regulations shall include, but not be limited to, procedures necessary to obtain appropriate steelhead trout resources management information, a requirement that the card contain a statement explaining potential uses of the funds received as authorized

by Section 7381, and a requirement that the cards be returned to the department.

SEC. 2. Section 7381 of the Fish and Game Code is amended to read:

7381. (a) Revenue received pursuant to Section 7380 may only be expended, upon appropriation by the Legislature, to monitor, restore, or enhance steelhead trout resources consistent with Sections 6901 and 6902, and to administer the catch report-restoration card program. The department shall submit all proposed expenditures, including proposed expenditures for administrative purposes, to the Advisory Committee on Salmon and Steelhead Trout for review and comment prior to submitting a request for inclusion of the appropriation in the annual Budget Bill. The committee may recommend revisions in any proposed expenditure to the Legislature and the commission.

(b) The department shall report to the Legislature on or before July 1, 2007, regarding the implementation of the catch report-restoration card program, the projects undertaken using revenues derived pursuant to that program, the benefits derived, and its recommendation regarding whether the catch report-restoration card requirement should be continued.

SEC. 3. Section 7382 is added to the Fish and Game Code, to read:

7382. This article shall become inoperative on July 1, 2007, and, as of January 1, 2008, is repealed, unless a later enacted statute that is enacted before January 1, 2008, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 4. Article 5 (commencing with Section 18741) is added to Chapter 3 of Part 10.2 of the Revenue and Taxation Code, to read:

Article 5. Fish and Game Preservation Fund

18741. (a) Any individual may designate on the tax return that a contribution in excess of the tax liability, if any, be made to the Endangered and Rare Fish, Wildlife, and Plant Species Conservation and Enhancement Account established in the Fish and Game Preservation Fund pursuant to Section 1770 of the Fish and Game Code.

(b) The contribution shall be in full dollar amounts and may be made individually by each signatory on a joint return.

(c) A designation under subdivision (a) shall be made for any taxable year on the initial return for that taxable year, and once made shall be irrevocable.

(d) If an individual designates a contribution to more than one account, and the amount available is insufficient to satisfy the total amount designated, the contribution shall be allocated among the designees on a pro rata basis.

(e) The Franchise Tax Board shall revise the form of the return to include a space labeled ''Rare and Endangered Species Preservation Program'' to allow for the designation permitted under subdivision (a).

(f) A deduction shall be allowed under Article 6 (commencing with Section 17201) of Chapter 3 of Part 10 for any contribution made pursuant to subdivision (a).

18742. (a) The Franchise Tax Board shall notify the Controller of both the amount of moneys paid by taxpayers in excess of their tax liability and the amount of refund moneys that taxpayers have designated pursuant to Section 18741 to be transferred to the Endangered and Rare Fish, Wildlife, and Plant Species Conservation and Enhancement Account. The Controller shall transfer from the Personal Income Tax Fund to that account, an amount not in excess of the sum of the amounts reported to the Controller by the Franchise Tax Board that have been designated by individuals pursuant to Section 18741 for payment into that account.

(b) All moneys transferred to the account, upon appropriation by the Legislature, shall be allocated as follows:

(1) To the Franchise Tax Board and the Controller for the reimbursement of all actual and direct costs incurred by the Franchise Tax Board and the Controller in connection with the collection and administration of funds under this article.

(2) To the Department of Fish and Game for the purposes specified in Section 1771 of the Fish and Game Code.

18743. It is the intent of the Legislature that this article create an additional funding source for programs for endangered and rare animals and native plant species and shall be used to supplement, not supplant, other funding sources for these programs.

18744. (a) This article shall remain in effect only until January 1, 2008, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 2008, deletes or extends that date.

(b) If, in any calendar year the Franchise Tax Board estimates by September 1 that contributions described in this article made on returns filed in that calendar year will be less than two hundred fifty thousand dollars ($250,000) for taxable years beginning in 2002, or the adjusted amount specified in subdivision (c) for subsequent taxable years, as may be applicable, then this article is repealed with respect to taxable years beginning on and after January 1 of that calendar year. The Franchise Tax Board shall estimate the annual contribution amount by September 1 of each year using the actual amounts known to be contributed and an estimate of the remaining year's contributions.

(c) For each calendar year, beginning with calendar year 2003, the Franchise Tax Board shall adjust, on or before September 1 of that

calendar year, the minimum estimated contribution amount specified in subdivision (b) as follows:

(1) The minimum estimated contribution amount for the calendar year shall be an amount equal to the product of the minimum estimated contribution amount for the prior September 1 multiplied by the inflation factor adjustment as specified in paragraph (2) of subdivision (h) of Section 17041, rounded off to the nearest dollar.

(2) The inflation factor adjustment used for the calendar year shall be based on the figures for the percentage change in the California Consumer Price Index received on or before August 1 of the calendar year pursuant to paragraph (1) of subdivision (h) of Section 17041.

(d) Notwithstanding the repeal of this article, any contribution amounts designated pursuant to this article prior to its repeal shall continue to be transferred and disbursed in accordance with this article as in effect immediately prior to that repeal.

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.

CHAPTER 595

An act to amend Sections 33008, 33211.5, and 33211.6 of the Public Resources Code, relating to the Santa Monica Mountains Conservancy.

[Approved by Governor September 15, 2002. Filed with Secretary of State September 16, 2002.]

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

SECTION 1. Section 33008 of the Public Resources Code is amended to read:

33008. (a) The Legislature finds and declares that there are existing problems of substandard lots, incompatible land uses, conflicts with recreational use, and inadequate resource protection which, in some cases, cannot be addressed in a feasible manner by local government exercise of the police power or federal land acquisition as part of the Santa Monica Mountains National Recreation Area, and that it is necessary to enact the provisions of this division as a complement to the

full exercise of the police power by local governments and the acquisition of lands by the federal government for the Santa Monica Mountains National Recreation Area.

(b) The Legislature further finds and declares that the people of the State of California have an interest in the protection of resources and the use of lands acquired or managed by the conservancy pursuant to this division, and that the conservancy in carrying out its duties pursuant to this division acts on behalf of the State of California.

(c) This division does not authorize the conservancy to regulate private property, nor does it supersede or limit a local government's exercise of the police power, over private property, derived from any other provision of existing law or any law hereafter enacted.

SEC. 2. Section 33211.5 of the Public Resources Code is amended to read:

33211.5. (a) The following conditions of use apply to property owned or subject to the management of the conservancy:

(1) Opening and closing hours shall be posted on any property upon which public use is permitted.

(2) Property may be closed to public use only when fire, mudslide, landslide, or flood dangers pose a substantial risk of injury or loss of life, or when a federal, state, or local disaster or emergency declaration has been made by an authorized person or public agency, or where there is an emergency or potential emergency situation of a temporary nature that involves substantial risk or potential risk to life or property, and the temporary closure or restriction of access is necessary to protect the public health and safety.

Any property closed shall be reopened as soon as the fire, mudslide, landslide, or flood dangers no longer pose a danger of injury or loss of life, or when a federal, state, or local disaster or emergency declaration is no longer in effect, or where there is no longer an emergency or potential emergency situation of a temporary nature that involves substantial risk or potential risk to life or property.

(3) Vehicles shall park only in designated areas and may not be operated off of roads or other areas designated for vehicle use. All vehicle use, including bicycles, shall conform to posted signs.

(b) Trails, campsites, and other public use areas on property owned or subject to the management of the conservancy shall be designated and posted with prohibited activities and use restrictions clearly indicated, including, but not limited to, the prohibition or restriction of smoking, fires, fireworks, animals, possession of dangerous weapons, or other activities that affect the safety of visitors, campers, trail users, or the natural or historic resources of the property.

(c) Determining and posting conditions of use pursuant to subdivisions (a) and (b) may not be considered the adoption of

regulations within the meaning 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).

(d) (1) The conditions of use and types of uses of property owned or subject to the management of the conservancy are considered to be of statewide significance. The types of uses and the management policies affecting those uses shall be consistent with the policies for permitted uses of lands within the state park system.

(2) Notwithstanding any other law, ordinance, rule, or regulation, the conservancy may exercise its discretion in determining whether to authorize any license, permit for special use, easement, project, activity, or other entitlement to be undertaken by the conservancy or its agents, for the use of conservancy owned or managed land. This subdivision shall not be construed to restrict the authority of the conservancy to lease lands consistent with the purposes of this division and the requirements of Section 33206.

SEC. 3. Section 33211.6 of the Public Resources Code is amended to read:

33211.6. (a) Dumping any refuse matter, except by permit signed by the executive director or the executive director's authorized representative, on property owned or managed by the conservancy, and posted against that dumping, shall be a misdemeanor punishable by a fine of not more than one thousand dollars ($1,000), or imprisonment in the county jail for not more than six months, or both that fine and imprisonment.

(b) Injuring, defacing, or destroying any property owned or managed by the conservancy or any of the natural features thereof, shall be a misdemeanor punishable by a fine of not more than one thousand dollars ($1,000), or imprisonment in the county jail for not more than six months, or both that fine and imprisonment.

(c) Violation of the posted conditions of use on any property owned or managed by the conservancy is a misdemeanor punishable by imprisonment in the county jail not exceeding 90 days, or by a fine not exceeding one thousand dollars ($1,000), or by both that fine and imprisonment, except that at the time a particular action is commenced, the judge may, considering the recommendation of the prosecuting attorney, reduce the charged offense from a misdemeanor to an infraction. Any person convicted of the offense after such a reduction shall be punished by a fine of not less than one hundred dollars ($100), nor more than five hundred dollars ($500).

CHAPTER 596

An act to add Section 4123 to the Public Resources Code, relating to wildfires.

[Approved by Governor September 15, 2002. Filed with Secretary of State September 16, 2002.]

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

SECTION 1. (a) The Legislature finds and declares all of the following:

(1) Federal and state resource agencies have identified more than 740 communities as urban wildland interface communities in the vicinity of federal lands that are at a high risk from wildfire.

(2) Catastrophic wildfires are not only a danger to property and personal safety, but also to the environment.

(3) Wildfires can negatively affect air quality, causing and contributing to severe health problems, including eye and lung irritation, asthma, and other respiratory illnesses.

(4) The state should promote greater utilization of existing hazardous fuel reduction programs and grant funds available to the general public.

(5) The state should promote practices by forest landowners that reduce risk of catastrophic wildfires in urban interface areas.

(6) The state should encourage and support the development of strategies and solutions for reducing the risk of wildfire for communities that have been identified at risk by the Fire and Resource Assessment Program of the Department of Forestry and Fire Protection.

(b) It is the intent of the Legislature to encourage wildfire protection activities that reduce the risks of fire to citizens and firefighters.

(c) It is also the intent of the Legislature to reduce total wildfire costs and losses while increasing firefighter and public safety.

SEC. 2. Section 4123 is added to the Public Resources Code, to read:

4123. (a) The director of the department shall establish a working group that consists of the following members:

(1) Four representatives from either state or local government, or both.

(2) Three representatives of industries with experience in state forestry and fire suppression policy.

(3) Three representatives of environmental groups with experience in state forestry and fire suppression policy.

(4) Two representatives with experience in state forestry and fire suppression policy from sectors of the public that are not otherwise represented in the working group.

(b) The working group established pursuant to subdivision (a) shall do both of the following:

(1) Identify potential incentives for landowners to implement prefire activities in state responsibility areas and urban wildland interface communities.

(2) Identify all federal, state, or local programs, private programs, and any other programs requiring a cost-share that involves prefire activities.

(c) The department shall report the findings of the working group to the Legislature on or before January 1, 2004. The department shall include in the report any recommendations identified by the working group to provide potential incentives for consideration by the Legislature.

(d) For the purposes of this section, the following terms mean:

(1) ''Prefire activities'' means those lawful activities that reduce the risk of wildfire, including precommercial thinning, selective harvesting, shaded fuel breaks, brush treatments, grazing, and prescribed burns.

(2) ''Urban wildland interface community'' means an area that is identified by the United States Department of Agriculture and the United States Department of the Interior as an urban wildland interface community at high risk from wildfire and listed in the ''List of fire threatened communities in California, Appendix A,'' issued by the Department of Forestry and Fire Protection.

CHAPTER 597

An act to amend Section 25208.3 of, and to add Article 9.7 (commencing with Section 25209.10) to Chapter 6.5 of Division 20 of, the Health and Safety Code, relating to water.

[Approved by Governor September 15, 2002. Filed with Secretary of State September 16, 2002.]

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

SECTION 1. Section 25208.3 of the Health and Safety Code is amended to read:

25208.3. (a) The state board shall, by emergency regulation, adopt a fee schedule that assesses a fee upon any person discharging any liquid hazardous wastes or hazardous wastes containing free liquids into a surface impoundment, except as provided in Section 25208.17. The state board shall include in this fee schedule the fees charged for applications for, and renewals of, an exemption from Section 25208.5, as specified in subdivision (h) of Section 25208.5, from subdivision (a) of Section

25208.4, as specified in subdivision (b) of Section 25208.4, from subdivision (c) of Section 25208.4, as specified in Section 25208.16, and from Sections 25208.4 and 25208.5, as specified in subdivision (e) of Section 25208.13. The state board shall also include provisions in the fee schedule for assessing a penalty pursuant to subdivision (c). The state board shall set these fees at an amount equal to the state board's and regional board's reasonable and anticipated costs of administering this article.

(b) The emergency regulations that set the fee schedule shall be adopted by the state board in accordance with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, and for the purposes of that chapter, including Section 11349.6 of the Government Code, the adoption of these regulations is an emergency and shall be considered by the Office of Administrative Law as necessary for the immediate preservation of the public peace, health and safety, and general welfare. Notwithstanding Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, any emergency regulations adopted by the state board pursuant to this section shall be filed with, but not be repealed by, the Office of Administrative Law and shall remain in effect until revised by the state board.

(c) The state board shall send a notice to each person subject to the fee specified in subdivision (a). If a person fails to pay the fee within 60 days after receipt of this notice, the state board shall require the person to pay an additional penalty fee. The state board shall set the penalty fee at not more than 100 percent of the assessed fee, but in an amount sufficient to deter future noncompliance, as based upon that person's past history of compliance and ability to pay, and upon additional expenses incurred by this noncompliance.

(d) The state board shall collect and deposit the fees collected pursuant to this article in the Surface Impoundment Assessment Account, which is hereby created in the General Fund. The money within the Surface Impoundment Assessment Account is available, upon appropriation by the Legislature, to the state board and the regional boards for purposes of administering this article and Article 9.7 (commencing with Section 25209.10).

SEC. 2. Article 9.7 (commencing with Section 25209.10) is added to Chapter 6.5 of Division 20 of the Health and Safety Code, to read:

Article 9.7. Integrated On-Farm Drainage Management

25209.10. The Legislature finds and declares all of the following:

(a) The long-term economic and environmental sustainability of agriculture is critical to the future of the state, and it is in the interest of the state to enact policies that enhance that sustainability.

(b) High levels of salt and selenium are present in many soils in the state as a result of both natural occurrences and irrigation practices that concentrate their presence in soils.

(c) The buildup of salt and selenium in agricultural soil is an unsustainable practice that degrades soil, harms an irreplaceable natural resource, reduces crop yields and farm income, and poses threats to wildlife.

(d) Salt and selenium buildup can degrade groundwater, especially in areas with perched groundwater aquifers.

(e) Off-farm drainage of irrigation water with high levels of salt and selenium degrades rivers and waterways, particularly the San Joaquin River and its tributaries. This environmental damage presents a clear and imminent danger that warrants immediate action to prevent or mitigate harm to public health and the environment.

(f) Discharge of agricultural drainage water to manmade drains and ponds has resulted in environmental damage, including damage to wildlife. Proposals to discharge agricultural drainage to natural water bodies, including the San Francisco Bay, are extremely expensive and pose threats to the environmental quality of those water bodies.

(g) Water supplies for agricultural irrigation have been reduced significantly in recent years, necessitating increased efforts to use water more efficiently.

(h) Although salt can be collected and managed as a commercial farm commodity, California currently imports salt from other countries.

(i) Integrated on-farm drainage management is a sustainable system of managing salt-laden farm drainage water. Integrated on-farm drainage management is designed to eliminate the need for off-farm drainage of irrigation water, prevent the on-farm movement of irrigation and drainage water to groundwater, restore and enhance the productive value of degraded farmland by removing salt and selenium from the soil, conserve water by reducing the demand for irrigation water, and create the potential to convert salt from a waste product and pollutant to a commercial farm commodity.

(j) Although integrated on-farm drainage management facilities are designed and operated expressly to prevent threats to groundwater and wildlife, these facilities currently may be classified as surface impoundments pursuant to the Toxic Pits Act of 1984, which discourages farmers from using them as an environmentally preferable means of managing agricultural drainage water.

(k) It is the policy of the state to conserve water and to minimize the environmental impacts of agricultural drainage. It is therefore in the

interest of the state to encourage the voluntary implementation of sustainable farming and irrigation practices, including, but not limited to, integrated on-farm drainage management, as a means of improving environmental protection, conserving water, restoring degraded soils, and enhancing the economic productivity of farms.

25209.11. For purposes of this article, the following terms have the following meanings:

(a) ''Agricultural drainage water'' means surface drainage water or percolated irrigation water that is collected by subsurface drainage tiles placed beneath an agricultural field.

(b) ''On-farm'' means within the boundaries of a property, geographically contiguous properties, or a portion of the property or properties, owned or under the control of a single owner or operator, that is used for the commercial production of agricultural commodities and that contains an integrated on-farm drainage management system and a solar evaporator.

(c) ''Integrated on-farm drainage management system'' means a facility for the on-farm management of agricultural drainage water that does all of the following:

(1) Reduces levels of salt and selenium in soil by the application of irrigation water to agricultural fields.

(2) Collects agricultural drainage water from irrigated fields and sequentially reuses that water to irrigate successive crops until the volume of residual agricultural drainage water is substantially decreased and its salt content significantly increased.

(3) Discharges the residual agricultural drainage water to an on-farm solar evaporator for evaporation and appropriate salt management.

(4) Eliminates discharge of agricultural drainage water outside the boundaries of the property or properties that produces the agricultural drainage water and that is served by the integrated on-farm drainage management system and the solar evaporator.

(d) ''Regional board'' means a California regional water quality control board.

(e) ''Solar evaporator'' means an on-farm area of land and its associated equipment that meets all of the following conditions:

(1) It is designed and operated to manage agricultural drainage water discharged from the integrated on-farm drainage management system.

(2) The area of the land that makes up the solar evaporator is equal to, or less than, 2 percent of the area of the land that is managed by the integrated on-farm drainage management system.

(3) Agricultural drainage water from the integrated on-farm drainage management system is discharged to the solar evaporator by timed sprinklers or other equipment that allows the discharge rate to be set and adjusted as necessary to avoid standing water within the solar evaporator

or, if a water catchment basin is part of the solar evaporator, within that portion of the solar evaporator that is outside the basin.

(4) The combination of the rate of discharge of agricultural drainage water to the solar evaporator and subsurface tile drainage under the solar evaporator provides adequate assurance that constituents in the agricultural drainage water will not migrate from the solar evaporator into the vadose zone or waters of the state in concentrations that pollute or threaten to pollute the waters of the state.

(f) ''State board'' means the State Water Resources Control Board.

(g) ''Water catchment basin'' means an area within the boundaries of a solar evaporator that is designated to receive and hold any water that might otherwise be standing water within the solar evaporator. The entire area of a water catchment basin shall be permanently and continuously covered with netting, or otherwise designed, constructed, and operated to prevent access by avian wildlife to standing water within the basin.

25209.12. On or before April 1, 2003, the state board, in consultation, as necessary, with other appropriate state agencies, shall adopt emergency regulations that establish minimum requirements for the design, construction, operation, and closure of solar evaporators. The regulations shall include, but are not limited to, requirements to ensure all of the following:

(a) The operation of a solar evaporator does not result in any discharge of on-farm agricultural drainage water outside the boundaries of the area of land that makes up the solar evaporator.

(b) (1) The solar evaporator is designed, constructed, and operated so that, under reasonably forseeable operating conditions, the discharge of agricultural water to the solar evaporator does not result in standing water.

(2) Notwithstanding paragraph (1), a solar evaporator may be designed, constructed, and operated to accommodate standing water, if it includes a water catchment basin.

(3) The board may specify those conditions under which a solar evaporator is required to include a water catchment basin to prevent standing water that would otherwise occur within the solar evaporator.

(c) Avian wildlife is adequately protected. In adopting regulations pursuant to this subdivision, the state board shall do the following:

(1) Consider and, to the extent feasible, incorporate best management practices recommended or adopted by the United States Fish and Wildlife Service.

(2) Establish guidelines for the authorized inspection of a solar evaporator by the regional board pursuant to Section 25209.15. The guidelines shall include technical advice developed in consultation with the Department of Fish and Game and the United States Fish and

Wildlife Service that may be used by regional board personnel to identify observed conditions relating to the operation of a solar evaporator that indicate an unreasonable threat to avian wildlife.

(d) Constituents in agricultural drainage water discharged to the solar evaporator will not migrate from the solar evaporator into the vadose zone or the waters of the state in concentrations that pollute or threaten to pollute the waters of the state.

(e) Adequate groundwater monitoring and recordkeeping is performed to ensure compliance with the requirements of this article.

(f) Salt isolated in a solar evaporator shall be managed in accordance with all applicable laws and shall eventually be harvested and sold for commercial purposes, used for beneficial purposes, or stored or disposed in a facility authorized to accept that waste pursuant to this chapter or Division 30 (commencing with Section 40000) of the Public Resources Code.

25209.13. (a) Any person who intends to operate a solar evaporator shall, before installing the solar evaporator, file a notice of intent with the regional board, using a form prepared by the regional board. The form shall require the person to provide information including, but not limited to, all of the following:

(1) The location of the solar evaporator.

(2) The design of the solar evaporator and the equipment that will be used to operate it.

(3) The maximum anticipated rate at which agricultural drainage water will be discharged to the solar evaporator.

(4) Plans for operating the solar evaporator in compliance with the requirements of this article.

(5) Groundwater monitoring data that are adequate to establish baseline data for use in comparing subsequent data submitted by the operator pursuant to this article.

(6) Weather data and a water balance analysis sufficient to assess the likelihood of standing water occurring within the solar evaporator.

(b) The regional board shall, within 30 calendar days after receiving the notice submitted pursuant to subdivision (a), review its contents, inspect, if necessary, the site where the proposed solar evaporator will be located, and notify the operator of the proposed solar evaporator whether it will comply with the requirements of this article. If the regional board determines that the proposed solar evaporator will not comply with this article, the regional board shall issue a written response to the applicant identifying the reasons for noncompliance. If the regional board determines the solar evaporator will comply with the requirements of this article, the regional board shall issue a written notice of plan compliance to the operator of the proposed solar evaporator.

(c) Any person who receives a written notice of plan compliance pursuant to subdivision (b) shall, before operating the installed solar evaporator, request the regional board to conduct a compliance inspection of the solar evaporator. Within 30 calendar days after receiving a request, the regional board shall inspect the solar evaporator and notify the operator whether it complies with the requirements of this article. If the regional board finds that the solar evaporator does not comply with the requirements of this article, the regional board shall issue a written response to the applicant identifying the reasons for noncompliance. Except as provided in subdivision (e), if the regional board determines that the solar evaporator complies with the requirements of this article, the regional board shall issue a written notice of authority to operate to the operator of the solar evaporator. The regional board may include in the authority to operate any associated condition that the regional board deems necessary to ensure compliance with the purposes and requirements of this article.

(d) No person may commence the operation of a solar evaporator unless the person receives a written notice of authority to operate the solar evaporator pursuant to this section.

(e) (1) On and after January 1, 2008, a regional board may not issue a written notice of authority to operate a solar evaporator pursuant to this section.

(2) The requirements of paragraph (1) do not affect the validity of any written notice of authority to operate a solar evaporator issued by the regional board before January 1, 2008.

(f) The regional board shall review any authority to operate issued by the regional board pursuant to this section every five years. The regional board shall renew the authority to operate, unless the regional board finds that the operator of the solar evaporator has not demonstrated compliance with the requirements of this article.

25209.14. (a) Any person operating a solar evaporator shall annually, according to a schedule established by the regional board pursuant to subdivision (b), submit groundwater monitoring data and any other information that is deemed necessary by the regional board to ensure compliance with the requirements of this article.

(b) Each regional board shall adopt a schedule for the submission of the data and information described in subdivision (a) at the earliest possible time. The regional board shall notify the operator of each solar evaporator of the applicable submission schedule.

25209.15. (a) The regional board, consistent with its existing statutory authority, shall inspect any solar evaporator that is authorized to operate pursuant to Section 25209.13 at least once every five years to ensure continued compliance with the requirements of this article. In conducting any inspection, the regional board may request the

participation of a qualified state or federal avian biologist in a technical advisory capacity. The regional board shall include in the inspection report conducted pursuant to this section any evidence of adverse impacts on avian wildlife and shall forward the report to the appropriate state and federal agencies.

(b) If the regional board, as a result of an inspection or review conducted pursuant to this article, determines that a solar evaporator is not in compliance with the requirements of this article, the regional board shall provide written notice to the operator of the solar evaporator of that failure, and shall include in that written notice the reasons for that determination.

(c) Chapter 5 (commencing with Section 13300) of, and Chapter 5.8 (commencing with Section 13399) of, Division 7 of the Water Code apply to any failure to comply with the requirements of this article and to any action, or failure to act, by the state board or a regional board. The regional board may, consistent with Section 13223 of the Water Code, revoke or modify an authorization to operate issued pursuant to this article.

25209.16. (a) For the purposes of Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, including Section 11349.6 of the Government Code, the adoption of the regulations required to be adopted pursuant to Section 25209.12 is an emergency and shall be considered by the Office of Administrative Law as necessary for the immediate preservation of the public peace, health and safety, and general welfare.

(b) Notwithstanding Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, any emergency regulations adopted by the state board pursuant to Section 25209.12 shall be filed with, but not be repealed by, the Office of Administrative Law and shall remain in effect until revised by the state board.

25209.17. Any solar evaporator operating under a valid written notice of authority to operate issued by the regional board pursuant to this article, including any facility operating pursuant to Article 9.5 (commencing with Section 25208) prior to January 1, 2003, that the regional board determines is in compliance with the requirements of this article, is not subject to Article 9.5 (commencing with Section 25208) or Sections 13260 or 13263 of the Water Code. Upon determining pursuant to this section that a facility is a solar evaporator in compliance with this article, the regional board shall, as appropriate, revise or rescind any waste discharge requirements or other requirements imposed on the operator of the facility pursuant to Article 9.5 (commencing with Section 25208) or Section 13260 or 13263 of the Water Code.

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.

CHAPTER 598

An act to amend Section 30988 of, to amend and renumber Section 30988.4 of, to repeal Sections 30988.1 and 30988.3 of, and to repeal and add Section 30988.2 of, the Public Resources Code, relating to ocean resources, and making an appropriation therefor.

[Approved by Governor September 15, 2002. Filed with Secretary of State September 16, 2002.]

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

SECTION 1. Section 30988 of the Public Resources Code is amended to read:

30988. (a) The Legislature finds and declares that Santa Monica Bay is a public trust for present and future generations of Californians, and an invaluable element in the ecosystem of southern California.

(b) The biological health and recreational resources of Santa Monica Bay are threatened by the historical accumulation of DDT, PCBs and other toxic pollutants, pathogens, nutrients, stormwater and urban runoff, nonpoint pollutant sources, oil spills, and industrial discharges, increasing with population pressures in the region.

(c) Santa Monica Bay's Palos Verdes Shelf has been identified as a federal Superfund site, and designated under the United States Environmental Protection Agency's National Estuary Program. Since 1988, the United States Environmental Protection Agency has designated the former Santa Monica Bay Restoration Project as an agency to plan for the Santa Monica Bay's restoration, and to oversee implementation of the Santa Monica Bay Restoration Plan. The State of California has expended millions of dollars for the administration of the Santa Monica Bay Restoration Project, and the Safe Neighborhood Parks, Clean Water, Clean Air, and Coastal Protection Bond Act of 2000 (the Villaraigosa-Keeley Act; Chapter 1.692 (commencing with Section 5096.300) of Division 5 of the Public Resources Code) earmarks up to

twenty-five million dollars ($25,000,000) for Santa Monica Bay restoration projects, as identified by the former Santa Monica Bay Restoration Project.

(d) It is the intent of the Legislature that the Santa Monica Bay Restoration Commission be a nonregulatory, locally based state government entity that will monitor, assess, coordinate, and advise all state programs, and oversee funding that affects the beneficial uses, restoration, and enhancement of Santa Monica Bay and its watershed.

SEC. 2. Section 30988.1 of the Public Resources Code is repealed.

SEC. 3. Section 30988.2 of the Public Resources Code is repealed.

SEC. 4. Section 30988.2 is added to the Public Resources Code, to read:

30988.2. (a) The Santa Monica Bay Restoration Project is hereby renamed the Santa Monica Bay Restoration Commission. The commission shall independently execute the duties described in this section, and the State Water Resources Control Board shall provide administrative services to the commission. Any reference in any statute to the Santa Monica Bay Restoration Project shall be deemed to be a reference to the Santa Monica Bay Restoration Commission.

(b) (1) The Secretary for Environmental Protection, the Secretary of the Resources Agency, and the Chair of the Bay Watershed Council of the Santa Monica Bay Restoration Commission shall enter into a memorandum of understanding that ensures the coordination of state programs affecting Santa Monica Bay, and that delineates the authority of that commission, and its governance structure with respect to the implementation of those state programs. The commission membership shall be prescribed in the memorandum of understanding, and shall include federal, state, and local public agency officials and employees, and representatives of other stakeholder interests.

(c) The commission may do all of the following:

(1) Request and receive federal, state, local, and private funds from any source, and expend those moneys for the restoration and enhancement of Santa Monica Bay and its watershed.

(2) Award and administer grants for the restoration and enhancement of Santa Monica Bay and its watershed.

(3) Enter into contracts and joint powers authority agreements, as necessary, to carry out the purposes of the commission.

(4) Monitor, assess, and coordinate activities among federal, state, and local agencies and, where appropriate, private firms, to restore and enhance Santa Monica Bay and its watershed.

(d) (1) The Santa Monica Bay Restoration Account is hereby created in the State Treasury, and moneys in the account may be expended, upon appropriation by the Legislature, to support the activities of the Santa Monica Bay Restoration Commission.

(2) The balance of any funds previously appropriated by the Legislature, prior to January 1, 2003, from the General Fund or from bond proceeds to support the activities of the former Santa Monica Bay Restoration Project shall be transferred into the account.

(3) (A) Funds transferred to the account that are derived from an appropriation from the General Fund are available for expenditure only for the duration originally authorized and only for a purpose authorized by this division as it read on December 31, 2002.

(B) Funds transferred to the account that are derived from an appropriation of bond proceeds are available for expenditure only for the duration originally authorized and may be expended for any purpose authorized by this division on and after January 1, 2003.

SEC. 5. Section 30988.3 of the Public Resources Code is repealed.

SEC. 6. Section 30988.4 of the Public Resources Code is amended and renumbered to read:

30988.3. The Santa Monica Bay Restoration Commission shall prioritize in its educational, monitoring, and bond proceeds expenditure decisions, proposals, or projects designed to achieve bay restoration objectives including, but not limited to, all of the following:

(a) The reduction or elimination of stormwater, urban runoff, and point and nonpoint source pollution.

(b) The reduction or prevention of the threat of oil and sewage spills and leaks.

(c) The reduction and prevention of beach erosion.

(d) The reduction and prevention of public health threats from pollution.

(e) The prevention and restoration of, and protection against, loss of wetlands, coastal and riparian habitats, and Santa Monica Bay's natural and living resources.

(f) Effective enforcement of appropriate environmental laws.

(g) Public education and warnings of any dangers of consuming contaminated seafood.

(h) Increased public education concerning the Santa Monica Bay in collaboration with universities and grades K-12 schools.

(i) Assuring that ocean resources are accessible to all Californians regardless of socioeconomic status, and are preserved and enhanced for future generations.

CHAPTER 599

An act to add Chapter 9 (commencing with Section 6950) of Part 1 of Division 6 of the Fish and Game Code, relating to invasive species, and making an appropriation therefor.

[Approved by Governor September 15, 2002. Filed with Secretary of State September 16, 2002.]

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

SECTION 1. Chapter 9 (commencing with Section 6950) is added to Part 1 of Division 6 of the Fish and Game Code, to read:

CHAPTER 9. INTERAGENCY AQUATIC INVASIVE SPECIES COUNCIL

6950. ''Invasive species'' for the purposes of this chapter, means a species, including its seeds, eggs, spores, or other biological materials capable of propagating that species, that is not native to the ecosystem, and whose introduction causes or is likely to cause economic or environmental harm or harm to human health. Nothing in this definition may be construed to include those agricultural crops generally recognized by the Department of Agriculture or the United States Department of Agriculture as suitable to be grown in the state.

6952. The Interagency Aquatic Invasive Species Council is hereby established.

6953. (a) The director, or his or her representative, is chairperson of the council.

(b) Representatives of the following entities are members of the council:

(1) The Department of Food and Agriculture.
(2) The Department of Boating and Waterways.
(3) The Department of Parks and Recreation.
(4) The Department of Water Resources.
(5) The State Water Resources Control Board.
(6) The California Coastal Commission.
(7) The State Coastal Conservancy.
(8) The University of California.
(9) The State Lands Commission.

(c) In addition to the members of the council set forth in subdivision (b), the Governor may appoint to the council, as representatives of the public, one person representing each of the following interest groups, each of which group shall have expertise in aquatic invasive species:

(1) Ports or shipping, or both.
(2) Business interests.

(3) Environmental interests.

(4) Local water agencies.

(d) The members of the council set forth in subdivisions (b) and (c) may invite representatives of federal agencies and tribal groups to join the council as members.

6954. The department, in cooperation with the council, and using existing funds and current personnel of the department, shall support and coordinate the development of a comprehensive plan for dealing with aquatic invasive species in California. The plan shall address the following aspects of prevention and containment of aquatic invasive species:

(1) Prevention, including education of, and outreach to, the general public and policymakers.

(2) Monitoring and detection.

(3) Control and eradication.

(4) Inspection.

(5) Enforcement.

(b) The plan prepared pursuant to subdivision (a) shall follow, to the extent possible, the guidelines of the Aquatic Nuisance Species Task Force set forth in Section 4722 of Title 16 of the United States Code.

(c) The council shall submit its first working version of the plan to the Legislature on or before January 1, 2004.

6955. The council shall meet at least twice annually to ensure that state agency activities concerning aquatic invasive species are coordinated, complementary, cost-efficient, and effective. In doing so, the council may undertake the following tasks:

(a) Develop protocols to be followed in responding to aquatic invasive species infestations not listed for control or eradication purposes in any statute or regulation as of January 1, 2002.

(b) Review and comment on proposals for new or amended aquatic invasive species management plans.

(c) Review any proposed site-specific aquatic invasive species regulations.

(d) Serve as a clearinghouse for information regarding aquatic invasive species.

6956. No provision of this chapter applies to the University of California, unless the Regents of the University of California, by appropriate resolution, make it applicable.

CHAPTER 600

An act to amend Section 6217.1 of the Public Resources Code, relating to fish.

[Approved by Governor September 15, 2002. Filed with Secretary of State September 16, 2002.]

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

SECTION 1. Section 6217.1 of the Public Resources Code is amended to read:

6217.1. (a) This section and the process described in this section governs the expenditure of any funds received by the State of California from the federal government for the purposes of salmon and steelhead trout conservation and restoration, the expenditure of funds authorized for the Coastal Watershed Salmon Habitat Program pursuant to Article 7 (commencing with Section 79104.200) of Chapter 6 of Division 26 of the Water Code, and the expenditure of funds appropriated to the Department of Fish and Game for salmon and steelhead trout conservation and restoration from the California Clean Water, Clean Air, Safe Neighborhood Parks, and Coastal Protection Fund pursuant to Article 5 (commencing with Section 5096.650) of Chapter 1.696 of Division 5 of the Public Resources Code.

(b) For purposes of this section, ''project'' means an activity that improves fish habitat in coastal waters utilized by salmon and anadromous trout species.

(c) (1) The Department of Fish and Game shall grant funds from the Salmon and Steelhead Trout Restoration Account in the Resources Trust Fund, as follows:

(A) At least 87.5 percent of the funds shall be allocated as project grants through the existing grant program operated by the fisheries management program of the Department of Fish and Game.

(B) Not more than 12.5 percent of the funds may also be used for project contract administration activities and biological support staff.

(2) (A) A project shall require the consent of a willing landowner, and emphasize the development of coordinated watershed improvement activities.

(B) Projects that restore habitat for salmon and anadromous trout species that are eligible for protection as listed or candidate species under state or federal endangered species acts shall be given top funding priority.

(C) Projects shall be cost-effective and treat causes and not symptoms of fish habitat degradation. Projects may implement instream, riparian,

water quality, water quantity, and watershed prescriptions and shall be designed to restore the structure and function of fish habitat.

(3) Any grant funds allocated to a project that exceed the actual cost of completing the project shall be returned to the Salmon and Steelhead Trout Restoration Account.

(d) (1) A citizen's advisory committee shall be appointed by the Director of Fish and Game to give advice on the grant program.

(2) The advisory committee shall consist of seven representatives recommended by the California Advisory Committee on Salmon and Steelhead Trout, one representative from the agriculture industry, one representative from the timber industry, one representative of public water agency interests, one academic or research scientist with expertise in anadromous fisheries restoration, and three county supervisors from coastal counties in which anadromous trout exist. The county supervisor members shall be recommended by the California State Association of Counties.

(3) The advisory committee shall provide oversight of, and recommend priorities for, grant funding under this section. In making funding decisions, the Department of Fish and Game shall consider the project selection priorities established by the advisory committee.

(4) Members of any advisory committee established for these purposes shall be reimbursed for travel and incidental expenses related to the performance of their duties under this section. Reimbursement for the advisory committee created pursuant to this section shall be made from the funds designated in subparagraph (B) of paragraph (1) of subdivision (c). Reimbursement for other Department of Fish and Game salmon and steelhead trout advisory committees shall be funded by appropriate sources.

(5) If a member of the advisory committee, or a member of his or her immediate family, is employed by a grant applicant, the employer of a grant applicant, or a consultant or independent contractor employed by a grant applicant, the advisory committee member shall make that disclosure to the other members of the committee, and shall not participate in reviewing or making recommendations on the grant application of that applicant.

(e) Except as provided in subdivision (f), the money in the Salmon and Steelhead Trout Restoration Account shall be allocated as follows:

(1) Not less than 65 percent of the money shall be used for salmon habitat protection and restoration projects. Of that amount, at least 75 percent shall be used for watershed (upslope) and riparian area protection and restoration activities. These activities may include, but are not limited to, grants to acquire and install fish screens to protect juvenile and adult salmon and steelhead trout from entrapment in water diversions, and grants to remove substandard culverts, stream crossings,

and bridges that constitute barriers to spawning of salmon and steelhead trout and passage of fish. These funds may also be used for the acquisition, from willing sellers, of conservation easements for riparian buffer strips along coastal rivers and streams to protect salmon and steelhead trout habitat or for projects that protect and improve water quality and quantity.

(2) Up to 35 percent of the money shall be allocated for any of the uses listed in this paragraph.

(A) Watershed evaluation, assessment, and planning necessary to develop a site-specific and clearly prioritized plan to implement watershed improvements.

(B) Multiyear grants for watershed planning and project monitoring and evaluations.

(C) Watershed organization support and assistance.

(D) Project maintenance and monitoring after the project implementations are complete.

(E) Public school watershed and fishery conservation education projects.

(F) Private sector technical training and education project grants, including teaching private landowners about practical means of improving land and water management practices that, if implemented, will contribute to the protection and restoration of salmon stream habitat; scholarship funding for workshops and conferences that teach restoration techniques; operation of nonprofit restoration technical schools; and production of restoration training and education workshops and conferences.

(G) Fish and wildlife habitat improvements, as defined by Section 4793, and authorized under the California Forestry Incentive Program (CFIP).

(H) The salmon restoration project of the California Conservation Corps.

(I) The state's share of the federal Watershed Stewards Program.

(J) Monitoring projects that utilize protocols approved by the Department of Fish and Game and the National Marine Fisheries Service (NMFS) to provide baseline or trend data, or both, for anadromous fish populations or the physical and biological factors known to be limiting recovery.

(K) Artificial propagation programs designed to restore depleted stocks of salmonids that comply with the directives of the joint Department of Fish and Game and NMFS Hatchery Operations Review Committee.

(f) The advisory committee, in any fiscal year, may make a recommendation to the Department of Fish and Game to allocate money from the Salmon and Steelhead Trout Restoration Account for the

purposes stated in subdivision (e), but in different percentage requirements than the 65/35 split stated in paragraphs (1) and (2) of that subdivision. Following that recommendation, the Director of Fish and Game may suspend the percentage requirements stated in paragraphs (1) and (2) of subdivision (e) for that fiscal year only.

CHAPTER 601

An act to amend Sections 25410.5, 25410.6, 25411, 25413, 25415, 25416, 25417.5, 25441, 25442.7, 25443.5, 25445, 25446, 25449.1, and 25449.3 of, and to repeal Sections 25412.5, 25441.5, and 25447.2 of, the Public Resources Code, and to add Section 2774.6 to the Public Utilities Code, relating to energy.

[Approved by Governor September 15, 2002. Filed with Secretary of State September 16, 2002.]

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

SECTION 1. Section 25410.5 of the Public Resources Code is amended to read:

25410.5. The Legislature finds and declares all of the following:

(a) Energy costs are frequently the second largest discretionary expense in a local government's budget. According to the commission, most public institutions could reduce their energy costs by 20 to 30 percent.

(b) A variety of energy conservation measures are available to local governments. These measures are highly cost-effective, often providing a payback on the initial investment in three years or less.

(c) Many local governments lack energy management expertise and are often unaware of their high energy costs or the opportunities to reduce those costs.

(d) Local governments that desire to reduce their energy costs through energy conservation and efficiency measures often lack available funding.

(e) Since 1980, the Energy Conservation Assistance Account has provided $110 million in loans, through a revolving loan account, to 600 schools, hospitals, and local governments. The energy conservation projects funded by the account save approximately $35 million annually in energy costs.

(f) Local governments and public institutions need assistance in all aspects of energy efficiency improvements, including, but not limited to, project identification, project development and implementation,

evaluation of project proposals and options, operations and maintenance, and troubleshooting of problem projects.

SEC. 2. Section 25410.6 of the Public Resources Code is amended to read:

25410.6. (a) It is the intent of the Legislature that the commission shall administer the State Energy Conservation Assistance Account to provide grants and loans to local governments and public institutions to maximize energy use savings, including, but not limited to, technical assistance, demonstrations, and identification and implementation of cost-effective energy efficiency measures and programs in existing and planned buildings or facilities.

(b) It is further the intent of the Legislature that the commission seek the assistance of utility companies in providing energy audits for local governments and public institutions and in publicizing the availability of State Energy Conservation Assistance Account funds to qualified entities.

SEC. 3. Section 25411 of the Public Resources Code is amended to read:

25411. As used in this chapter:

(a) ''Allocation'' means a loan of funds by the commission pursuant to the procedures specified in this chapter.

(b) ''Building'' means any existing or planned structure that includes a heating or cooling system, or both. Additions to an original building shall be considered part of that building rather than a separate building.

(c) ''Eligible institution'' means a school, hospital, public care institution, or a unit of local government.

(d) ''Energy audit'' means a determination of the energy consumption characteristics of a building or facility that does all of the following:

(1) Identifies the type, size, and energy use level of the building or facility and the major energy using systems of the building or facility.

(2) Determines appropriate energy conservation maintenance and operating procedures.

(3) Indicates the need, if any, for the acquisition and installation of energy conservation measures.

(e) ''Energy conservation maintenance and operating procedure'' means a modification or modifications in the maintenance and operations of a building or facility, and any installations therein (based on the use time schedule of the building or facility), which are designed to reduce energy consumption in the building or facility and that require no significant expenditure of funds.

(f) ''Energy conservation measure'' means an installation or modification of an installation in a building or facility that is primarily

intended to reduce energy consumption or allow the use of a more desirable energy source.

(g) ''Energy conservation project'' means an undertaking to acquire and to install one or more energy conservation measures in a building or facility, and technical assistance in connection with that undertaking.

(h) ''Facility'' means any major energy using system of an eligible institution whether or not housed in a building.

(i) ''Hospital'' means a public or nonprofit institution that is both of the following:

(1) A general hospital, tuberculosis hospital, or any other type of hospital, other than a hospital furnishing primarily domiciliary care.

(2) Duly authorized to provide hospital services under the laws of this state.

(j) ''Hospital building'' means a building housing a hospital and related operations, including laboratories, laundries, outpatient departments, nurses' home and training activities, and central service operations in connection with a hospital, and also includes a building housing education or training activities for health professions personnel operated as an integral part of a hospital.

(k) ''Local government building'' means a building that is primarily occupied by offices or agencies of a unit of local government or by a public care institution.

(*l*) ''Project'' means a purpose for which an allocation may be requested and made under this chapter. Those purposes shall include energy audits, energy conservation and operating procedures, and energy conservation measures in existing and planned buildings and facilities, energy conservation projects, and technical assistance programs.

(m) ''Public care institution'' means a public or nonprofit institution that owns:

(1) A long-term care institution.

(2) A rehabilitation institution.

(3) An institution for the provision of public health services, including related publicly owned services such as laboratories, clinics, and administrative offices operated in connection with the institution.

(4) A residential child care center.

(n) ''Public or nonprofit institution'' means an institution owned and operated by:

(1) The state, a political subdivision of the state, or an agency or instrumentality of either.

(2) An organization exempt from income tax under Section 501(c)(3) of the Internal Revenue Code of 1954.

(3) In the case of public care institutions, an organization also exempt from income tax under Section 501(c)(4) of the Internal Revenue Code of 1954.

(o) ''School'' means a public or nonprofit institution, including a local educational agency, which:

(1) Provides, and is legally authorized to provide, elementary education or secondary education, or both, on a day or residential basis.

(2) Provides, and is legally authorized to provide, a program of education beyond secondary education, on a day or residential basis and meets all of the following requirements:

(A) Admits as students only persons having a certificate of graduation from a school providing secondary education, or the recognized equivalent of that certificate.

(B) Is accredited by a nationally recognized accrediting agency or association.

(C) Provides an education program for which it awards a bachelor's degree or higher degree or provides not less than a two-year program that is acceptable for full credit toward a degree at any institution that meets the requirements of subparagraphs (A) and (B) and provides that program.

(3) Provides not less than a one-year program of training to prepare students for gainful employment in a recognized occupation and that meets the provisions of (2).

(p) ''School building'' means a building housing classrooms, laboratories, dormitories, athletic facilities, or related facilities operated in connection with a school.

(q) ''Technical assistance costs'' means costs incurred for the use of existing personnel or the temporary employment of other qualified personnel, or both, necessary for providing technical assistance.

(r) ''Technical assistance program'' means assistance to schools, hospitals, local government, and public care institutions and includes, but is not limited to:

(1) Conducting specialized studies identifying and specifying energy savings and related cost savings that are likely to be realized as a result of:

(A) Modification of maintenance and operating procedures in a building or facility, in addition to those modifications implemented after the preliminary energy audit, or

(B) Acquisition and installation of one or more specified energy conservation measures in the building or facility, or as a result of both.

(C) New construction activities.

(2) Planning of specific remodeling, renovation, repair, replacement, or insulation projects related to the installation of energy conservation measures in the building or facility.

(3) Developing and evaluating alternative project implementation methods and proposals.

(s) ''Unit of local government'' means a unit of general purpose government below the state or a special district.

SEC. 4. Section 25412.5 of the Public Resources Code is repealed.

SEC. 5. Section 25413 of the Public Resources Code is amended to read:

25413. Applications may be approved by the commission only in those instances where the eligible institution has furnished information satisfactory to the commission that the costs of the project, plus interest on state funds loaned, calculated in accordance with Section 25415, will be recovered through savings in the cost of energy to the institution during the repayment period of the allocation.

The savings shall be calculated in a manner prescribed by the commission.

SEC. 6. Section 25415 of the Public Resources Code is amended to read:

25415. (a) Each eligible institution to which an allocation has been made under this chapter shall repay the principal amount of the allocation, plus interest, in not more than 30 equal semiannual payments, as determined by the commission. The first semiannual payment shall be made on or before December 22 of the fiscal year following the year in which the project is completed. The repayment period may not exceed the life of the equipment, as determined by the commission or the lease term of the building in which the energy conservation measures will be installed.

(b) Notwithstanding any other provision of law, the commission shall, unless it determines that the purposes of this chapter would be better served by establishing an alternative interest rate schedule, periodically set interest rates on the loans based on surveys of existing financial markets and at rates not less than 3 percent per annum.

(c) The governing body of each eligible institution shall annually budget an amount at least sufficient to make the semiannual payments required in this section. The amount shall not be raised by the levy of additional taxes but shall instead be obtained by a savings in energy costs or other sources.

SEC. 7. Section 25416 of the Public Resources Code is amended to read:

25416. (a) The State Energy Conservation Assistance Account is hereby created in the General Fund. Notwithstanding Section 13340 of the Government Code, the account is continuously appropriated to the commission without regard to fiscal year.

(b) The money in the account shall consist of all money authorized or required to be deposited in the account by the Legislature and all

money received by the commission pursuant to Sections 25414 and 25415.

(c) The money in the account shall be disbursed by the Controller for the purposes of this chapter as authorized by the commission.

(d) The commission may contract and provide grants for services to be performed for eligible institutions. Services may include, but are not limited to, feasibility analysis, project design, field assistance, and operation and training. The amount expended for those services may not exceed 10 percent of the balance of the account as determined by the commission on July 1 of each year.

(e) The commission may make grants for innovative projects and programs. The amount expended for grants may not exceed 5 percent of the annual appropriation from the account.

(f) The commission may charge a fee for the services provided under subdivision (d).

SEC. 8. Section 25417.5 of the Public Resources Code is amended to read:

25417.5. (a) In furtherance of the purposes of the commission as set forth in this chapter, the commission has the power and authority to do all of the following:

(1) Borrow money, for the purpose of obtaining funds to make loans pursuant to this chapter, from the California Economic Development Financing Authority, the California Infrastructure and Economic Development Bank, and the California Consumer Power and Conservation Financing Authority from the proceeds of revenue bonds issued by any of those agencies.

(2) Pledge, to provide collateral in connection with the borrowing of money pursuant to paragraph (1), loans made pursuant to this chapter or Chapter 5.4 (commencing with Section 25440), or the principal and interest payments on loans made pursuant to this chapter or Chapter 5.4 (commencing with Section 25440).

(3) Sell loans made pursuant to this chapter or Chapter 5.4 (commencing with Section 25440), at prices determined in the sole discretion of the commission, to the California Economic Development Financing Authority, the California Infrastructure and Economic Development Bank, and the California Consumer Power and Conservation Financing Authority to raise funds to enable the commission to make loans to eligible institutions.

(4) Enter into loan agreements or other contracts necessary or appropriate in connection with the pledge or sale of loans pursuant to paragraph (2) or (3), or the borrowing of money as provided in paragraph (1), containing any provisions that may be required by the California Economic Development Financing Authority, the California Infrastructure and Economic Development Bank, or the California

Consumer Power and Conservation Financing Authority as conditions of issuing bonds to fund loans to, or the purchase of loans from, the commission.

(b) In connection with the pledging of loans, or of the principal and interest payment on loans, pursuant to paragraph (2) of subdivision (a), the commission may enter into pledge agreements setting forth the terms and conditions pursuant to which the commission is pledging loans or the principal and interest payment on loans, and may also agree to have the loans held by bond trustees or by independent collateral or escrow agents and to direct that payments received on those loans be paid to those trustee, collateral, or escrow agents.

(c) The commission may employ financial consultants, legal advisers, accountants, and other service providers, as may be necessary in its judgment, in connection with activities pursuant to this chapter.

(d) Notwithstanding any other provision of law, this chapter provides a complete, separate, additional, and alternative method for implementing the measures authorized by this chapter, including the authority of the eligible institutions or local jurisdictions to have borrowed and to borrow in the future pursuant to loans made pursuant to this chapter or Chapter 5.4 (commencing with Section 25440), and is supplemental and additional to powers conferred by other laws.

SEC. 9. Section 25441 of the Public Resources Code is amended to read:

25441. The commission shall provide financial assistance to local jurisdictions for the purpose of providing staff training and support services, including, but not limited to, planning design, permitting, energy conservation, comprehensive energy management, project evaluation, and development of alternative energy resources.

SEC. 10. Section 25441.5 of the Public Resources Code is repealed.

SEC. 11. Section 25442.7 of the Public Resources Code is amended to read:

25442.7. (a) Loans under this article may not exceed five million dollars ($5,000,000) for any one local jurisdiction unless the commission determines, by unanimous vote, that the public interest and objectives of this chapter would be better served at a higher loan amount.

(b) Loan repayments shall be made in accordance with a schedule established by the commission. Repayment of loans shall be made in full unless the commission determines, by unanimous vote, that the public interest and objectives of this chapter would be better served by negotiating a reduced loan repayment for a project that fails to meet the technical or financial performance criteria through no fault of the local jurisdiction.

SEC. 12. Section 25443.5 of the Public Resources Code is amended to read:

25443.5. (a) In furtherance of the purposes of the commission as set forth in this chapter, the commission has the power and authority to do all of the following:

(1) Borrow money, for the purpose of obtaining funds to make loans pursuant to this chapter, from the California Economic Development Financing Authority, the California Infrastructure and Economic Development Bank, and the California Consumer Power and Conservation Financing Authority from the proceeds of revenue bonds issued by any of those agencies.

(2) Pledge, to provide collateral in connection with the borrowing of money pursuant to paragraph (1), loans made pursuant to this chapter or Chapter 5.2 (commencing with Section 25410), or the principal and interest payments on loans made pursuant to this chapter or Chapter 5.2 (commencing with Section 25410).

(3) Sell loans made pursuant to this chapter or Chapter 5.2 (commencing with Section 25410), at prices determined in the sole discretion of the commission, to the California Economic Development Financing Authority, the California Infrastructure and Economic Development Bank, and the California Consumer Power and Conservation Financing Authority to raise funds to enable the commission to make loans to eligible institutions.

(4) Enter into loan agreements or other contracts necessary or appropriate in connection with the pledge or sale of loans pursuant to paragraph (2) or (3), or the borrowing of money as provided in paragraph (1), containing any provisions that may be required by the California Economic Development Financing Authority, the California Infrastructure and Economic Development Bank, or the California Consumer Power and Conservation Financing Authority as conditions of issuing bonds to fund loans to, or the purchase of loans from, the commission.

(b) In connection with the pledging of loans, or of the principal and interest payment on loans, pursuant to paragraph (2) of subdivision (a), the commission may enter into pledge agreements setting forth the terms and conditions pursuant to which the commission is pledging loans or the principal and interest payment on loans, and may also agree to have the loans held by bond trustees or by independent collateral or escrow agents and to direct that payments received on those loans be paid to those trustee, collateral, or escrow agents.

(c) The commission may employ financial consultants, legal advisers, accountants, and other service providers, as may be necessary in its judgment, in connection with activities pursuant to this chapter.

(d) Notwithstanding any other provision of law, this chapter provides a complete, separate, additional, and alternative method for implementing the measures authorized by this chapter, including the

authority of the eligible institutions or local jurisdictions to have borrowed and to borrow in the future pursuant to loans made pursuant to this chapter or Chapter 5.2 (commencing with Section 25410), and is supplemental and additional to powers conferred by other laws.

SEC. 13. Section 25445 of the Public Resources Code is amended to read:

25445. The commission shall design a local jurisdiction energy assistance program for the purpose of providing financial assistance under Article 2 (commencing with Section 25441) and providing loans under Article 3 (commencing with Section 25442). A local jurisdiction's energy assistance program shall be funded through the commission's existing local government assistance programs, except that if a project is not eligible for funding under an existing program, the commission may fund the project under this chapter.

SEC. 14. Section 25446 of the Public Resources Code is amended to read:

25446. Loans made pursuant to this program shall, at a minimum, be evaluated on both of the following factors:

(a) Project feasibility.

(b) Energy savings or energy production potential sufficient to repay the loan in accordance with Section 25442.

SEC. 15. Section 25447.2 of the Public Resources Code is repealed.

SEC. 16. Section 25449.1 of the Public Resources Code is amended to read:

25449.1. The commission shall enter into an agreement with the State Department of Education to expend petroleum violation escrow funds to supplement, and not supplant, other available funds in order to provide loans to school districts to purchase, maintain, and evaluate energy efficient equipment and small power production systems.

SEC. 17. Section 25449.3 of the Public Resources Code is amended to read:

25449.3. (a) The Local Jurisdiction Energy Assistance Account is hereby created in the General Fund. All money appropriated for purposes of this chapter and all money received from local jurisdictions from loan repayments shall be deposited in the account and disbursed by the Controller as authorized by the commission.

(b) The commission may charge a fee for the services provided under this chapter.

(c) The commission may contract for services to be performed by eligible institutions, as defined in subdivision (c) of Section 25411. Those services may include, but are not limited to, performance of a feasibility analysis, and providing project design, field evaluation, and operation and training assistance. The amount expended for contract services may not exceed 10 percent of the annual scheduled loan

repayment to the Local Jurisdiction Energy Assistance Account, as determined by the commission not later than July 1 of each fiscal year.

SEC. 18. Section 2774.6 is added to the Public Utilities Code, to read:

2774.6. The commission, in consultation with the State Energy Resources Conservation and Development Commission, shall develop a program for residential and commercial customer air-conditioning load control, as an element of each electrical corporation's tariffed service offerings paid for with electric rates. The goal of the program shall be to contribute to the adequacy of electricity supply and to help customers reduce their electric bills in a cost-effective manner. The program may include peak load reduction programs for residential and commercial air-conditioning systems, if the commission determines that the inclusion would be cost-effective.

SEC. 19. The Legislature finds and declares all of the following:

(a) Air-conditioning load constitutes 28 percent of California's peak electricity demand, the largest single component of electricity demand.

(b) Reducing peak load of, and implementing load control for, residential and commercial air-conditioning systems by the state's electrical corporations can achieve a significant reduction of California's peak electricity demand in a cost-effective manner.

(c) It is the intent of the Legislature that the state establish cost-effective load control programs for residential and commercial air-conditioning systems.

SEC. 20. 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.

CHAPTER 602

An act to add Section 99165 to the Public Utilities Code, relating to transit.

[Approved by Governor September 15, 2002. Filed with Secretary of State September 16, 2002.]

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

SECTION 1. Section 99165 is added to the Public Utilities Code, to read:

99165. (a) For purposes of this section, ''environmental and public health impacts'' means those impacts that affect the health and environment of persons living, working, and attending school in the vicinity of a bus fueling station, including, but not limited to, impacts associated with nuisance odors.

(b) On or before July 1, 2003, the Omnitrans Joint Powers Authority shall contract with an independent third party to prepare and submit to the Legislature and the Governor a report on the environmental and public health impacts of transit bus fueling stations located within the jurisdiction of the authority and owned or operated by the authority. In conducting the assessment, the authority shall hold at least one noticed public hearing in the vicinity of each bus fueling station for the purposes of soliciting input from persons who may be affected by those impacts. The authority shall consult with the South Coast Air Quality Management District and other appropriate federal, state, local agencies, and community groups representing residents of the affected areas, in conducting the assessment.

(c) The Omnitrans Joint Powers Authority shall solely use state funds allocated to it or its member agencies pursuant to the State Transportation Assistance Program under Section 99313.3 in order to comply with this section.

SEC. 2. Pursuant to Section 17579 of the Government Code, the Legislature finds that there is no mandate contained in this act that will result in costs incurred by a local agency or school district for a new program or higher level of service which require reimbursement pursuant to Section 6 of Article XIII B of the California Constitution and Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code.

CHAPTER 603

An act to amend Sections 10753.4 and 10795.4 of, to amend and renumber Sections 10753.7, 10753.8, and 10753.9 of, and to add Sections 10753.1 and 10753.7 to, the Water Code, relating to water.

[Approved by Governor September 15, 2002. Filed with Secretary of State September 16, 2002.]

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

SECTION 1. The Legislature finds and declares the following:

(a) Groundwater constitutes a major source of water for use by the state's citizens in many urban and rural areas. It is in the interest of those citizens, and of benefit to California's economy, that groundwater resources be protected and managed to optimize the available water supply.

(b) Protection and management include, but are not limited to, protection of recharge areas and source areas from contamination, protection of groundwater quality, artificial recharge, planned variation of pumping, and conjunctive management of both surface water and groundwater to optimize supplies.

(c) Groundwater is a crucial component of California's water supply and provides about 30 percent of California's agricultural and urban demand in an average year, and 40 percent or more in dry years.

(d) California has 515 groundwater basins and subbasins, many of which are the sole source of water supply for irrigation and drinking water and significant number of groundwater basins have been impaired by pollution or are threatened with impairment.

(e) A significant number of the state's groundwater basins are poorly understood, making proper management difficult.

(f) The preparation of groundwater management plans enables local agencies to address issues related to groundwater recharge and storage, which are crucial components for effective management of California's water supply.

(g) It is the intent of the Legislature to encourage local agencies to work cooperatively to manage groundwater resources within their jurisdictions. The preparation of certain basin management objectives will assist local agencies in optimizing local resources while protecting groundwater and surface water resources. The preparation of basin management objectives also will facilitate an understanding of the basin or subbasin, thereby allowing local agencies, individually and cooperatively, to meet local, regional, and state water needs through conjunctive management, while ensuring that no particular water supply is jeopardized.

SEC. 2. Section 10753.1 is added to the Water Code, to read:

10753.1. Nothing in this part, or in any groundwater management plan adopted pursuant to this part, affects surface water rights or the procedures under common law or local groundwater authority, or any provision of law other than this part that determines or grants surface water rights.

SEC. 3. Section 10753.4 of the Water Code is amended to read:

10753.4. (a) The local agency shall prepare a groundwater management plan within two years of the date of the adoption of the resolution of intention. If the plan is not adopted within two years, the resolution of intention expires, and no plan may be adopted except pursuant to a new resolution of intention adopted in accordance with this chapter.

(b) For the purposes of carrying out this part, the local agency shall make available to the public a written statement describing the manner in which interested parties may participate in developing the groundwater management plan. The local agency may appoint, and consult with, a technical advisory committee consisting of interested parties for the purposes of carrying out this part.

SEC. 4. Section 10753.7 of the Water Code is amended and renumbered to read:

10753.8. A groundwater management plan may include components relating to all of the following:

(a) The control of saline water intrusion.

(b) Identification and management of wellhead protection areas and recharge areas.

(c) Regulation of the migration of contaminated groundwater.

(d) The administration of a well abandonment and well destruction program.

(e) Mitigation of conditions of overdraft.

(f) Replenishment of groundwater extracted by water producers.

(g) Monitoring of groundwater levels and storage.

(h) Facilitating conjunctive use operations.

(i) Identification of well construction policies.

(j) The construction and operation by the local agency of groundwater contamination cleanup, recharge, storage, conservation, water recycling, and extraction projects.

(k) The development of relationships with state and federal regulatory agencies.

(*l*) The review of land use plans and coordination with land use planning agencies to assess activities which create a reasonable risk of groundwater contamination.

SEC. 5. Section 10753.7 is added to the Water Code, to read:

10753.7. (a) For the purposes of qualifying as a groundwater management plan under this part, a plan shall contain the components that are set forth in this section. In addition to the requirements of a specific funding program, any local agency seeking state funds administered by the department for the construction of groundwater projects or groundwater quality projects, excluding programs that are funded under Part 2.78 (commencing with Section 10795), shall do all of the following:

(1) Prepare and implement a groundwater management plan that includes basin management objectives for the groundwater basin that is subject to the plan. The plan shall include components relating to the monitoring and management of groundwater levels within the groundwater basin, groundwater quality degradation, inelastic land surface subsidence, and changes in surface flow and surface water quality that directly affect groundwater levels or quality or are caused by groundwater pumping in the basin.

(2) For the purposes of carrying out paragraph (1), the local agency shall prepare a plan to involve other agencies that enables the local agency to work cooperatively with other public entities whose service area or boundary overlies the groundwater basin.

(3) For the purposes of carrying out paragraph (1), the local agency shall prepare a map that details the area of the groundwater basin, as defined in the department's Bulletin No. 118, and the area of the local agency, that will be subject to the plan, as well as the boundaries of other local agencies that overlie the basin in which the agency is developing a groundwater management plan.

(4) The local agency shall adopt monitoring protocols that are designed to detect changes in groundwater levels, groundwater quality, inelastic surface subsidence for basins for which subsidence has been identified as a potential problem, and flow and quality of surface water that directly affect groundwater levels or quality or are caused by groundwater pumping in the basin. The monitoring protocols shall be designed to generate information that promotes efficient and effective groundwater management.

(5) Local agencies that are located in areas outside the groundwater basins delineated on the latest edition of the department's groundwater basin and subbasin map shall prepare groundwater management plans incorporating the components in this subdivision, and shall use geologic and hydrologic principles appropriate to those areas.

(b) (1) (A) A local agency may receive state funds administered by the department for the construction of groundwater projects or for other projects that directly affect groundwater levels or quality if it prepares and implements, participates in, or consents to be subject to, a groundwater management plan, a basinwide management plan, or other integrated regional water management program or plan that meets, or is in the process of meeting, the requirements of subdivision (a). A local agency with an existing groundwater management plan that meets the requirements of subdivision (a), or a local agency that completes an upgrade of its plan to meet the requirements of subdivision (a) within one year of applying for funds, shall be given priority consideration for state funds administered by the department over local agencies that are in the process of developing a groundwater management plan. The department

shall withhold funds from the project until the upgrade of the groundwater management plan is complete.

(B) Notwithstanding subparagraph (A), a local agency that manages groundwater under any other provision of existing law that meets the requirements of subdivision (a), or that completes an upgrade of its plan to meet the requirements of subdivision (a) within one year of applying for funding, shall be eligible for funding administered by the department. The department shall withhold funds from a project until the upgrade of the groundwater management plan is complete.

(C) Notwithstanding subparagraph (A), a local agency that conforms to the requirements of an adjudication of water rights in the groundwater basin is in compliance with subdivision (a). For purposes of this section, an ''adjudication'' includes an adjudication under Section 2101, an administrative adjudication, and an adjudication in state or federal court.

(D) Subparagraphs (A) and (B) do not apply to proposals for funding under Part 2.78 (commencing with Section 10795), or to funds authorized or appropriated prior to September 1, 2002.

(2) Upon the adoption of a groundwater management plan in accordance with this part, the local agency shall submit a copy of the plan to the department, in an electronic format, if practicable, approved by the department. The department shall make available to the public copies of the plan received pursuant to this part.

SEC. 6. Section 10753.8 of the Water Code is amended and renumbered to read:

10753.9. (a) A local agency shall adopt rules and regulations to implement and enforce a groundwater management plan adopted pursuant to this part.

(b) Nothing in this part shall be construed as authorizing the local agency to make a binding determination of the water rights of any person or entity.

(c) Nothing in this part shall be construed as authorizing the local agency to limit or suspend extractions unless the local agency has determined through study and investigation that groundwater replenishment programs or other alternative sources of water supply have proved insufficient or infeasible to lessen the demand for groundwater.

SEC. 7. Section 10753.9 of the Water Code is amended and renumbered to read:

10753.10. In adopting rules and regulations pursuant to Section 10753.9, the local agency shall consider the potential impact of those rules and regulations on business activities, including agricultural operations, and to the extent practicable and consistent with the protection of the groundwater resources, minimize any adverse impacts on those business activities.

SEC. 8. Section 10795.4 of the Water Code is amended to read:

10795.4. Upon appropriation by the Legislature, the money in the fund may be used by the department to assist local public agencies by awarding grants to those agencies to conduct groundwater studies or to carry out groundwater monitoring and management activities in accordance with Part 2.75 (commencing with Section 10750) or other authority pursuant to which local public agencies manage groundwater resources, or both, including the development of groundwater management plans, as provided for in subdivision (a) of Section 10753.7.

CHAPTER 604

An act to add Chapter 4.7 (commencing with Section 13292) to Division 7 of the Water Code, relating to the State Water Resources Control Board and the California regional water quality control boards.

[Approved by Governor September 15, 2002. Filed with Secretary of State September 16, 2002.]

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

SECTION 1. Chapter 4.7 (commencing with Section 13292) is added to Division 7 of the Water Code, to read:

CHAPTER 4.7. FAIRNESS AND DUE PROCESS

13292. (a) It is the responsibility of the state board to provide guidance to the regional boards in matters of procedure, as well as policy and regulation. In order to ensure that regional boards are providing fair, timely, and equal access to all participants in regional board proceedings, the state board shall undertake a review of the regional boards' public participation procedures. As part of the review process, and upon request by the state board, the regional boards shall solicit comments from participants in their proceedings. Upon completion of the review, the state board shall report to the Legislature regarding its findings and include recommendations to improve regional board public participation processes. The state board shall make copies of the comments it received available upon request.

(b) (1) Commencing July 1, 2003, the state board shall provide annual training to regional board members to improve public participation procedures at the regional level.

(2) Paragraph (1) shall be implemented only during fiscal years for which funding is provided for the purposes of that paragraph in the annual Budget Act or in another statute.

CHAPTER 605

An act to amend Sections 629.50, 629.51, 629.52, 629.54, 629.56, 629.58, 629.60, 629.62, 629.64, 629.68, 629.70, 629.72, 629.74, 629.76, 629.78, 629.80, 629.82, 629.86, 629.88, 629.89, 629.90, 629.94, and 629.98 of, and to add Sections 629.53 and 629.61 to, the Penal Code, relating to interception of communications.

[Approved by Governor September 16, 2002. Filed with Secretary of State September 17, 2002.]

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

SECTION 1. Section 629.50 of the Penal Code is amended to read:

629.50. (a) Each application for an order authorizing the interception of a wire, electronic 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, or the person designated to act as district attorney in the district attorney's absence, to the presiding judge of the superior court or one other judge designated by the presiding judge. An ordered list of additional judges may be authorized by the presiding judge to sign an order authorizing an interception. One of these judges may hear an application and sign an order only if that judge makes a determination that the presiding judge, the first designated judge, and those judges higher on the list are unavailable. Each application shall include all of the following information:

(1) The identity of the investigative or law enforcement officer making the application, and the officer authorizing the application.

(2) The identity of the law enforcement agency that is to execute the order.

(3) 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.

(4) 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 (A) details as to the particular offense that has been, is being, or is about to be committed, (B) 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, (C) a particular description of the nature and location of the facilities from which or the place where the communication is to be intercepted, (D) a particular description of the type of communication sought to be intercepted, and (E) 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.

(5) 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.

(6) 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 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. This requirement may be satisfied by making inquiry of the California Attorney General and the United States Department of Justice and reporting the results of these inquiries in the application.

(7) 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.

(8) An application for modification of an order may be made when there is probable cause to believe that the person or persons identified in the original order have commenced to use a facility or device that is not subject to the original order. Any modification under this subdivision shall only be valid for the period authorized under the order being modified. The application for modification shall meet all of the requirements in paragraphs (1) to (6), inclusive, and shall include a statement of the results thus far obtained from the interception, or a reasonable explanation for the failure to obtain results.

(b) The judge may require the applicant to furnish additional testimony or documentary evidence in support of an application for an order under this section.

SEC. 2. Section 629.51 of the Penal Code is amended to read:

629.51. For the purposes of this chapter, the following terms have the following meanings:

(a) ''Wire communication'' means any aural transfer made in whole or in part through the use of facilities for the transmission of communications by the aid of wire, cable, or other like connection between the point of origin and the point of reception (including the use of a like connection in a switching station), furnished or operated by any person engaged in providing or operating these facilities for the transmission of communications, and the term includes any electronic storage of these communications.

(b) ''Electronic pager communication'' means any tone or digital display or tone and voice pager communication.

(c) ''Electronic cellular telephone communication'' means any cellular or cordless radio telephone communication.

(d) ''Aural transfer'' means a transfer containing the human voice at any point between and including the point of origin and the point of reception.

SEC. 3. Section 629.52 of the Penal Code is amended to read:

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 pager, or electronic cellular telephone communications initially intercepted 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, 11370.6, 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 precursors or 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 felony involving a destructive device in violation of Section 12303, 12303.1, 12303.2, 12303.3, 12303.6, 12308, 12309, 12310, or 12312, or a violation of Section 209.

(3) Any felony violation of Section 186.22.

(4) Any felony violation of Section 11418, relating to weapons of mass destruction, Section 11418.5, relating to threats to use weapons of mass destruction, or Section 11419, relating to restricted biological agents.

(5) An attempt or 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 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.

SEC. 4. Section 629.53 is added to the Penal Code, to read:

629.53. The Judicial Council may establish guidelines for judges to follow in granting an order authorizing the interception of any wire, electronic pager, or electronic cellular telephone communications.

SEC. 5. Section 629.54 of the Penal Code is amended to read:

629.54. Each order authorizing the interception of any wire, electronic 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.

SEC. 6. Section 629.56 of the Penal Code is amended to read:

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, or the person designated

to act as district attorney in the district attorney's absence, the presiding judge of the superior court or the first available judge designated as provided in Section 629.50 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 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.

SEC. 7. Section 629.58 of the Penal Code is amended to read:

629.58. No order entered under this chapter shall authorize the interception of any wire, electronic pager, or electronic cellular telephone, or electronic 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.

SEC. 8. Section 629.60 of the Penal Code is amended to read:

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 the number of communications intercepted pursuant to the original order, and a statement setting forth 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 filed with the court at the intervals that the judge may require, but not less than one for each period of six days, and shall be made by any reasonable and reliable means, as determined by the judge.

SEC. 9. Section 629.61 is added to the Penal Code, to read:

629.61. (a) Whenever an order authorizing an interception is entered, the order shall require a report in writing or otherwise to be made to the Attorney General showing what persons, facilities, places, or any combination of these are to be intercepted pursuant to the application, and the action taken by the judge on each of those applications. The report shall be made at the interval that the order may require, but not less than 10 days after the order was issued, and shall be made by any reasonable and reliable means, as determined by the Attorney General.

(b) The Attorney General may issue regulations prescribing the collection and dissemination of information collected pursuant to this chapter.

(c) The Attorney General shall, upon the request of an individual making an application for an interception order pursuant to this chapter, provide any information known as a result of these reporting requirements and in compliance with paragraph (6) of subdivision (a) of Section 629.50.

SEC. 10. Section 629.62 of the Penal Code is amended to read:

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 number of wire, electronic pager, and electronic cellular telephone devices that are the subject of each order granted.

(5) The period of interceptions authorized by the order, and the number and duration of any extensions of the order.

(6) The offense specified in the order or application, or extension of an order.

(7) The identity of the applying law enforcement officer and agency making the application and the person authorizing the application.

(8) The nature of the facilities from which or the place where communications were to be intercepted.

(9) 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.

(10) The number of arrests resulting from interceptions made under the order or extension, and the offenses for which arrests were made.

(11) The number of trials resulting from the interceptions.

(12) The number of motions to suppress made with respect to the interceptions, and the number granted or denied.

(13) 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.

(14) 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.

(15) The date of the order for service of inventory made pursuant to Section 629.68, confirmation of compliance with the order, and the number of notices sent.

(16) 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 pager, or electronic cellular telephone communications.

(d) The Attorney General shall, upon the request of an individual making an application, provide any information known to him or her as a result of these reporting requirements that would enable the individual making an application to comply with paragraph (6) of subdivision (a) of Section 629.50.

SEC. 11. Section 629.64 of the Penal Code is amended to read:

629.64. The contents of any wire or electronic communication intercepted by any means authorized by this chapter shall, if possible, be recorded on any recording media. 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 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.

SEC. 12. Section 629.68 of the Penal Code is amended to read:

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 issue an order that shall require the requesting agency to serve 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 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.

SEC. 13. Section 629.70 of the Penal Code is amended to read:

629.70. (a) A defendant shall be notified that he or she was identified as the result of an interception that was obtained pursuant to this chapter. The notice shall be provided prior to the entry of a plea of guilty or nolo contendere, or at least 10 days prior to any trial, hearing, or proceeding in the case other than an arraignment or grand jury proceeding.

(b) Within the time period specified in subdivision (c), the prosecution shall provide to the defendant a copy of all recorded interceptions from which evidence against the defendant was derived, including a copy of the court order, accompanying application, and monitoring logs.

(c) Neither the contents of any intercepted wire, electronic pager, or electronic cellular telephone communication nor evidence derived from those contents shall 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 the materials specified in subdivision (b). This 10-day period may be waived by the judge with regard to the transcript if he or she finds that it was not possible to furnish the party with the transcript 10 days before the trial, hearing, or proceeding, and that the party will not be prejudiced by the delay in receiving that transcript.

(d) A court may issue an order limiting disclosures pursuant to subdivisions (a) and (b) upon a showing of good cause.

SEC. 14. Section 629.72 of the Penal Code is amended to read:

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 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.

SEC. 15. Section 629.74 of the Penal Code is amended to read:

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 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.

SEC. 16. Section 629.76 of the Penal Code is amended to read:

629.76. The Attorney General, any deputy attorney general, district attorney, or deputy district attorney, or any peace officer or federal law enforcement officer who, by any means authorized by this chapter, has obtained knowledge of the contents of any wire, electronic 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.

SEC. 17. Section 629.78 of the Penal Code is amended to read:

629.78. Any person who has received, by any means authorized by this chapter, any information concerning a wire, electronic 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.

SEC. 18. Section 629.80 of the Penal Code is amended to read:

629.80. No otherwise privileged communication intercepted in accordance with, or in violation of, the provisions of this chapter shall lose its privileged character. When a peace officer or federal law enforcement officer, while engaged in intercepting wire, electronic pager, or electronic cellular telephone communications in the manner authorized by this chapter, intercepts wire, electronic 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 communication 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 online and offline 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.

SEC. 19. Section 629.82 of the Penal Code is amended to read:

629.82. (a) If a peace officer or federal law enforcement officer, while engaged in intercepting wire, electronic pager, or electronic

cellular telephone communications in the manner authorized by this chapter, intercepts wire, electronic 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, or any violent felony as defined in subdivision (c) of Section 667.5, (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 or federal law enforcement officer, while engaged in intercepting wire, electronic pager, or electronic cellular telephone communications in the manner authorized by this chapter, intercepts wire, electronic pager, or electronic cellular telephone communications relating to crimes other than those specified in subdivision (a), 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 pager, or electronic cellular telephone communication relating to crimes other than those 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 pager, or electronic cellular telephone communication and a copy of the contents thereof that were used to obtain the warrant.

SEC. 20. Section 629.86 of the Penal Code is amended to read:

629.86. Any person whose wire, electronic 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.

SEC. 21. Section 629.88 of the Penal Code is amended to read:

629.88. Nothing in Section 631, 632.5, 632.6, or 632.7 shall be construed as prohibiting any peace officer or federal law enforcement officer from intercepting any wire, electronic 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 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.

SEC. 22. Section 629.89 of the Penal Code is amended to read:

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 pager, or electronic cellular telephone communications.

SEC. 23. Section 629.90 of the Penal Code is amended to read:

629.90. An order authorizing the interception of a wire, electronic 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.

SEC. 24. Section 629.94 of the Penal Code is amended to read:

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 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 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, or the district attorney's designee 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. 25. Section 629.98 of the Penal Code is amended to read:

629.98. This chapter shall remain in effect only until January 1, 2008, and as of that date is repealed.

SEC. 26. 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.

SEC. 27. This bill shall become operative only if both this bill and Senate Bill 1391 are enacted and become effective.

CHAPTER 606

An act to amend Sections 189, 667.5, 1192.7, 11417, and 11418 of, and to add Section 11418.1 to, the Penal Code, relating to weapons of

mass destruction, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 16, 2002. Filed with Secretary of State September 17, 2002.]

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

SECTION 1. Section 189 of the Penal Code is amended to read:

189. All murder which is perpetrated by means of a destructive device or explosive, a weapon of mass destruction, knowing use of ammunition designed primarily to penetrate metal or armor, poison, lying in wait, torture, or by any other kind of willful, deliberate, and premeditated killing, or which is committed in the perpetration of, or attempt to perpetrate, arson, rape, carjacking, robbery, burglary, mayhem, kidnapping, train wrecking, or any act punishable under Section 206, 286, 288, 288a, or 289, or any murder which is perpetrated by means of discharging a firearm from a motor vehicle, intentionally at another person outside of the vehicle with the intent to inflict death, is murder of the first degree. All other kinds of murders are of the second degree.

As used in this section, ''destructive device'' means any destructive device as defined in Section 12301, and ''explosive'' means any explosive as defined in Section 12000 of the Health and Safety Code.

As used in this section, ''weapon of mass destruction'' means any item defined in Section 11417.

To prove the killing was ''deliberate and premeditated,'' it shall not be necessary to prove the defendant maturely and meaningfully reflected upon the gravity of his or her act.

SEC. 2. Section 667.5 of the Penal Code is amended to read:

667.5. Enhancement of prison terms for new offenses because of prior prison terms shall be imposed as follows:

(a) Where one of the new offenses is one of the violent felonies specified in subdivision (c), in addition to and consecutive to any other prison terms therefor, the court shall impose a three-year term for each prior separate prison term served by the defendant where the prior offense was one of the violent felonies specified in subdivision (c). However, no additional term shall be imposed under this subdivision for any prison term served prior to a period of 10 years in which the defendant remained free of both prison custody and the commission of an offense which results in a felony conviction.

(b) Except where subdivision (a) applies, where the new offense is any felony for which a prison sentence is imposed, in addition and consecutive to any other prison terms therefor, the court shall impose a one-year term for each prior separate prison term served for any felony;

provided that no additional term shall be imposed under this subdivision for any prison term served prior to a period of five years in which the defendant remained free of both prison custody and the commission of an offense which results in a felony conviction.

(c) For the purpose of this section, ''violent felony'' shall mean any of the following:

(1) Murder or voluntary manslaughter.

(2) Mayhem.

(3) Rape as defined in paragraph (2) or (6) of subdivision (a) of Section 261 or paragraph (1) or (4) of subdivision (a) of Section 262.

(4) Sodomy by force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person.

(5) Oral copulation by force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person.

(6) Lewd acts on a child under the age of 14 years as defined in Section 288.

(7) Any felony punishable by death or imprisonment in the state prison for life.

(8) Any felony in which the defendant inflicts great bodily injury on any person other than an accomplice which has been charged and proved as provided for in Section 12022.7 or 12022.9 on or after July 1, 1977, or as specified prior to July 1, 1977, in Sections 213, 264, and 461, or any felony in which the defendant uses a firearm which use has been charged and proved as provided in Section 12022.5 or 12022.55.

(9) Any robbery.

(10) Arson, in violation of subdivision (a) or (b) of Section 451.

(11) The offense defined in subdivision (a) of Section 289 where the act is accomplished against the victim's will by force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person.

(12) Attempted murder.

(13) A violation of Section 12308, 12309, or 12310.

(14) Kidnapping.

(15) Assault with the intent to commit mayhem, rape, sodomy, or oral copulation, in violation of Section 220.

(16) Continuous sexual abuse of a child, in violation of Section 288.5.

(17) Carjacking, as defined in subdivision (a) of Section 215.

(18) A violation of Section 264.1.

(19) Extortion, as defined in Section 518, which would constitute a felony violation of Section 186.22 of the Penal Code.

(20) Threats to victims or witnesses, as defined in Section 136.1, which would constitute a felony violation of Section 186.22 of the Penal Code.

(21) Any burglary of the first degree, as defined in subdivision (a) of Section 460, wherein it is charged and proved that another person, other than an accomplice, was present in the residence during the commission of the burglary.

(22) Any violation of Section 12022.53.

(23) A violation of subdivision (b) or (c) of Section 11418.

The Legislature finds and declares that these specified crimes merit special consideration when imposing a sentence to display society's condemnation for these extraordinary crimes of violence against the person.

(d) For the purposes of this section, the defendant shall be deemed to remain in prison custody for an offense until the official discharge from custody or until release on parole, whichever first occurs, including any time during which the defendant remains subject to reimprisonment for escape from custody or is reimprisoned on revocation of parole. The additional penalties provided for prior prison terms shall not be imposed unless they are charged and admitted or found true in the action for the new offense.

(e) The additional penalties provided for prior prison terms shall not be imposed for any felony for which the defendant did not serve a prior separate term in state prison.

(f) A prior conviction of a felony shall include a conviction in another jurisdiction for an offense which, if committed in California, is punishable by imprisonment in the state prison if the defendant served one year or more in prison for the offense in the other jurisdiction. A prior conviction of a particular felony shall include a conviction in another jurisdiction for an offense which includes all of the elements of the particular felony as defined under California law if the defendant served one year or more in prison for the offense in the other jurisdiction.

(g) A prior separate prison term for the purposes of this section shall mean a continuous completed period of prison incarceration imposed for the particular offense alone or in combination with concurrent or consecutive sentences for other crimes, including any reimprisonment on revocation of parole which is not accompanied by a new commitment to prison, and including any reimprisonment after an escape from incarceration.

(h) Serving a prison term includes any confinement time in any state prison or federal penal institution as punishment for commission of an offense, including confinement in a hospital or other institution or facility credited as service of prison time in the jurisdiction of the confinement.

(i) For the purposes of this section, a commitment to the State Department of Mental Health as a mentally disordered sex offender

following a conviction of a felony, which commitment exceeds one year in duration, shall be deemed a prior prison term.

(j) For the purposes of this section, when a person subject to the custody, control, and discipline of the Director of Corrections is incarcerated at a facility operated by the Department of the Youth Authority, that incarceration shall be deemed to be a term served in state prison.

(k) Notwithstanding subdivisions (d) and (g) or any other provision of law, where one of the new offenses is committed while the defendant is temporarily removed from prison pursuant to Section 2690 or while the defendant is transferred to a community facility pursuant to Section 3416, 6253, or 6263, or while the defendant is on furlough pursuant to Section 6254, the defendant shall be subject to the full enhancements provided for in this section.

This subdivision shall not apply when a full, separate, and consecutive term is imposed pursuant to any other provision of law.

SEC. 3. Section 1192.7 of the Penal Code is amended to read:

1192.7. (a) Plea bargaining in any case in which the indictment or information charges any serious felony, any felony in which it is alleged that a firearm was personally used by the defendant, or any offense of driving while under the influence of alcohol, drugs, narcotics, or any other intoxicating substance, or any combination thereof, is prohibited, unless there is insufficient evidence to prove the people's case, or testimony of a material witness cannot be obtained, or a reduction or dismissal would not result in a substantial change in sentence.

(b) As used in this section ''plea bargaining'' means any bargaining, negotiation, or discussion between a criminal defendant, or his or her counsel, and a prosecuting attorney or judge, whereby the defendant agrees to plead guilty or nolo contendere, in exchange for any promises, commitments, concessions, assurances, or consideration by the prosecuting attorney or judge relating to any charge against the defendant or to the sentencing of the defendant.

(c) As used in this section, ''serious felony'' means any of the following:

(1) Murder or voluntary manslaughter; (2) mayhem; (3) rape; (4) sodomy by force, violence, duress, menace, threat of great bodily injury, or fear of immediate and unlawful bodily injury on the victim or another person; (5) oral copulation by force, violence, duress, menace, threat of great bodily injury, or fear of immediate and unlawful bodily injury on the victim or another person; (6) lewd or lascivious act on a child under the age of 14 years; (7) any felony punishable by death or imprisonment in the state prison for life; (8) any felony in which the defendant personally inflicts great bodily injury on any person, other than an accomplice, or any felony in which the defendant personally uses a

firearm; (9) attempted murder; (10) assault with intent to commit rape or robbery; (11) assault with a deadly weapon or instrument on a peace officer; (12) assault by a life prisoner on a noninmate; (13) assault with a deadly weapon by an inmate; (14) arson; (15) exploding a destructive device or any explosive with intent to injure; (16) exploding a destructive device or any explosive causing bodily injury, great bodily injury, or mayhem; (17) exploding a destructive device or any explosive with intent to murder; (18) any burglary of the first degree; (19) robbery or bank robbery; (20) kidnapping; (21) holding of a hostage by a person confined in a state prison; (22) attempt to commit a felony punishable by death or imprisonment in the state prison for life; (23) any felony in which the defendant personally used a dangerous or deadly weapon; (24) selling, furnishing, administering, giving, or offering to sell, furnish, administer, or give to a minor any heroin, cocaine, phencyclidine (PCP), or any methamphetamine-related drug, as described in paragraph (2) of subdivision (d) of Section 11055 of the Health and Safety Code, or any of the precursors of methamphetamines, as described in subparagraph (A) of paragraph (1) of subdivision (f) of Section 11055 or subdivision (a) of Section 11100 of the Health and Safety Code; (25) any violation of subdivision (a) of Section 289 where the act is accomplished against the victim's will by force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person; (26) grand theft involving a firearm; (27) carjacking; (28) any felony offense, which would also constitute a felony violation of Section 186.22; (29) assault with the intent to commit mayhem, rape, sodomy, or oral copulation, in violation of Section 220; (30) throwing acid or flammable substances, in violation of Section 244; (31) assault with a deadly weapon, firearm, machinegun, assault weapon, or semiautomatic firearm or assault on a peace officer or firefighter, in violation of Section 245; (32) assault with a deadly weapon against a public transit employee, custodial officer, or school employee, in violation of Sections 245.2, 245.3, or 245.5; (33) discharge of a firearm at an inhabited dwelling, vehicle, or aircraft, in violation of Section 246; (34) commission of rape or sexual penetration in concert with another person, in violation of Section 264.1; (35) continuous sexual abuse of a child, in violation of Section 288.5; (36) shooting from a vehicle, in violation of subdivision (c) or (d) of Section 12034; (37) intimidation of victims or witnesses, in violation of Section 136.1; (38) criminal threats, in violation of Section 422; (39) any attempt to commit a crime listed in this subdivision other than an assault; (40) any violation of Section 12022.53; (41) a violation of subdivision (b) or (c) of Section 11418; and (42) any conspiracy to commit an offense described in this subdivision.

(d) As used in this section, ''bank robbery'' means to take or attempt to take, by force or violence, or by intimidation from the person or

presence of another any property or money or any other thing of value belonging to, or in the care, custody, control, management, or possession of, any bank, credit union, or any savings and loan association.

As used in this subdivision, the following terms have the following meanings:

(1) ''Bank'' means any member of the Federal Reserve System, and any bank, banking association, trust company, savings bank, or other banking institution organized or operating under the laws of the United States, and any bank the deposits of which are insured by the Federal Deposit Insurance Corporation.

(2) ''Savings and loan association'' means any federal savings and loan association and any ''insured institution'' as defined in Section 401 of the National Housing Act, as amended, and any federal credit union as defined in Section 2 of the Federal Credit Union Act.

(3) ''Credit union'' means any federal credit union and any state-chartered credit union the accounts of which are insured by the Administrator of the National Credit Union administration.

(e) The provisions of this section shall not be amended by the Legislature except by statute passed in each house by rollcall vote entered in the journal, two-thirds of the membership concurring, or by a statute that becomes effective only when approved by the electors.

SEC. 4. Section 11417 of the Penal Code is amended to read:

11417. (a) For the purposes of this article, the following terms have the following meanings:

(1) ''Weapon of mass destruction'' includes chemical warfare agents, weaponized biological or biologic warfare agents, restricted biological agents, nuclear agents, radiological agents, or the intentional release of industrial agents as a weapon, or an aircraft, vessel, or vehicle, as described in Section 34500 of the Vehicle Code, which is used as a destructive weapon.

(2) ''Chemical Warfare Agents'' includes, but is not limited to, the following weaponized agents, or any analog of these agents:

(A) Nerve agents, including Tabun (GA), Sarin (GB), Soman (GD), GF, and VX.

(B) Choking agents, including Phosgene (CG) and Diphosgene (DP).

(C) Blood agents, including Hydrogen Cyanide (AC), Cyanogen Chloride (CK), and Arsine (SA).

(D) Blister agents, including mustards (H, HD [sulfur mustard], HN-1, HN-2, HN-3 [nitrogen mustard]), arsenicals, such as Lewisite (L), urticants, such as CX; and incapacitating agents, such as BZ.

(3) ''Weaponized biological or biologic warfare agents'' include weaponized pathogens, such as bacteria, viruses, rickettsia, yeasts, fungi, or genetically engineered pathogens, toxins, vectors, and endogenous biological regulators (EBRs).

(4) ''Nuclear or radiological agents'' includes any improvised nuclear device (IND) which is any explosive device designed to cause a nuclear yield; any radiological dispersal device (RDD) which is any explosive device utilized to spread radioactive material; or a simple radiological dispersal device (SRDD) which is any act or container designed to release radiological material as a weapon without an explosion.

(5) ''Vector'' means a living organism or a molecule, including a recombinant molecule, or a biological product that may be engineered as a result of biotechnology, that is capable of carrying a biological agent or toxin to a host.

(6) ''Weaponization'' is the deliberate processing, preparation, packaging, or synthesis of any substance for use as a weapon or munition. "Weaponized agents'' are those agents or substances prepared for dissemination through any explosive, thermal, pneumatic, or mechanical means.

(7) For purposes of this section, ''used as a destructive weapon'' means to use with the intent of causing widespread great bodily injury or death by causing a fire or explosion or the release of a chemical, biological, or radioactive agent.

(b) The intentional release of a dangerous chemical or hazardous material generally utilized in an industrial or commercial process shall be considered use of a weapon of mass destruction when a person knowingly utilizes those agents with the intent to cause harm and the use places persons or animals at risk of serious injury, illness, or death, or endangers the environment.

(c) The lawful use of chemicals for legitimate mineral extraction, industrial, agricultural, or commercial purposes is not proscribed by this article.

(d) No university, research institution, private company, individual, or hospital engaged in scientific or public health research and, as required, registered with the Centers for Disease Control and Prevention (CDC) pursuant to Part 113 (commencing with Section 113.1) of Subchapter E of Chapter 1 of Title 9 or pursuant to Part 72 (commencing with Section 72.1) of Subchapter E of Chapter 1 of Title 42 of the Code of Federal Regulations, or any successor provisions, shall be subject to this article.

SEC. 5. Section 11418 of the Penal Code is amended to read:

11418. (a) (1) Any person, without lawful authority, who possesses, develops, manufactures, produces, transfers, acquires, or retains any weapon of mass destruction, shall be punished by imprisonment in the state prison for 4, 8, or 12 years.

(2) Any person who commits a violation of paragraph (1) and who has been previously convicted of Section 11411, 11412, 11413, 11418,

11418.1, 11418.5, 11419, 11460, 12303.1, 12303.2, or 12303.3 shall be punished by imprisonment in the state prison for 5, 10, or 15 years.

(b) (1) Any person who uses or directly employs against another person a weapon of mass destruction in a form that may cause widespread, disabling illness or injury in human beings shall be punished by imprisonment in the state prison for life.

(2) Any person who uses or directly employs against another person a weapon of mass destruction in a form that may cause widespread great bodily injury or death and causes the death of any human being shall be punished by imprisonment in the state prison for life without the possibility of parole. Nothing in this paragraph shall prevent punishment instead under Section 190.2.

(3) Any person who uses a weapon of mass destruction in a form that may cause widespread damage to or disruption of the food supply or "source of drinking water" as defined in subdivision (d) of Section 25249.11 of the Health and Safety Code shall be punished by imprisonment in the state prison for 5, 8, or 12 years and by a fine of not more than one hundred thousand dollars ($100,000).

(4) Any person who maliciously uses against animals, crops, or seed and seed stock, a weapon of mass destruction in a form that may cause widespread damage to or substantial diminution in the value of stock animals or crops, including seeds used for crops or product of the crops, shall be punished by imprisonment in the state prison for 4, 8, or 12 years and by a fine of not more than one hundred thousand dollars ($100,000).

(c) Any person who uses a weapon of mass destruction in a form that may cause widespread and significant damage to public natural resources, including coastal waterways and beaches, public parkland, surface waters, ground water, and wildlife, shall be punished by imprisonment in the state prison for 3, 4, or 6 years.

(d) (1) Any person who uses recombinant technology or any other biological advance to create new pathogens or more virulent forms of existing pathogens for use in any crime described in subdivision (b) shall be punished by imprisonment in the state prison for 4, 8, or 12 years and by a fine of not more than two hundred fifty thousand dollars ($250,000).

(2) Any person who uses recombinant technology or any other biological advance to create new pathogens or more virulent forms of existing pathogens for use in any crime described in subdivision (c) shall be punished by imprisonment in the state prison for three, six, or nine years and by a fine of not more than two hundred fifty thousand dollars ($250,000).

(e) Nothing in this section shall be construed to prevent punishment instead pursuant to any other provision of law that imposes a greater or more severe punishment.

SEC. 6. Section 11418.1 is added to the Penal Code, to read:

11418.1. Any person who gives, mails, sends, or causes to be sent any false or facsimile of a weapon of mass destruction to another person, or places, causes to be placed, or possesses any false or facsimile of a weapon of mass destruction, with the intent to cause another person to fear for his or her own safety, or for the personal safety of others, is guilty of a misdemeanor. If the person's conduct causes another person to be placed in sustained fear, the person shall be punished by imprisonment in a county jail for not more than one year or in the state prison for 16 months, or two or three years and by a fine of not more than two hundred fifty thousand dollars ($250,000). For purposes of this section, ''sustained fear'' has the same meaning as in Section 11418.5.

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.

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 provide for immediate authority to effectively address the use or threatened use of weapons of mass destruction in California, it is necessary that this act take effect immediately.

CHAPTER 607

An act to amend Section 25112.5 of, and to add Article 6.6 (commencing with Section 25169.5) to Chapter 6.5 of Division 20 of, the Health and Safety Code, relating to hazardous waste.

[Approved by Governor September 16, 2002. Filed with Secretary of State September 17, 2002.]

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

SECTION 1. Section 25112.5 of the Health and Safety Code is amended to read:

25112.5. (a) ''Disclosure statement'' means a statement submitted to the department by an applicant, signed by the applicant under penalty of perjury, which includes all of the following information:

(1) The full name, any previous name or names, business address, social security number, and driver's license number of all of the following:

(A) The applicant.

(B) Any officers, directors, or partners, if the applicant is a business concern.

(C) All persons or any officers, partners, or any directors if there are no officers, of business concerns holding more than 5 percent of the equity in, or debt liability of the applicant, except that if the debt liability is held by a lending institution, the applicant shall only supply the name and address of the lending institution.

(2) Except as provided in subdivision (b), the following persons listed on the disclosure statement shall properly submit fingerprint images and related identification information:

(A) The sole proprietor.

(B) The partners.

(C) Other persons listed in subparagraph (C) of paragraph (1) and any officers or directors of the applicant company as required by the department.

(3) If fingerprint images and related identification information are submitted for purposes of paragraph (2), the fingerprint images and related identification information shall be submitted for any person required by paragraph (2) only once. If there is a change in the person serving in a position for which fingerprint images and related identification information are required to be submitted pursuant to paragraph (2), fingerprint images and related identification information shall be captured and submitted for that person. Fingerprint images and the related identification information may be obtained using the Department of Justice's electronic fingerprint network.

(4) The full name and business address of any business concern that generates, transports, treats, stores, recycles, disposes of, or handles hazardous waste and hazardous materials in which the applicant holds at least a 5 percent debt liability or equity interest.

(5) A description of any local, state, or federal licenses, permits, or registrations for the generation, transportation, treatment, storage, recycling, disposal, or handling of hazardous waste or hazardous materials applied for, or possessed by the applicant, or by the applicant under any previous name or names, in the five years preceding the filing of the statement, or, if the applicant is a business concern, by the officers, directors, or partners of the business concern, including the name and address of the issuing agency.

(6) A listing and explanation of any final orders or license revocations or suspensions issued or initiated by any local, state, or federal authority, in the five years immediately preceding the filing of the statement, or any

civil or criminal prosecutions filed in the five years immediately preceding, or pending at the time of, the filing of the statement, with any remedial actions or resolutions if applicable, relating to the generation, transportation, treatment, storage, recycling, disposal, or handling of hazardous waste or hazardous materials by the applicant, or by the applicant under any previous name or names, or, if the applicant is a business concern, by any officer, director, or partner of the business concern.

(7) A listing of any agencies outside of the state that regulate, or had regulated, the applicant's, or the applicant's under any previous name or names, generation, transportation, treatment, storage, recycling, disposal, or handling of hazardous waste or hazardous materials in the five years preceding the filing of the disclosure statement.

(8) A listing and explanation of any federal or state conviction, judgment, or settlement, in the five years immediately preceding the filing of the statement, with any remedial actions or resolutions if applicable, relating to the generation, transportation, treatment, storage, recycling, disposal, or handling of hazardous waste or hazardous materials by the applicant, or by the applicant under any previous name or names, or if the applicant is a business concern, by any officer, director, or partner of the business concern.

(9) A listing of all owners, officers, directors, trustees, and partners of the applicant who have owned, or been an officer, director, trustee, or partner of, any company that generated, transported, treated, stored, recycled, disposed of, or handled hazardous wastes or hazardous materials and which was the subject of any of the actions described in paragraphs (6) and (8) for the five years preceding the filing of the statement.

(b) Notwithstanding paragraph (2) of subdivision (a), a corporation, the stock of which is listed on a national securities exchange and registered under the Securities Exchange Act of 1934 (15 U.S.C. Sec. 78a et seq.), or a subsidiary of such a corporation, is not subject to the fingerprint requirements of subdivision (a).

(c) In lieu of the statement specified in subdivision (a), a corporation, the stock of which is listed on a national securities exchange or on the National Market System of the NASDAQ Stock Market and registered under the Securities Exchange Act of 1934 (15 U.S.C. Sec. 78a et seq.), or a subsidiary of that corporation, may submit to the department copies of all periodic reports, including, but not limited to, those reports required by Section 78m of Title 15 of the United States Code and Part 229 (commencing with Section 229.10) of Chapter II of Title 17 of the Code of Federal Regulations that the corporation or subsidiary has filed with the Securities and Exchange Commission in the three years immediately preceding the submittal, if the corporation or subsidiary

thereof has held a hazardous waste facility permit or operated a hazardous waste facility under interim status pursuant to Section 25200 or 25200.5 since January 1, 1984.

(d) (1) Before issuing an authorization for which a disclosure statement is required pursuant to this chapter, the department shall submit the fingerprint cards or electronic fingerprint images and related identification information submitted pursuant to paragraph (2) of subdivision (a) to the Department of Justice for the purpose of obtaining information as to the existence and nature of a record of state and federal level convictions and state and federal level arrests for which the Department of Justice establishes that the applicant is incarcerated or was released on bail or on his or her own recognizance pending trial. The Department of Justice shall forward any request for federal level criminal offender record information, received by the Department of Justice, pursuant to this subdivision, to the Federal Bureau of Investigation.

(2) For each applicant or licensee whose fingerprint images and related identification information are submitted to the Department of Justice pursuant to this subdivision, the Department of Justice shall provide the following information to the department pursuant to this section:

(A) Every conviction rendered against that applicant or licensee.

(B) Every arrest for an offense for which that applicant or licensee is presently awaiting trial, whether the applicant or licensee is incarcerated or has been released on bail or on his or her own recognizance pending trial.

(3) The department, pursuant to this subdivision, shall request subsequent arrest notification service from the Department of Justice as provided under Section 11105.2 of the Penal Code.

(4) The department shall reimburse the Department of Justice for the actual costs incurred by the Department of Justice for searching and furnishing state and federal level criminal offender record information pursuant to this subdivision.

SEC. 2. Article 6.6 (commencing with Section 25169.5) is added to Chapter 6.5 of Division 20 of the Health and Safety Code, to read:

Article 6.6. Hazardous Waste of Concern and Public Safety Act

25169.5. For purposes of this article, the following definitions shall apply:

(a) ''Background check'' means a criminal history background check obtained from fingerprint images submitted by the person or persons identified in the disclosure statement, pursuant to Section 25112.5. The

background check shall include any previous name or names of the person submitting the fingerprint images.

(b) ''Hazardous waste of concern'' means a hazardous waste listed as a hazardous waste of concern by the department pursuant to Section 25169.6.

25169.6. (a) On or before July 1, 2003, the department shall adopt by regulation, and revise as appropriate, a list of hazardous wastes of concern and, for purposes of subdivision (a) of Section 25169.7, the minimum quantity of the hazardous waste of concern that is required to be reported when missing. The list shall include, at a minimum, any hazardous waste that the department, in consultation with the other agencies described in subdivision (b), determines requires special handling restrictions and requirements, beyond those restrictions and requirements generally applicable to hazardous wastes, because of the potential for a hazardous waste of concern to be intentionally and effectively used to harm the public in a terrorist or other criminal act.

(b) The department shall develop the list of hazardous wastes of concern and associated reportable quantities, in consultation with other affected local, state, and federal agencies that have technical expertise on the storage, transportation, and potential hazards of those hazardous wastes.

25169.7. Except as specified otherwise in subdivision (b), on and after July 1, 2003, all of the following requirements, including any regulations adopted by the department pursuant to Section 25169.8, shall apply to any person handling any hazardous waste of concern:

(a) (1) If a hazardous waste transporter or the owner or operator of a hazardous waste facility discovers that a hazardous waste of concern is missing during transportation or storage, and the amount of waste missing equals or exceeds the reportable quantity specified in the regulations adopted pursuant to Section 25169.6, the hazardous waste transporter or the owner or operator shall immediately, as specified in the regulations adopted by the department, provide a verbal notification to the department and report the discrepancy to the department in writing by letter within five days after the discovery. The transporter or the owner or operator shall also comply with the applicable manifest discrepancy reporting requirements specified in the regulations adopted by the department pursuant to this chapter.

(2) Within 24 hours after receiving a notification of a missing hazardous waste of concern pursuant to paragraph (1), the department shall make a preliminary determination whether there is a potential risk to public safety. If, after making that preliminary determination, or at any time thereafter, the department determines the missing hazardous waste of concern presents a significant potential risk to public safety from its use in a terrorist or other criminal act, the department shall notify the

Office of Emergency Services and the Department of the California Highway Patrol.

(3) The Department of the California Highway Patrol may enter and inspect any hazardous waste facility at the department's request to perform an investigation of any hazardous waste that the department determines may be missing.

(b) (1) Notwithstanding Section 25200.4, any person applying for a hazardous waste facilities permit or other grant of authorization to use and operate a hazardous waste facility that would handle hazardous waste of concern shall submit to the department a disclosure statement containing the information specified in Section 25112.5.

(2) On or before January 1, 2004, and at any time upon the request of the department, any person owning or operating a hazardous waste facility that handles any hazardous waste of concern shall submit to the department a disclosure statement containing the information specified in Section 25112.5.

(3) (A) Except as provided in subparagraph (B), on and after January 1, 2004, any person applying for registration as a hazardous waste transporter who will transport hazardous waste of concern shall submit to the department a disclosure statement containing the information specified in Section 25112.5.

(B) Subparagraph (A) does not apply to a transporter who has submitted a disclosure statement to the department within the two-year period immediately preceding the application for registration, unless there has been a change in the information required to be contained in the disclosure statement or the department requests the transporter to submit a disclosure statement.

(4) At any time upon the request of the department, any registered hazardous waste transporter who transports any hazardous waste of concern shall submit to the department a disclosure statement containing the information specified in Section 25112.5.

(5) Whenever any change pertaining to the information required to be contained in a disclosure statement filed pursuant to paragraphs (1) to (4), inclusive, occurs after the date of the filing of the disclosure statement, the transporter or the facility owner or operator shall provide the updated information in writing to the department within 30 days of the change.

(6) On or before 180 days after receiving a disclosure statement pursuant to this subdivision, the department shall conduct a background check, as defined in subdivision (a) of Section 25169.5.

(7) This subdivision does not apply to any federal, state, or local agency or any person operating pursuant to a permit-by-rule, conditional authorization, or conditional exemption.

25169.8. (a) On or before July 1, 2003, the department shall adopt emergency regulations to implement this article, with the concurrence of the California Highway Patrol.

(b) The regulations adopted by the department pursuant to this section shall be adopted as emergency regulations in accordance with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, and for the purposes of that chapter, including Section 11349.6 of the Government Code, the adoption of these regulations is an emergency and shall be considered by the Office of Administrative Law as necessary for the immediate preservation of the public peace, health and safety, and general welfare. Notwithstanding Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, including subdivision (e) of Section 11349.1 of the Government Code, any emergency regulations adopted pursuant to this section shall be filed with, but not be repealed by, the Office of Administrative Law and shall remain in effect until revised by the department.

(c) Except as provided in subdivision (d), in adopting regulations pursuant to this section, the department shall ensure that the regulations are consistent with the Hazardous Materials Transportation Authorization Act of 1994 (Chapter 51 (commencing with Section 5101) of Title 49 of the United States Code, and thereafter amended.

(d) If the department determines that a requirement imposed pursuant to Section 25169.7 could be preempted by the Hazardous Materials Transportation Authorization Act of 1994 pursuant to Section 5125 of Title 49 of the Code of Federal Regulations, the department shall apply to the Secretary of Transportation for a waiver of preemption pursuant to subsection (e) of Section 5125 of Title 49 of the United States Code.

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.

CHAPTER 608

An act to amend Section 602 of, and to add Section 171.5 to, the Penal Code, relating to commercial airports, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 16, 2002. Filed with
Secretary of State September 17, 2002.]

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

SECTION 1. Section 171.5 is added to the Penal Code, to read:

171.5. (a) For purposes of this section:

(1) ''Airport'' means an airport, with a secured area, that regularly serves an air carrier holding a certificate issued by the United States Secretary of Transportation.

(2) ''Sterile area'' means a portion of an airport defined in the airport security program to which access generally is controlled through the screening of persons and property, as specified in Section 1540.5 of Title 49 of the Code of Federal Regulations.

(b) It is unlawful for any person to knowingly possess within any sterile area of an airport, any of the items listed in subdivision (c).

(c) The following items are unlawful to possess as provided in subdivision (a):

(1) Any firearm.

(2) Any knife with a blade length in excess of four inches, the blade of which is fixed in an unguarded position by the use of one or two hands.

(3) Any box cutter or straight razor.

(4) Any metal military practice hand grenade.

(5) Any metal replica hand grenade.

(6) Any plastic replica hand grenade.

(7) Any imitation firearm as defined in Section 417.4.

(8) Any frame, receiver, barrel, or magazine of a firearm.

(9) Any unauthorized tear gas weapon.

(10) Any taser or stun gun, as defined in Section 244.5.

(11) Any instrument that expels a metallic projectile, such as a BB or pellet, through the force of air pressure, CO_2 pressure, or spring action, or any spot marker gun or paint gun.

(12) Any ammunition as defined in Section 12316.

(d) Subdivision (b) shall not apply to, or affect, any of the following:

(1) A duly appointed peace officer, as defined in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2, a retired peace officer with authorization to carry concealed weapons as described in subdivision (a) of Section 12027, a full-time paid peace officer of another state or the federal government who is carrying out official duties while in California, or any person summoned by any of these officers to assist in making arrests or preserving the peace while he or she is actually engaged in assisting the officer.

(2) A person who has authorization to possess a weapon specified in subdivision (c), granted in writing by an airport security coordinator who

is designated as specified in Section 1542.3 of Title 49 of the Code of Federal Regulations, and who is responsible for the security of the airport.

(e) A violation of this section is punishable by imprisonment in a county jail for a period not exceeding six months, or by a fine not exceeding one thousand dollars ($1,000), or by both that fine and imprisonment.

(f) The provisions of this section are cumulative, and shall not be construed as restricting the application of any other law. However, an act or omission that is punishable in different ways by this and any other provision of law shall not be punished under more than one provision.

(g) Nothing in this section is intended to affect existing state or federal law regarding the transportation of firearms on airplanes in checked luggage, or the possession of the items listed in subdivision (c) in areas that are not ''sterile areas.''

SEC. 2. Section 602 of the Penal Code is amended to read:

602. Except as provided in Section 602.8, every person who willfully commits a trespass by any of the following acts is guilty of a misdemeanor:

(a) Cutting down, destroying, or injuring any kind of wood or timber standing or growing upon the lands of another.

(b) Carrying away any kind of wood or timber lying on those lands.

(c) Maliciously injuring or severing from the freehold of another anything attached to it, or its produce.

(d) Digging, taking, or carrying away from any lot situated within the limits of any incorporated city, without the license of the owner or legal occupant, any earth, soil, or stone.

(e) Digging, taking, or carrying away from land in any city or town laid down on the map or plan of the city, or otherwise recognized or established as a street, alley, avenue, or park, without the license of the proper authorities, any earth, soil, or stone.

(f) Maliciously tearing down, damaging, mutilating, or destroying any sign, signboard, or notice placed upon, or affixed to, any property belonging to the state, or to any city, county, city and county, town or village, or upon any property of any person, by the state or by an automobile association, which sign, signboard or notice is intended to indicate or designate a road, or a highway, or is intended to direct travelers from one point to another, or relates to fires, fire control, or any other matter involving the protection of the property, or putting up, affixing, fastening, printing, or painting upon any property belonging to the state, or to any city, county, town, or village, or dedicated to the public, or upon any property of any person, without license from the owner, any notice, advertisement, or designation of, or any name for any

commodity, whether for sale or otherwise, or any picture, sign, or device intended to call attention to it.

(g) Entering upon any lands owned by any other person whereon oysters or other shellfish are planted or growing; or injuring, gathering, or carrying away any oysters or other shellfish planted, growing, or on any of those lands, whether covered by water or not, without the license of the owner or legal occupant; or destroying or removing, or causing to be removed or destroyed, any stakes, marks, fences, or signs intended to designate the boundaries and limits of any of those lands.

(h) Willfully opening, tearing down, or otherwise destroying any fence on the enclosed land of another, or opening any gate, bar, or fence of another and willfully leaving it open without the written permission of the owner, or maliciously tearing down, mutilating, or destroying any sign, signboard, or other notice forbidding shooting on private property.

(i) Building fires upon any lands owned by another where signs forbidding trespass are displayed at intervals not greater than one mile along the exterior boundaries and at all roads and trails entering the lands, without first having obtained written permission from the owner of the lands or the owner's agent, or the person in lawful possession.

(j) Entering any lands, whether unenclosed or enclosed by fence, for the purpose of injuring any property or property rights or with the intention of interfering with, obstructing, or injuring any lawful business or occupation carried on by the owner of the land, the owner's agent or by the person in lawful possession.

(k) Entering any lands under cultivation or enclosed by fence, belonging to, or occupied by, another, or entering upon uncultivated or unenclosed lands where signs forbidding trespass are displayed at intervals not less than three to the mile along all exterior boundaries and at all roads and trails entering the lands without the written permission of the owner of the land, the owner's agent or of the person in lawful possession, and

(1) Refusing or failing to leave the lands immediately upon being requested by the owner of the land, the owner's agent or by the person in lawful possession to leave the lands, or

(2) Tearing down, mutilating, or destroying any sign, signboard, or notice forbidding trespass or hunting on the lands, or

(3) Removing, injuring, unlocking, or tampering with any lock on any gate on or leading into the lands, or

(4) Discharging any firearm.

(*l*) Entering and occupying real property or structures of any kind without the consent of the owner, the owner's agent, or the person in lawful possession.

(m) Driving any vehicle, as defined in Section 670 of the Vehicle Code, upon real property belonging to, or lawfully occupied by, another

and known not to be open to the general public, without the consent of the owner, the owner's agent, or the person in lawful possession. This subdivision shall not apply to any person described in Section 22350 of the Business and Professions Code who is making a lawful service of process, provided that upon exiting the vehicle, the person proceeds immediately to attempt the service of process, and leaves immediately upon completing the service of process or upon the request of the owner, the owner's agent, or the person in lawful possession.

(n) Refusing or failing to leave land, real property, or structures belonging to or lawfully occupied by another and not open to the general public, upon being requested to leave by (1) a peace officer at the request of the owner, the owner's agent, or the person in lawful possession, and upon being informed by the peace officer that he or she is acting at the request of the owner, the owner's agent, or the person in lawful possession, or (2) the owner, the owner's agent, or the person in lawful possession. The owner, the owner's agent, or the person in lawful possession shall make a separate request to the peace officer on each occasion when the peace officer's assistance in dealing with a trespass is requested. However, a single request for a peace officer's assistance may be made to cover a limited period of time not to exceed 30 days and identified by specific dates, during which there is a fire hazard or the owner, owner's agent or person in lawful possession is absent from the premises or property. In addition, a single request for a peace officer's assistance may be made for a period not to exceed six months when the premises or property is closed to the public and posted as being closed. However, this subdivision shall not be applicable to persons engaged in lawful labor union activities which are permitted to be carried out on the property by the California Agricultural Labor Relations Act, Part 3.5 (commencing with Section 1140) of Division 2 of the Labor Code, or by the National Labor Relations Act. For purposes of this section, land, real property, or structures owned or operated by any housing authority for tenants as defined under Section 34213.5 of the Health and Safety Code constitutes property not open to the general public; however, this subdivision shall not apply to persons on the premises who are engaging in activities protected by the California or United States Constitution, or to persons who are on the premises at the request of a resident or management and who are not loitering or otherwise suspected of violating or actually violating any law or ordinance.

(o) Entering upon any lands declared closed to entry as provided in Section 4256 of the Public Resources Code, if the closed areas shall have been posted with notices declaring the closure, at intervals not greater than one mile along the exterior boundaries or along roads and trails passing through the lands.

(p) Refusing or failing to leave a public building of a public agency during those hours of the day or night when the building is regularly closed to the public upon being requested to do so by a regularly employed guard, watchman, or custodian of the public agency owning or maintaining the building or property, if the surrounding circumstances would indicate to a reasonable person that the person has no apparent lawful business to pursue.

(q) Knowingly skiing in an area or on a ski trail which is closed to the public and which has signs posted indicating the closure.

(r) Refusing or failing to leave a hotel or motel, where he or she has obtained accommodations and has refused to pay for those accommodations, upon request of the proprietor or manager, and the occupancy is exempt, pursuant to subdivision (b) of Section 1940 of the Civil Code, from Chapter 2 (commencing with Section 1940) of Title 5 of Part 4 of Division 3 of the Civil Code. For purposes of this subdivision, occupancy at a hotel or motel for a continuous period of 30 days or less shall, in the absence of a written agreement to the contrary, or other written evidence of a periodic tenancy of indefinite duration, be exempt from Chapter 2 (commencing with Section 1940) of Title 5 of Part 4 of Division 3 of the Civil Code.

(s) Entering upon private property, including contiguous land, real property, or structures thereon belonging to the same owner, whether or not generally open to the public, after having been informed by a peace officer at the request of the owner, the owner's agent, or the person in lawful possession, and upon being informed by the peace officer that he or she is acting at the request of the owner, the owner's agent, or the person in lawful possession, that the property is not open to the particular person; or refusing or failing to leave the property upon being asked to leave the property in the manner provided in this subdivision.

This subdivision shall apply only to a person who has been convicted of a violent felony, as specified in subdivision (c) of Section 667.5, committed upon the particular private property. A single notification or request to the person as set forth above shall be valid and enforceable under this subdivision unless and until rescinded by the owner, the owner's agent, or the person in lawful possession of the property.

(t) (1) Knowingly entering, by an unauthorized person, upon any airport operations area if the area has been posted with notices restricting access to authorized personnel only and the postings occur not greater than every 150 feet along the exterior boundary.

(2) Any person convicted of a violation of paragraph (1) shall be punished as follows:

(A) By a fine not exceeding one hundred dollars ($100).

(B) By imprisonment in the county jail not exceeding six months, or by a fine not exceeding one thousand dollars ($1,000), or both, if the

person refuses to leave the airport operations area after being requested to leave by a peace officer or authorized personnel.

(C) By imprisonment in the county jail not exceeding six months, or by a fine not exceeding one thousand dollars ($1,000), or both, for a second or subsequent offense.

(3) As used in this subdivision the following definitions shall control:

(A) ''Airport operations area'' means that part of the airport used by aircraft for landing, taking off, surface maneuvering, loading and unloading, refueling, parking, or maintenance, where aircraft support vehicles and facilities exist, and which is not for public use or public vehicular traffic.

(B) ''Authorized personnel'' means any person who has a valid airport identification card issued by the airport operator or has a valid airline identification card recognized by the airport operator, or any person not in possession of an airport or airline identification card who is being escorted for legitimate purposes by a person with an airport or airline identification card.

(C) ''Airport'' means any facility whose function is to support commercial aviation.

(u) Refusing or failing to leave a battered women's shelter at any time after being requested to leave by a managing authority of the shelter.

(1) A person who is convicted of violating this subdivision shall be punished by imprisonment in a county jail for not more than one year.

(2) The court may order a defendant who is convicted of violating this subdivision to make restitution to a battered woman in an amount equal to the relocation expenses of the battered woman and her children if those expenses are incurred as a result of trespass by the defendant at a battered women's shelter.

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.

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 address the extant threat of weapons to transportation networks, and to discourage trespass in inadequately protected secure areas of airports, it is necessary that this act go into immediate effect.

CHAPTER 609

An act to amend Sections 7583.2, 7583.3, 7583.8, 7583.9, and 7583.17 of, and to repeal Sections 7583.11 and 7583.43 of, the Business and Professions Code, relating to private security services.

[Approved by Governor September 16, 2002. Filed with Secretary of State September 17, 2002.]

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

SECTION 1. Section 7583.2 of the Business and Professions Code is amended to read:

7583.2. No person licensed as a private patrol operator shall do any of the following:

(a) Fail to properly maintain an accurate and current record of all firearms or other deadly weapons that are in the possession of the licensee or of any employee while on duty. Within seven days after a licensee or his or her employees discover that a deadly weapon that has been recorded as being in his or her possession has been misplaced, lost, or stolen, or is in any other way missing, the licensee or his or her manager shall mail or deliver to any local law enforcement agency that has jurisdiction, a written report concerning the incident. The report shall describe fully the circumstances surrounding the incident, any injuries or damages incurred, the identity of all participants, and whether a police investigation was conducted.

(b) Fail to properly maintain an accurate and current record of the name, address, commencing date of employment, and position of each employee, and the date of termination of employment when an employee is terminated.

(c) Fail to properly maintain an accurate and current record of proof of completion by each employee of the licensee of the course of training in the exercise of the power to arrest as required by Section 7583.5.

(d) Fail to certify an employee's completion of the course of training in the exercise of the power to arrest prior to placing the employee at a duty station.

(e) Fail to certify proof of current and valid registration for each employee who is subject to registration.

(f) Permit any employee to carry a firearm or other deadly weapon without first ascertaining that the employee is proficient in the use of each weapon to be carried. With respect to firearms, evidence of proficiency shall include a certificate from a firearm training facility approved by the director certifying that the employee is proficient in the use of that specified caliber of firearm and a current and valid firearm qualification permit issued by the department. With respect to other deadly weapons, evidence of proficiency shall include a certificate from a training facility approved by the director certifying that the employee is proficient in the use of that particular deadly weapon.

(g) Fail to deliver to the director a written report describing fully the circumstances surrounding the discharge of any firearm, or physical altercation with a member of the public while on duty, by a licensee or any officer, partner, or employee of a licensee while acting within the course and scope of his or her employment within seven days after the incident. For the purposes of this subdivision, a report shall be required only for physical altercations that result in any of the following: (1) the arrest of a security guard, (2) the filing of a police report by a member of the public, (3) injury on the part of a member of the public that requires medical attention, or (4) the discharge, suspension, or reprimand of a security guard by his or her employer. The report shall include, but not be limited to, a description of any injuries or damages incurred, the identity of all participants, and whether a police investigation was conducted. Any report may be investigated by the director to determine if any disciplinary action is necessary.

(h) Fail to notify the bureau in writing and within 30 days that a manager previously qualified pursuant to this chapter is no longer connected with the licensee.

SEC. 1.3. Section 7583.2 of the Business and Professions Code is amended to read:

7583.2. A licensed private patrol operator, lawful business, or public agency that employs a security guard registered pursuant to this chapter shall do the following:

(a) Maintain an accurate and current record of all firearms or other deadly weapons that are in the possession of the licensee, lawful business, public agency, or of any employee while on duty. Within seven days after a licensee, lawful business, public agency, or his or her employees discover that a deadly weapon that has been recorded as being in his or her possession has been misplaced, lost, or stolen, or is in any other way missing, the licensee or his or her manager, lawful business, or public agency shall mail or deliver to any local law enforcement agency that has jurisdiction, a written report concerning the incident. The report shall describe fully the circumstances surrounding the

incident, any injuries or damages incurred, the identity of all participants, and whether a police investigation was conducted.

(b) Maintain an accurate and current record of the name, address, commencing date of employment, and position of each employee, and the date of termination of employment when an employee is terminated.

(c) Maintain an accurate and current record of proof of completion by each employee of the licensee, lawful business, or public agency of the course of training in the exercise of the power to arrest as required by Section 7583.5.

(d) Certify an employee's completion of the course of training in the exercise of the power to arrest prior to placing the employee at a duty station.

(e) Certify proof of current and valid registration for each employee who is subject to registration.

(f) Prohibit an employee from carrying a firearm or other deadly weapon until first ascertaining that the employee is proficient in the use of each weapon to be carried. With respect to firearms, evidence of proficiency shall include a certificate from a firearm training facility approved by the director certifying that the employee is proficient in the use of that specified caliber of firearm and a current and valid firearm qualification permit issued by the department. With respect to other deadly weapons, evidence of proficiency shall include a certificate from a training facility approved by the director certifying that the employee is proficient in the use of that particular deadly weapon.

(g) Deliver to the director a written report describing fully the circumstances surrounding the discharge of any firearm, or physical altercation with a member of the public while on duty, by a licensee or any officer, partner, or employee of a licensee, lawful business, or public agency while acting within the course and scope of his or her employment within seven days after the incident. For the purposes of this subdivision, a report shall be required only for physical altercations that result in any of the following: (1) the arrest of a security guard, (2) the filing of a police report by a member of the public, (3) injury on the part of a member of the public that requires medical attention, or (4) the discharge, suspension, or reprimand of a security guard by his or her employer. The report shall include, but not be limited to, a description of any injuries or damages incurred, the identity of all participants, and whether a police investigation was conducted. Any report may be investigated by the director to determine if any disciplinary action is necessary.

(h) (1) Notify the bureau in writing and within 30 days that a manager previously qualified pursuant to this chapter is no longer connected with the licensee.

(2) This subdivision shall not apply to any lawful business or public agency that employs registered security guards.

SEC. 1.5. Section 7583.2 of the Business and Professions Code is amended to read:

7583.2. No person licensed as a private patrol operator shall do any of the following:

(a) Fail to properly maintain an accurate and current record of all firearms or other deadly weapons that are in the possession of the licensee or of any employee while on duty. Within seven days after a licensee or his or her employees discover that a deadly weapon that has been recorded as being in his or her possession has been misplaced, lost, or stolen, or is in any other way missing, the licensee or his or her manager shall mail or deliver to any local law enforcement agency that has jurisdiction, a written report concerning the incident. The report shall describe fully the circumstances surrounding the incident, any injuries or damages incurred, the identity of all participants, and whether a police investigation was conducted.

(b) Fail to properly maintain an accurate and current record of the name, address, commencing date of employment, and position of each employee, and the date of termination of employment when an employee is terminated.

(c) Fail to properly maintain an accurate and current record of proof of completion by each employee of the licensee of the course of training in the exercise of the power to arrest as required by Section 7583.5, the security officer skills training required by subdivision (b) of Section 7583.6, and the annual practice and review required by subdivision (f) of Section 7583.6.

(d) Fail to certify an employee's completion of the course of training in the exercise of the power to arrest prior to placing the employee at a duty station.

(e) Fail to certify proof of current and valid registration for each employee who is subject to registration.

(f) Permit any employee to carry a firearm or other deadly weapon without first ascertaining that the employee is proficient in the use of each weapon to be carried. With respect to firearms, evidence of proficiency shall include a certificate from a firearm training facility approved by the director certifying that the employee is proficient in the use of that specified caliber of firearm and a current and valid firearm qualification permit issued by the department. With respect to other deadly weapons, evidence of proficiency shall include a certificate from a training facility approved by the director certifying that the employee is proficient in the use of that particular deadly weapon.

(g) Fail to deliver to the director a written report describing fully the circumstances surrounding the discharge of any firearm, or physical

altercation with a member of the public while on duty, by a licensee or any officer, partner, or employee of a licensee while acting within the course and scope of his or her employment within seven days after the incident. For the purposes of this subdivision, a report shall be required only for physical altercations that result in any of the following: (1) the arrest of a security guard, (2) the filing of a police report by a member of the public, (3) injury on the part of a member of the public that requires medical attention, or (4) the discharge, suspension, or reprimand of a security guard by his or her employer. The report shall include, but not be limited to, a description of any injuries or damages incurred, the identity of all participants, and whether a police investigation was conducted. Any report may be investigated by the director to determine if any disciplinary action is necessary.

(h) Fail to notify the bureau in writing and within 30 days that a manager previously qualified pursuant to this chapter is no longer connected with the licensee.

(i) Fail to administer to each registered employee of the licensee, the review or practice training required by subdivision (f) of Section 7583.6.

SEC. 1.7. Section 7583.2 of the Business and Professions Code is amended to read:

7583.2. A licensed private patrol operator, lawful business, or public agency that employs a security guard registered pursuant to this chapter shall do the following:

(a) Maintain an accurate and current record of all firearms or other deadly weapons that are in the possession of the licensee, lawful business, public agency, or of any employee while on duty. Within seven days after a licensee, lawful business, public agency, or his or her employees discover that a deadly weapon that has been recorded as being in his or her possession has been misplaced, lost, or stolen, or is in any other way missing, the licensee or his or her manager, lawful business, or public agency, shall mail or deliver to any local law enforcement agency that has jurisdiction, a written report concerning the incident. The report shall describe fully the circumstances surrounding the incident, any injuries or damages incurred, the identity of all participants, and whether a police investigation was conducted.

(b) Maintain an accurate and current record of the name, address, commencing date of employment, and position of each employee, and the date of termination of employment when an employee is terminated.

(c) Maintain an accurate and current record of proof of completion by each employee of the licensee, lawful business, or public agency, of the course of training in the exercise of the power to arrest as required by Section 7583.5, the security officer skills training required by subdivision (b) of Section 7583.6, and the annual practice and review required by subdivision (f) of Section 7583.6.

(d) Certify an employee's completion of the course of training in the exercise of the power to arrest prior to placing the employee at a duty station.

(e) Certify proof of current and valid registration for each employee who is subject to registration.

(f) Prohibit an employee from carrying a firearm or other deadly weapon until first ascertaining that the employee is proficient in the use of each weapon to be carried. With respect to firearms, evidence of proficiency shall include a certificate from a firearm training facility approved by the director certifying that the employee is proficient in the use of that specified caliber of firearm and a current and valid firearm qualification permit issued by the department. With respect to other deadly weapons, evidence of proficiency shall include a certificate from a training facility approved by the director certifying that the employee is proficient in the use of that particular deadly weapon.

(g) Deliver to the director a written report describing fully the circumstances surrounding the discharge of any firearm, or physical altercation with a member of the public while on duty, by a licensee or any officer, partner, or employee of a licensee, lawful business, or public agency, while acting within the course and scope of his or her employment within seven days after the incident. For the purposes of this subdivision, a report shall be required only for physical altercations that result in any of the following: (1) the arrest of a security guard, (2) the filing of a police report by a member of the public, (3) injury on the part of a member of the public that requires medical attention, or (4) the discharge, suspension, or reprimand of a security guard by his or her employer. The report shall include, but not be limited to, a description of any injuries or damages incurred, the identity of all participants, and whether a police investigation was conducted. Any report may be investigated by the director to determine if any disciplinary action is necessary.

(h) (1) Notify the bureau in writing and within 30 days that a manager previously qualified pursuant to this chapter is no longer connected with the licensee.

(2) This subdivision shall not apply to any lawful business or public agency that employs registered security guards.

(i) Fail to administer to each registered employee of the licensee, the review or practice training required by subdivision (f) of Section 7583.6.

SEC. 2. Section 7583.3 of the Business and Professions Code is amended to read:

7583.3. No person required to be registered as a security guard pursuant to this chapter shall do any of the following:

(a) Fail to carry on his or her person, while on duty, a valid and current security guard registration card.

(b) Fail to carry on his or her person a valid and current firearms permit when carrying a firearm on duty.

(c) Carry or use a firearm unless he or she possesses a valid and current firearms permit issued pursuant to this chapter.

(d) Fail to report to his or her employer within 24 hours of the incident the circumstances surrounding any incident involving the discharge of any firearm in which he or she is involved while acting within the course and scope of his or her employment.

SEC. 3. Section 7583.8 of the Business and Professions Code is amended to read:

7583.8. No employee of a licensee who performs the function of a security guard or security patrolperson shall be issued a registration card until there is proper certification by the instructor that the exercise of the power to arrest course has been taught and the employee's certification that the instruction was received has been delivered to the department. Except as provided in subdivision (f) of Section 7583.9, no security guard registration shall be issued until a criminal history background check has been completed pursuant to subdivision (e) of Section 7583.9 and a determination has been made by the bureau.

SEC. 3.5. Section 7583.8 of the Business and Professions Code is amended to read:

7583.8. No employee of a licensee, lawful business, or public agency who performs the function of a security guard or security patrolperson shall be issued a registration card until there is proper certification by the instructor that the exercise of the power to arrest course has been taught and the employee's certification that the instruction was received has been delivered to the department. Except as provided in subdivision (f) of Section 7583.9, no security guard registration shall be issued until a criminal history background check has been completed pursuant to subdivision (e) of Section 7583.9 and a determination has been made by the bureau.

SEC. 4. Section 7583.9 of the Business and Professions Code is amended to read:

7583.9. (a) Upon accepting employment by a private patrol operator, any employee who performs the function of a security guard or security patrolperson who is not currently registered with the bureau, shall complete an application for registration on a form as prescribed by the director, and obtain two classifiable fingerprint cards for submission to the Department of Justice. The applicant shall submit the application, the registration fee, and his or her fingerprints to the bureau. The bureau shall forward the classifiable fingerprint cards to the Department of Justice. The Department of Justice shall forward one classifiable fingerprint card to the Federal Bureau of Investigation for purposes of a background check.

(b) If a private patrol operator pays the application fee on behalf of the applicant, nothing in this section shall preclude the private patrol operator from withholding the amount of the fee from the applicant's compensation.

(c) The licensee shall maintain supplies of applications and fingerprint cards that shall be provided by the bureau upon request.

(d) In lieu of classifiable fingerprint cards provided for in this section, the bureau may authorize applicants to submit their fingerprints into an electronic fingerprinting system administered by the Department of Justice. Applicants who submit their fingerprints by electronic means shall have their fingerprints entered into the system through a terminal operated by a law enforcement agency or other facility authorized by the Department of Justice to conduct electronic fingerprinting. The enforcement agency responsible for operating the terminal may charge a fee sufficient to reimburse it for the costs incurred in providing this service.

(e) Upon receipt of an applicant's electronic or hard card fingerprints as provided in this section, the Department of Justice shall disseminate the following information to the bureau:

(1) Every conviction rendered against the applicant.

(2) Every arrest for an offense for which the applicant is presently awaiting trial, whether the applicant is incarcerated or has been released on bail or on his or her own recognizance pending trial.

(f) A currently employed, full-time peace officer holding peace officer status under Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2 of the Penal Code, or a level I or level II reserve officer as described in paragraphs (1) and (2) of subdivision (a) of Section 832.6 of the Penal Code may immediately perform the functions of a security guard or security patrolperson, provided that he or she has submitted an application, the applicable fees, and his or her fingerprints to the bureau for a security guard registration.

(g) In addition to the amount authorized pursuant to Section 7570.1, the bureau may impose an additional fee not to exceed three dollars ($3) for processing classifiable fingerprint cards submitted by applicants excluding those submitted into an electronic fingerprint system using electronic fingerprint technology.

(h) An employee shall, on the first day of employment, display to the client his or her registration card if it is feasible and practical to comply with this disclosure requirement. The employee shall thereafter display to the client his or her registration card upon the request of the client.

SEC. 4.3. Section 7583.9 of the Business and Professions Code is amended to read:

7583.9. (a) Upon accepting employment by a private patrol operator, lawful business, or public agency, any employee who performs

the function of a security guard or security patrolperson who is not currently registered with the bureau, shall complete an application for registration on a form as prescribed by the director, and obtain two classifiable fingerprint cards for submission to the Department of Justice. The applicant shall submit the application, the registration fee, and his or her fingerprints to the bureau. The bureau shall forward the classifiable fingerprint cards to the Department of Justice. The Department of Justice shall forward one classifiable fingerprint card to the Federal Bureau of Investigation for purposes of a background check.

(b) If a private patrol operator pays the application fee on behalf of the applicant, nothing in this section shall preclude the private patrol operator from withholding the amount of the fee from the applicant's compensation.

(c) The licensee shall maintain supplies of applications and fingerprint cards that shall be provided by the bureau upon request.

(d) In lieu of classifiable fingerprint cards provided for in this section, the bureau may authorize applicants to submit their fingerprints into an electronic fingerprinting system administered by the Department of Justice. Applicants who submit their fingerprints by electronic means shall have their fingerprints entered into the system through a terminal operated by a law enforcement agency or other facility authorized by the Department of Justice to conduct electronic fingerprinting. The enforcement agency responsible for operating the terminal may charge a fee sufficient to reimburse it for the costs incurred in providing this service.

(e) Upon receipt of an applicant's electronic or hard card fingerprints as provided in this section, the Department of Justice shall disseminate the following information to the bureau:

(1) Every conviction rendered against the applicant.

(2) Every arrest for an offense for which the applicant is presently awaiting trial, whether the applicant is incarcerated or has been released on bail or on his or her own recognizance pending trial.

(f) A currently employed, full-time peace officer holding peace officer status under Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2 of the Penal Code, or a level I or level II reserve officer as described in paragraphs (1) and (2) of subdivision (a) of Section 832.6 of the Penal Code may immediately perform the functions of a security guard or security patrolperson, provided that he or she has submitted an application, the applicable fees, and his or her fingerprints to the bureau for a security guard registration.

(g) In addition to the amount authorized pursuant to Section 7570.1, the bureau may impose an additional fee not to exceed three dollars ($3) for processing classifiable fingerprint cards submitted by applicants

excluding those submitted into an electronic fingerprint system using electronic fingerprint technology.

(h) An employee shall, on the first day of employment, display to the client his or her registration card if it is feasible and practical to comply with this disclosure requirement. The employee shall thereafter display to the client his or her registration card upon the request of the client.

SEC. 4.5. Section 7583.9 of the Business and Professions Code is amended to read:

7583.9. (a) Upon accepting employment by a private patrol operator, any employee who performs the function of a security guard or security patrolperson who is not currently registered with the bureau, shall complete an application for registration on a form as prescribed by the director, and obtain two classifiable fingerprint cards for submission to the Department of Justice. The applicant shall submit the application, the registration fee, and his or her fingerprints to the bureau. The bureau shall forward the classifiable fingerprint cards to the Department of Justice. The Department of Justice shall forward one classifiable fingerprint card to the Federal Bureau of Investigation for purposes of a background check.

(b) If a private patrol operator pays the application fee on behalf of the applicant, nothing in this section shall preclude the private patrol operator from withholding the amount of the fee from the applicant's compensation.

(c) The licensee shall maintain supplies of applications and fingerprint cards that shall be provided by the bureau upon request.

(d) In lieu of classifiable fingerprint cards provided for in this section, the bureau may authorize applicants to submit their fingerprints into an electronic fingerprinting system administered by the Department of Justice. Applicants who submit their fingerprints by electronic means shall have their fingerprints entered into the system through a terminal operated by a law enforcement agency or other facility authorized by the Department of Justice to conduct electronic fingerprinting. The enforcement agency responsible for operating the terminal may charge a fee sufficient to reimburse it for the costs incurred in providing this service.

(e) Upon receipt of an applicant's electronic or hard card fingerprints as provided in this section, the Department of Justice shall disseminate the following information to the bureau:

(1) Every conviction rendered against the applicant.

(2) Every arrest for an offense for which the applicant is presently awaiting trial, whether the applicant is incarcerated or has been released on bail or on his or her own recognizance pending trial.

(f) (1) A currently employed, full-time peace officer holding peace officer status under Chapter 4.5 (commencing with Section 830) of Title

3 of Part 2 of the Penal Code, or a level I or level II reserve officer as described in paragraphs (1) and (2) of subdivision (a) of Section 832.6 of the Penal Code may immediately perform the functions of a security guard or security patrolperson, provided that he or she has submitted an application, the applicable fees, and his or her fingerprints to the bureau for a security guard registration.

(2) This subdivision does not apply to a peace officer required to obtain a firearm qualification card pursuant to Section 7583.12.

(g) Peace officers exempt from the submission of classifiable fingerprints pursuant to subdivision (f) shall submit verification of their active duty peace officer status to the bureau with their application for registration. A photocopy of the front and back of their peace officer identification badge shall be adequate verification.

(h) Peace officers exempt from the submission of classifiable fingerprints pursuant to subdivision (f) shall report a change in their active duty peace officer status to the bureau within 72 hours of the change in active duty peace officer status.

(i) (1) Peace officers exempt from obtaining a firearm qualification card pursuant to subdivision (c) of Section 7583.12 shall submit to the bureau with their application for registration a letter of approval from his or her primary employer authorizing him or her to carry a firearm while working as a security guard or security officer.

(2) For purposes of this section, ''primary employer'' means a public safety agency currently employing a peace officer subject to this section.

(j) In addition to the amount authorized pursuant to Section 7570.1, the bureau may impose an additional fee not to exceed three dollars ($3) for processing classifiable fingerprint cards submitted by applicants excluding those submitted into an electronic fingerprint system using electronic fingerprint technology.

(k) An employee shall, on the first day of employment, display to the client his or her registration card if it is feasible and practical to comply with this disclosure requirement. The employee shall thereafter display to the client his or her registration card upon the request of the client.

SEC. 4.7. Section 7583.9 of the Business and Professions Code is amended to read:

7583.9. (a) Upon accepting employment by a private patrol operator, lawful business, or public agency, any employee who performs the function of a security guard or security patrolperson who is not currently registered with the bureau, shall complete an application for registration on a form as prescribed by the director, and obtain two classifiable fingerprint cards for submission to the Department of Justice. The applicant shall submit the application, the registration fee, and his or her fingerprints to the bureau. The bureau shall forward the classifiable fingerprint cards to the Department of Justice. The

Department of Justice shall forward one classifiable fingerprint card to the Federal Bureau of Investigation for purposes of a background check.

(b) If a private patrol operator pays the application fee on behalf of the applicant, nothing in this section shall preclude the private patrol operator from withholding the amount of the fee from the applicant's compensation.

(c) The licensee shall maintain supplies of applications and fingerprint cards that shall be provided by the bureau upon request.

(d) In lieu of classifiable fingerprint cards provided for in this section, the bureau may authorize applicants to submit their fingerprints into an electronic fingerprinting system administered by the Department of Justice. Applicants who submit their fingerprints by electronic means shall have their fingerprints entered into the system through a terminal operated by a law enforcement agency or other facility authorized by the Department of Justice to conduct electronic fingerprinting. The enforcement agency responsible for operating the terminal may charge a fee sufficient to reimburse it for the costs incurred in providing this service.

(e) Upon receipt of an applicant's electronic or hard card fingerprints as provided in this section, the Department of Justice shall disseminate the following information to the bureau:

(1) Every conviction rendered against the applicant.

(2) Every arrest for an offense for which the applicant is presently awaiting trial, whether the applicant is incarcerated or has been released on bail or on his or her own recognizance pending trial.

(f) (1) A currently employed, full-time peace officer holding peace officer status under Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2 of the Penal Code, or a level I or level II reserve officer as described in paragraphs (1) and (2) of subdivision (a) of Section 832.6 of the Penal Code may immediately perform the functions of a security guard or security patrolperson, provided that he or she has submitted an application, the applicable fees, and his or her fingerprints to the bureau for a security guard registration.

(2) This subdivision does not apply to a peace officer required to obtain a firearm qualification card pursuant to Section 7583.12.

(g) Peace officers exempt from the submission of classifiable fingerprints pursuant to subdivision (f) shall submit verification of their active duty peace officer status to the bureau with their application for registration. A photocopy of the front and back of their peace officer identification badge shall be adequate verification.

(h) Peace officers exempt from the submission of classifiable fingerprints pursuant to subdivision (f) shall report a change in their active duty peace officer status to the bureau within 72 hours of the change in active duty peace officer status.

(i) (1) Peace officers exempt from obtaining a firearm qualification card pursuant to subdivision (c) of Section 7583.12 shall submit to the bureau with their application for registration a letter of approval from his or her primary employer authorizing him or her to carry a firearm while working as a security guard or security officer.

(2) For purposes of this section, ''primary employer'' means a public safety agency currently employing a peace officer subject to this section.

(j) In addition to the amount authorized pursuant to Section 7570.1, the bureau may impose an additional fee not to exceed three dollars ($3) for processing classifiable fingerprint cards submitted by applicants excluding those submitted into an electronic fingerprint system using electronic fingerprint technology.

(k) An employee shall, on the first day of employment, display to the client his or her registration card if it is feasible and practical to comply with this disclosure requirement. The employee shall thereafter display to the client his or her registration card upon the request of the client.

SEC. 5. Section 7583.11 of the Business and Professions Code is repealed.

SEC. 6. Section 7583.17 of the Business and Professions Code is amended to read:

7583.17. (a) Upon approval of an application for registration, the chief shall cause to be issued to the applicant at his or her last known residential address a registration card in a form approved by the director.

(b) A person may work as a security guard or security patrolperson pending receipt of the registration card if he or she has been approved by the bureau and carries on his or her person a hardcopy printout of the bureau's approval from the bureau's Web site and a valid picture identification.

(c) In the event of the loss or destruction of the card, the cardholder may apply to the bureau for a certified replacement of the card, stating the circumstances surrounding the loss, and pay a ten dollar ($10) certification fee, whereupon the bureau shall issue a certified replacement of the card.

SEC. 7. Section 7583.43 of the Business and Professions Code is repealed.

SEC. 8. (a) Section 1.3 of this bill incorporates amendments to Section 7583.2 of the Business and Professions Code proposed by both this bill and AB 248. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2003, (2) each bill amends Section 7583.2 of the Business and Professions Code, (3) AB 2880 is not enacted or as enacted does not amend that section, and (4) this bill is enacted after AB 248, in which case Sections 1, 1.5, and 1.7 of this bill shall not become operative.

(b) Section 1.5 of this bill incorporates amendments to Section 7583.2 of the Business and Professions Code proposed by both this bill and AB 2880. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2003, (2) each bill amends Section 7583.2 of the Business and Professions Code, (3) AB 248 is not enacted or as enacted does not amend that section, and (4) this bill is enacted after AB 2880, in which case Sections 1, 1.3, and 1.7 of this bill shall not become operative.

(c) Section 1.7 of this bill incorporates amendments to Section 7583.2 of the Business and Professions Code proposed by this bill, AB 248, and AB 2880. It shall only become operative if (1) all three bills are enacted and become effective on or before January 1, 2003, (2) all three bills amend Section 7583.2 of the Business and Professions Code, and (3) this bill is enacted after AB 248, and AB 2880, in which case Sections 1, 1.3, and 1.5 of this bill shall not become operative.

SEC. 9. Section 3.5 of this bill incorporates amendments to Section 7583.8 of the Business and Professions Code proposed by both this bill and AB 248. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2003, (2) each bill amends Section 7583.8 of the Business and Professions Code, and (3) this bill is enacted after AB 248, in which case Section 3 of this bill shall not become operative.

SEC. 10. (a) Section 4.3 of this bill incorporates amendments to Section 7583.9 of the Business and Professions Code proposed by both this bill and AB 248. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2003, (2) each bill amends Section 7583.9 of the Business and Professions Code, (3) AB 1840 is not enacted or as enacted does not amend that section, and (4) this bill is enacted after AB 248, in which case Sections 4, 4.5, and 4.7 of this bill shall not become operative.

(b) Section 4.5 of this bill incorporates amendments to Section 7583.9 of the Business and Professions Code proposed by both this bill and AB 1840. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2003, (2) each bill amends Section 7583.9 of the Business and Professions Code, (3) AB 248 is not enacted or as enacted does not amend that section, and (4) this bill is enacted after AB 1840, in which case Sections 4, 4.3, and 4.7 of this bill shall not become operative.

(c) Section 4.7 of this bill incorporates amendments to Section 7583.9 of the Business and Professions Code proposed by this bill, AB 248, and AB 1840. It shall only become operative if (1) all three bills are enacted and become effective on or before January 1, 2003, (2) all three bills amend Section 7583.9 of the Business and Professions Code, and

(3) this bill is enacted after AB 248, and AB 1840, in which case Sections 4, 4.3, and 4.5 of this bill shall not become operative.

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.

CHAPTER 610

An act to add Section 25160.7 to the Health and Safety Code, and to amend Sections 2402.6, 32000.5, 32001, and 34501.12 of the Vehicle Code, relating to vehicles.

[Approved by Governor September 16, 2002. Filed with Secretary of State September 17, 2002.]

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

SECTION 1. Section 25160.7 is added to the Health and Safety Code, to read:

25160.7. An authorized representative of the generator or facility operator that is responsible for loading hazardous waste into a transport vehicle shall, prior to that loading, ensure that the driver of the transport vehicle is in possession of the appropriate class of driver's license and any endorsement required to lawfully operate the transport vehicle with its intended load.

SEC. 2. Section 2402.6 of the Vehicle Code is amended to read:

2402.6. (a) The commissioner may adopt and enforce regulations and standards with respect to fuel containers and fuel systems on vehicles using compressed or liquefied natural gas and liquefied petroleum gas used in conjunction with a propulsion system certified by the State Air Resources Board as producing as few or fewer emissions as a State Air Resources Board approved system using compressed or liquefied natural gas or liquefied petroleum gas and with respect to the operation of vehicles using any of those fuels to ensure the safety of the equipment and vehicles and of persons and property using the highways.

(b) The commissioner may also adopt and enforce regulations and standards with respect to fuel containers and fuel systems on vehicles

using compressed or liquefied hydrogen gas or liquid fuels that generate hydrogen gas.

(c) All motor vehicles with compressed natural gas fuel systems used for propulsion shall comply either with the regulations adopted pursuant to subdivision (a) or with National Fire Protection Administration Standard NFPA 52, ''Compressed Natural Gas (CNG) Vehicular Fuel Systems'' in effect at the time of manufacture, until standards for those fuel systems have been incorporated into the Federal Motor Vehicle Safety Standards by the United States Department of Transportation. Whenever those Federal Motor Vehicle Safety Standards include requirements for gaseous fuel systems, all motor vehicles with gaseous fuel systems which are manufactured after the effective date of those requirements shall comply with those requirements.

(d) It is an infraction for any person to operate any motor vehicle in violation of any provision of a regulation adopted pursuant to this section.

(e) The operator of every facility for filling portable liquefied natural gas or liquefied petroleum gas containers having a capacity of four pounds or more but not more than 200 pounds of gas shall post in a conspicuous place the regulations applicable to that filling procedure.

SEC. 3. Section 32000.5 of the Vehicle Code is amended to read:

32000.5. (a) Every motor carrier who directs the transportation of an explosive and, on and after July 1, 1982, any motor carrier who directs the transportation of a hazardous material, who is required to display placards pursuant to Section 27903, and every motor carrier who transports for a fee in excess of 500 pounds of hazardous materials of the type requiring placards pursuant to Section 27903, shall be licensed in accordance with the provisions of this code, unless specifically exempted by this code or regulations adopted pursuant to this code. This license shall be available for examination and shall be displayed in accordance with the regulations adopted by the commissioner.

(b) (1) Except as provided in Section 32001, this division shall not apply to any person hauling only hazardous waste, as defined in Section 25115 or 25117 of the Health and Safety Code, and who is registered pursuant to subdivision (a) of Section 25163 of the Health and Safety Code or who is exempt from that registration pursuant to subdivision (b) of that section.

(2) Motor carriers that are transporting a hazardous waste and are required to display placards pursuant to Section 27903 shall comply with all provisions of Section 32001 except paragraph (3) of subdivision (c) of that section.

(c) This division does not apply to implements of husbandry, as defined in Section 36000.

(d) This division does not apply to the hauling of division 1.3 explosives classified as special fireworks or to division 1.4 explosives classified as common fireworks by the United States Department of Transportation if those fireworks are transported by a motor carrier under the authority of, and in conformance with, a license issued to the motor carrier by the State Fire Marshal pursuant to Part 2 (commencing with Section 12500) of Division 11 of the Health and Safety Code. In that case, a copy of the license shall be carried in the vehicle and presented to any peace officer upon request.

SEC. 4. Section 32001 of the Vehicle Code is amended to read:

32001. (a) (1) Any authorized employee of the department may inspect any sealed or unsealed vehicle, container, or shipment subject to this division in maintenance facilities, terminals, or other public or private property to ascertain the quantity and kind of hazardous material and to ensure compliance with the provisions of this code and regulations adopted pursuant to this code.

(2) If a seal is opened for inspection, the department shall reseal any vehicle, container, or shipment prior to further transportation.

(b) Unless specifically stated, nothing contained in this division shall be deemed to exempt any vehicle transporting a hazardous material subject to this division or the operator or any other person from other provisions of this code.

(c) No motor carrier shall direct the transportation of any shipment of a hazardous material in any vehicle unless all of the following are complied with:

(1) The vehicle is equipped as required by this code and applicable regulations adopted pursuant to law.

(2) The shipment complies with laws and regulations pertaining to the shipment or transportation of hazardous material.

(3) The motor carrier holds a valid license for the transportation of hazardous materials.

(4) (A) A vehicle or combination of vehicles required to display placards pursuant to Section 27903 is equipped with a two-way communication device, maintained in good working order, that enables the driver to contact the personnel responsible for the safety operations of the motor carrier in the event of an emergency.

(B) For the purposes of this section, ‘‘two-way communication device’’ means a radio, cellular telephone, or other similar device that permits communication between the driver and personnel responsible for the safety operations of the motor carrier.

(5) (A) The enclosed cargo body, when the display of placards is required pursuant to Section 27903, shall be locked and remain locked during transit of the hazardous materials so as to prevent any unauthorized entry and shall be opened only during loading, unloading,

or at the direction of a peace officer, an authorized employee of the department, or a person authorized pursuant to Section 25185 of the Health and Safety Code.

(B) A driver transporting hazardous material in a locked cargo body shall verify that all locks are in place if the vehicle has been left unattended for any length of time. Each driver shall make a notation in his or her log book of the time and date that the verification occurred.

(C) For the purposes of this section, ''cargo body'' means a fully enclosed area that is an integral part of the vehicle and designed to encapsulate the entire load, such as a van body or an intermodal freight container, and does not mean a tank or flatbed type of vehicle.

(d) The commissioner may issue exemptions from the provisions of this section.

(e) Nothing in this section shall limit the ability of other state or local agencies to carry out their regulatory, enforcement, or emergency response duties under other provisions of law.

SEC. 5. Section 34501.12 of the Vehicle Code is amended to read:

34501.12. (a) Notwithstanding Section 408, as used in this section and Sections 34505.5 and 34505.6, ''motor carrier'' means the registered owner of any vehicle described in subdivision (a), (b), (e), (f), or (g) of Section 34500, except in the following circumstances:

(1) The registered owner leases the vehicle to another person for a term of more than four months. If the lease is for more than four months, the lessee is the motor carrier.

(2) The registered owner operates the vehicle exclusively under the authority and direction of another person. If the operation is exclusively under the authority and direction of another person, that other person may assume the responsibilities as the motor carrier. If not so assumed, the registered owner is the motor carrier. A person who assumes the motor carrier responsibilities of another pursuant to subdivision (b) shall provide to that other person whose motor carrier responsibility is so assumed, a completed copy of a department form documenting that assumption, stating the period for which responsibility is assumed, and signed by an agent of the assuming person. A legible copy shall be carried in each vehicle or combination of vehicles operated on the highway during the period for which responsibility is assumed. That copy shall be presented upon request by any authorized employee of the department. The original completed departmental form documenting the assumption shall be provided to the department within 30 days of the assumption. If the assumption of responsibility is terminated, the person who had assumed responsibility shall so notify the department in writing within 30 days of the termination.

(b) (1) A motor carrier may combine two or more terminals for purposes of the inspection required by subdivision (d) subject to all of the following conditions:

(A) The carrier identifies to the department, in writing, each terminal proposed to be included in the combination of terminals for purposes of this subdivision prior to an inspection of the designated terminal pursuant to subdivision (d).

(B) The carrier provides the department, prior to the inspection of the designated terminal pursuant to subdivision (d), a written listing of all its vehicles of a type subject to subdivision (a), (b), (e), (f), or (g) of Section 34500 that are based at each of the terminals combined for purposes of this subdivision. The listing shall specify the number of vehicles of each type at each terminal.

(C) The carrier provides to the department at the designated terminal during the inspection all maintenance records and driver records and a representative sample of vehicles based at each of the terminals included within the combination of terminals.

(2) If the carrier fails to provide the maintenance records, driver records, and representative sample of vehicles pursuant to subparagraph (C) of paragraph (1), the department shall assign the carrier an unsatisfactory terminal rating and require a reinspection to be conducted pursuant to subdivision (h).

(3) For purposes of this subdivision, the following terms have the meanings given:

(A) ''Driver records'' includes pull notice system records, driver proficiency records, and driver timekeeping records.

(B) ''Maintenance records'' includes all required maintenance, lubrication, and repair records and drivers' daily vehicle condition reports.

(C) ''Representative sample'' means the following, applied separately to the carrier's fleet of motortrucks and truck tractors and its fleet of trailers:

Fleet Size	Representative Sample
1 or 2	All
3 to 8	3
9 to 15	4
16 to 25	6
26 to 50	9
51 to 90	14
91 or more	20

(c) Each motor carrier who, in this state, directs the operation of, or maintains, any vehicle of a type described in subdivision (a) shall designate one or more terminals, as defined in Section 34515, in this state where vehicles can be inspected by the department pursuant to paragraph (4) of subdivision (a) of Section 34501 and where vehicle inspection and maintenance records and driver records will be made available for inspection.

(d) (1) The department shall inspect, at least every 25 months, every terminal, as defined in Section 34515, of any motor carrier who, at any time, operates any vehicle described in subdivision (a).

(2) The department shall place an inspection priority on those terminals operating vehicles listed in subdivision (g) of Section 34500.

(3) As used in this section and in Sections 34505.5 and 34505.6, subdivision (f) of Section 34500 includes only those combinations where the gross vehicle weight rating (GVWR) of the towing vehicle exceeds 10,000 pounds, but does not include a pickup truck, and subdivision (g) of Section 34500 includes only those vehicles transporting hazardous material for which the display of placards is required pursuant to Section 27903, a license is required pursuant to Section 32000.5, or for which hazardous waste transporter registration is required pursuant to Section 25163 of the Health and Safety Code. Historical vehicles, as described in Section 5004, vehicles that display special identification plates in accordance with Section 5011, implements of husbandry and farm vehicles, as defined in Chapter 1 (commencing with Section 36000) of Division 16, and vehicles owned or operated by an agency of the federal government are not subject to this section or to Sections 34505.5 and 34505.6.

(e) (1) It is the responsibility of the motor carrier to schedule with the department the inspection required by subdivision (d). The motor carrier shall submit an application form supplied by the department, accompanied by the required fee. The fee, which is nonrefundable, is four hundred dollars ($400) per terminal, except in the case of an owner-operator, or a nonregulated motor carrier who owns, leases, or otherwise operates not more than one heavy power unit and not more than three towed vehicles described in subdivision (a), (b), (e), (f), or (g) of Section 34500, for which the fee shall be one hundred dollars ($100). Federal, state, and local public entities are exempt from the fee requirements of this section.

(2) Except as provided in paragraph (4), the inspection term for each inspected terminal of a motor carrier shall expire 25 months from the date the terminal receives a satisfactory compliance rating, as specified in subdivision (h). Applications and fees for subsequent inspections shall be submitted not earlier than nine months and not later than seven months before the expiration of the motor carrier's then current

inspection term. If the motor carrier has submitted the inspection application and the required accompanying fees, but the department is unable to complete the inspection within the 25-month inspection period, then no additional fee shall be required for the inspection requested in the original application.

(3) All fees collected pursuant to this subdivision shall be deposited in the Motor Vehicle Account in the State Transportation Fund. An amount equal to the fees collected shall be available for appropriation by the Legislature from the Motor Vehicle Account to the department for the purpose of conducting truck terminal inspections and for the additional roadside safety inspections required by Section 34514.

(4) To avoid the scheduling of a renewal terminal inspection pursuant to this section during a carrier's seasonal peak business periods, the current inspection term of a terminal that has paid all required fees and has been rated satisfactory in its last inspection may be reduced by not more than nine months if a written request is submitted by the carrier to the department at least four months prior to the desired inspection month, or at the time of payment of renewal inspection fees in compliance with paragraph (2), whichever date is earlier. A motor carrier may request this adjustment of the inspection term during any inspection cycle. A request made pursuant to this paragraph shall not result in a fee proration and does not relieve the carrier from the requirements of paragraph (2).

(f) It is unlawful for a motor carrier to operate any vehicle subject to this section without having submitted an inspection application and the required fees to the department as required by subdivision (e) or (h).

(g) It is unlawful for any motor carrier to operate any vehicle subject to this section after submitting an inspection application to the department, without the inspection described in subdivision (d) having been performed and a safety compliance report having been issued to the motor carrier within the 25-month inspection period or within 60 days immediately preceding the inspection period.

(h) (1) Any inspected terminal that receives an unsatisfactory compliance rating shall be reinspected within 120 days after the issuance of the unsatisfactory compliance rating.

(2) A terminal's first required reinspection under this subdivision shall be without charge unless one or more of the following is established:

(A) The motor carrier's operation presented an imminent danger to public safety.

(B) The motor carrier was not in compliance with the requirement to enroll all drivers in the pull notice program pursuant to Section 1808.1.

(C) The motor carrier failed to provide all required records and vehicles for a consolidated inspection pursuant to subdivision (b).

(3) If the unsatisfactory rating was assigned for any of the reasons set forth in paragraph (2), the carrier shall submit the required fee as provided in paragraph (4).

(4) Applications for reinspection pursuant to paragraph (3) or for second and subsequent consecutive reinspections under this subdivision shall be accompanied by the fee specified in paragraph (1) of subdivision (e) and shall be filed within 60 days of issuance of the unsatisfactory compliance rating. The reinspection fee is nonrefundable.

(5) When a motor carrier's Motor Carrier of Property Permit or Public Utilities Commission operating authority is suspended as a result of an unsatisfactory compliance rating, the department shall conduct no reinspection until requested to do so by the Department of Motor Vehicles or the Public Utilities Commission, as appropriate.

(i) It is the intent of the Legislature that the department make its best efforts to inspect terminals within the resources provided. In the interest of the state, the Commissioner of the California Highway Patrol may extend for a period not to exceed six months the inspection terms beginning prior to July 1, 1990.

(j) To encourage motor carriers to attain continuous satisfactory compliance ratings, the department may establish and implement an incentive program consisting of the following:

(1) After the second consecutive satisfactory compliance rating assigned to a motor carrier terminal as a result of an inspection conducted pursuant to subdivision (d), and after each consecutive satisfactory compliance rating thereafter, an appropriate certificate, denoting the number of consecutive satisfactory ratings, shall be awarded to the terminal, unless the terminal has received an unsatisfactory compliance rating as a result of any inspection conducted in the interim between the consecutive inspections conducted under subdivision (d), or the motor carrier is rated unsatisfactory by the department following a controlled substances and alcohol testing program inspection. The certificate authorized under this paragraph shall not be awarded for performance in the administrative review authorized under paragraph (2). However, the certificate shall include a reference to any administrative reviews conducted during the period of consecutive satisfactory ratings.

(2) Unless the department's evaluation of the motor carrier's safety record indicates a declining level of compliance, a terminal that has attained two consecutive satisfactory compliance ratings assigned following inspections conducted pursuant to subdivision (d) is eligible for an administrative review in lieu of the next required inspection, unless the terminal has received an unsatisfactory compliance rating as a result of any inspection conducted in the interim between the consecutive inspections conducted under subdivision (d). An administrative review shall consist of all of the following:

(A) A signed request by a terminal management representative requesting the administrative review in lieu of the required inspection containing a promise to continue to maintain a satisfactory level of compliance for the next 25-month inspection term.

(B) A review with a terminal management representative of the carrier's record as contained in the department's files. If a terminal has been authorized a second consecutive administrative review, the review required under this subparagraph is optional, and may be omitted at the carrier's request.

(C) Absent any cogent reasons to the contrary, upon completion of the requirements of subparagraphs (A) and (B), the safety compliance rating assigned during the last required inspection shall be extended for 25 months.

(3) Not more than two administrative reviews may be conducted consecutively. At the completion of the 25-month inspection term following a second administrative review, a terminal inspection shall be conducted pursuant to subdivision (d). If this inspection results in a satisfactory compliance rating, the terminal shall again be eligible for an administrative review in lieu of the next required inspection. If the succession of satisfactory ratings is interrupted by any rating of other than satisfactory, irrespective of the reason for the inspection, the terminal shall again attain two consecutive satisfactory ratings to become eligible for an administrative review.

(4) As a condition for receiving the administrative reviews authorized under this subdivision in lieu of inspections, and in order to ensure that compliance levels remain satisfactory, the motor carrier shall agree to accept random, unannounced inspections by the department.

SEC. 6. The Department of the California Highway Patrol, in consultation with the Department of Toxic Substances Control, shall prepare a report on the feasibility and cost-effectiveness of requiring all commercial motor vehicles required to display warning placards when transporting any amount of explosives, radiological materials, poisonous materials, or extremely hazardous waste to be equipped with global positioning devices. The completed report shall be submitted to the Chief Clerk of the Assembly and the Secretary of the Senate no later than July 1, 2004.

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.

CHAPTER 611

An act to amend Sections 11417, 11418.5, and 11419 of the Penal Code, relating to weapons of mass destruction, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 16, 2002. Filed with Secretary of State September 17, 2002.]

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

SECTION 1. Section 11417 of the Penal Code is amended to read:

11417. (a) For the purposes of this article, the following terms have the following meanings:

(1) ''Weapon of mass destruction'' includes chemical warfare agents, weaponized biological or biologic warfare agents, restricted biological agents, nuclear agents, radiological agents, or the intentional release of industrial agents as a weapon, or an aircraft, vessel, or vehicle, as described in Section 34500 of the Vehicle Code, which is used as a destructive weapon.

(2) ''Chemical Warfare Agents'' includes, but is not limited to, the following weaponized agents, or any analog of these agents:

(A) Nerve agents, including Tabun (GA), Sarin (GB), Soman (GD), GF, and VX.

(B) Choking agents, including Phosgene (CG) and Diphosgene (DP).

(C) Blood agents, including Hydrogen Cyanide (AC), Cyanogen Chloride (CK), and Arsine (SA).

(D) Blister agents, including mustards (H, HD [sulfur mustard], HN-1, HN-2, HN-3 [nitrogen mustard]), arsenicals, such as Lewisite (L), urticants, such as CX; and incapacitating agents, such as BZ.

(3) ''Weaponized biological or biologic warfare agents'' include weaponized pathogens, such as bacteria, viruses, rickettsia, yeasts, fungi, or genetically engineered pathogens, toxins, vectors, and endogenous biological regulators (EBRs).

(4) ''Nuclear or radiological agents'' includes any improvised nuclear device (IND) which is any explosive device designed to cause a nuclear yield; any radiological dispersal device (RDD) which is any explosive device utilized to spread radioactive material; or a simple radiological dispersal device (SRDD) which is any act or container

designed to release radiological material as a weapon without an explosion.

(5) ''Vector'' means a living organism or a molecule, including a recombinant molecule, or a biological product that may be engineered as a result of biotechnology, that is capable of carrying a biological agent or toxin to a host.

(6) ''Weaponization'' is the deliberate processing, preparation, packaging, or synthesis of any substance for use as a weapon or munition. "Weaponized agents'' are those agents or substances prepared for dissemination through any explosive, thermal, pneumatic, or mechanical means.

(7) For purposes of this section, ''used as a destructive weapon'' means to use with the intent of causing widespread great bodily injury or death by causing a fire or explosion or the release of a chemical, biological, or radioactive agent.

(b) The intentional release of a dangerous chemical or hazardous material generally utilized in an industrial or commercial process shall be considered use of a weapon of mass destruction when a person knowingly utilizes those agents with the intent to cause harm and the use places persons or animals at risk of serious injury, illness, or death, or endangers the environment.

(c) The lawful use of chemicals for legitimate mineral extraction, industrial, agricultural, or commercial purposes is not proscribed by this article.

(d) No university, research institution, private company, individual, or hospital engaged in scientific or public health research and, as required, registered with the Centers for Disease Control and Prevention (CDC) pursuant to Part 113 (commencing with Section 113.1) of Subchapter E of Chapter 1 of Title 9 or pursuant to Part 72 (commencing with Section 72.1) of Subchapter E of Chapter 1 of Title 42 of the Code of Federal Regulations, or any successor provisions, shall be subject to this article.

SEC. 2. Section 11418.5 of the Penal Code is amended to read:

11418.5. (a) Any person who knowingly threatens to use a weapon of mass destruction, with the specific intent that the statement as defined in Section 225 of the Evidence Code or a statement made by means of an electronic communication device, is to be taken as a threat, even if there is no intent of actually carrying it out, which, on its face and under the circumstances in which it is made, is so unequivocal, immediate, and specific as to convey to the person threatened, a gravity of purpose and an immediate prospect of execution of the threat, and thereby causes that person reasonably to be in sustained fear for his or her own safety, or for his or her immediate family's safety shall be punished by imprisonment in a county jail for up to one year or in the state prison for 3, 4, or 6 years,

and by a fine of not more than two hundred fifty thousand dollars ($250,000).

(b) For the purposes of this section, ''sustained fear'' can be established by, but is not limited to, conduct such as evacuation of any building by any occupant, evacuation of any school by any employee or student, evacuation of any home by any resident or occupant, any isolation, quarantine, or decontamination effort.

(c) The fact that the person who allegedly violated this section did not actually possess a biological agent, toxin, or chemical weapon does not constitute a defense to the crime specified in this section.

(d) Nothing in this section shall be construed to prevent punishment instead pursuant to any other provision of law that imposes a greater or more severe punishment.

SEC. 3. Section 11419 of the Penal Code is amended to read:

11419. (a) Any person or entity possessing any of the restricted biological agents enumerated in subdivision (b) shall be punished by imprisonment in the state prison for 4, 8, or 12 years, and by a fine of not more than two hundred fifty thousand dollars ($250,000).

(b) For the purposes of this section, ''restricted biological agents'' means the following:

(1) Viruses: Crimean-Congo hemorrhagic fever virus, eastern equine encephalitis virus, ebola viruses, equine morbilli virus, lassa fever virus, marburg virus, Rift Valley fever virus, South African hemorrhagic fever viruses (Junin, Machupo, Sabia, Flexal, Guanarito), tick-borne encephalitis complex viruses, variola major virus (smallpox virus), Venezuelan equine encephalitis virus, viruses causing hantavirus pulmonary syndrome, yellow fever virus.

(2) Bacteria: bacillus anthracis (commonly known as anthrax), brucella abortus, brucella melitensis, brucella suis, burkholderia (pseudomonas) mallei, burkholderia (pseudomonas) pseudomallei, clostridium botulinum, francisella tularensis, yersinia pestis (commonly known as plague).

(3) Rickettsiae: coxiella burnetii, rickettsia prowazekii, rickettsia rickettsii.

(4) Fungi: coccidioides immitis.

(5) Toxins: abrin, aflatoxins, botulinum toxins, clostridium perfringens epsilon toxin, conotoxins, diacetoxyscirpenol, ricin, saxitoxin, shigatoxin, staphylococcal enterotoxins, tabtoxin, tetrodotoxin, T-2 toxin.

(6) Any other microorganism, virus, infectious substance, or biological product that has the same characteristics as, or is substantially similar to, the substances prohibited in this section.

(c) (1) This section shall not apply to any physician, veterinarian, pharmacist, or licensed medical practitioner authorized to dispense a

prescription under Section 11026 of the Health and Safety Code, or universities, research institutions, or pharmaceutical corporations, or any person possessing the agents pursuant to a lawful prescription issued by a person defined in Section 11026 of the Health and Safety Code, if the person possesses vaccine strains of the viral agents Junin virus strain #1, Rift Valley fever virus strain MP-12, Venezuelan equine encephalitis virus strain TC-83 and yellow fever virus strain 17-D; any vaccine strain described in Section 78.1 of Subpart A of Part 78 of Subchapter C of Chapter 1 of Title 9 of the Code of Federal Regulations, or any successor provisions, and any toxin for medical use, inactivated for use as vaccines, or toxin preparation for biomedical research use at a median lethal dose for vertebrates of more than 100 ng/kg, as well as any national standard toxin required for biologic potency testing as described in Part 113 (commencing with Section 113.1) of Subchapter E of Chapter 1 of Title 9 of the Code of Federal Regulations, or any successor provisions.

(2) For the purposes of this section, no person shall be deemed to be in possession of an agent if the person is naturally exposed to, or innocently infected or contaminated with, the agent.

(d) Any peace officer who encounters any of the restricted agents mentioned above shall immediately notify and consult with a local public health officer to ensure proper consideration of any public health risk.

(e) Nothing in this section shall be construed to prevent punishment instead pursuant to any other provision of law that imposes a greater or more severe punishment.

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.

SEC. 5. 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 immediate authority to effectively address the use or threatened use of weapons of mass destruction in California, it is necessary that this act take effect immediately.

CHAPTER 612

An act to add Sections 8588.10 and 8588.11 to the Government Code, to add Sections 1797.116 and 13159.1 to the Health and Safety Code, and to add Section 13519.12 to the Penal Code, relating to emergency services, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 16, 2002. Filed with Secretary of State September 17, 2002.]

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

SECTION 1. This act shall be known and may be cited as the Responders Emergency Act to Combat Terrorism (REACT).

SEC. 2. The Legislature finds and declares the following:

(a) In light of recent events, California is among the best prepared states in the United States with regard to potential acts of terrorism. However, additional training is appropriate and necessary to ensure that all potential first responders to a terrorist event and a terrorist attack will be prepared.

(b) There are approximately 66,000 sworn and reserve state and local law enforcement officers, 65,000 volunteer and paid state and local firefighters, and 70,500 local emergency medical technicians and paramedics who could benefit from additional first responder training regarding terrorism. Additional public works employees may also be anticipated to benefit from training.

(c) The best way to fight terrorism and the damage caused by those acts is to prevent it, while also ensuring that local emergency response personnel, also known as emergency responders, who are often the first persons dispatched during emergency situations, are appropriately trained to deal with the unique aspects of terrorist acts and are able to uphold the highest standards of public safety.

(d) Local law enforcement, firefighters, and other local emergency personnel have become extremely adept at doing their jobs in dealing with traditional crime and emergency events, but the emerging threats of terrorism and bioterrorism have created new challenges that must be met to ensure the safety of those personnel and all of the citizens of our state.

(e) It is the intent of the Legislature that the training be developed and made available to first responders as quickly as possible.

SEC. 3. Section 8588.10 is added to the Government Code, to read:

8588.10. (a) The Emergency Response Training Advisory Committee shall be established pursuant to subdivision (d). The committee shall recommend the criteria for terrorism awareness curriculum content to meet the training needs of state and local

emergency response personnel and volunteers. In addition, the committee shall identify any additional training that would be useful and appropriate but that may not be generally available in California, and shall make recommendations pertaining to any need for training oversight agencies for first responder disciplines to expedite their curriculum approval processes.

(b) Basic terrorism awareness training shall include, but not be limited to, the following:

(1) An overview of conventional, chemical, biological, radiological, and nuclear threats.

(2) Threat and hazard recognition, with an emphasis on ability to determine local vulnerabilities.

(3) Understanding the structure and function of an incident command system.

(4) Initial response actions, including preliminary assessment, notifications, resource needs, and safety considerations.

(5) Coordination with other emergency service first responders.

(6) Gathering, verifying, assessing, and communicating incident information.

(7) Understanding mass casualty implications and decontamination requirements.

(8) Balancing lifesaving activities with evidence preservation.

(9) General awareness and additional training for each of the first responder categories specific to each discipline.

(c) (1) The Legislature finds and declares that training on terrorism awareness for first responders is of critical importance to the people of California.

(2) Every agency responsible for development of terrorism awareness training and every agency that employs or uses first responders shall give a high priority to the completion of that training.

(d) The Emergency Response Training Advisory Committee is hereby created, which shall be chaired by the Governor's security advisor and shall consist of the following members, or their representatives:

(1) The Governor's security advisor.

(2) The Commissioner of the California Highway Patrol.

(3) The Executive Director of the Commission on Peace Officer Standards and Training.

(4) The State Fire Marshal.

(5) The Director of Health Services.

(6) The Director of Emergency Services.

(7) The Director of the Emergency Medical Services Authority.

(8) The Chairperson of the California Fire Fighter Joint Apprenticeship Committee.

(9) The Attorney General.

(10) Nine representatives, appointed by the Governor, comprised of all of the following:

(A) One police chief from the California Police Chiefs Association.

(B) One county sheriff from the California State Sheriffs' Association.

(C) One representative of port security agencies.

(D) Two fire chiefs, one from the California Fire Chiefs Association and one from the California Metropolitan Fire Chiefs Association.

(E) Two firefighters, one from a statewide organization that represents career firefighters and one from a statewide organization that represents both career and volunteer firefighters.

(F) Two law enforcement labor representatives, one from a state organization and one from a local organization.

SEC. 4. Section 8588.11 is added to the Government Code, to read:

8588.11. (a) The Office of Emergency Services shall contract with the California Fire Fighter Joint Apprenticeship Program to develop a fire service specific course of instruction on the responsibilities of first responders to terrorism incidents. The course shall include the criteria for the curriculum content recommended by the Emergency Response Training Advisory Committee established pursuant to Section 8588.10 to address the training needs of both of the following:

(1) Firefighters in conformance with the standards established by the State Fire Marshal.

(2) Paramedics and other emergency medical services fire personnel in conformance with the standards established by the State Emergency Medical Services Authority.

(b) The course of instruction shall be developed in consultation with individuals knowledgeable about consequence management that addresses the topics of containing and mitigating the impact of a terrorist incident, including, but not limited to, a terrorist act using hazardous materials, as well as weapons of mass destruction, including any chemical warfare agent, weaponized biological agent, or nuclear or radiological agent, as those terms are defined in Section 11417 of the Penal Code, by techniques including, but not limited to, rescue, firefighting, casualty treatment, and hazardous materials response and recovery.

(c) The contract shall provide for the delivery of training by the California Fire Fighter Joint Apprenticeship Program through reimbursement contracts with the state, local, and regional fire agencies who may, in turn, contract with educational institutions.

(d) To maximize the availability and delivery of training, the California Fire Fighter Joint Apprenticeship Program shall develop a course of instruction to train the trainers in the presentation of the first

responder training of consequence management for fire service personnel.

SEC. 5. Section 1797.116 is added to the Health and Safety Code, to read:

1797.116. (a) The authority shall establish additional training standards that include the criteria for the curriculum content recommended by the Emergency Response Training Advisory Committee established pursuant to Section 8588.10 of the Government Code, involving the responsibilities of first responders to terrorism incidents and to address the training needs of those identified as first responders.

(b) Every EMT I, EMT II, and EMT-P, as defined in Sections 1797.80, 1797.82, and 1797.84, may receive the appropriate training described in this section. Pertinent training previously completed by any jurisdiction's EMT I, EMT II, or EMT-P personnel and meeting the training requirements of this section may be submitted to the training program approving authority to assess its content and determine whether it meets the training standards prescribed by the authority.

SEC. 6. Section 13159.1 is added to the Health and Safety Code, to read:

13159.1. (a) The State Fire Marshal shall establish additional training standards that include the criteria for curriculum content recommended by the Emergency Response Training Advisory Committee established pursuant to Section 8588.10 of the Government Code, involving the responsibilities of first responders to terrorism incidents and to address the training needs of those identified as first responders.

(b) Every paid and volunteer firefighter assigned to field duties in a state or local fire department or fire protection or firefighting agency may receive the appropriate training described in this section. Pertinent training previously completed by any jurisdiction's firefighters and meeting the training standards of this section may be submitted to the State Fire Marshal to assess its content and determine whether it meets the training requirements prescribed by the State Fire Marshal.

SEC. 7. Section 13519.12 is added to the Penal Code, to read:

13519.12. (a) Pursuant to Section 13510, the Commission on Peace Officer Standards and Training shall establish training standards and develop a course of instruction that includes the criteria for the curriculum content recommended by the Emergency Response Training Advisory Committee established pursuant to Section 8588.10 of the Government Code, involving the responsibilities of first responders to terrorism incidents. The course of instruction shall address the training needs of peace officers at a managerial or supervisory level and below who are assigned to field duties. The training shall be developed in

consultation with the Department of Justice and other individuals knowledgeable about terrorism and address current theory, terminology, historical issues, and procedures necessary to appropriately respond to and effectively mitigate the effects of a terrorist incident.

(b) The commission shall expedite the delivery of this training to law enforcement through maximum use of its local and regional delivery systems.

(c) To maximize the availability and delivery of training, the commission shall develop a course of instruction to train trainers and first responders dealing with terrorism incidents using a variety of formats.

(d) Every police chief and sheriff, the Commissioner of the Highway Patrol, and other general law enforcement agency executives may determine the members of their agency to receive the emergency response to terrorism incidents training developed by the commission under this section. The persons to be trained may include, but are not limited to, peace officers that perform general law enforcement duties at a managerial or supervisory level or below and are assigned to field duties.

SEC. 8. Sections 3 to 7, inclusive, of this act shall be implemented only when federal funds are received for the purposes of this act.

SEC. 9. 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 adequate funding for essential law enforcement training and emergency personnel to further improve responses to potential and actual acts of terrorism, it is necessary that this act take effect immediately.

CHAPTER 613

An act to amend Section 66474.4 of the Government Code, relating to land use.

[Approved by Governor September 16, 2002. Filed with Secretary of State September 17, 2002.]

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

SECTION 1. Section 66474.4 of the Government Code is amended to read:

66474.4. (a) The legislative body of a city or county shall deny approval of a tentative map, or a parcel map for which a tentative map was not required, if it finds that either the resulting parcels following a subdivision of that land would be too small to sustain their agricultural use or the subdivision will result in residential development not incidental to the commercial agricultural use of the land, and if the legislative body finds that the land is subject to any of the following:

(1) A contract entered into pursuant to the California Land Conservation Act of 1965 (Chapter 7 (commencing with Section 51200) of Part 1 of Division 1 of Title 5), including an easement entered into pursuant to Section 51256.

(2) An open-space easement entered into pursuant to the Open-Space Easement Act of 1974 (Chapter 6.6 (commencing with Section 51074) of Part 1 of Division 1 of Title 5).

(3) An agricultural conservation easement entered into pursuant to Chapter 4 (commencing with Section 10260) of Division 10.2 of the Public Resources Code.

(4) A conservation easement entered into pursuant to Chapter 4 (commencing with Section 815) of Part 2 of Division 2 of the Civil Code.

(b) (1) For purposes of this section, land shall be conclusively presumed to be in parcels too small to sustain their agricultural use if the land is (A) less than 10 acres in size in the case of prime agricultural land, or (B) less than 40 acres in size in the case of land that is not prime agricultural land.

(2) For purposes of this section, agricultural land shall be presumed to be in parcels large enough to sustain their agricultural use if the land is (A) at least 10 acres in size in the case of prime agricultural land, or (B) at least 40 acres in size in the case of land that is not prime agricultural land.

(c) A legislative body may approve a subdivision with parcels smaller than those specified in this section if the legislative body makes either of the following findings:

(1) The parcels can nevertheless sustain an agricultural use permitted under the contract or easement, or are subject to a written agreement for joint management pursuant to Section 51230.1 and the parcels that are jointly managed total at least 10 acres in size in the case of prime agricultural land or 40 acres in size in the case of land that is not prime agricultural land.

(2) One of the parcels contains a residence and is subject to Section 428 of the Revenue and Taxation Code; the residence has existed on the property for at least five years; the landowner has owned the parcels for at least 10 years; and the remaining parcels shown on the map are at least 10 acres in size if the land is prime agricultural land, or at least 40 acres in size if the land is not prime agricultural land.

(d) No other homesite parcels as described in paragraph (2) of subdivision (c) may be created on any remaining parcels under contract entered into pursuant to the California Land Conservation Act of 1965 (Chapter 7 (commencing with Section 51200) of Division 1 of Title 5) for at least 10 years following the creation of a homesite parcel pursuant to this section.

(e) This section shall not apply to land that is subject to a contract entered into pursuant to the California Land Conservation Act of 1965 (Chapter 7 (commencing with Section 51200) of Division 1 of Title 5) when any of the following has occurred:

(1) A local agency formation commission has approved the annexation of the land to a city and the city will not succeed to the contract as provided in Sections 51243 and 51243.5.

(2) Written notice of nonrenewal of the contract has been served, as provided in Section 51245, and, as a result of that notice, there are no more than three years remaining in the term of the contract.

(3) The board or council has granted tentative approval for cancellation of the contract as provided in Section 51282.

(f) This section shall not apply during the three-year period preceding the termination of a contract described in paragraph (1) of subdivision (a).

(g) This section shall not be construed as limiting the power of legislative bodies to establish minimum parcel sizes larger than those specified in subdivision (a).

(h) This section does not limit the authority of a city or county to approve a tentative or parcel map with respect to land subject to an easement described in this section for which agriculture is the primary purpose if the resulting parcels can sustain uses consistent with the intent of the easement.

(i) This section does not limit the authority of a city or county to approve a tentative or parcel map with respect to land subject to an easement described in this section for which agriculture is not the primary purpose if the resulting parcels can sustain uses consistent with the purposes of the easement.

(j) Where an easement described in this section contains language addressing allowable land divisions, the terms of the easement shall prevail.

(k) The amendments to this section made in the 2002 portion of the 2001–02 Regular Session of the Legislature shall apply only with respect to contracts or easements entered into on or after January 1, 2003.

CHAPTER 614

An act to amend Sections 51296.3, 51296.4, and 56749 of, and to add Sections 56426, 56426.5, and 56856.5 to, the Government Code, relating to local agency formation.

[Approved by Governor September 16, 2002. Filed with Secretary of State September 17, 2002.]

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

SECTION 1. Section 51296.3 of the Government Code is amended to read:

51296.3. Notwithstanding any provision of the Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000 (Division 3 (commencing with Section 56000)), a local agency formation commission shall not approve a change of organization or reorganization that would result in the annexation of land within a designated farmland security zone to a city. However, this subdivision shall not apply under any of the following circumstances:

(a) If the farmland security zone is located within a designated, delineated area that has been approved by the voters as a limit for existing and future urban facilities, utilities, and services.

(b) If annexation of a parcel or a portion of a parcel is necessary for the location of a public improvement, as defined in Section 51290.5, except as provided in Section 51296.5 or 51296.6.

(c) If the landowner consents to the annexation.

SEC. 2. Section 51296.4 of the Government Code is amended to read:

51296.4. Notwithstanding any provision of the Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000 (Division 3 (commencing with Section 56000)), a local agency formation commission shall not approve a change of organization or reorganization that would result in the annexation of land within a designated farmland security zone to a special district that provides or would provide sewers, nonagricultural water, or streets and roads, unless the facilities or services provided by the special district benefit land uses that are allowed under the contract and the landowner consents to the change of organization or reorganization.

SEC. 3. Section 56426 is added to the Government Code, to read:

56426. The commission shall not approve or conditionally approve a change to the sphere of influence of a local government agency of territory that is subject to a farmland security zone contract pursuant to Article 7 (commencing with Section 51296) of Chapter 7 of Part 1 of Division 1, if that local government agency provides or would provide

facilities or services related to sewers, nonagricultural water, or streets and roads to the territory, unless these facilities or services benefit land uses that are allowed under the contract and the landowner consents to the change to the sphere of influence.

SEC. 4. Section 56426.5 is added to the Government Code, to read:

56426.5. (a) The commission shall not approve a change to the sphere of influence of a local government agency of territory that is subject to a contract entered into pursuant to the California Land Conservation Act of 1965 (Chapter 7 (commencing with Section 51200) of Part 1 of Division 1) if that local government agency provides or would provide facilities or services related to sewers, nonagricultural water, or streets and roads to the territory, unless these facilities or services benefit land uses that are allowed under the contract and the landowner consents to the change to the sphere of influence.

(b) Notwithstanding subdivision (a), the commission may nevertheless approve a change for that territory if it finds either of the following:

(1) That the change would facilitate planned, orderly, and efficient patterns of land use or provision of services, and the public interest in the change substantially outweighs the public interest in the current continuation of the contract beyond its current expiration date.

(2) That the change is not likely to adversely affect the continuation of the contract beyond its current expiration date.

In making this determination, the commission shall consider all of the following:

(A) The policies and implementation measures adopted by the city or county that would administer the contract both before and after any ultimate annexation, relative to the continuation of agriculture or other uses allowable under the contract.

(B) The infrastructure plans of the annexing agency.

(C) Other factors that the commission deems relevant.

(c) This section shall not apply to any of the following:

(1) Territory that is subject to a contract for which a notice of nonrenewal has been served pursuant to Section 51245.

(2) Territory that is subject to a contract for which a tentative cancellation has been approved pursuant to Section 51282.

(3) Territory for which the governing body of the county or city administering the contract has given its written approval to the change and the landowner consents to the change.

SEC. 5. Section 56749 of the Government Code is amended to read:

56749. (a) The commission shall not approve or conditionally approve a change of organization or reorganization that would result in the annexation to a city of territory that is within a farmland security zone created pursuant to Article 7 (commencing with Section 51296) of

Chapter 7 of Division 1 if that city provides or would provide facilities or services related to sewers, nonagricultural water, or streets and roads, unless the facilities or services provided by the city benefit land uses that are allowed under a farmland security zone contract and the landowner consents to the change of organization or reorganization. However, this subdivision shall not apply under any of the following circumstances:

(1) If the farmland security zone is located within a designated, delineated area that has been approved by the voters as a limit for existing and future urban facilities, utilities, and services.

(2) If annexation of a parcel or a portion of a parcel is necessary for the location of a public improvement, as defined in Section 51290.5, except as provided in subdivision (f) or (g) of Section 51296.

(3) If the landowner consents to the annexation.

(b) This section shall not apply during the three-year period preceding the termination of a farmland security zone contract under Article 7 (commencing with Section 51296) of Chapter 7 of Part 1 of Division 1.

SEC. 6. Section 56856.5 is added to the Government Code, to read:

56856.5. (a) The commission shall not approve or conditionally approve a change of organization or reorganization that would result in the annexation to a city or special district of territory that is subject to a contract entered into pursuant to the California Land Conservation Act of 1965 (Chapter 7 (commencing with Section 51200) of Part 1 of Division 1), other than a contract entered into pursuant to Article 7 (commencing with Section 51296) of Chapter 7 of Part 1 of Division 1, if that city or special district provides or would provide facilities or services related to sewers, nonagricultural water, or streets and roads to the territory, unless these facilities or services benefit land uses that are allowed under the contract.

(b) This section shall not be construed to preclude the annexation of territory for the purpose of using other facilities or services provided by the agency that benefit land uses allowable under the contract.

(c) Notwithstanding subdivision (a), the commission may nevertheless approve a change of organization or reorganization if it finds any of the following:

(1) The city or county that would administer the contract after annexation has adopted policies and feasible implementation measures applicable to the subject territory ensuring the continuation of agricultural use and other uses allowable under the contract on a long-term basis.

(2) The change of organization or reorganization encourages and provides planned, well-ordered, and efficient urban development patterns that include appropriate consideration of the preservation of open-space lands within those urban development patterns.

(3) The change of organization or reorganization is necessary to provide services to planned, well-ordered, and efficient urban development patterns that include appropriate consideration of the preservation of open-space lands within those urban development patterns.

(d) This section shall not apply to territory subject to a contract for which either of the following applies:

(1) A notice of nonrenewal has been served pursuant to Section 51245, if the annexing agency agrees that no services will actually be provided by it for use during the remaining life of the contract for land uses or activities not allowed under the contract.

(2) A tentative cancellation has been approved pursuant to Section 51282.

SEC. 7. The changes in law made by this act shall not apply to any change of organization or reorganization initiated prior to January 1, 2003.

CHAPTER 615

An act to add Section 411 to the Food and Agricultural Code, relating to food.

[Approved by Governor September 16, 2002. Filed with Secretary of State September 17, 2002.]

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

SECTION 1. It is the intent of the Legislature that the food forecasts made by the Department of Food and Agriculture and the Department of Water Resources shall include the following considerations:

(1) Neither the state nor the nation should be allowed to become dependent upon a net import of foreign food.

(2) As the nation's population grows, California should produce enough food to supply the state and also continue to supply the historical proportion of the nation's food supply, approximately 25 percent of the nation's table food.

(3) Countries such as Japan are heavily dependent on imported food, some of which comes from California. California is also called upon to ship food to prevent famines and to protect our national interest by providing food to maintain stability elsewhere in the world. Consideration should be given to maintaining the state's ability to meet these export needs.

SEC. 2. Section 411 is added to the Food and Agricultural Code, to read:

411. (a) The Department of Food and Agriculture shall supply the Department of Water Resources with a forecast that estimates the amount of production of food, fiber, livestock, and other farm products.

(b) As part of the forecast, the Department of Food and Agriculture's assumptions shall be based upon 20-year estimates that include, but are not limited to, the following data:

(1) Land use conversion rates and the amount of land available for agricultural production.

(2) The growing need for food, fiber, livestock and other farm products as the state's and the nation's populations grow.

(3) Implementation of irrigation technology and other on-farm water conservation measures.

(4) Advances in crop yields and production techniques.

(5) Alternate uses of crops.

(c) The department shall include an additional table in the forecast that estimates the agricultural water needs based upon food security considerations that include, at a minimum, the following:

(1) Population growth estimates.

(2) Production of farm products sufficient to feed the state's population, as well as continue to provide at least 25 percent of the nation's table food.

(3) Production necessary to meet the growth in export markets.

(d) To the extent feasible, the Department of Food and Agriculture may cooperate with the Department of Finance, the University of California, and other institutions and organizations in obtaining information for the forecasts.

(e) The Department of Food and Agriculture shall furnish the forecast to the Department of Water Resources for estimating related water usage, as well as to the Chairs of the Assembly Committee on Agriculture, the Assembly Committee on Water, Parks, and Wildlife, and the Senate Committee on Agriculture and Water Resources. The Department of Water Resources shall include this information in Bulletin 160.

CHAPTER 616

An act to amend Section 51257, of the Government Code, to amend Sections 10211, 10212, 10230, 10231, 10233, 10234, 10235, 10236, 10237, 10239, 10240, 10241, 10244, 10246, 10250, 10251, 10252, 10254, 10260, 10260.5, 10261, 10262, 10263, 10264, 10270, 10271, 10273, 10274, and 10276 of, to add Sections 10230.5, 10255, 10262.2,

and 10262.5 to, and to repeal Section 10265, of the Public Resources Code, and to amend Sections 402.1, 421.5, 423.4, 423.8, and 426 of the Revenue and Taxation Code, relating to agricultural land conservation.

[Approved by Governor September 16, 2002. Filed with Secretary of State September 17, 2002.]

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

SECTION 1. Section 51257 of the Government Code is amended to read:

51257. (a) To facilitate a lot line adjustment, pursuant to subdivision (d) of Section 66412, and notwithstanding any other provision of this chapter, the parties may mutually agree to rescind the contract or contracts and simultaneously enter into a new contract or contracts pursuant to this chapter, provided that the board or council finds all of the following:

(1) The new contract or contracts would enforceably restrict the adjusted boundaries of the parcel for an initial term for at least as long as the unexpired term of the rescinded contract or contracts, but for not less than 10 years.

(2) There is no net decrease in the amount of the acreage restricted. In cases where two parcels involved in a lot line adjustment are both subject to contracts rescinded pursuant to this section, this finding will be satisfied if the aggregate acreage of the land restricted by the new contracts is at least as great as the aggregate acreage restricted by the rescinded contracts.

(3) At least 90 percent of the land under the former contract or contracts remains under the new contract or contracts.

(4) After the lot line adjustment, the parcels of land subject to contract will be large enough to sustain their agricultural use, as defined in Section 51222.

(5) The lot line adjustment would not compromise the long-term agricultural productivity of the parcel or other agricultural lands subject to a contract or contracts.

(6) The lot line adjustment is not likely to result in the removal of adjacent land from agricultural use.

(7) The lot line adjustment does not result in a greater number of developable parcels than existed prior to the adjustment, or an adjusted lot that is inconsistent with the general plan.

(b) Nothing in this section shall limit the authority of the board or council to enact additional conditions or restrictions on lot line adjustments.

(c) Only one new contract may be entered into pursuant to this section with respect to a given parcel, prior to January 1, 2004.

(d) In the year 2002, the department's Williamson Act Status Report, prepared pursuant to Section 51207, shall include a review of the performance of this section.

(e) This section shall remain in effect only until January 1, 2004, and as of that date is repealed, unless a later enacted statute, that is enacted on or before January 1, 2004, deletes or extends that date.

SEC. 2. Section 10211 of the Public Resources Code is amended to read:

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 for the California Farmland Conservancy Program by the owner of a fee simple interest in land to a local government, nonprofit organization, resource conservation district, or to a regional park or open-space district or regional park or open-space authority that has the conservation of farmland among its stated purposes, as prescribed by statute, or as expressed in the entity's locally adopted policies. It shall be granted in perpetuity as the equivalent of covenants running with the land.

SEC. 3. Section 10212 of the Public Resources Code is amended to read:

10212. ''Applicant'' means a city, county, nonprofit organization, resource conservation district, or a regional park or open-space district or regional park or open-space authority that has the conservation of farmland among its stated purposes, as prescribed by statute, or as expressed in the entity's locally adopted policies, that applies for a grant authorized pursuant to this division.

SEC. 4. Section 10230 of the Public Resources Code is amended to read:

10230. (a) (1) The California Farmland Conservancy Program Fund is hereby created.

Except as provided in paragraph (2), the moneys in the fund shall, upon appropriation by the Legislature in the annual Budget Act, be used for the purposes of the program, which include the purchase of agricultural conservation easements, fee title acquisition grants, 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.

(2) Notwithstanding paragraph (1), moneys may be deposited into the fund from federal grants, and gifts and donations that are designated and required by the donor to be used exclusively for the purposes of the program, and notwithstanding Section 13340 of the Government Code,

those moneys are hereby continuously appropriated to the department for expenditure for the purposes of this program.

(b) 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.

SEC. 5. Section 10230.5 is added to the Public Resources Code, to read:

10230.5. Policy planning grants may be awarded pursuant to criteria established by the department for purposes including, but not limited to, the development and evaluation of local or regional land conservation strategies and potential agricultural conservation easement or fee title acquisition projects.

SEC. 6. Section 10231 of the Public Resources Code is amended to read:

10231. Money available from the fund shall be utilized in accordance with the expenditures and distribution authorized, required, or otherwise provided in the program for grants for the acquisition of agricultural conservation easements or fee title. This includes direct costs incidental to the acquisition, as determined by the department, including costs associated with a loss in property tax revenues resulting from the acquisition of those agricultural conservation easements. Direct costs paid to the applicant shall have been incurred after the application was submitted to the department and no more than 180 days before the execution of the grant agreement or during the grant term, and shall not exceed 10 percent of the value of the easements for which the costs were incurred.

SEC. 7. Section 10233 of the Public Resources Code is amended to read:

10233. Each application for a grant pursuant to this division shall contain a matching funding component, as specified in this section, and may be provided in the form of cash or in-kind services, or any combination thereof, as determined by the department.

(a) Each application for a grant for the purchase of an agricultural conservation easement shall contain a matching component of not less than 5 percent of the value of the grant or a landowner donation of not less than 10 percent of the appraised fair market value of the agricultural conservation easement. In situations where both matching funds and donations of easement value are being combined, the combined match shall be not less than 10 percent of the appraised fair market value of the agricultural conservation easement. Up to 50 percent of contributions to an agricultural conservation easement monitoring endowment for the

subject property may be provided as a component of a qualified grant match under this division, as determined by the department.

(b) Each application for a planning or land improvement grant pursuant to Section 10230 shall contain a matching funding component of not less than 10 percent of the proposal's total cost.

(c) Each application for a fee title acquisition grant shall contain a matching component of not less than 5 percent of the value of the grant.

SEC. 8. Section 10234 of the Public Resources Code is amended to read:

10234. Every applicant for a grant for the acquisition of fee title or an agricultural conservation easement shall provide by a resolution from the governing body of the local government in which the proposed project is located, and shall certify both of the following:

(a) The proposal meets the eligibility criteria set forth in Section 10251.

(b) The proposal has been approved by the appropriate local governmental governing body.

SEC. 9. Section 10235 of the Public Resources Code is amended to read:

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 director, or where the easement may be transferred to a public agency or nonprofit organization, for management purposes.

(b) If a local government or nonprofit organization holding the easement is dissolved, it shall be transferred to an appropriate public agency or nonprofit organization, 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 easement holder, and the director. The director shall determine that the amendment is not inconsistent with this section before it may be amended.

SEC. 10. Section 10236 of the Public Resources Code is amended to read:

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 entity that holds the easement shall reimburse the fund by an amount equal to the fair market value of the easement, as determined by an appraisal approved by the department.

SEC. 11. Section 10237 of the Public Resources Code is amended to read:

10237. The director shall not disburse any grant funds for easement or fee title acquisitions unless the applicant, and in the case of an easement acquisition grant, the seller, agrees to restrict the use of the land in perpetuity, subject to review after 25 years.

SEC. 12. Section 10239 of the Public Resources Code is amended to read:

10239. The director shall disburse funds to an applicant for a grant for the acquisition of fee title to agricultural land only if the applicant agrees to all of the following conditions:

(a) Upon acquisition of the property, treat the property as encumbered by an agricultural conservation easement subject to this division and approved by the department.

(b) Sell the fee title subject to an agricultural conservation easement approved by the department to a private landowner within three years of the acquisition of the fee title.

(c) Reimburse the fund within 30 days after the sale of the restricted fee title by an amount equal to the department's proportional share of the net proceeds of the sale.

(1) The ''net proceeds of the sale'' is defined as the fair market value of the land less the value of the easement and associated transaction costs.

(2) The department's proportional share of the net proceeds of the sale shall be calculated using a factor reflecting the department's proportional share of the purchase price paid by the applicant in the original acquisition of fee title, taking into account contributions from all sources toward that original purchase price.

SEC. 13. Section 10240 of the Public Resources Code is amended to read:

10240. (a) The department shall adopt rules and regulations for the implementation of this division.

(b) Rules or regulations adopted by the department pursuant to this section shall be adopted 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).

SEC. 14. Section 10241 of the Public Resources Code is amended to read:

10241. The department shall adopt the criteria necessary for its approval of grant applications.

SEC. 15. Section 10244 of the Public Resources Code is amended to read:

10244. To be eligible to receive funds pursuant to this division for the acquisition of either agricultural conservation easements or fee title interests, qualified applicants shall submit to the department

documentation of the applicable local government's 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.

SEC. 16. Section 10246 of the Public Resources Code is amended to read:

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. An application for a land improvement grant 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 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.

(f) The application satisfies other relevant criteria established by the department.

SEC. 17. Section 10250 of the Public Resources Code is amended to read:

10250. In reviewing applications pursuant to this division, the department shall determine whether the proposed project meets the applicable requirements set forth in this division and conforms with any rules or regulations adopted by the department pursuant to this division.

SEC. 18. Section 10251 of the Public Resources Code is amended to read:

10251. Applicants for an agricultural conservation easement or fee acquisition grant shall meet all of the following eligibility criteria:

(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 that 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) Without conservation, the land proposed for protection is likely to be converted to nonagricultural use in the foreseeable future.

SEC. 19. Section 10252 of the Public Resources Code is amended to read:

10252. The director shall evaluate a proposal for a fee title or agricultural conservation easement acquisition grant based upon the overall value of the project, taking into consideration the goals and objectives for this program, and the extent to which the proposed project 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.

(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 and other sources toward the acquisition of the fee title or agricultural conservation easement, or both.

(k) The price of the proposed acquisition is cost-effective in comparison to the fair market value.

(*l*) Other relevant considerations established by the director.

SEC. 20. Section 10254 of the Public Resources Code is amended to read:

10254. Before an application for an agricultural conservation easement or fee title acquisition grant is approved by the department pursuant to the program, the entity that is applying for the grant 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 as follows:

(a) Notice shall be provided to adjacent landowners as indicated in the county tax rolls not less than 30 days prior to the expected date of the local government's consideration of the resolution required pursuant to subdivision (b) of Section 10234.

(b) The notice to the county and city shall be provided not less than 30 days before the entity applies for the grant to acquire an agricultural conservation easement.

SEC. 21. Section 10260 of the Public Resources Code is amended to read:

10260. (a) In determining the amount of funding to be provided for an agricultural conservation easement or fee acquisition grant, the department shall take reasonable steps to ensure that the total purchase price of the agricultural conservation easement or, in the case of a fee title acquisition, the total purchase price of the subject property does not exceed fair market value, taking into consideration the funding from all

sources. The determination of fair market value shall be accomplished, as follows:

(1) An applicant shall select and retain an independent real estate appraiser to determine the value of the subject property, including any proposed agricultural conservation easement.

(2) The department shall review and consider an applicant's appraisal and may, at its sole discretion, require or obtain an additional appraisal.

(3) The easement value shall be calculated by determining the difference between the fair market value and the restricted value of the property.

(b) The department may conditionally approve grant applications prior to completion of final appraisals, provided an acceptable appraisal and all other requirements of this division are met before any disbursement of grant funds.

(c) The department shall have final authority to determine the acceptability of an appraisal pursuant to this division.

SEC. 22. Section 10255 is added to the Public Resources Code, to read:

10255. Prior to the disbursement of grant funds for easements or fee title acquisitions under this division, all of the following conditions shall be met:

(a) The proposed agricultural conservation project shall be deemed by the department to be compatible with the applicable city or county general plan.

(b) The governing body of the applicable city or county approves the easement proposal by resolution.

(c) For land within a city's sphere of influence, the proposed agricultural conservation project shall be deemed by the department to be compatible with both the applicable county and city general plans. In addition, both the applicable county and city shall have adopted resolutions approving the easement proposal.

SEC. 23. Section 10260.5 of the Public Resources Code is amended to read:

10260.5. For purposes of this division, an agricultural conservation easement shall be recorded in the county recorder's office in each county in which the real property affected is located. Once recorded, the easement shall attach to the real property in perpetuity.

SEC. 24. Section 10261 of the Public Resources Code is amended to read:

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 that would have been payable to the owner but for the existence of the easement less the fair market value of the easement, as determined by an independent appraisal, at the time of condemnation.

(2) The program, and any other contributing parties if so provided in 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).

SEC. 25. Section 10262 of the Public Resources Code is amended to read:

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) 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.

SEC. 26. Section 10262.2 is added to the Public Resources Code, to read:

10262.2. An agricultural conservation easement may provide for either or both of the following:

(a) 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.

(b) 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.

SEC. 27. Section 10262.5 is added to the Public Resources Code, to read:

10262.5. The granting of an agricultural conservation easement under this division shall not be interpreted to convey any rights of public access to the subject property.

SEC. 28. Section 10263 of the Public Resources Code is amended to read:

10263. (a) The department shall act on an application for a grant within 180 days after the department determines that it is complete.

(b) If the department disapproves a grant application, the applicant shall be given written notice of the disapproval within 10 days of the department's decision. The written notice shall state the reason for the disapproval of the application.

SEC. 29. Section 10264 of the Public Resources Code is amended to read:

10264. The director shall disapprove the application for a grant for the acquisition of an agricultural conservation easement or fee title in any of the following circumstances:

(a) The application does not satisfy the eligibility criteria set forth in Section 10251.

(b) The department has determined that 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.

SEC. 30. Section 10265 of the Public Resources Code is repealed.

SEC. 31. Section 10270 of the Public Resources Code is amended to read:

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. Upon receipt of a request, the department shall immediately notify the affected local government to initiate a local government inquiry pursuant to Section 10271.

SEC. 32. Section 10271 of the Public Resources Code is amended to read:

10271. (a) 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.

(1) The local government 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 local government.

(2) The inquiry shall be concluded and a report submitted to the department within 150 days of the department notifying the local government of the request pursuant to Section 10270.

(b) The department shall make a decision as to the request within 195 days after notifying the local government of the request or within 45 days after receiving the local government report summarizing the results of its inquiry, whichever occurs later.

SEC. 33. Section 10273 of the Public Resources Code is amended to read:

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) The conservation purposes, as defined in the agricultural conservation easement, can no longer be achieved.

(7) 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 that 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.

(c) The department shall request from the easement holder, and shall consider the easement holder's assessment of, information regarding the continuing value and viability of the subject property for the conservation purposes for which the easement was originally created. The department may consider the easement holder's investment in, or experience with, the subject property in evaluating the proposed termination.

SEC. 34. Section 10274 of the Public Resources Code is amended to read:

10274. The uneconomic character of existing agricultural use shall not by itself be sufficient reason for termination of the agricultural conservation easement, unless the director determines there is no other reasonable or comparable agricultural use for the land, and the conservation purposes, as defined in the agricultural conservation easement, can no longer be achieved. If the director determines that the existing use is uneconomic, that there is no other reasonable or comparable agricultural use of the land, and the conservation purposes as defined in the agricultural conservation easement can no longer be achieved, termination of the easement may be approved by the secretary without making a finding pursuant to paragraph (6) of subdivision (a) of Section 10273.

SEC. 35. Section 10276 of the Public Resources Code is amended to read:

10276. (a) If the termination of the agricultural conservation easement is approved pursuant to this division or pursuant to a judicial proceeding in a court of competent jurisdiction, the landowner shall repurchase the easement by paying to the fund and, if so provided in the easement, to any other contributing parties, 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 complete the termination process by repurchasing the agricultural conservation easement within one year from the date of the department's approval of the termination of the easement, the termination approval shall lapse and 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, except as provided in subdivision (d).

(d) Where an easement was originally purchased with moneys from sources other than the program, the easement may require that moneys received from the repurchase of the easement be divided proportionally between the fund and any other funding source, including nonprofit organizations, in amounts that are proportional to the original contribution made by each party that contributed to that purchase. If provided in an easement, a nonprofit organization that contributed indirect costs and services to the purchase of an easement may recoup the actual amount of its contribution, plus an amount not exceeding 3 percent of the total amount of the contribution for administrative costs of ongoing easement monitoring and enforcement. Those contributions shall be deducted from the total proceeds prior to the proportional division defined herein.

SEC. 36. Section 402.1 of the Revenue and Taxation Code is amended to read:

402.1. (a) In the assessment of land, the assessor shall consider the effect upon value of any enforceable restrictions to which the use of the land may be subjected. These restrictions shall include, but are not limited to, all of the following:

(1) Zoning.

(2) Recorded contracts with governmental agencies other than those provided in Sections 422 and 422.5.

(3) Permit authority of, and permits issued by, governmental agencies exercising land use powers concurrently with local governments, including the California Coastal Commission and regional coastal commissions, the San Francisco Bay Conservation and Development Commission, and the Tahoe Regional Planning Agency.

(4) Development controls of a local government in accordance with any local coastal program certified pursuant to Division 20 (commencing with Section 30000) of the Public Resources Code.

(5) Development controls of a local government in accordance with a local protection program, or any component thereof, certified pursuant to Division 19 (commencing with Section 29000) of the Public Resources Code.

(6) Environmental constraints applied to the use of land pursuant to provisions of statutes.

(7) Hazardous waste land use restriction pursuant to Section 25240 of the Health and Safety Code.

(8) A recorded conservation, trail, or scenic easement, as described in Section 815.1 of the Civil Code, that is granted in favor of a public agency, or in favor of a nonprofit corporation organized pursuant to Section 501(c)(3) of the Internal Revenue Code that has as its primary

purpose the preservation, protection, or enhancement of land in its natural, scenic, historical, agricultural, forested, or open-space condition or use.

(b) There is a rebuttable presumption that restrictions will not be removed or substantially modified in the predictable future and that they will substantially equate the value of the land to the value attributable to the legally permissible use or uses.

(c) Grounds for rebutting the presumption may include, but are not necessarily limited to, the past history of like use restrictions in the jurisdiction in question and the similarity of sales prices for restricted and unrestricted land. The possible expiration of a restriction at a time certain shall not be conclusive evidence of the future removal or modification of the restriction unless there is no opportunity or likelihood of the continuation or renewal of the restriction, or unless a necessary party to the restriction has indicated an intent to permit its expiration at that time.

(d) In assessing land with respect to which the presumption is unrebutted, the assessor shall not consider sales of otherwise comparable land not similarly restricted as to use as indicative of value of land under restriction, unless the restrictions have a demonstrably minimal effect upon value.

(e) In assessing land under an enforceable use restriction wherein the presumption of no predictable removal or substantial modification of the restriction has been rebutted, but where the restriction nevertheless retains some future life and has some effect on present value, the assessor may consider, in addition to all other legally permissible information, representative sales of comparable lands that are not under restriction but upon which natural limitations have substantially the same effect as restrictions.

(f) For the purposes of this section the following definitions apply:

(1) ''Comparable lands'' are lands that are similar to the land being valued in respect to legally permissible uses and physical attributes.

(2) ''Representative sales information'' is information from sales of a sufficient number of comparable lands to give an accurate indication of the full cash value of the land being valued.

(g) It is hereby declared that the purpose and intent of the Legislature in enacting this section is to provide for a method of determining whether a sufficient amount of representative sales information is available for land under use restriction in order to ensure the accurate assessment of that land. It is also hereby declared that the further purpose and intent of the Legislature in enacting this section and Section 1630 is to avoid an assessment policy which, in the absence of special circumstances, considers uses for land that legally are not available to the owner and not contemplated by government, and that these sections are necessary to

implement the public policy of encouraging and maintaining effective land use planning. Nothing in this statute shall be construed as requiring the assessment of any land at a value less than as required by Section 401 or as prohibiting the use of representative comparable sales information on land under similar restrictions when this information is available.

SEC. 37. Section 421.5 of the Revenue and Taxation Code is amended 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 defined in Section 10211 of the Public Resources Code.

(b) ''Open-space land'' includes land subject to an agricultural conservation easement.

SEC. 38. Section 423.4 of the Revenue and Taxation Code is amended to read:

423.4. Land subject to a farmland security zone contract specified in Section 51296.1 of the Government Code shall be valued for assessment purposes at 65 percent of the value under Section 423 or 65 percent of the value under Section 110.1, whichever is lower.

SEC. 39. Section 423.8 of the Revenue and Taxation Code is amended to read:

423.8. (a) Notwithstanding the acreage requirement specified in subdivision (f) of Section 421, both of the following apply with respect to enrollment in a wildlife habitat contract:

(1) Any open-space land that has been restricted as wildlife or endangered species habitat by a political subdivision of the state or entity of state government shall, upon the request of the owner of that land, be enrolled in a wildlife habitat contract with the political subdivision of the state or entity of state government that has so restricted the subject open-space land.

(2) Any open-space land that has been restricted as wildlife or endangered species habitat by an agency of the federal government shall, upon the request of the landowner, be enrolled in a wildlife habitat contract with the city or county having jurisdiction over the restricted open-space land.

For any open-space land eligible for valuation under Section 422.5, 423, 423.3, 423.5, 426, or 435, that has also been enrolled in a wildlife habitat contract pursuant to this section, the controlling value of the land shall, except as otherwise provided in the following sentence, be the lower of the values determined for that land pursuant to those sections or Section 402.1. Other lands enrolled in a wildlife habitat contract pursuant to this section shall be assessed at the value determined as provided in Section 402.1.

(b) In no event shall this section or Section 421 be construed to authorize a political subdivision or any entity of the state or federal government to restrict the otherwise lawful use of property by designating all or part of that property as wildlife habitat or endangered species habitat without the consent of the owner of that property.

(c) It is the intent of the Legislature in adding this section to establish a nonexclusive alternative method of recognizing, for purposes of property taxation, the existence of certain governmental restrictions on the use of property. Neither this section nor Section 402.1 shall be construed or applied to require the existence of a wildlife habitat contract, as described in this section, as a necessary condition for recognizing the effect upon the taxable value of property of any enforceable restriction that is recognized under Section 422, 422.5, or 402.1 and is legally established by statute, regulation, or any action or classification by a governmental entity, for the benefit of wildlife, endangered species, or their habitats.

SEC. 40. Section 426 of the Revenue and Taxation Code is amended to read:

426. Notwithstanding any provision of Section 423 to the contrary, if either the county, city, or nonprofit organization or the owner of land subject to contract, agreement, scenic restriction, or open-space easement has served notice of nonrenewal as provided in Section 51091, 51245, or 51296.9 of the Government Code, and the county assessors shall, unless the parties shall have subsequently rescinded the contract pursuant to Section 51254 or 51255 of the Government Code, value the land as provided in this section.

(a) If the owner of land serves notice of nonrenewal or the county, city, or nonprofit organization serves notice of nonrenewal and the owner fails to protest as provided in Section 51091, 51245, or 51296.9 of the Government Code, subdivision (b) shall apply immediately. If the county, city, or nonprofit organization serves notice of nonrenewal and the owner does protest as provided in Section 51091, 51245, or 51296 of the Government Code, subdivision (b) shall apply when less than six years remain until the termination of the period for which the land is enforceably restricted.

(b) Where any of the conditions in subdivision (a) apply, the board or assessor in each year until the termination of the period for which the land is enforceably restricted shall do all of the following:

(1) Determine the value of the land pursuant to Section 110.1 of the Revenue and Taxation Code. If the land is not subject to Section 110.1 of the Revenue and Taxation Code when the restriction expires, the value shall be determined pursuant to Section 110 of the Revenue and Taxation Code as if it were free of contractual restriction. If the land will be subject to a use for which the Revenue and Taxation Code provides a special

restricted assessment, the value shall be determined as if it were subject to the new restriction.

(2) Determine the value of the land by capitalization of income as provided in Section 423 and without regard to the existence of any of the conditions in subdivision (a).

(3) Subtract the value determined in paragraph (2) of subdivision (b). by capitalization of income from the full value determined in paragraph (1) of subdivision (b).

(4) Using the rate announced by the board pursuant to paragraph (1) of subdivision (b) of Section 423, discount the amount obtained in paragraph (3) of subdivision (b) for the number of years remaining until the termination of the contract, agreement, scenic restriction, or open-space easement.

(5) Determine the value of the land by adding the value determined by capitalization of income as provided in paragraph (2) of subdivision (b) and the value obtained in paragraph (4) of subdivision (b).

(6) Apply the ratio prescribed in Section 401 to the value of the land determined in paragraph (5) of subdivision (b) to obtain its assessed value.

CHAPTER 617

An act to amend Sections 3511, 4700, 5050, and 5515 of, and to add Section 2081.7 to, the Fish and Game Code, and to amend Sections 1013 and 22762 of the Water Code, relating to the Salton Sea, and making an appropriation therefor.

[Approved by Governor September 16, 2002. Filed with Secretary of State September 17, 2002.]

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

SECTION 1. (a) ''Quantification Settlement Agreement'' means the agreement, the provisions of which are substantially described in the draft Quantification Settlement Agreement (QSA), dated December 12, 2000, and submitted for public review by the Quantification Settlement Agreement parties, and as it may be amended, and that shall include as a necessary component the implementation of the Agreement for Transfer of Conserved Water by and between the Imperial Irrigation District and the San Diego County Water Authority, dated April 29, 1998 (IID/SDCWA Transfer Agreement), and as it may be amended, and any QSA-related program that delivers water at the intake of the

Metropolitan Water District of Southern California's Colorado River Aqueduct.

(b) It is the intent of the Legislature to allocate fifty million dollars ($50,000,000) from funds available pursuant to the Water Security, Clean Drinking Water, Coastal and Beach Protection Act of 2002, if it is approved by the voters at the statewide general election to be held November 5, 2002 (Proposition 50), as a minimum state contribution or matching contribution for federal funds or funds obtained from other sources, to assist in the implementation of the preferred alternative or other related restoration activities, including the program referred to in paragraph (3) of subdivision (d) of Section 2081.7 of the Fish and Game Code, at the Salton Sea or the lower Colorado River, or to assist in the development of a natural community conservation plan that is consistent with the initiative and that is implemented to effectuate the QSA.

(c) The Legislature finds that it is important to the state to meet its commitment to reduce its use of water from the Colorado River to 4.4 million acre-feet per year. The Legislature further finds that it is important that actions taken to reduce California's Colorado River water use are consistent with its commitment to restore the Salton Sea, which is an important resource for the state. The Legislature further finds that species previously designated as fully protected may be taken during activities intended to meet the state's commitment to reduce its use of Colorado River water as long as those activities are found to comply with existing law, including Chapter 1.5 (commencing with Section 2050) of Division 3 of the Fish and Game Code.

(d) California's Colorado River Water Use Plan is a framework developed to allow California to meet its Colorado River needs from within its basic annual apportionment. California will be required to reduce the amount of Colorado River water it uses by up to 800,000 acre-feet per year.

(e) California's basic apportionment of Colorado River water is 4.4 million acre-feet per year, but until recently, due to the availability of surplus river water and apportioned but unused water of Nevada and Arizona, California has used up to 5.2 million acre-feet per year over the past ten years. About 700,000 acre-feet of this additional water has been used to fill the Colorado River Aqueduct, which transports water to the southern California urban coast. Nevada and Arizona are now using, or are close to using, their full apportionments, and California can no longer rely on that surplus of water.

(f) The Salton Sea will eventually become too saline to support its fishery and fish-eating birds unless a restoration plan is adopted and implemented. The transfer of water from the Imperial Irrigation District to the San Diego County Water Authority and the other Quantification

Settlement Agreement (QSA) parties pursuant to the QSA could result in an acceleration of the rate of salinization of the Salton Sea.

(g) Restoration of the Salton Sea is in the state and national interest. Congress recognized in the Salton Sea Reclamation Act of 1998, Public Law 105-372, that appropriate federal agencies should offer alternative restoration options to Congress and the public in order to avoid further deterioration of the internationally significant habitat and wildlife values of the Salton Sea and to protect the wide array of economic and social values that exist in the immediate vicinity of the Salton Sea. The failure to issue that report in a timely fashion has unnecessarily constrained the Legislature's ability to consider fully the costs and benefits of various options to restoration that should be undertaken at the Salton Sea.

SEC. 2. Section 2081.7 is added to the Fish and Game Code, to read:

2081.7. (a) Notwithstanding Sections 3511, 4700, 5050, and 5515, and contingent upon the fulfillment of the conditions listed in subdivisions (b), (c), and (d), the department may authorize, under Chapter 1.5 (commencing with Section 2050) or Chapter 10 (commencing with Section 2800), the take of species resulting from impacts attributable to the implementation of the Quantification Settlement Agreement, as defined in subdivision (a) of Section 1 of the act that added this section during the 2001–02 Regular Session, on all of the following:

(1) The salinity, elevation, shoreline habitat, or water quality of the Salton Sea.

(2) The quantity and quality of water flowing in the All-American Canal, the Coachella Canal, the Imperial Valley and Coachella Valley drains, the New and Alamo Rivers, the Coachella Valley Stormwater Channel, and the habitat sustained by those flows.

(3) Agricultural lands in the Imperial Valley.

(4) The quantity and quality of water flowing in the Colorado River, the habitat sustained by those flows, and the collection of that water for delivery to authorized users.

(b) The Quantification Settlement Agreement is executed by the appropriate parties on or before December 31, 2002.

(c) After consultation with the Department of Water Resources and an opportunity for public review and comment, the department determines, based on the best available science, that the implementation of the Quantification Settlement Agreement during the first 15 years that the agreement is in effect (1) will not result in a material increase in projected salinity levels at the Salton Sea, and (2) the agreement will not foreclose alternatives for reclamation of the Salton Sea as summarized in Section 101(b)(1)(A) of the Salton Sea Reclamation Act of 1998 (P.L. 105-372).

(d) All of the following conditions are met:

(1) The requirements of subdivision (b) and (c) of Section 2081 are satisfied as to the species for which take is authorized.

(2) The take authorization provides for the development and implementation, in cooperation with federal and state agencies, of an adaptive management process for monitoring the effectiveness of, and adjusting as necessary, the measures to minimize and fully mitigate the impacts of the authorized take. The adjusted measures are subject to Section 2052.1.

(3) The take authorization provides for the development and implementation in cooperation with state and federal agencies of an adaptive management process that substantially contributes to the long-term conservation of the species for which take is authorized. Preparation of the adaptive management program and implementation of the program is the responsibility of the department. The department's obligation to prepare and implement the adaptive management program is conditioned upon the availability of funds pursuant to the Water Security, Clean Drinking Water, Coastal and Beach Protection Act of 2002, if it is approved by the voters at the statewide general election to be held November 5, 2002 (Proposition 50), or other funds that may be appropriated by the Legislature or approved by the voters for that purpose. The failure to appropriate funds does not relieve the applicant of the obligations of paragraphs (1) and (2). However, the applicant shall not be required to fund any program pursuant to this paragraph.

(4) The requirements of paragraph (1) may be satisfied if the take is authorized under Chapter 10 (commencing with Section 2800).

(e) (1) The Secretary of the Resources Agency shall use all available authority to enter into a memorandum of understanding (MOU) between the Secretary of the Interior, the Salton Sea Authority, and the Governor, as provided in Section 101(b)(1)(B)(i) of the Salton Sea Reclamation Act of 1998 (P.L. 105-372) for the purpose of developing, selecting, and implementing alternatives for projects that realize the objectives of Section 101(b)(1)(A) of the Salton Sea Reclamation Act of 1998 (P.L. 105-372). The memorandum of understanding shall be consistent with the authority granted to the Secretary of the Interior under the Salton Sea Reclamation Act of 1998 (P.L. 105-372). The memorandum of understanding, at a minimum, shall establish all of the following:

(A) Criteria for evaluation and selection of alternatives that will allow for consideration of a range of alternatives including, but not limited to, an alternative designed to sustain avian biodiversity at the Salton Sea, but not maintain elevation for the whole sea, an alternative to maintain salinity at or below current conditions and elevation near 230 feet below mean sea level under a variety of inflow conditions, and a most cost-effective technical alternative.

(B) Criteria for determining the magnitude and practicability of costs of construction, operation, and maintenance of each alternative evaluated.

(C) A process, with established deadlines, for release of a report regarding the potential alternatives, the selection of a preferred alternative, including a proposed funding plan to implement the preferred alternative, to be analyzed pursuant to the National Environmental Policy Act and California Environmental Quality Act, the release of the draft environmental impact statement/environmental impact report (EIS/EIR) analyzing the alternatives, the release of the final EIR/EIS, and the issuance of a final alternatives report to Congress and the Legislature on or before January 1, 2007.

(2) The Secretary of the Resources Agency shall establish an advisory committee representing the parties interested in the future of the Salton Sea. The Resources Agency shall consult with the advisory committee throughout all stages of the alternative selection process.

(f) Subsequent to the issuance of the take authorization referred to in subdivision (a), the applicant shall be relieved of any condition included in the take authorization to satisfy division (c), upon fulfillment of either of the following conditions:

(1) If the department finds that increases in salinity at the Salton Sea will no longer adversely affect piscivorous birds at the Salton Sea, the department may enter into an agreement with the Imperial Irrigation District that phases out the district's water or irrigation runoff to the Salton Sea.

(2) The department makes a finding that a Salton Sea reclamation plan has been funded and implemented that eliminates the need for the Imperial Irrigation District to undertake measures that mitigate impacts to piscivorous birds at the Salton Sea.

(g) This section shall not be construed to exempt from any other provision of law the Quantification Settlement Agreement and the Agreement for Transfer of Conserved Water by and between the Imperial Irrigation District and the San Diego County Water Authority, dated April 29, 1998.

SEC. 3. Section 3511 of the Fish and Game Code is amended to read:

3511. (a) Except as provided in Section 2081.7, fully protected birds or parts thereof may not be taken or possessed at any time and no provision of this code or any other law shall be construed to authorize the issuance of permits or licenses to take any fully protected bird and no such permits or licenses heretofore issued shall have any force or effect for any such purpose; except that the commission may authorize the collecting of such species for necessary scientific research and may authorize the live capture and relocation of such species pursuant to a

permit for the protection of livestock. Legally imported fully protected birds or parts thereof may be possessed under a permit issued by the department.

(b) The following are fully protected birds:

(1) American peregrine falcon (Falco peregrinus anatum).

(2) Brown pelican.

(3) California black rail (Laterallus jamaicensis coturniculus).

(4) California clapper rail (Rallus longirostris obsoletus).

(5) California condor (Gymnogyps californianus).

(6) California least tern (Sterna albifrons browni).

(7) Golden eagle.

(8) Greater sandhill crane (Grus canadensis tabida).

(9) Light-footed clapper rail (Rallus longirostris levipes).

(10) Southern bald eagle (Haliaeetus leucocephalus leucocephalus).

(11) Trumpeter swan (Cygnus buccinator).

(12) White-tailed kite (Elanus leucurus).

(13) Yuma clapper rail (Rallus longirostris yumanensis).

SEC. 4. Section 4700 of the Fish and Game Code is amended to read:

4700. (a) Except as provided in Section 2081.7, fully protected mammals or parts thereof may not be taken or possessed at any time and no provision of this code or any other law shall be construed to authorize the issuance of permits or licenses to take any fully protected mammal and no permits or licenses heretofore issued shall have any force or effect for that purpose. However, the commission may authorize the collecting of those species for necessary scientific research. Legally imported fully protected mammals or parts thereof may be possessed under a permit issued by the department.

(b) The following are fully protected mammals:

(1) Morro Bay kangaroo rat (Dipodomys heermanni morroensis).

(2) Bighorn sheep (Ovis canadensis), except Nelson bighorn sheep (subspecies Ovis canadensis nelsoni) as provided by subdivision (b) of Section 4902.

(3) Northern elephant seal (Mirounga angustirostris).

(4) Guadalupe fur seal (Arctocephalus townsendi).

(5) Ring-tailed cat (genus Bassariscus).

(6) Pacific right whale (Eubalaena sieboldi).

(7) Salt-marsh harvest mouse (Reithrodontomys raviventris).

(8) Southern sea otter (Enhydra lutris nereis).

(9) Wolverine (Gulo luscus).

SEC. 5. Section 5050 of the Fish and Game Code is amended to read:

5050. (a) Except as provided in Section 2081.7, fully protected reptiles and amphibians or parts thereof may not be taken or possessed

at any time and no provision of this code or any other law shall be construed to authorize the issuance of permits or licenses to take any fully protected reptile or amphibian and no such permits or licenses heretofore issued shall have any force or effect for any such purpose; except that the commission may authorize the collecting of such species for necessary scientific research. Legally imported fully protected reptiles or amphibians or parts thereof may be possessed under a permit issued by the department.

(b) The following are fully protected reptiles and amphibians:

(1) Blunt-nosed leopard lizard (Crotaphytus wislizenii silus).

(2) San Francisco garter snake (Thamnophis sirtalis tetrataenia).

(3) Santa Cruz long-toed salamander (Ambystoma macrodactylum croceum).

(4) Limestone salamander (Hydromantes brunus).

(5) Black toad (Bufo boreas exsul).

SEC. 6. Section 5515 of the Fish and Game Code is amended to read:

5515. (a) Except as provided in Section 2081.7, fully protected fish or parts thereof may not be taken or possessed at any time and no provision of this code or any other law shall be construed to authorize the issuance of permits or licenses to take any fully protected fish and no such permits or licenses heretofore issued shall have any force or effect for any such purpose; except that the commission may authorize the collecting of such species for necessary scientific research. Legally imported fully protected fish or parts thereof may be possessed under a permit issued by the department.

(b) The following are fully protected fish:

(1) Colorado River squawfish (Ptychocheilus lucius).

(2) Thicktail chub (Gila crassicauda).

(3) Mohave chub (Gila mohavensis).

(4) Lost River sucker (Catostomus luxatus).

(5) Modoc sucker (Catostomus microps).

(6) Shortnose sucker (Chasmistes brevirostris).

(7) Humpback sucker (Xyrauchen texanus).

(8) Owens River pupfish (Cyprinoden radiosus).

(9) Unarmored threespine stickleback (Gasterosteus aculeatus williamsoni).

(10) Rough sculpin (Cottus asperrimus).

SEC. 7. Section 1013 of the Water Code is amended to read:

1013. (a) The Imperial Irrigation District, acting under a contract with the United States for diversion and use of Colorado River water or pursuant to the Constitution or to this chapter, or complying with an order of the Secretary of the Interior, a court, or the board, to reduce through conservation measures, the volume of the flow of water directly

or indirectly into the Salton Sea, shall not be held liable for any effects to the Salton Sea or its bordering area resulting from the conservation measures.

(b) For the purposes of this section, and during the term of the Quantification Settlement Agreement as defined in subdivision (a) of Section 1 of the act amending this section during the 2001–2002 Regular Session, "land fallowing conservation measures" means the generation of water to be made available for transfer or for environmental mitigation purposes by fallowing land or removing land from agricultural production regardless of whether the fallowing or removal from agricultural production is temporary or long term, and regardless of whether it occurs in the course of normal and customary agricultural production, if both of the following apply:

(1) The measure is part of a land fallowing conservation plan that includes mitigation provisions adopted by the Board of Directors of the Imperial Irrigation District.

(2) Before the Imperial Irrigation District adopts a land fallowing conservation plan, the district shall consult with the Board of Supervisors of the County of Imperial and obtain the board's assessment of whether the proposed land fallowing conservation plan includes adequate measures to avoid or mitigate unreasonable economic or environmental impacts in the County of Imperial.

(c) In order to minimize impacts on the environment, during the term of the Quantification Settlement Agreement and for six years thereafter, in any evaluation or assessment of the Imperial Irrigation District's use of water, it shall be conclusively presumed that any water conserved, or used for mitigation purposes, through land fallowing conservation measures has been conserved in the same volume as if conserved by efficiency improvements, such as by reducing canal seepage, canal spills, or surface or subsurface runoff from irrigation fields.

(d) If a party to the Quantification Settlement Agreement engages in water efficiency conservation measures or land fallowing conservation measures to carry out a Quantification Settlement Agreement transfer or to mitigate the environmental impacts of a Quantification Settlement Agreement transfer, there may be no forfeiture, diminution, or impairment of the right of that party to use of the water conserved.

(e) During the period that the Quantification Settlement Agreement is in effect and the Imperial Irrigation District is meeting its water delivery obligations under the Quantification Settlement Agreement, if the Imperial Irrigation District utilizes land fallowing conservation measures that ensure compliance with the criteria of subdivision (c) of Section 2081.7 of the Fish and Game Code for the environmental impacts of a water transfer to implement the Quantification Settlement Agreement, no person or local agency, as defined in Section 21062 of the

Public Resources Code, may seek to obtain additional conserved Colorado River water from the district, voluntarily or involuntarily, until the district has adopted a resolution offering to make conserved Colorado River water available.

(f) Subdivisions (c), (d), and (e) shall not become operative unless the parties have executed the Quantification Settlement Agreement on or before December 31, 2002.

(g) This section may not be construed to exempt the Imperial Irrigation District from any requirement established under the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code).

SEC. 8. Section 22762 is added to the Water Code, to read:

22762. An action to determine the validity of the Quantification Settlement Agreement defined in subdivision (a) of Section 1 of the act that added this section during the 2001–02 Regular Session, or any action regarding a contract entered into that implements, or is referenced in, that Quantification Settlement Agreement, may be brought pursuant to Chapter 9 (commencing with Section 860) of Title 10 of Part 2 of the Code of Civil Procedure.

SEC. 9. (a) The Resources Agency and the Technology, Trade, and Commerce Agency, in consultation with the Imperial Irrigation District, Imperial County, and any other entities, organizations, and individuals deemed appropriate by the secretaries of those two agencies, shall review and report to the Governor and the Legislature, on or before June 30, 2003, on all of the following:

(1) The expected nature and extent of any economic impacts related to the use of land fallowing in the Imperial Valley in connection with the Quantification Settlement Agreement, as defined in subdivision (a) of Section 1.

(2) Measures taken by the Imperial Irrigation District in formulating a fallowing program to minimize as far as practicable those economic impacts.

(3) Whether and to what extent funds provided to the Imperial Irrigation District for transferred water under the Quantification Settlement Agreement, together with any other funds that have been made available for these purposes would mitigate those economic impacts.

(4) The amount of any additional funds required to mitigate the economic impacts.

(b) If the report required under this section indicates that additional funds are required, the report shall include recommendations to the Governor and the Legislature on all of the following:

(1) Proposed means for providing those additional funds, including, but not limited to, funding by the state.

(2) Formulation of a program to administer those funds in the most effective manner. The program shall be developed in consultation with the Departments of Finance, Food and Agriculture, and Water Resources, with the Imperial Irrigation District, and with any other entities deemed appropriate by the secretaries of the two agencies.

CHAPTER 618

An act to add Section 79560.1 to the Water Code, relating to water.

[Approved by Governor September 16, 2002. Filed with Secretary of State September 17, 2002.]

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

SECTION 1. Section 79560.1 is added to the Water Code, to read:

79560.1. (a) The department shall administer 50 percent of the funds, and the board shall administer the remaining 50 percent of the funds, made available to the program described in Sections 79560 and 79561.

(b) For projects proposed to be funded pursuant to Section 79560 that include any modification of a river or stream channel, the state agency making the grant, prior to the award of the grant, shall determine whether the environmental impacts resulting from that modification will be fully mitigated by considering all of the impacts of that modification and any mitigation, environmental enhancement, and environmental benefit resulting from the project, and determining whether, on balance, any environmental enhancement or benefit equals or exceeds any negative environmental impacts of the project. The costs of mitigation or enhancement may be included in the project costs eligible for funding pursuant to Section 79560.

(c) This section shall become operative only if the Water Security, Clean Drinking Water, Coastal and Beach Protection Act of 2002 is approved by the voters at the November 5, 2002, statewide general election.

SEC. 2. It is the intent of the Legislature that up to one hundred fifty million dollars ($150,000,000) of the total funds provided by the Water Security, Clean Drinking Water, Coastal and Beach Protection Act of 2002, if that measure is approved by the voters at the November 5, 2002, statewide general election, may be used for projects that facilitate water transfers pursuant to the Quantification Settlement Agreement (QSA) and that contribute to achieving the benchmarks of the Interim Surplus Guidelines, provided that the QSA is executed on or before December

31, 2002. It is further the intent of the Legislature that of the funds provided by Section 79560 of the Water Code, as added by that act, if enacted, not less than 40 percent be available for projects in northern California and not less than 40 percent be available for projects in southern California for the purpose of funding integrated regional water management projects.

CHAPTER 619

An act to amend Section 3054 of the Penal Code, relating to parolees.

[Approved by Governor September 17, 2002. Filed with Secretary of State September 17, 2002.]

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

SECTION 1. Section 3054 of the Penal Code is amended to read:

3054. (a) (1) The Department of Corrections shall establish three pilot programs that provide intensive training and counseling programs for female parolees to assist in the successful reintegration of those parolees into the community upon release or discharge from prison and after completion of in-prison therapeutic community substance abuse treatment programs.

(2) The Director of Corrections shall determine the counties in which the pilot programs are established.

(b) (1) The services offered in the pilot programs may include, but shall not be limited to, drug and alcohol abuse treatment, cognitive skills development, education, life skills, job skills, victim impact awareness, anger management, family reunification, counseling, vocational training and support, residential care, and placement in affordable housing and employment opportunities.

(2) Ancillary services such as child care and reimbursement of transportation costs shall be provided to the extent necessary to permit full participation by female offenders in employment assistance, substance abuse treatment, and other program elements.

(3) The pilot programs shall include a case management component to assess the social services and other needs of participating in the social services, education, job training, and other programs most likely to result in their recovery and employment success.

(c) With respect to a female parolee who violates her parole, the Board of Prison Terms may order initial or continued participation in a program under this section, in lieu of revocation pursuant to Section 3060, provided the department approves the program participation, the

parolee meets all eligibility criteria for the program, and the parole violation was nonviolent.

(d) (1) The Department of Corrections shall prepare an informational handout explaining the pilot programs created by this section.

(2) A copy of this informational handout shall be given to each female inmate eligible for any of the pilot programs and to each female parolee eligible for any of the pilot programs pursuant to subdivision (c).

(e) Subject to appropriation of funds, the department is authorized to enter into contracts, or amend existing contracts, for community residential treatment services for offenders and minor children in an offender's custody in order to carry out the goals stated in paragraph (1) of subdivision (a).

(f) (1) It is the intent of the Legislature that the programs demonstrate the cost-effectiveness of providing the enhanced services described in subdivision (b), based upon an annual evaluation of a representative sample of female parolees, in order to determine the impact of these services upon the criminal recidivism, employment, and welfare dependency of the offenders and their families.

(2) The department, with the assistance of an independent consultant with expertise in criminal justice programs, shall complete a report evaluating the cost-effectiveness of the pilot programs in regard to the effect of the programs (A) on the recidivism of participating female offenders compared with a comparable nonparticipating group of female offenders and (B) on the employment of female offenders and the welfare dependency of a female offender's family. The report shall be provided to the Governor and the Chairperson of the Joint Legislative Budget Committee and the chairpersons of the fiscal committees of both houses of the Legislature by January 1, 2002.

CHAPTER 620

An act to repeal and add Article 12 (commencing with Section 18831) of Chapter 3 of Part 10.2 of Division 2 of the Revenue and Taxation Code, relating to taxation.

[Approved by Governor September 17, 2002. Filed with Secretary of State September 17, 2002.]

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

SECTION 1. Article 12 (commencing with Section 18831) of Chapter 3 of Part 10.2 of Division 2 of the Revenue and Taxation Code is repealed.

SEC. 2. Article 12 (commencing with Section 18831) is added to Chapter 3 of Part 10.2 of Division 2 of the Revenue and Taxation Code, to read:

Article 12. Asthma and Lung Disease Research Fund

18831. (a) An individual may designate on the tax return that a contribution in excess of the tax liability, if any, be made to the Asthma and Lung Disease Research Fund established by Section 18832. That designation is to be used as a voluntary contribution on the tax return.

(b) The contributions shall be in full dollar amounts and may be made individually by each signatory on a joint return.

(c) A designation shall be made for any taxable year on the initial return for that taxable year and once made is irrevocable. If payments and credits reported on the return, together with any other credits associated with the taxpayer's account, do not exceed the taxpayer's liability, the return shall be treated as though no designation has been made. If no designee is specified, the contribution shall be transferred to the General Fund after reimbursement of the direct actual costs of the Franchise Tax Board for the collection and administration of funds under this article.

(d) If an individual designates a contribution to more than one account or fund listed on the tax return, and the amount available is insufficient to satisfy the total amount designated, the contribution shall be allocated among the designees on a pro rata basis.

(e) The Franchise Tax Board shall revise the form of the return to include a space labeled the "Asthma and Lung Disease Research Fund" to allow for the designation permitted. The form shall also include in the instructions information that the contribution may be in the amount of one dollar ($1) or more and that the contribution shall be used for asthma and lung disease research.

(f) Notwithstanding any other provision, a voluntary contribution designation for the Asthma and Lung Disease Research Fund shall not be added on the tax return until another voluntary contribution designation is removed.

(g) A deduction shall be allowed under Article 6 (commencing with Section 17201) of Chapter 3 of Part 10 for any contribution made pursuant to subdivision (a).

18832. There is in the State Treasury the Asthma and Lung Disease Research Fund to receive contributions made pursuant to Section 18831.

The Franchise Tax Board shall notify the Controller of both the amount of money paid by taxpayers in excess of their tax liability and the amount of refund money that taxpayers have designated pursuant to Section 18831 to be transferred to the Asthma and Lung Disease Research Fund. The Controller shall transfer from the Personal Income Tax Fund to the Asthma and Lung Disease Research Fund an amount not in excess of the sum of the amounts designated by individuals pursuant to Section 18831 for payment into that fund.

18833. All moneys transferred to the Asthma and Lung Disease Research Fund, upon appropriation by the Legislature, shall be allocated as follows:

(a) To the Franchise Tax Board and the Controller for reimbursement of all costs incurred by the Franchise Tax Board and the Controller in connection with their duties under this article.

(b) To the State Department of Health Services for allocation to the American Lung Association of California to provide research grants to develop and advance the understanding, causes, techniques, and modalities effective in the prevention, care, treatment, and cure of lung disease. The department shall have no oversight authority over these moneys or their uses and shall allocate these moneys to the American Lung Association of California for the purposes described in this subdivision. The funds may not be used for the administrative costs of the State Department of Health Services.

(c) For purposes of this section, the lung diseases and research areas shall include, but not be limited to, the following:

(1) Asthma.

(2) Health effects of air pollution.

(3) Tuberculosis.

(4) Chronic obstructive pulmonary disease.

(5) Emphysema.

18834. It is the intent of the Legislature that this article create an additional funding source for asthma and lung disease research and shall be used to supplement, not supplant, other funding sources for this research.

18835. (a) This article shall remain in effect only until January 1 of the fifth taxable year following the first appearance of the Asthma and Lung Disease Research Fund on the tax return, and as of that date is repealed, unless a later enacted statute, that is enacted before the applicable date, deletes or extends that date.

(b) If, in the second calendar year after the first taxable year the Asthma and Lung Disease Research Fund appears on the tax return, the Franchise Tax Board estimates by September 1 that contributions described in this article made on returns filed in that calendar year will be less than two hundred fifty thousand dollars ($250,000), or the

adjusted amount specified in subdivision (c) for subsequent taxable years, as may be applicable, then this article is repealed with respect to taxable years beginning on or after January 1 of that calendar year. The Franchise Tax Board shall estimate the annual contribution amount by September 1 of each year using the actual amounts known to be contributed and an estimate of the remaining year's contribution.

(c) For each calendar year, beginning with the third calendar year that the Asthma and Lung Disease Research Fund appears on the tax return, the Franchise Tax Board shall adjust, on or before September 1 of that calendar year, the minimum estimated contribution amount specified in subdivision (b) as follows:

(1) The minimum estimated contribution amount for the calendar year shall be an amount equal to the product of the minimum estimated contribution amount for the prior September 1 multiplied by the inflation factor adjustment as specified in paragraph (2) of subdivision (h) of Section 17041, rounded off to the nearest dollar.

(2) The inflation factor adjustment used for the calendar year shall be based on the figures for the percentage change in the California Consumer Price Index received on or before August 1 of the calendar year pursuant to paragraph (1) of subdivision (h) of Section 17041.

(d) Notwithstanding the repeal of this article, any contribution amounts designated pursuant to this article prior to its repeal shall continue to be transferred and disbursed in accordance with this article as in effect immediately prior to that repeal.

SEC. 3. Notwithstanding the repeal of Article 12 (commencing with Section 18831) of Chapter 3 of Part 10.2 of Division 2 of the Revenue and Taxation Code made by Section 1, any contribution amounts designated pursuant to that article prior to its repeal shall continue to be transferred and disbursed in accordance with that article as in effect on January 1, 2002. Pursuant to the preceding sentence, the contribution amounts designated for the California Lung Disease and Asthma Research Fund for the 2000 taxable year shall be transferred to the State Department of Health Services for allocation to the American Lung Association of California for the purposes set forth in subdivision (b) of Section 18833 of the Revenue and Taxation Code, as that section read on January 1, 2002.

CHAPTER 621

An act to amend Section 6254.21 of, and to add Section 6254.24 to, the Government Code, and to amend Section 146e of the Penal Code, relating to public officials.

[Approved by Governor September 17, 2002. Filed with
Secretary of State September 17, 2002.]

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

SECTION 1. This act shall be known and may be cited as the Public Safety Officials Home Protection Act.

SEC. 2. Section 6254.21 of the Government Code is amended to read:

6254.21. (a) No state or local agency shall post the home address or telephone number of any elected or appointed official on the Internet without first obtaining the written permission of that individual.

(b) No person shall knowingly post the home address or telephone number of any elected or appointed official, or of the official's residing spouse or child on the Internet knowing that person is an elected or appointed official and intending to cause imminent great bodily harm that is likely to occur or threatening to cause imminent great bodily harm to that individual. A violation of this subdivision is a misdemeanor. A violation of this subdivision that leads to the bodily injury of the official, or his or her residing spouse or child, is a misdemeanor or a felony.

(c) For purposes of this section ''elected or appointed official'' includes, but is not limited to, all of the following:

(1) State constitutional officers.
(2) Members of the Legislature.
(3) Judges and court commissioners.
(4) District attorneys.
(5) Public defenders.
(6) Members of a city council.
(7) Members of a board of supervisors.
(8) Appointees of the Governor.
(9) Appointees of the Legislature.
(10) Mayors.
(11) City attorneys.
(12) Police chiefs and sheriffs.
(13) A public safety official as defined in Section 6254.24.

(d) Nothing in this section is intended to preclude punishment instead under Sections 69, 76, or 422 of the Penal Code, or any other provision of law.

SEC. 3. Section 6254.24 is added to the Government Code, to read:

6254.24. As used in this chapter, ''public safety official'' means the following:

(a) An active or retired peace officer as defined in Sections 830 and 830.1 of the Penal Code.

(b) An active or retired public officer or other person listed in Sections 1808.2 and 1808.6 of the Vehicle Code.

(c) An ''elected or appointed official'' as defined in subdivision (b) of Section 6254.21.

(d) Attorneys employed by the Department of Justice, the State Public Defender, or a county office of the district attorney or public defender.

(e) City attorneys and attorneys who represent cities in criminal matters.

(f) Specified employees of the Department of Corrections, the California Youth Authority, and the Prison Industry Authority who supervise inmates or are required to have a prisoner in their care or custody.

(g) Nonsworn employees who supervise inmates in a city police department, a county sheriff's office, the Department of the California Highway Patrol, federal, state, and local detention facilities, and local juvenile halls, camps, ranches, and homes.

(h) Federal prosecutors and criminal investigators and National Park Service Rangers working in California.

(i) The surviving spouse or child of a peace officer defined in Section 830 of the Penal Code, if the peace officer died in the line of duty.

SEC. 4. Section 146e of the Penal Code is amended to read:

146e. (a) Every person who maliciously, and with the intent to obstruct justice or the due administration of the laws, or with the intent or threat to inflict imminent physical harm in retaliation for the due administration of the laws, publishes, disseminates, or otherwise discloses the residence address or telephone number of any peace officer, nonsworn police dispatcher, employee of a city police department or county sheriff's office, or public safety official, or that of the spouse or children of these persons who reside with them, while designating the peace officer, nonsworn police dispatcher, employee of a city police department or county sheriff's office, or public safety official, or relative of these persons as such, without the authorization of the employing agency, is guilty of a misdemeanor.

(b) A violation of subdivision (a) with regard to any peace officer, employee of a city police department or county sheriff's office, or public safety official, or the spouse or children of these persons, that results in bodily injury to the peace officer, employee of the city police department or county sheriff's office, or public safety official, or the spouse or children of these persons, is a felony.

(c) For purposes of this section, ''public safety official'' is defined in Section 6254.24 of the Government Code.

SEC. 5. (a) An advisory task force shall be created to determine how to protect a public safety official's home information. The task force

shall be chaired by the Attorney General and shall be comprised of representatives from the following:

(1) Interested state enforcement entities, including, but not limited to, the Department of Justice, the Department of the California Highway Patrol, and the Office of Privacy Protection in the Department of Consumer Affairs.

(2) The judicial community.

(3) The legal community, including, the district attorneys and public defenders.

(4) The state recorders and assessors.

(5) The business community involved in real estate transactions.

(b) The task force shall prepare a report of its findings that, among other things, includes a comprehensive plan on how to protect a public safety official's home information, definitions of those comprising public safety officials, and other information or proposals that may be necessary to carry out this act. This report shall be filed with the Legislature no later than September 1, 2003.

SEC. 6. 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.

CHAPTER 622

An act to amend Sections 191.5 and 3075 of the Penal Code, relating to criminal punishment.

[Approved by Governor September 17, 2002. Filed with Secretary of State September 17, 2002.]

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

SECTION 1. Section 191.5 of the Penal Code is amended to read:

191.5. (a) Gross vehicular manslaughter while intoxicated is the unlawful killing of a human being without malice aforethought, in the driving of a vehicle, where the driving was in violation of Section 23140, 23152, or 23153 of the Vehicle Code, and the killing was either the proximate result of the commission of an unlawful act, not amounting to a felony, and with gross negligence, or the proximate result of the

commission of a lawful act which might produce death, in an unlawful manner, and with gross negligence.

(b) Gross vehicular manslaughter while intoxicated also includes operating a vessel in violation of subdivision (b), (c), (d), (e), or (f) of Section 655 of the Harbors and Navigation Code, and in the commission of an unlawful act, not amounting to felony, and with gross negligence; or operating a vessel in violation of subdivision (b), (c), (d), (e), or (f) of Section 655 of the Harbors and Navigation Code, and in the commission of a lawful act which might produce death, in an unlawful manner, and with gross negligence.

(c) Except as provided in subdivision (d), gross vehicular manslaughter while intoxicated is punishable by imprisonment in the state prison for 4, 6, or 10 years.

(d) Any person convicted of violating this section who has one or more prior convictions of this section or of paragraph (1) or (3) of subdivision (c) of Section 192, subdivision (a) or (c) of Section 192.5 of this code, or of violating Section 23152 punishable under Sections 23540, 23542, 23546, 23548, 23550, or 23552 of, or convicted of Section 23153 of, the Vehicle Code, shall be punished by imprisonment in the state prison for a term of 15 years to life. Article 2.5 (commencing with Section 2930) of Chapter 7 of Title 1 of Part 3 shall apply to reduce the term imposed pursuant to this subdivision.

(e) This section shall not be construed as prohibiting or precluding a charge of murder under Section 188 upon facts exhibiting wantonness and a conscious disregard for life to support a finding of implied malice, or upon facts showing malice consistent with the holding of the California Supreme Court in People v. Watson, 30 Cal. 3d 290.

(f) This section shall not be construed as making any homicide in the driving of a vehicle or the operation of a vessel punishable which is not a proximate result of the commission of an unlawful act, not amounting to felony, or of the commission of a lawful act which might produce death, in an unlawful manner.

(g) For the penalties in subdivision (d) to apply, the existence of any fact required under subdivision (d) shall be alleged in the information or indictment and either admitted by the defendant in open court or found to be true by the trier of fact.

SEC. 2. Section 3075 of the Penal Code is amended to read:

3075. (a) There is in each county a board of parole commissioners, consisting of each of the following:

(1) The sheriff, or his or her designee, or, in a county with a department of corrections, the director of that department.

(2) The probation officer, or his or her designee.

(3) A member, not a public official, to be selected from the public by the presiding judge, if any, or, if none, by the senior judge in point of service, of the superior court.

(b) The public member of the county board of parole commissioners or his or her alternate shall be entitled to his or her actual traveling and other necessary expenses incurred in the discharge of his or her duties. In addition, the public member or his or her alternate shall be entitled to per diem at any rate that may be provided by the board of supervisors. The public member or his or her alternate shall hold office for a term of one year and in no event for a period exceeding three consecutive years. The term shall commence on the date of appointment.

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.

CHAPTER 623

An act to add Section 11102.1 to the Penal Code, relating to fingerprinting.

[Approved by Governor September 17, 2002. Filed with Secretary of State September 17, 2002.]

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

SECTION 1. Section 11102.1 is added to the Penal Code, to read:

11102.1. (a) Notwithstanding any other provision of law, the Department of Justice shall establish, implement, and maintain a certification program to process fingerprint-based criminal background clearances on individuals who roll applicant fingerprint impressions, manually or electronically, for licensure, certification, or employment purposes. Commencing January 1, 2004, no person shall roll applicant fingerprints for nonlaw enforcement purposes unless certified. Law enforcement personnel and state employees who have received training pertaining to applicant fingerprint rolling and have undergone a criminal offender record information background investigation are exempt from the requirements of this section. The department shall charge a fee sufficient to cover the costs of the certification program.

(b) Individuals who roll fingerprint impressions, either manually or electronically, for individuals who are being fingerprinted for applicant licensure, certification, or employment purposes, must submit to the Department of Justice, manually or electronically, two sets of fingerprints, along with the appropriate fees and documentation. The department shall retain one copy of the fingerprint impressions to process a state level criminal background clearance, and it shall submit one copy of the fingerprint impressions to the Federal Bureau of Investigation to process a federal level criminal background clearance.

(c) The department shall retain the fingerprint impressions for subsequent arrest notification pursuant to Section 11105.2.

(d) Every individual certified as a fingerprint roller shall meet the following criteria:

(1) Be a legal resident of this state at the time of certification.

(2) Be at least 18 years of age.

(3) Have satisfactorily completed a notarized written application prescribed by the department to determine the fitness of the person to exercise the functions of a fingerprint roller.

(e) Prior to granting a certificate as a fingerprint roller, the department shall determine that the applicant possesses the required honesty, credibility, truthfulness, and integrity to fulfill the responsibilities of the position. To assist in determining the identity of the applicant, the department shall require that applicants submit fingerprint images and related information.

(f) The department shall not certify any individual who has been convicted of either any felony offense or any other offense that involves both moral turpitude, dishonesty, or fraud, and bears on the applicant's ability to perform the duties or responsibilities of a fingerprint roller. The certification shall be revoked if, at any time, the individual is convicted of either any felony offense, or any other offense that involves both moral turpitude, dishonesty, or fraud, and bears on the applicant's ability to perform the duties or responsibilities of a fingerprint roller.

(g) In addition to subdivision (f), the department may refuse to certify any individual as a fingerprint roller or make, revoke, or suspend the certification of any fingerprint roller upon any of the following:

(1) Substantial and material misstatement or omission in the application submitted to the department.

(2) If the individual has been convicted of or is awaiting adjudication for a felony or a lesser offense involving moral turpitude, or a lesser offense of a nature incompatible with the duties of a fingerprint roller. A conviction after a plea of nolo contendere is deemed to be a conviction within the meaning of this subdivision.

(3) Revocation, suspension, restriction, or denial of a professional license, if the revocation, suspension, restriction, or denial was for

misconduct, dishonesty, or for any cause substantially related to the duties or responsibilities of a fingerprint roller.

(4) Failure to discharge fully and faithfully any of the duties or responsibilities required of a fingerprint roller.

(5) Been adjudged liable for damages in any suit grounded in fraud, misrepresentation, or in violation of the state regulatory laws, or in any suit based upon a failure to discharge fully and faithfully the duties of a fingerprint roller.

(6) Use of false or misleading advertising in which the fingerprint roller has represented that he or she has duties, rights, or privileges that he or she does not possess by law.

(7) Commission of any act involving dishonesty, fraud, or deceit with the intent to substantially benefit the fingerprint roller or another, or to substantially injure another.

(8) Failure to submit any remittance payable upon demand by the department under this section or failure to satisfy any court ordered money judgment, including restitution.

(h) Commencing January 1, 2004, the department shall not accept applicant fingerprint impressions, manually or electronically, unless they were rolled by an individual certified under the Department of Justice Fingerprint Rolling Certification Program.

(i) The Department of Justice shall work with applicant regulatory entities to improve and make more efficient the criminal offender record information request process related to employment, licensing, and certification background investigations.

(j) The Department of Justice may adopt regulations as necessary to implement the provisions of this section.

CHAPTER 624

An act to add Sections 337t, 337u, 337v, 337w, 337x, 337y, and 337z to the Penal Code, relating to gaming.

[Approved by Governor September 17, 2002. Filed with Secretary of State September 17, 2002.]

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

SECTION 1. Section 337t is added to the Penal Code, to read:

337t. The following definitions govern the construction of this section and Sections 337u, 337w, 337x, and 337y:

(a) ''Associated equipment'' means any equipment or mechanical, electromechanical, or electronic contrivance, component or machine

used remotely or directly in connection with gaming or any game that would not otherwise be classified as a gaming device, including dice, playing cards, links which connect to progressive slot machines, equipment which affects the proper reporting of gross revenue, computerized systems for monitoring slot machines and devices for weighing or counting money.

(b) ''Cashless wagering system'' means a method of wagering and accounting in which the validity and value of a wagering instrument or wagering credits are determined, monitored, and retained by a computer that is operated and maintained by a licensee and that maintains a record of each transaction involving the wagering instrument or wagering credits, exclusive of the game or gaming device on which wagers are being made. The term includes computerized systems which facilitate electronic transfers of money directly to or from a game or gaming device.

(c) ''Cheat'' means to alter the normal elements of chance, method of selection, or criteria, excluding those alterations to the game generally done by the casino to provide variety to games and that are known, or should be known, by the wagering players, which determine any of the following:

(1) The result of a gambling game.

(2) The amount or frequency of payment in a gambling game.

(3) The value of a wagering instrument.

(4) The value of a wagering credit.

(d) ''Drop box'' means the box that serves as a repository for cash, chips, tokens, or other wagering instruments.

(e) ''Gambling establishment'' means any premises wherein or whereon any gaming is done.

(f) ''Gambling game device'' means any equipment or mechanical, electromechanical, or electronic contrivance, component or machine used remotely or directly in connection with gaming or any game which affects the result of a wager by determining win or loss. The term includes any of the following:

(1) A slot machine.

(2) A collection of two or more of the following components:

(A) An assembled electronic circuit which cannot be reasonably demonstrated to have any use other than in a slot machine.

(B) A cabinet with electrical wiring and provisions for mounting a coin, token, or currency acceptor and provisions for mounting a dispenser of coins, tokens, or anything of value.

(C) A storage medium containing the source language or executable code of a computer program that cannot be reasonably demonstrated to have any use other than in a slot machine.

(D) An assembled video display unit.

(E) An assembled mechanical or electromechanical display unit intended for use in gambling.

(F) An assembled mechanical or electromechanical unit which cannot be demonstrated to have any use other than in a slot machine.

(3) Any mechanical, electrical, or other device that may be connected to or used with a slot machine to alter the normal criteria of random selection or affect the outcome of a game.

(4) A system for the accounting or management of any game in which the result of the wager is determined electronically by using any combination of hardware or software for computers.

(5) Any combination of one of the components set forth in subparagraphs (A) to (F), inclusive, of paragraph (2) and any other component that the commission determines, by regulation, to be a machine used directly or remotely in connection with gaming or any game which affects the results of a wager by determining a win or loss.

(g) ''Past-posting'' means the placing of a wager by an individual at a game after having knowledge of the result or outcome of that game.

(h) ''Pinching wagers'' means to reduce the amount wagered or to cancel the wager after acquiring knowledge of the outcome of the game or other event that is the subject of the wager.

(i) ''Pressing wagers'' means to increase a wager after acquiring knowledge of the outcome of the game or other event that is the subject of the wager.

(j) ''Tribal Gaming Agency'' means the person, agency, board, committee, commission, or council designated under tribal law, including, but not limited to, an intertribal gaming regulatory agency approved to fulfill those functions by the National Indian Gaming Commission, as primarily responsible for carrying out the regulatory responsibilities of the tribe under the Indian Gaming and Regulatory Act (25 U.S.C. Sec. 2701) and a tribal gaming ordinance.

(k) ''Wagering credit'' means a representative of value, other than a chip, token, or wagering instrument, that is used for wagering at a game or gaming device and is obtained by the payment of cash or a cash equivalent, the use of a wagering instrument or the electronic transfer of money.

(l) ''Wagering instrument'' means a representative of value, other than a chip or token, that is issued by a licensee and approved by the California Gambling Control Commission or a tribal gaming agency, for use in a cashless wagering system.

SEC. 2. Section 337u is added to the Penal Code, to read:

337u. It is unlawful for any person to commit any of the following acts:

(a) To alter or misrepresent the outcome of a gambling game or other event on which wagers lawfully have been made after the outcome is made sure, but before it is revealed to the players.

(b) To place, increase, or decrease a wager or to determine the course of play after acquiring knowledge, not available to all players, of the outcome of the gambling game or any event that affects the outcome of the gambling game or which is the subject of the wager or to aid anyone in acquiring that knowledge for the purpose of placing, increasing, or decreasing a wager or determining the course of play contingent upon that event or outcome.

(c) To claim, collect, or take, or attempt to claim, collect, or take, money or anything of value in or from a gambling game, with intent to defraud, without having made a wager contingent on the game, or to claim, collect, or take an amount greater than the amount actually won.

(d) Knowingly to entice or induce another to go to any place where a gambling game is being conducted or operated in violation of this section, or Section 337v, 337w, 337x, or 337y, with the intent that the other person play or participate in that gambling game.

(e) To place or increase a wager after acquiring knowledge of the outcome of the gambling game or other event which is the subject of the wager, including past-posting and pressing wagers.

(f) To reduce the amount wagered or cancel the wager after acquiring knowledge of the outcome of the gambling game or other event which is the subject of the bet, including pinching wagers.

(g) To manipulate, with the intent to cheat, any component of a gambling game device in a manner contrary to the designed and normal operational purpose for the component, including, but not limited to, varying the pull of the handle of a slot machine, with knowledge that the manipulation affects the outcome of the gambling game or with knowledge of any event that affects the outcome of the gambling game.

SEC. 3. Section 337v is added to the Penal Code, to read:

337v. It is unlawful for any person at a gambling establishment to use, or to possess with the intent to use, any device to assist in any of the following:

(a) In projecting the outcome of the gambling game.

(b) In keeping track of the cards played.

(c) In analyzing the probability of the occurrence of an event relating to the gambling game.

(d) In analyzing the strategy for playing or wagering to be used in the gambling game, except as permitted by the California Gambling Control Commission or a tribal gaming agency.

SEC. 4. Section 337w is added to the Penal Code, to read:

337w. (a) It is unlawful for any person to use counterfeit chips, counterfeit debit instruments, or other counterfeit wagering instruments

in a gambling game, the equipment associated with a gambling game, or a cashless wagering system.

(b) It is unlawful for any person, in playing or using any gambling game, the equipment associated with a gambling game, or a cashless wagering system designed to be played with, receive, or be operated by chips, tokens, wagering credits or other wagering instruments approved by the California Gambling Control Commission or a tribal gaming agency, or by lawful coin of the United States of America to either:

(1) Knowingly use chips, tokens, wagering credits, or other wagering instruments not approved by the California Gambling Control Commission or a tribal gaming agency, or lawful coin, legal tender of the United States of America, or use coins or tokens not of the same denomination as the coins or tokens intended to be used in that gambling game, associated equipment, or cashless wagering system.

(2) Use any device or means to violate this section or Section 337u, 337v, 337x, or 337y.

(c) It is unlawful for any person, not a duly authorized employee of a gambling establishment acting in furtherance of his or her employment within that establishment, to possess any device intended to be used to violate this section or Section 337u, 337v, 337x, or 337y.

(d) It is unlawful for any person, not a duly authorized employee of a gambling establishment acting in furtherance of his or her employment within that establishment, to possess any key or device known to have been designed for the purpose of, and suitable for, opening, entering, or affecting the operation of any gambling game, cashless wagering system, or dropbox, or for removing money or other contents from the game, system, or box.

(e) It is unlawful for any person to possess any paraphernalia for manufacturing slugs. As used in this subdivision, ‘‘paraphernalia for manufacturing slugs’’ means the equipment, products, and materials that are intended for use or designed for use in manufacturing, producing, fabricating, preparing, testing, analyzing, packaging, storing, or concealing a counterfeit facsimile of the chips, tokens, debit instruments, or other wagering instruments approved by the California Gambling Control Commission or a tribal gaming agency, or a lawful coin of the United States, the use of which is unlawful pursuant to subdivision (b). The term ‘‘paraphernalia for manufacturing slugs’’ includes, but is not limited to, any of the following:

(1) Lead or lead alloys.

(2) Molds, forms, or similar equipment capable of producing a likeness of a gaming token or lawful coin of the United States.

(3) Melting pots or other receptacles.

(4) Torches.

(5) Tongs, trimming tools, or other similar equipment.

(6) Equipment which can be reasonably demonstrated to manufacture facsimiles of debit instruments or wagering instruments approved by the California Gambling Control Commission or a tribal gaming agency.

SEC. 5. Section 337x is added to the Penal Code, to read:

337x. It is unlawful to cheat at any gambling game in a gambling establishment.

SEC. 6. Section 337y is added to the Penal Code, to read:

337y. It is unlawful to do either of the following:

(a) Manufacture, sell, or distribute any cards, chips, dice, game, or device which is intended to be used to violate Section 337u, 337v, 337w, or 337x.

(b) Mark, alter, or otherwise modify any gambling game device or associated equipment in a manner that either:

(1) Affects the result of a wager by determining win or loss.

(2) Alters the normal criteria of random selection, which affects the operation of a gambling game or which determines the outcome of a game.

(c) It is unlawful for any person to instruct another in cheating or in the use of any device for that purpose, with the knowledge or intent that the information or use conveyed may be employed to violate Section 337u, 337v, 337w, or 337x.

SEC. 7. Section 337z is added to the Penal Code, to read:

337z. (a) Any person who violates Section 337u, 337v, 337w, 337x, or 337y shall be punished as follows:

(1) For the first violation, by imprisonment in a county jail for a term not to exceed one year, or by a fine of not more than five thousand dollars ($5,000), or by both that fine and imprisonment.

(2) For a second or subsequent violation of any of those sections, by imprisonment in a county jail for a term not to exceed one year or by a fine of not more than fifteen thousand dollars ($15,000), or by both that fine and imprisonment.

(b) A person who attempts to violate Section 337u, 337v, 337w, 337x, or 337y shall be punished in the same manner as the underlying crime.

(c) This section does not preclude prosecution under Section 332 or any other provision of law.

SEC. 8. 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.

CHAPTER 625

An act to amend Section 71.4 of the Harbors and Navigation Code, to amend Sections 15025, 21090, 21158.6, 41780, 41821.2, 42175.1, 42806.5, 42808, 42835, 42885, 42885.5, 42889, 42889.3, 42950, 42951, and 42954 of, to add Sections 42847.5 and 48023.5 to, to amend, renumber, and add Section 41820.5 of, and to repeal Section 42814 of, the Public Resources Code, and to amend Section 31560 of the Vehicle Code, relating to environmental quality, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 17, 2002. Filed with Secretary of State September 17, 2002.]

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

SECTION 1. Section 71.4 of the Harbors and Navigation Code is amended to read:

71.4. (a) The department, subject to the approval of the Legislature in accordance with Section 85.2, may make loans to cities, counties, or districts having power to acquire, construct, and operate small craft harbors, for the planning, acquisition, construction, improvement, maintenance, or operation of small craft harbors and facilities in connection therewith, and connecting waterways, if the department finds that the project is feasible.

(b) The department shall establish, by rules and regulations, policies and standards to be followed in making loans pursuant to this section so as to further the proper development and maintenance of a statewide system of small craft harbors and connecting waterways. To the greatest extent possible, the department shall adhere to customary commercial practices to ensure that loans made pursuant to this section are adequately secured and that the loans are repaid consistent with the terms of the loan agreement. Any rules and regulations shall include policies and standards for restrooms, vessel pumpout facilities, oil recycling facilities, and receptacles for the purpose of separating, reusing, or recycling all solid waste materials.

(c) The department shall develop weighing and ranking criteria to qualify and prioritize the public loans.

(d) Any loan under this section shall be repaid as provided in Section 70.

(e) Rates to be charged for the use of the boating facilities shall be established by the city, county, or district, subject to the approval of the department, in every loan contract. The department shall concern itself with the rates charged only as prescribed in Section 71.8. The rates set shall be based on a monthly berthing charge, and the department shall monitor these rates to ensure that the berthing charges are reasonable and not exorbitant.

(f) The department shall submit any project for which it recommends any loan be made to the Governor for inclusion in the Budget Bill.

(g) No loans shall be made to cities, counties, or districts pursuant to this article from funds appropriated in the Budget Act of 1999 for the purposes of this section until the practices and criteria described in subdivisions (b) and (c) have been reviewed and approved by the Department of Finance. Any subsequent changes to those practices and criteria shall also be approved by the Department of Finance.

SEC. 2. Section 15025 of the Public Resources Code is amended to read:

15025. For purposes of this article, the following terms have the following meanings:

(a) ''Mercury-added novelty'' means a mercury-added product intended mainly for personal or household enjoyment or adornment. A ''mercury-added novelty'' includes, but is not limited to, any item intended for use as a practical joke, figurine, adornment, toy, game, card, ornament, yard statue or figure, candle, jewelry, holiday decoration, and item of apparel, including footwear. ''Mercury-added novelty'' does not include a product that contains no mercury other than in a mercury-added button cell battery.

(b) ''Mercury fever thermometer'' means a mercury-added product that is used for measuring body temperature. Mercury fever thermometer does not include a digital thermometer that uses mercury-added button cell batteries.

(c) ''School'' means any school used for the purpose of the education of more than 12 children in kindergarten or any of grades 1 to 12, inclusive.

SEC. 3. Section 21090 of the Public Resources Code is amended to read:

21090. (a) An environmental impact report for a redevelopment plan may be a master environmental impact report, program environmental impact report, or a project environmental impact report. Any environmental impact report for a redevelopment plan shall specify the type of environmental impact report that is prepared for the redevelopment plan.

(b) If the environmental impact report for a redevelopment plan is a project environmental impact report, all public and private activities or

undertakings pursuant to, or in furtherance of, a redevelopment plan shall be deemed to be a single project. However, further environmental review of any public or private activity or undertaking pursuant to, or in furtherance of, a redevelopment plan for which a project environmental impact report has been certified shall be conducted if any of the events specified in Section 21166 have occurred.

SEC. 4. Section 21158.6 of the Public Resources Code is amended to read:

21158.6. (a) For a project in the City of Oakland that consists of multiple-family residential development, or a residential and commercial or retail mixed-use development with not more than 25 percent of the total floor area of the project utilized as retail space, a focused environmental impact report may be prepared, notwithstanding that the project was not identified in a master environmental impact report, if all of the following conditions are met:

(1) The Oakland City Council does both of the following:

(A) Authorizes the implementation of this section. The city council may authorize the implementation of this section only by voting to approve the practice of preparing focused environmental impact reports for projects in the central business district housing target areas specified in paragraph (11).

(B) Determines that the general plan, zoning ordinance, and related policies and programs are consistent with principles that encourage compact development in a manner that does both of the following:

(i) Promotes efficient transportation systems, economic growth, affordable housing, energy efficiency, and an appropriate balance of jobs and housing.

(ii) Protects the environment, open space, and agricultural areas.

(2) The city submits a draft determination to the Office of Planning and Research that the applicable general plan, zoning ordinance, and any related policies and programs are consistent with the principles described in subparagraph (B) of paragraph (1) prior to the city council making its determination regarding that consistency. The office may submit comments on the draft findings to the city council within 30 days from the date that the city submits the draft determination to the office.

(3) The city has an average population density of at least 5,000 persons per square mile.

(4) The project is consistent with the general plan, any applicable specific plan and community plan, and zoning ordinance, including any variance that is properly granted pursuant to that zoning ordinance, an environmental impact report was prepared for the general plan, and the application for the project is deemed complete pursuant to Section 65943 of the Government Code within 3 years of the date this section is effective.

(5) The lead agency cannot make the finding described in subdivision (c) of Section 21157.1, a negative declaration or mitigated negative declaration cannot be prepared pursuant to Section 21080, 21157.5, or 21158, and Section 21166 does not apply.

(6) The project meets one or both of the following conditions:

(A) The parcel on which the project is to be developed is surrounded by immediately contiguous urban development.

(B) The parcel on which the project is to be developed is, or has been previously, developed with urban uses.

(7) The density of the project is at least 40 units per net acre.

(8) The parcel on which the project is to be developed is within one-half mile of an existing rail transit station.

(9) The project can be adequately served by existing utilities and municipal services, and there will be adequate capacity for infrastructure, utilities, and services to serve other projects approved and proposed in the service area.

(10) The project does not include a single level building that exceeds the square footage limitation specified in subdivision (a) of Section 21158.5.

(11) The project is located in one of the following central business district housing target areas:

(A) The Valdez cluster, which is bounded on the west by Telegraph Avenue, on the south by 23rd Street, on the east by Harrison Street, and on the north by 27th Street. A project located in this cluster that meets the condition described in paragraph (8) may include a portion up to one acre that does not meet that condition.

(B) The Uptown cluster, which is bounded on the west by Castro Street, on the south by 14th Street from Castro Street to Jefferson Street and 16th Street from Jefferson Street to Broadway, on the east by Jefferson Street from 14th Street to 16th Street and Broadway from 16th Street to 22nd Street, and on the north by 22nd Street.

(C) The 11th Street cluster, which is bounded by Franklin Street from 12th Street to 15th Street, by Webster from 11th Street to 12th Street, by Alice Street from 11th Street to 13th Street, by 12th Street from Franklin Street to Webster Street, by 11th Street from Webster Street to Alice Street and 13th Street from Alice Street to Madison Street, and on the east by Madison Street from 13th Street to 15th Street, and on the north by 15th Street from Franklin Street to Madison Street.

(D) The Old Oakland cluster, which is bounded on the west by Castro Street, on the south by 7th Street, on the east by Broadway, and on the north by 11th Street.

(b) A focused environmental impact report prepared pursuant to this section shall be limited to a discussion of potentially significant effects on the environment specific to the project. No discussion shall be

required of alternatives to the project, cumulative impacts of the project, or the growth inducing impacts of the project.

(c) (1) On or before July 1, 2004, the city shall submit a report to the Office of Planning and Research that includes, but that is not necessarily limited to, all of the following information:

(A) The number of focused environmental impact reports prepared pursuant to this section.

(B) The types of projects for which focused environmental impact reports were prepared pursuant to this section.

(C) The time periods for preparing each of the focused environmental impact reports prepared pursuant to this section, and for acting on each project from the date that the application was deemed complete.

(D) A description of any alternatives to a project, cumulative impacts of a project, growth inducing impacts of a project, or other issues that may have been identified and analyzed if an environmental document, other than a focused environmental impact report, had been prepared for the project.

(2) Prior to submitting the report to the office pursuant to paragraph (1), the city shall hold at least one public hearing and shall respond to oral and written comments regarding the draft report. The city shall include the comments and responses in the final report.

(d) This section shall remain in effect only until January 1, 2005, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2005, deletes or extends that date.

SEC. 5. Section 41780 of the Public Resources Code is amended to read:

41780. (a) Each city or county source reduction and recycling element shall include an implementation schedule that shows both of the following:

(1) For the initial element, the city or county shall divert 25 percent of all solid waste from landfill disposal or transformation by January 1, 1995, through source reduction, recycling, and composting activities.

(2) Except as provided in Sections 41783, 41784, and 41785, for the first and each subsequent revision of the element, the city or county shall divert 50 percent of all solid waste on and after January 1, 2000, through source reduction, recycling, and composting activities.

(b) Nothing in this part prohibits a city or county from implementing source reduction, recycling, and composting activities designed to exceed these requirements.

SEC. 6. Section 41820.5 of the Public Resources Code is amended and renumbered to read:

41820.6. (a) In addition to its authority under Section 41820, the board may, after a public hearing, grant a time extension from the

diversion requirements of Section 41780 to a city if both of the following conditions exist:

(1) The city was incorporated pursuant to Division 3 (commencing with Section 56000) of Title 5 of the Government Code on or after January 1, 2001.

(2) The county within which the city is located did not include provisions in its franchises that ensured that the now incorporated area would comply with the diversion requirements of Section 41780.

(b) The board may authorize a city that meets the requirements of subdivision (a) to submit a source reduction and recycling element that includes an implementation schedule that shows that the city shall divert 50 percent of its estimated generation amount of solid waste from landfill or transformation facilities, within three years from the date on which the source reduction and recycling element is due pursuant to subdivision (b) of Section 41791.5, through source reduction, recycling, and composting activities.

SEC. 7. Section 41820.5 is added to the Public Resources Code, to read:

41820.5. (a) In addition to its authority under Section 41820, the board may, after a public hearing, grant a time extension from the diversion requirements of Section 41780 to a city if both of the following conditions exist:

(1) The city was incorporated pursuant to Division 3 (commencing with Section 56000) of Title 5 of the Government Code after January 1, 1990, and before January 1, 2001.

(2) The county within which the city is located did not include provisions in its franchises that ensured that the now incorporated area would comply with the diversion requirements of Section 41780.

(b) The board may authorize a city that meets the requirements of subdivision (a) to submit a source reduction and recycling element that includes an implementation schedule that shows both of the following:

(1) The city shall divert 25 percent of its estimated generation amount of solid waste from landfill or transformation facilities within three years from the date on which the source reduction and recycling element is due pursuant to subdivision (b) of Section 41791.5, through source reduction, recycling, and composting activities.

(2) The city shall divert 50 percent of its estimated generation amount of solid waste from landfill or transformation facilities within eight years from the date on which the source reduction and recycling element is due pursuant to subdivision (b) of Section 41791.5, through source reduction, recycling, and composting activities.

SEC. 8. Section 41821.2 of the Public Resources Code is amended to read:

41821.2. (a) For the purposes of this section, ''district'' means a community services district, public utility district, or sanitary district that provides solid waste handling services or implements source reduction and recycling programs.

(b) Notwithstanding any other law, each district shall do all of the following:

(1) Comply with the source reduction and recycling element and the household hazardous waste element of the city, county, or regional agency in which the district is located, as required by the city, county, or regional agency. The city, county, or regional agency shall notify a district of any program that it is implementing or modifying when it annually submits a report to the board pursuant to Section 41821.

(2) Provide each city, county, or regional agency in which it is located, information on the programs implemented by the district, the amount of waste disposed and reported to the disposal tracking system pursuant to Section 41821.5 for each city, county, or regional agency, and the amount of waste diverted by the district for each city, county, or regional agency.

(c) The board may adopt regulations pertaining to the format of the information to be provided pursuant to paragraph (2) of subdivision (b) and deadlines for supplying this information to the city, county, or regional agency, so that it may be incorporated into the annual report submitted to the board pursuant to Section 41821.

(d) A district is subject to the portion of a penalty imposed, pursuant to Section 41850, upon a city, county, or regional agency in which the district is located, that is in proportion to the district's responsibility for failure to implement that jurisdiction's source reduction and recycling element and household hazardous waste element, as determined by that city, county, or regional agency. The board shall not determine the proportion of a district's responsibility as part of its determination to impose penalties. The city, county, or regional agency shall provide the district with a written notice regarding the district's responsibility, including the basis for determining the district's proportional responsibility, and an opportunity for hearing before the city, county, or regional agency's governing body, before assessing the district a proportion of the penalty imposed by the board.

(e) A district may impose a fee in an amount sufficient to pay for the costs of complying with this section. The fees shall be assessed and collected in the same manner as the fees imposed pursuant to Sections 41901 and 41902.

SEC. 9. Section 42175.1 of the Public Resources Code is amended to read:

42175.1. (a) Any hazardous material that becomes a hazardous waste when released or removed from any major appliance shall be

managed pursuant to Article 10.1 (commencing with Section 25211) of Chapter 6.5 of Division 20 of the Health and Safety Code.

(b) Any mercury-containing motor vehicle light switch removed from the hood or trunk of any vehicle prior to crushing or shredding shall be managed pursuant to Article 10.2 (commencing with Section 25214.5) of Chapter 6.5 of Division 20 of the Health and Safety Code.

(c) Failure to comply with the requirements of Section 42175 is a violation of Chapter 6.5 (commencing with Section 25100) of Division 20 of the Health and Safety Code.

SEC. 10. Section 42806.5 of the Public Resources Code is amended to read:

42806.5. ''Used tire'' means a tire that meets all of the following requirements:

(a) The tire is no longer mounted on a vehicle but is still suitable for use as a vehicle tire.

(b) The tire meets the applicable requirements of the Vehicle Code and Title 13 of the California Code of Regulations.

(c) (1) The used tire is ready for resale, is stored by size in a rack or a stack not more than two rows wide, but not in a pile, and is stored in accordance with local fire and vector control requirements and with state minimum standards.

(2) A used tire stored pursuant to this section shall be stored in a manner to allow the inspection of each individual tire.

SEC. 11. Section 42808 of the Public Resources Code is amended to read:

42808. ''Waste tire facility'' means a location, other than a solid waste facility permitted pursuant to this division that receives for transfer or disposal less than 150 tires per day averaged on an annual basis, where, at any time, waste tires are stored, stockpiled, accumulated, or discarded. ''Waste tire facility'' includes all of the following:

(a) ''Existing waste tire facility'' means a waste tire facility which is receiving, storing, or accumulating waste tires, or upon which waste tires are discarded, on January 1, 1990.

(b) ''Major waste tire facility'' means a waste tire facility where, at any time, 5,000 or more waste tires are or will be stored, stockpiled, accumulated, or discarded.

(c) ''Minor waste tire facility'' means a waste tire facility where, at any time, 500 or more, but less than 5,000, waste tires are or will be stored, stockpiled, accumulated, or discarded. However, a ''minor waste tire facility'' does not include a tire dealer or an automobile dismantler, as defined in Sections 220 and 221 of the Vehicle Code, who stores waste tires on the dealer's or dismantler's premises for less than 90 days if not more than 1,500 total used or waste tires are ever accumulated on the dealer's or dismantler's premises.

SEC. 12. Section 42814 of the Public Resources Code is repealed.

SEC. 13. Section 42835 of the Public Resources Code is amended to read:

42835. (a) Any person who accepts waste tires at a minor waste tire facility that has not been issued a permit or an authorization to operate from the board, or who knowingly directs, transports, or abandons waste tires to or at a minor waste tire facility that has not been issued a permit or an authorization to operate from the board shall, upon conviction, be punished by a fine of not less than five hundred dollars ($500) or more than five thousand dollars ($5,000) for each day of violation, by imprisonment in the county jail for not more than one year, or by both that fine and imprisonment.

(b) For purposes of subdivision (a), ''each day of violation'' means each day on which a violation continues. In any case where a person has accepted waste tires at a minor waste tire facility, or knowingly directed or transported waste tires to a minor waste tire facility, that has not been issued a permit, in violation of subdivision (a), each day that the waste tires remain at the facility and the person has knowledge thereof is a separate additional violation, unless the person has filed a report with the board disclosing the violation and is in compliance with any order regarding the waste tires issued by the board, a hearing officer, or a court of competent jurisdiction.

SEC. 14. Section 42847.5 is added to the Public Resources Code, to read:

42847.5. (a) Any costs or damages incurred by the board under this article constitute a lien upon the real property owned by any responsible party that is subject to the remedial action. The lien shall attach regardless of whether the responsible party is insolvent. A lien imposed under this section shall arise at the time costs are first incurred by the board with respect to a remedial action at the site.

(b) A lien established under this section shall be subject to the notice and hearing procedures required by due process of the law. Prior to imposing the lien, the board shall send the property owner via certified mail a ''Notice of Intent to Place A Lien'' letter. This letter shall provide that the owner, within 14 calendar days from the date of receipt of the letter, may object to the imposition of the lien either in writing or through an informal proceeding before a neutral official. This neutral official shall be the board's executive director or his or her designee, who may not have had any prior involvement with the site. The issue before the neutral official shall be whether the board has a reasonable basis for its determination that the statutory elements for lien placement under this section are satisfied. During this proceeding the property owner may present information or submit documents, or both, to establish that the board should not place a lien as proposed. The neutral official shall

assure that a record of the proceeding is made, and shall issue a written decision. The decision shall state whether the property owner has established any issue of fact or law to alter the board's intention to file a lien, and the basis for the decision.

(c) The board may not be considered a responsible party for a remediated site merely because a lien is imposed under this section.

(d) A lien imposed under this section shall continue until the liability for the costs or damages incurred under this article, or a judgment against the responsible party, is satisfied. However, if it is determined by a court that the judgment against the responsible party will not be satisfied, the board may exercise its rights under the lien.

(e) A lien imposed under this section shall have the force and effect of, and the priority of, a judgment lien upon its recordation in the county in which the property subject to the lien is located. The lien shall contain a legal description of the real property that is subject to, or affected by, the remedial action, the assessor's parcel number, and the name of the owner of record, as shown on the latest equalized assessment roll.

(f) All funds recovered under this section on behalf of the board's waste tire stabilization and abatement program shall be deposited in the California Tire Recycling Management Fund established under Section 42885.

SEC. 15. Section 42885 of the Public Resources Code is amended to read:

42885. (a) For purposes of this section, "California tire fee" means the fee imposed pursuant to this section.

(b) (1) (A) On and before December 31, 2006, every person who purchases a new tire, as defined in subdivision (g), shall pay a California tire fee of one dollar ($1.00) per tire.

(B) On and after January 1, 2007, every person who purchases a new tire, as defined in subdivision (g), shall pay a California tire fee of seventy-five cents ($0.75) per tire.

(2) The retail seller shall charge the retail purchaser the amount of the California tire fee as a charge that is separate from, and not included in, any other fee, charge, or other amount paid by the retail purchaser.

(3) The retail seller shall collect the California tire fee from the retail purchaser at the time of sale and may retain 3 percent of the fee as reimbursement for any costs associated with the collection of the fee. The retail seller shall remit the remainder to the state on a quarterly schedule for deposit in the California Tire Recycling Management Fund, which is hereby created in the State Treasury.

(c) The board, or its agent authorized pursuant to Section 42882, shall be reimbursed for its costs of collection, auditing, and making refunds associated with the California Tire Recycling Management Fund, but not to exceed 3 percent of the total annual revenue deposited in the fund.

(d) The California tire fee imposed pursuant to subdivision (a) shall be separately stated by the retail seller on the invoice given to the customer at the time of sale. Any other disposal or transaction fee charged by the retail seller related to the tire purchase shall be identified separately from the California tire fee.

(e) Any person or business who knowingly, or with reckless disregard, makes any false statement or representation in any document used to comply with this section is liable for a civil penalty for each violation or, for continuing violations, for each day that the violation continues. Liability under this section may be imposed in a civil action and shall not exceed twenty-five thousand dollars ($25,000) for each violation.

(f) In addition to the civil penalty that may be imposed pursuant to subdivision (e), the board may impose an administrative penalty in an amount not to exceed five thousand dollars ($5,000) for each violation of a separate provision or, for continuing violations, for each day that the violation continues, on any person who intentionally or negligently violates any permit, rule, regulation, standard, or requirement issued or adopted pursuant to this chapter. The board shall adopt regulations that specify the amount of the administrative penalty and the procedure for imposing an administrative penalty pursuant to this subdivision.

(g) For purposes of this section, ''new tire'' means a pneumatic or solid tire intended for use with on-road or off-road motor vehicles, motorized equipment, construction equipment, or farm equipment that is sold separately from the motorized equipment, or a new tire sold with a new or used motor vehicle, as defined in Section 42803.5, including the spare tire, construction equipment, or farm equipment. ''New tire'' does not include retreaded, reused, or recycled tires.

(h) The California tire fee may not be imposed on any tire sold with, or sold separately for use on, any of the following:

(1) Any self-propelled wheelchair.

(2) Any motorized tricycle or motorized quadricycle, as defined in Section 407 of the Vehicle Code.

(3) Any vehicle that is similar to a motorized tricycle or motorized quadricycle and is designed to be operated by a person who, by reason of the person's physical disability, is otherwise unable to move about as a pedestrian.

SEC. 16. Section 48023.5 is added to the Public Resources Code, to read:

48023.5. (a) In addition to the remedies authorized under Section 48023, any costs or damages incurred under this article by the board constitute a lien upon the real property owned by any responsible party that is subject to the remedial action. The lien shall attach regardless of whether the responsible party is insolvent. A lien imposed under this

section shall arise at the time costs are first incurred by the board with respect to a remedial action at the site.

(b) A lien established under this section shall be subject to the notice and hearing procedures required by due process of the law. Prior to imposing the lien, the board shall send the property owner via certified mail a "Notice of Intent to Place A Lien" letter. This letter shall provide that the owner, within 14 calendar days from the date of receipt of the letter, may object to the imposition of the lien either in writing or through an informal proceeding before a neutral official. This neutral official shall be the board's executive director or his or her designee, who may not have had any prior involvement with the site. The issue before the neutral official shall be whether the board has a reasonable basis for its determination that the statutory elements for lien placement under this section are satisfied. During this proceeding the property owner may present information or submit documents, or both, to establish that the board should not place a lien as proposed. The neutral official shall assure that a record of the proceeding is made, and shall issue a written decision. The decision shall state whether the property owner has established any issue of fact or law to alter the board's intention to file a lien, and the basis for the decision.

(c) The board may not be considered a responsible party for a remediated site merely because a lien is imposed under this section.

(d) A lien imposed under this section shall continue until the liability for the costs or damages incurred under this article, or a judgment against the responsible party, is satisfied. However, if it is determined by a court that the judgment against the responsible party will not be satisfied, the board may exercise its rights under the lien.

(e) A lien imposed under this section shall have the force and effect of, and the priority of, a judgment lien upon its recordation in the county in which the property subject to the lien is located. The lien shall contain a legal description of the real property that is subject to, or affected by, the remedial action, the assessor's parcel number, and the name of the owner of record, as shown on the latest equalized assessment roll.

(f) All funds recovered under this section on behalf of the board's solid waste disposal and codisposal site cleanup program shall be deposited in the Solid Waste Disposal Site Cleanup Trust Fund established under Section 48027.

SEC. 17. Section 42885.5 of the Public Resources Code is amended to read:

42885.5. (a) The board shall adopt a five-year plan, which shall be updated every two years, to establish goals and priorities for the waste tire program and each program element.

(b) On or before July 1, 2001, and every two years thereafter, the board shall submit the adopted five-year plan to the appropriate policy

and fiscal committees of the Legislature. The board shall include, in the plan, programmatic and fiscal issues including, but not limited to, the hierarchy used by the board to maximize productive uses of waste and used tires and the performance objectives and measurement criteria used by the board to evaluate the success of its waste and used tire recycling program. Additionally, the plan shall describe each program element's effectiveness, based upon performance measures developed by the board, including, but not limited to, the following:

(1) Enforcement and regulations relating to the storage of waste and used tires.

(2) Cleanup, abatement, or other remedial action related to waste tire stockpiles throughout the state.

(3) Research directed at promoting and developing alternatives to the landfill disposal of waste tires.

(4) Market development and new technology activities for used tires and waste tires.

(5) The waste and used tire hauler program and manifest system.

(c) The board shall base the budget for the California Tire Recycling Act and program funding on the plan.

SEC. 18. Section 42889 of the Public Resources Code is amended to read:

42889. Funding for the waste tire program shall be appropriated to the board in the annual Budget Act in a manner consistent with the five-year plan adopted and updated by the board. The moneys in the fund shall be expended for the payment of refunds under this chapter and for the following purposes:

(a) To pay the administrative overhead cost of this chapter, not to exceed 5 percent of the total revenue deposited in the fund annually, or an amount otherwise specified in the annual Budget Act.

(b) To pay the costs of administration associated with collection, making refunds, and auditing revenues in the fund, not to exceed 3 percent of the total revenue deposited in the fund, as provided in subdivision (b) of Section 42885.

(c) To pay the costs associated with operating the tire recycling program specified in Article 3 (commencing with Section 42870).

(d) To pay the costs associated with the development and enforcement of regulations relating to the storage of waste tires and used tires. The board shall consider designating a city, county, or city and county as the enforcement authority of regulations relating to the storage of waste tires and used tires, as provided in subdivision (c) of Section 42850. If the board designates a local entity for that purpose, the board shall provide sufficient, stable, and noncompetitive funding to that entity for that purpose, based on available resources, as provided in the five-year plan adopted and updated as provided in subdivision (a) of

Section 42855.5. The board may consider and create, as appropriate, financial incentives for citizens who report the illegal hauling or disposal of waste tires as a means of enhancing local and statewide waste tire and used tire enforcement programs.

(e) To pay the costs of cleanup, abatement, removal, or other remedial action related to waste tire stockpiles throughout the state, including all approved costs incurred by other public agencies involved in these activities by contract with the board. Not less than six million five hundred thousand dollars ($6,500,000) shall be expended by the board during each of the following fiscal years for this purpose: 2001–02 to 2006–07, inclusive.

(f) To make studies and conduct research directed at promoting and developing alternatives to the landfill disposal of waste tires.

(g) To assist in developing markets and new technologies for used tires and waste tires. The board's expenditure of funds for purposes of this subdivision shall reflect the priorities for waste management practices specified in subdivision (a) of Section 40051.

(h) To pay the costs associated with implementing and operating a waste tire and used tire hauler program and manifest system pursuant to Chapter 19 (commencing with Section 42950).

(i) To pay the costs to create and maintain an emergency reserve, which shall not exceed one million dollars ($1,000,000).

(j) To pay the costs of cleanup, abatement, or other remedial action related to the disposal of waste tires in implementing and operating the Farm and Ranch Solid Waste Cleanup and Abatement Grant Program established pursuant to Chapter 2.5 (commencing with Section 48100) of Part 7.

(k) To pay the costs associated with the preparation of a report by the Office of Environmental Health Hazard Assessment, in consultation with the State Air Resources Board, the Integrated Waste Management Board, and the State Department of Health Services, that includes, at a minimum, the major chemical constituents of smoke from burning tires, the toxicity of those chemicals, and the potential effects on human health from exposure to smoke from the tire fires. The report shall be submitted to the Governor, the Legislature, and the board by December 21, 2001. The cost of preparing this report shall not exceed one hundred fifty thousand dollars ($150,000).

SEC. 19. Section 42889.3 of the Public Resources Code is amended to read:

42889.3. On or before January 1 of each year, the Department of Transportation shall report to the Legislature and the board on the use of waste tires in transportation and civil engineering projects during the previous five years, including, but not limited to, the approximate

number of waste tires used every year, and the types and location of these projects.

SEC. 20. Section 42950 of the Public Resources Code is amended to read:

42950. For purposes of this chapter, the following definitions apply:

(a) ''Agricultural purposes'' means the use of waste tires as bumpers on agricultural equipment or as a ballast to maintain covers or structures at an agricultural site.

(b) (1) ''Altered waste tire'' means a waste tire that has been baled, shredded, chopped, or split apart. ''Altered waste tire'' does not mean crumb rubber.

(2) ''Alteration'' or ''altering,'' with reference to a waste tire, means an action that produces an altered waste tire.

(c) ''Applicant'' means any person seeking to register as a waste tire hauler.

(d) ''Baled tire'' means either a whole or an altered tire that has been compressed and then secured with a binding material for the purpose of reducing its volume.

(e) ''Common carrier'' means a ''common carrier,'' as defined in Section 211 of the Public Utilities Code.

(f) ''Crumb rubber'' means rubber granules derived from a waste tire that are less than or one-quarter inch or six millimeters in size.

(g) ''Repairable tire'' means a worn, damaged, or defective tire that is retreadable, recappable, or regrooveable, or that can be otherwise repaired to return the tire to use as a vehicle tire, and that meets the applicable requirements of the Vehicle Code and Title 13 of the California Code of Regulations.

(h) ''Scrap tire'' means a worn, damaged, or defective tire that is not a repairable tire.

(i) ''Tire derived product'' means material that meets both of the following requirements:

(1) Is derived from a process using waste tires or waste tire equivalents as a feedstock. A process using waste tires or waste tire equivalents includes, but is not limited to, shredding, crumbing, or chipping.

(2) Has been sold and removed from the processing facility.

(j) ''Used tire'' means a tire that meets both of the following requirements:

(1) The tire is no longer mounted on a vehicle but is still suitable for use as a vehicle tire.

(2) The tire meets the applicable requirements of the Vehicle Code and of Title 13 of the California Code of Regulations.

(k) ''Waste tire'' means a tire that is no longer mounted on a vehicle and is no longer suitable for use as a vehicle tire due to wear, damage,

or deviation from the manufacturer's original specifications. A waste tire includes a repairable tire, scrap tire, and altered waste tire, but does not include a tire derived product, crumb rubber, or a used tire.

(*l*) "Waste tire generator" or "waste tire generating business" means any person as defined by Section 40170 whose act or process produces waste tires as defined in Section 42807, causes a waste tire hauler to transport those waste tires, or otherwise causes waste tires to become subject to regulation. "Waste tire generator" or "waste tire generating business" does not include a person who transports 10 or fewer waste tires at any one time.

SEC. 21. Section 42951 of the Public Resources Code is amended to read:

42951. (a) Every person who engages in the transportation of waste or used tires shall hold a valid waste and used tire hauler registration, unless exempt as specified in Section 42954.

(b) A registered waste and used tire hauler shall only transport waste or used tires to a facility that is permitted, excluded, exempted, or otherwise authorized by the board, by statute, or by regulation, to accept waste and used tires, or to a facility that lawfully accepts waste or used tires for reuse or disposal.

SEC. 22. Section 42954 of the Public Resources Code is amended to read:

42954. (a) A person who hauls waste or used tires is exempt from registration under this chapter if at least one of the following conditions is met:

(1) The person transports fewer than 10 waste or used tires at any one time.

(2) The person is, or hauls used and waste tires in a vehicle owned and operated by, the United States, the State of California, or any county, city, town, or municipality in the state, except when vehicles the public agency owns or operates are used as a waste and used tire carrier for hire.

(3) The waste or used tires were inadvertently mixed or commingled with solid waste, and it is not economical or safe to remove or recover them.

(4) The vehicle originated outside the boundaries of the state and is destined for a point outside the boundaries of the state, if no waste or used tires are loaded or unloaded within the boundaries of the state.

(5) The person is hauling waste or used tires for agricultural purposes. However, notwithstanding Section 42961.5, a person hauling waste or used tires for agricultural purposes shall carry a manifest from the generator in the vehicle during transportation, which may be destroyed after delivery.

(6) The waste or used tires were hauled by a common carrier who transported something other than waste or used tires to an original

destination point and then transported waste or used tires on the return part of the trip, and the revenue derived from the waste or used tires is incidental when compared to the revenue earned by the carrier.

(7) The person, who is not a waste tire generating business, is transporting waste or used tires to an amnesty day event or to a location as defined in subdivision (b) of Section 42951, and has received written authorization, which includes specific conditions and dates, from the local enforcement agency. The local enforcement agency shall provide copies of any written authorizations to the board within 30 days of their issuance.

(8) The person complies with any additional conditions for exemption, as approved by the board.

(b) Any person who transports tires in violation of subdivision (b) of Section 42951 shall not be exempt pursuant to subdivision (a).

SEC. 23. Section 31560 of the Vehicle Code is amended to read:

31560. (a) Any person operating a vehicle, or combination of vehicles, in the transportation of waste tires, as defined in Section 42950 of the Public Resources Code, shall be registered with the California Integrated Waste Management Board, unless specifically exempted, as provided in Chapter 19 (commencing with Section 42950) of Part 3 of Division 30 of the Public Resources Code and in regulations adopted by the board to implement that chapter.

(b) It is unlawful and constitutes an infraction for any person engaged in the transportation of waste tires to violate any provision of this article or Section 42951 of the Public Resources Code.

SEC. 24. 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.

SEC. 25. 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 assist local agencies in achieving the 50 percent solid waste diversion goals as required by Section 41780 of the Public Resources Code, at the earliest possible time, it is necessary for this act to take effect immediately.

CHAPTER 626

An act to amend Sections 25218.1, 25218.5, 25358.6.1, 25395.12, 25395.15, 25570.2, and 25570.3 of, and to add Sections 25123.8 and 58004.5 to, the Health and Safety Code, and to amend Section 42175.1 of the Public Resources Code, relating to hazardous substances and waste.

[Approved by Governor September 17, 2002. Filed with Secretary of State September 17, 2002.]

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

SECTION 1. Section 25123.8 is added to the Health and Safety Code, to read:

25123.8. ''Universal waste'' means a hazardous waste identified as a universal waste in Section 66273.9 of Title 22 of the California Code of Regulations, or as that regulation may be further amended pursuant to this chapter, or a hazardous waste designated as a universal waste pursuant to this chapter.

SEC. 2. Section 25218.1 of the Health and Safety Code is amended to read:

25218.1. For purposes of this article, the following terms have the following meaning:

(a) ''Conditionally exempt small quantity generator'' or ''CESQG'' means a business concern which meets the criteria specified in Section 261.5 of Title 40 of the Code of Federal Regulations.

(b) ''Curbside household hazardous waste collection program'' means a collection service authorized by a public agency that is operated in accordance with Section 25163 and subdivision (d) of Section 25218.5 and that collects one or more of the following types of household hazardous waste:

(1) Latex paint.

(2) Used oil.

(3) Used oil filters.

(4) Household hazardous waste that is designated as a universal waste pursuant to this chapter or the regulations adopted by the department.

(c) ''Door-to-door household hazardous waste collection program'' or ''household hazardous waste residential pickup service'' means a program operated by a public agency, or its contractor, that collects household hazardous waste from individual residences, and transports that waste in an inspected and certified hazardous waste transport vehicle to an authorized household hazardous waste collection facility.

(d) ''Household'' means a single detached residence or a single unit of a multiple residence unit and all appurtenant structures.

(e) ''Household hazardous waste'' means any hazardous waste generated incidental to owning or maintaining a place of residence. Household hazardous waste does not include any waste generated in the course of operating a business concern at a residence.

(f) ''Household hazardous waste collection facility'' means a facility operated by a public agency, or its contractor, for the purpose of collecting, handling, treating, storing, recycling, or disposing of household hazardous waste, and its operation may include accepting hazardous waste from conditionally exempt small quantity generators if that acceptance is authorized pursuant to Section 25218.3. Household hazardous waste collection facilities include permanent household hazardous waste collection facilities, as defined in subdivision (h), temporary household hazardous waste collection facilities, as defined in subdivision (p), recycle-only household hazardous waste collection facilities, as defined in subdivision (n), curbside household hazardous waste collection programs, as defined in subdivision (b), and mobile household hazardous waste collection facilities, as defined in subdivision (g).

(g) ''Mobile household hazardous waste collection facility'' means a portable structure within which a household hazardous waste collection facility is operated and that meets all of the following conditions:

(1) The facility is operated not more than four times in any one calendar year at the same location.

(2) The facility is operated not more than three consecutive weeks within a two-month period at the same location.

(3) Upon the termination of operations, all equipment, materials, and waste are removed from the site within 144 hours.

(h) ''Permanent household hazardous waste collection facility'' means a permanent or semipermanent structure at a fixed location that meets both of the following conditions:

(1) The facility is operated at the same location on a continuous, regular schedule.

(2) The hazardous waste stored at the facility is removed within one year after collection.

(i) ''Public agency'' means a state or federal agency, county, city, or district.

(j) ''Quality assurance plan'' means a written protocol prepared by a public agency that is designed to ensure that reusable household hazardous products or materials, as defined in subdivision (o), that are collected by a household hazardous waste collection program are evaluated to verify that product containers, contents, and labels are as they originated from the products' manufacturers. The public agency or a person authorized by the public agency, as defined in subdivision (k), shall design the protocol to ensure, using its best efforts with the

resources generally available to the public agency, or the person authorized by the public agency, that products selected for distribution are appropriately labeled, uncontaminated, and appear to be as they originated from the product manufacturers. A quality assurance plan shall identify specific procedures for evaluating each container placed in a recycling or exchange program. The quality assurance plan shall also identify those products that shall not be accepted for distribution in a recycling or exchange program. Unacceptable products may include, but are not limited to, banned or unregistered agricultural waste, as defined in subdivision (a) of Section 25207.1, and products containing PCB, asbestos, or dioxin.

(k) ''Person authorized by the public agency'' means an employee of a public agency or a person from whom services are contracted by the public agency.

(*l*)''Recipient'' means any person who accepts a reusable household hazardous product or material at a household hazardous waste collection facility operating pursuant to this article.

(m) ''Recyclable household hazardous waste material'' means any of the following:

(1) Latex paint.

(2) Used oil.

(3) Used oil filters.

(4) Antifreeze.

(5) Spent lead-acid batteries.

(6) Household hazardous waste that is designated as a universal waste pursuant to this chapter or the regulations adopted by the department, except a universal waste for which the department determines, by regulation, that there is no readily available authorized recycling facility capable of accepting and recycling that waste.

(n) ''Recycle-only household hazardous waste collection facility'' means a household hazardous waste collection facility that is operated in accordance with Section 25218.8 and accepts for recycling only recyclable household hazardous waste materials.

(o) ''Reusable household hazardous product or material'' means a container of household hazardous product, or a container of hazardous material generated by a conditionally exempt small quantity generator, that has been received by a household hazardous waste facility operating pursuant to this article and that is offered for distribution in a materials exchange program to a recipient, as defined in subdivision (*l*), in accordance with a quality assurance plan, as defined in subdivision (j).

(p) ''Temporary household hazardous waste collection facility'' means a household hazardous waste collection facility that meets both of the following conditions:

(1) The facility is operated not more than once for a period of not more than two days in any one month at the same location.

(2) Upon termination of operations, all equipment, materials, and waste are removed from the site within 144 hours.

SEC. 3. Section 25218.5 of the Health and Safety Code is amended to read:

25218.5. (a) (1) Except as provided in paragraph (2), hazardous waste transported to a household hazardous waste collection facility shall be transported by any of the following:

(A) The individual or CESQG who generated the waste.

(B) A curbside household hazardous waste collection program.

(C) A mobile household hazardous waste collection facility, a temporary household hazardous waste collection facility, or a recycle-only household hazardous waste facility.

(D) A door-to-door household hazardous waste collection program.

(E) A household hazardous waste residential pickup service.

(F) A registered hazardous waste transporter carrying hazardous waste generated by a CESQG.

(G) A registered hazardous waste transporter carrying hazardous waste from a solid waste landfill loadcheck program or a transfer station loadcheck program under agreement with the household hazardous waste facility.

(H) A registered hazardous waste transporter, under agreement with the household hazardous waste facility, operating under a contract with a public agency to transport hazardous wastes that were disposed of in violation of this chapter, and that are being removed by, or are being removed under the oversight of, the public agency, if the hazardous wastes were not originally disposed of in violation of this chapter by that public agency.

(2) Spent batteries that are received and transported pursuant to Section 25216.1 may be transported to a household hazardous waste collection facility from a collection location or an intermediate collection location.

(3) Notwithstanding Section 25218.4, a registered hazardous waste transporter or mobile household hazardous waste collection facility transporting hazardous waste to a household hazardous waste collection facility shall comply with subdivisions (a) and (c) of Section 25163 and paragraph (1) of subdivision (d) of Section 25160.

(b) An individual transporting household hazardous waste generated by that person and a CESQG transporting hazardous waste generated by the CESQG to a household hazardous waste collection facility shall meet all of the following conditions:

(1) (A) Except as provided in subparagraph (B), the total amount of household hazardous waste or hazardous waste transported to a

household hazardous waste collection facility by either the person or a CESQG shall not exceed a total liquid volume of five gallons or a total dry weight of 50 pounds. If the hazardous waste transported is both liquid and nonliquid, the total amount transported shall not exceed a combined weight of 50 pounds.

(B) Subparagraph (A) does not apply to spent batteries that are collected by a collection location or intermediate collection location pursuant to Section 25216.1 and transported to a household hazardous waste collection facility.

(2) The household hazardous waste and CESQG hazardous waste that is transported shall be in closed containers and packed in a manner that prevents the containers from tipping, spilling, or breaking during transport.

(3) Different household hazardous wastes or different CESQG hazardous wastes shall not be mixed within a container before or during transport.

(4) If the hazardous waste is an extremely hazardous waste or an acutely hazardous waste, the total amount transported by a CESQG shall not exceed 2.2 pounds.

(c) (1) Except as provided in paragraph (2), the total combined volume or weight of latex paint, used oil filters, antifreeze, and small batteries transported to a recycle-only household hazardous waste collection facility by any one individual shall not exceed a total volume of 10 gallons or a total dry weight of 100 pounds. Up to two spent lead-acid batteries may be transported at the same time and not more than 20 gallons of used oil may be transported in the same vehicle if the volume of each individual container does not exceed five gallons.

(2) Paragraph (1) does not apply to spent batteries that are collected by a collection location or intermediate collection location pursuant to Section 25216.1 and transported to a household hazardous waste collection facility.

(d) A curbside household hazardous waste collection program shall meet all of the following conditions:

(1) Not more than a total combined weight of 10 pounds of used oil filters shall be collected from a single residence at one time.

(2) Not more than five gallons of used oil shall be collected from a single residence at one time, and the volume of each individual container collected shall not exceed five gallons.

(3) Not more than five gallons of latex paint shall be collected from a single residence at one time, and the volume of each individual container collected shall not exceed five gallons.

(4) Hazardous waste containing mercury shall not be collected by a curbside household hazardous waste collection program unless the

waste is contained in secure packaging that prevents breakage and spillage.

(5) Fluorescent light tubes that are four feet or greater in length shall not be collected by a curbside household hazardous waste collection program.

(6) The transported household hazardous waste shall be in closed containers and packed in a manner that prevents the containers from tipping, spilling, or breaking during transport.

(7) Different household hazardous wastes shall not be mixed within a container before or during transport.

(e) A door-to-door household hazardous waste collection program or household hazardous waste residential pickup service shall meet all of the following conditions:

(1) The transported household hazardous waste shall be in closed containers and packed in a manner that prevents the containers from tipping, spilling, or breaking during transport.

(2) Different household hazardous wastes shall not be mixed within a container before or during transport.

(3) A door-to-door household hazardous waste collection program or household hazardous waste residential pickup service is exempt from the requirements of Section 25160 regarding the use of a manifest when transporting household hazardous waste collected from individual residences to an authorized hazardous waste collection facility. In lieu of a manifest, a receipt shall be issued for the household hazardous waste collected from an individual residence, and a copy of the receipt shall be retained by the public agency for a period of at least three years.

(f) Notwithstanding Section 25218.4, a mobile household hazardous waste collection facility, a temporary household hazardous waste collection facility, or a recycle-only household hazardous waste collection facility that transports household hazardous waste from the collection facility to a household hazardous waste collection facility pursuant to subdivision (a) shall comply with subdivisions (a) and (c) of Section 25163 and paragraph (1) of subdivision (d) of Section 25160.

SEC. 4. Section 25358.6.1 of the Health and Safety Code is amended to read:

25358.6.1. (a) For purposes of this section, the following definitions shall apply:

(1) ‘‘Engineering, architectural, environmental, landscape architectural, construction project management, or land surveying services’’ includes professional services of an engineering, architectural, environmental, landscape architectural, construction project management, land surveying, or similar nature, as well as incidental services that members of these professions and those in their employ may logically or justifiably perform.

(2) ''Firm'' means any individual, firm, partnership, corporation, association, or other legal entity permitted by law to practice the profession of engineering, architecture, environmental, landscape architecture, construction project management, or land surveying.

(3) ''Prequalified list'' means a list of engineering, architectural, environmental, landscape architectural, construction project management, or land surveying firms that possess the qualifications established by the department to perform specific types of engineering, architectural, environmental, landscape architectural, construction project management, and land surveying services, with each firm ranked in order of its qualifications and costs.

(b) Notwithstanding Chapter 10 (commencing with Section 4525) of Division 5 of Title 1 of the Government Code, the department may advertise and award a contract, in accordance with this section, for engineering, architectural, environmental, landscape architectural, construction project management, or land surveying services pursuant to this chapter or Chapter 6.5 (commencing with Section 25100), if the contract is individually in an amount equal to, or less than, one million dollars ($1,000,000).

(c) The department may establish prequalified lists of engineering, architectural, environmental, landscape architectural, construction project management, or land surveying firms in accordance with the following process:

(1) For each type of engineering, architectural, environmental, landscape architectural, construction project management, or land surveying services work for which the department elects to use this section for advertising and awarding contracts, the department may request annual statements of qualifications from interested firms. The request for statements of qualifications shall be announced statewide through the California State Contracts Register and publications, Internet Web sites, or electronic bulletin boards of respective professional societies that are intended, designed, and maintained by the professional societies to communicate with their memberships. Each announcement shall describe the general scope of services to be provided within each generic project category for engineering, architectural, environmental, landscape architectural, construction project management, or land surveying services that the department anticipates may be awarded during the period covered by the announcement.

(2) The department shall define a generic project category so that each specific project to be awarded within that generic project category is substantially similar to all other projects within that generic project category, may be within the same size range and geographical area, and requires substantially similar skills and magnitude of professional effort as every other project within that generic project category. The generic

categories shall provide a basis for evaluating and establishing the type, quality, and costs, including hourly rates for personnel and field activities and equipment, of the services that would be provided by the firm.

(3) The department shall evaluate the statements of qualifications received pursuant to paragraph (1) and the department shall develop a short list of the most qualified firms that meet the criteria established and published by the department. The department shall hold discussions regarding each firm's qualifications with all firms listed on the short list. The department shall then rank the firms listed on the short list according to each firm's qualifications and the evaluation criteria established and published by the department.

(4) The department shall maintain prequalified lists of civil engineering, architectural, environmental, landscape architectural, construction project management, or land surveying firms ranked pursuant to paragraph (3) on an ongoing basis, except that no firm may remain on a list developed pursuant to paragraph (3) based on a single qualification statement for more than three years. The department shall include in each prequalified list adopted pursuant to paragraph (3) no less than three firms, unless the department certifies that the scope of the prequalified list is appropriate for the department's needs, taking into account the nature of the work, that the department made reasonable efforts to solicit qualification statements from qualified firms, and that the efforts were unsuccessful in producing three firms that met the established criteria. A firm may remain on the prequalified list up to three years without resubmitting a qualification statement, but the department may add additional firms to that list and may annually rank these firms. For purposes of annual adjustment to the ranking of firms already on the prequalified list developed pursuant to paragraph (3), the department shall rely on that firm's most recent annual qualification statement, if the statement is not more than three years old.

(5) During the term of the prequalified list developed pursuant to paragraph (3), as specific projects are identified by the department as being eligible for contracting under the procedures adopted pursuant to subdivision (d), the department shall contact the highest ranked firm on the appropriate prequalified list to determine if that firm has sufficient staff and is available for performance of the project. If the highest ranked firm is not available, the department shall continue to contact firms on the prequalified list in order of rank until a firm that is available is identified.

(6) The department may enter into a contract for the services with a firm identified pursuant to paragraph (5), if the contract is for a total price that the department determines is fair and reasonable to the department

and otherwise conforms to all matters and terms previously identified and established upon participation in the prequalified list.

(7) If the department is unable to negotiate a satisfactory contract with a firm identified pursuant to paragraph (6), the department shall terminate the negotiations with that firm and the department shall undertake negotiations with the next ranked firm that is available for performance. If a satisfactory contract cannot be negotiated with the second identified firm, the department shall terminate these negotiations and the department shall continue the negotiation process with the remaining qualified firms, in order of their ranking, until the department negotiates a satisfactory contract. If the department is unable to negotiate a satisfactory contract with a firm on two separate occasions, the department may remove that firm from the prequalified list. The department may award a contract to a firm on a prequalified list that is to be executed, including amendments, for a term that extends beyond the expiration date of that firm's tenure on the prequalified list.

(8) Once a satisfactory contract is negotiated and awarded to a firm from any prequalified list for a generic project category involving a site or facility investigation or characterization, a feasibility study, or a remedial design, for a specific response action or corrective action, including, but not limited to, a corrective action carried out pursuant to Section 25200.10, the department shall not enter into a contract with that firm for purposes of construction or implementation of any part of that same response action or corrective action.

(d) The department may adopt guidelines or regulations as necessary and consistent with this section, to define the manner of advertising, generic project categories, type, quantity and cost of services, qualification standards and evaluation criteria, content and submittal requirements for statements of qualification, procedures for ranking of firms and administration of the prequalified list, the scope of matters addressed by participation on a prequalified list, manner of notification of, negotiation with, and awarding of contracts to, prequalified firms, and procedures for protesting the award of contracts under this section, or any other matter that is appropriate for implementation of this section.

(e) Any removal or remedial action taken or contracted by the department pursuant to Section 25354 or subdivision (a) of Section 25358.3 is exempt from this section.

(f) This section does not exempt any contract from compliance with Article 4 (commencing with Section 19130) of Chapter 5 of Part 2 of Division 5 of Title 2 of the Government Code.

SEC. 5. Section 25395.12 of the Health and Safety Code is amended to read:

25395.12. (a) The department shall conduct audits of a minimum of 25 percent of the sites where a private site manager or private site

management team has conducted a site investigation or response action without oversight by the department, except with respect to cases where oversight is otherwise required under this article, and where the department has been requested to issue or has issued a certificate of completion.

(b) A private site manager and any member of a private site management team shall provide an authorized representative of the department with complete access, at any reasonable hour of the day, to all technical data, reports, records, environmental samples, photographs, maps, and files that are materially related to a response action conducted pursuant to this article.

SEC. 6. Section 25395.15 of the Health and Safety Code is amended to read:

25395.15. The department shall adopt minimum standards of performance that shall apply to the activities and conduct of private site managers and members of private site management teams that conduct response actions pursuant to this article. The standards shall be consistent with the requirements of this article and with generally accepted professional standards that apply to persons who engage in the types of work that are required to conduct hazardous substance release response actions pursuant to this chapter. The minimum standards of performance shall be adopted as expeditiously as possible, but not later than six months from the date that the department first begins accepting applications pursuant to Section 25395.3.

SEC. 7. Section 25570.2 of the Health and Safety Code is amended to read:

25570.2. For purposes of this chapter, the following terms have the following meaning:

(a) ''Air board'' means the State Air Resources Board.

(b) ''Cal-OSHA'' means the Division of Occupational Safety and Health in the Department of Industrial Relations.

(c) ''Department'' means the Department of Toxic Substances Control.

(d) ''Director'' means the Director of Toxic Substances Control.

(e) ''Water board'' means the State Water Resources Control Board.

(f) ''Environmental quality assessment'' or ''assessment'' means a systematic, documented, periodic, and objective review of the operations and practices, used by any commercial or industrial business or individual whose activities are regulated or conducted under Chapter 6.5 (commencing with Section 25100), Chapter 6.8 (commencing with Section 25300), or Chapter 6.95 (commencing with Section 25500), to achieve, monitor, maintain, and where feasible exceed, compliance with state environmental, worker health and safety, and public health requirements for the manufacture and use of hazardous substances and

the generation and disposal of hazardous wastes. A complete environmental assessment includes a number of different components related to hazardous substance and hazardous waste management and requires the expertise of a variety of assessors. An environmental assessment includes technical or managerial recommendations or actions, of a general or specific nature, in one or more of the following areas:

(1) Recommendations or specific actions for complying with, and where feasible, exceeding legal requirements in areas related to hazardous substance and hazardous waste management, including, but not limited to, air quality, water quality, emergency preparedness and response, hazard communications, and occupational safety and health.

(2) A qualitative review, or where feasible, a quantitative review, of the risks resulting from occupational, public or environmental exposure to hazardous substances.

(3) Recommendations or actions for anticipating and minimizing the risks specified in paragraph (2), including any potential liability, associated with regulated and unregulated hazardous substances, and any suggested management procedures or practices.

(g) ''Environmental assessor'' or ''assessor'' means an individual who, through academic training, occupational experience, and reputation, is qualified to objectively conduct one or more aspects of an environmental assessment. Environmental assessors may include, but shall not be limited to, specialists trained as analytical chemists, professional engineers, geologists, environmental management system auditors, epidemiologists, hydrologists, attorneys with expertise in hazardous substance law, physicians, industrial hygienists, toxicologists, registered environmental health specialists, and environmental program managers.

(h) ''Hazardous substance'' shall have the same meaning as found in Chapter 6.8 (commencing with Section 25300) and ''hazardous waste'' shall have the same meaning as found in Chapter 6.5 (commencing with Section 25100).

SEC. 8. Section 25570.3 of the Health and Safety Code is amended to read:

25570.3. (a) The director, in consultation with the Water Board, the Air Board, the Division of Occupational Safety and Health in the Department of Industrial Relations, and the Department of Consumer Affairs shall develop, adopt by regulation, and publicize criteria for, the voluntary registration of environmental assessors who have the experience or qualifications sufficient to conduct environmental assessments. The director shall determine minimum standards of performance and criteria for the establishment of two classes of environmental assessors.

(b) In establishing criteria for the registration of class I environmental assessors the director shall consider all of the following:

(1) The level of experience, including a minimum of two years of experience in successfully assisting businesses, government agencies, or labor organizations in the assessor's general field of expertise in managing hazardous substances or hazardous waste, or both.

(2) Evaluations from clients, colleagues, and professional associations.

(3) Skills or expertise that represent an area of specialty within a field, such as professional engineering or engineering geology, for which the state now offers a certification, licensing, or registration process.

(4) Pertinent specialized certification, licensing, or registration programs offered by professional associations or other private sector organizations.

(5) Specific areas of expertise, including, but not limited to, underground tank checks or removal, small generator waste reduction, recycling, treatment, and disposal, prevention and control of air emissions and water releases, assessment of soil or groundwater contamination, risk assessment and risk reduction recommendations, or occupational safety and health reviews.

(c) In addition to registration as a class I environmental assessor, an applicant for registration as a class II environmental assessor shall, in addition to any requirements specified by regulation, meet both of the following requirements:

(1) Possess a bachelor of science degree from an accredited college or university in a physical or biological science, engineering, or a related field.

(2) Have a minimum of eight years of professional-level environmental experience, acquired within the last 10 years, of which four years shall be professional-level site mitigation experience acquired within the last six years.

(d) The director may appoint an ad hoc advisory committee to assist in developing the requirements for the registration of class I and class II environmental assessors. The members of the ad hoc committee shall represent the range of professional skills that may be possessed by class I and class II environmental assessors, and shall be registered or certified in their respective professions by the State of California.

(e) The director shall require each applicant for registration as a class I or class II environmental assessor to pay the following fees:

(1) For a class I environmental assessor:

(A) A nonrefundable application fee of up to fifty dollars ($50) for each applicant seeking registration as a class I environmental assessor.

(B) An annual fee of up to one hundred dollars ($100) for registration as a class I environmental assessor.

(2) For a class II environmental assessor:

(A) A nonrefundable application fee of up to one hundred twenty-five dollars ($125) for each applicant seeking registration as a class II environmental assessor.

(B) An annual fee of up to five hundred dollars ($500) for registration as a class II environmental assessor.

(f) (1) The director shall assess the fees specified in paragraphs (1) and (2) of subdivision (e) at a level sufficient to meet the costs of application processing, registration, listing and publication, audits, complaints, investigations, disciplinary proceedings, and those other activities that are reasonably necessary to administer and implement the environmental assessor registration program.

(2) The director shall deposit all fees collected pursuant to this section in the Environmental Quality Assessment Fund, which is hereby established in the State Treasury. The director may expend the funds in the Environmental Quality Assessment Fund, upon appropriation by the Legislature, to implement this chapter.

(g) Any applicant who is denied registration shall be notified in writing by a letter signed by the director or the director's designee, stating the reasons for the denial. The applicant may respond to the registration denial by providing additional information for the purpose of clarifying the application, and may request reconsideration of the denial.

(h) (1) On or before March of each year, the director shall, in collaboration with associations representing small and medium-sized businesses, publish, prepare, and disseminate a list of registered environmental assessors that are listed by class.

(2) The list prepared pursuant to paragraph (1) shall be arranged in accordance with the types of tasks performed by the registered environmental assessor, and, at a minimum, shall specify the professional and employment affiliations and the specific area of expertise of the assessor, and shall indicate whether the assessor is a sales representative, owner, or part owner of a business that manufactures or distributes technology for hazardous substances or hazardous waste management. In addition, the list shall provide an alphabetical listing of firms that provide environmental assessment services and that employ registered assessors. The registered assessors employed by each firm shall be listed with the firm's name by class. The director shall include a written disclaimer of liability as part of the published list of registered assessors.

(i) Each environmental assessor shall obtain a renewal of registration every five years following the date of the initial registration or renewal of registration. The director shall determine a renewal fee that is sufficient to cover the reasonable costs incurred in reassessing the

qualifications of the applicant for renewal. In considering whether to renew a registration, the director shall also consider any factual complaints regarding the work of that assessor and may suspend or deny registration pursuant to subdivision (l).

(j) Notwithstanding any other provision of law, no state agency or employee of a state agency shall be held liable for any injury or damages resulting from the services provided by a registered environmental assessor listed pursuant to subdivision (h). In any litigation regarding the registration process or the list of assessors, the Attorney General shall defend a state employee or state agency involved with the development or implementation of the program specified in this chapter.

(k) The director may perform periodic audits of work performed and certified by an environmental assessor, as necessary, to ensure the desired standard of performance. A registered environmental assessor shall provide an authorized representative of the director with complete access, at any reasonable hour of the day, to all technical data, reports, records, environmental samples, photographs, maps, and files used in the preparation of certified reports, with the exception of proprietary or other confidential information.

(*l*) The director shall deny, suspend, or rescind an environmental assessor's registration when an assessor's performance falls below the minimum required standards of performance adopted pursuant to subdivision (a) or Section 25395.15, as determined by an audit conducted by an authorized representative of the director pursuant to subdivision (k) or Section 25395.12. In addition to a failure to meet the minimum standards of performance adopted pursuant to subdivision (a) or Section 25395.15, any one of the following findings shall be sufficient grounds for the denial, suspension, or rescission of a registration:

(1) Gross negligence.

(2) Inexcusable neglect of duty.

(3) Intentional misrepresentation of laboratory data or other intentional fraud.

(4) Charging for services not rendered, or for performing services that are not reasonably necessary.

(5) Abandonment of any client, except for instances involving the nonpayment of fees for services rendered.

(6) Conviction of a felony or misdemeanor involving the regulation of hazardous wastes, hazardous substances, or hazardous materials, including, but not limited to, a conviction of a felony or misdemeanor under Section 25395.13.

(7) Conviction of a felony or misdemeanor involving moral turpitude.

(8) Knowingly making a false statement regarding a material fact or knowingly fail to disclose a material fact in connection with an application for registration.

(m) The director shall adopt, by regulation, a procedure for the appeal of a denial, suspension, or rescission of registration.

SEC. 9. Section 58004.5 is added to the Health and Safety Code, to read:

58004.5. (a) The department succeeds to, and is vested with, all of the duties, powers, purposes, responsibilities, and jurisdiction of the Office of Environmental Health Hazard Assessment with regard to the Environmental Quality Assessment Act of 1986 (Chapter 6.98 (commencing with Section 25570)).

(b) The Director of Toxic Substances Control may expend the unexpended balance of any funds available for expenditure by the Director of Environmental Health Hazard Assessment in connection with the performance of the functions of the Director of Environmental Health Hazard Assessment in carrying out the Environmental Quality Assessment Act of 1986.

(c) All officers and employees of the Office of Environmental Health Hazard Assessment who are serving in the state civil service, other than as temporary employees, and engaged in the performance of a function in carrying out the Environmental Quality Assessment Act of 1986 shall be transferred to the department. The status, positions, and rights of those persons shall not be affected by the transfer and shall be retained by them as officers and employees of the Department of Toxic Substances Control, pursuant to the State Civil Service Act (Part 2 (commencing with Section 18500) of Division 5 of Title 2 of the Government Code), except as to positions exempted from civil service.

(d) The department shall have possession and control of all records, papers, offices, equipment, supplies, money, funds, appropriations, licenses, permits, agreements, contracts, claims, judgments, and land or other property, real or personal, held for the benefit or use of the Office of Environmental Health Hazard Assessment for purposes of the functions transferred to the department to subdivision (a).

(e) Any regulation adopted before January 1, 2003, by the Office of Environmental Health Hazard Assessment or its predecessors, relating to carrying out the Environmental Quality Assessment Act of 1986, as specified in subdivision (a), that are in effect on January 1, 2003, shall remain in effect on and after January 1, 2003, and are enforceable by the department until readopted, amended, or repealed by the department.

SEC. 10. Section 42175.1 of the Public Resources Code is amended to read:

42175.1. (a) Any hazardous material that becomes a hazardous waste when released or removed from any major appliance shall be

managed pursuant to Article 10.1 (commencing with Section 25211) of Chapter 6.5 of Division 20 of the Health and Safety Code.

(b) Any mercury-containing motor vehicle light switch that becomes a hazardous waste when removed from any vehicle shall be managed pursuant to Article 10.2 (commencing with Section 25214.5) of Chapter 6.5 of Division 20 of the Health and Safety Code.

(c) Failure to comply with the requirements of Section 42175 is a violation of Chapter 6.5 (commencing with Section 25100) of Division 20 of the Health and Safety Code.

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.

CHAPTER 627

An act to amend Sections 11105, 11105.02, 11105.3, and 11105.4 of the Penal Code, and to amend Section 15660 of the Welfare and Institutions Code, relating to criminal history information.

[Approved by Governor September 17, 2002. Filed with Secretary of State September 17, 2002.]

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

SECTION 1. The Legislature finds and declares that legislation is necessary to address through consolidation the problem of numerous overlapping statutory criteria for the dissemination of state summary criminal history information for the purposes of protecting California's citizenry. The Legislature further finds and declares that the present complexity of the statutory criteria provides a disservice both to applicants and to the most vulnerable members of society because the complexity could lead to mistakes, omissions, and delays in the processing of state summary criminal history information for employment, licensing, and certification purposes.

The Legislature further finds and declares that the purpose of this act is to consolidate the statutory criteria for state summary criminal history information dissemination. It is not intended to overrule the decisions, orders, or judgments in Central Valley v. Younger and the related case

of Gresher v. Deukmejian (Alameda Superior Court Nos. 497394-6 and 524298-6).

The Legislature further finds and declares that, except for those substantive changes to dissemination criteria made by this act, the Legislature has not attempted to analyze or determine the appropriateness of the amount and type of state summary criminal history information provided to agencies, organizations, or individuals for purposes of employment, licensing, or certification. It is not the intent of the Legislature that the enactment of this act should foreclose future legislative review of the appropriateness of the amount and type of summary criminal history information that should be provided to any agency, organization, or individual for purposes of employment, licensing, or certification.

SEC. 2. Section 11105 of the Penal Code is amended to read:

11105. (a) (1) The Department of Justice shall maintain state summary criminal history information.

(2) As used in this section:

(A) ''State summary criminal history information'' means the master record of information compiled by the Attorney General pertaining to the identification and criminal history of any person, such as name, date of birth, physical description, fingerprints, photographs, date of arrests, arresting agencies and booking numbers, charges, dispositions, and similar data about the person.

(B) ''State summary criminal history information'' does not refer to records and data compiled by criminal justice agencies other than the Attorney General, nor does it refer to records of complaints to or investigations conducted by, or records of intelligence information or security procedures of, the office of the Attorney General and the Department of Justice.

(b) The Attorney General shall furnish state summary criminal history information to any of the following, if needed in the course of their duties, provided that when information is furnished to assist an agency, officer, or official of state or local government, a public utility, or any other entity, in fulfilling employment, certification, or licensing duties, Chapter 1321 of the Statutes of 1974 and Section 432.7 of the Labor Code shall apply:

(1) The courts of the state.

(2) Peace officers of the state as defined in Section 830.1, subdivisions (a) and (e) of Section 830.2, subdivision (a) of Section 830.3, subdivisions (a) and (b) of Section 830.5, and subdivision (a) of Section 830.31.

(3) District attorneys of the state.

(4) Prosecuting city attorneys of any city within the state.

(5) Probation officers of the state.

(6) Parole officers of the state.

(7) A public defender or attorney of record when representing a person in proceedings upon a petition for a certificate of rehabilitation and pardon pursuant to Section 4852.08.

(8) A public defender or attorney of record when representing a person in a criminal case and if authorized access by statutory or decisional law.

(9) Any agency, officer, or official of the state if the criminal history information is required to implement a statute or regulation that expressly refers to specific criminal conduct applicable to the subject person of the state summary criminal history information, and contains requirements or exclusions, or both, expressly based upon that specified criminal conduct.

(10) Any city or county, or city and county, or district, or any officer, or official thereof if access is needed in order to assist that agency, officer, or official in fulfilling employment, certification, or licensing duties, and if the access is specifically authorized by the city council, board of supervisors, or governing board of the city, county, or district if the criminal history information is required to implement a statute, ordinance, or regulation that expressly refers to specific criminal conduct applicable to the subject person of the state summary criminal history information, and contains requirements or exclusions, or both, expressly based upon that specified criminal conduct.

(11) The subject of the state summary criminal history information under procedures established under Article 5 (commencing with Section 11120) of Chapter 1 of Title 1 of Part 4.

(12) Any person or entity when access is expressly authorized by statute if the criminal history information is required to implement a statute or regulation that expressly refers to specific criminal conduct applicable to the subject person of the state summary criminal history information, and contains requirements or exclusions, or both, expressly based upon that specified criminal conduct.

(13) Health officers of a city, county, or city and county, or district, when in the performance of their official duties enforcing Section 120175 of the Health and Safety Code.

(14) Any managing or supervising correctional officer of a county jail or other county correctional facility.

(15) Any humane society, or society for the prevention of cruelty to animals, for the specific purpose of complying with Section 14502 of the Corporations Code for the appointment of level 1 humane officers.

(16) Local child support agencies established by Section 17304 of the Family Code. When a local child support agency closes a support enforcement case containing summary criminal history information, the agency shall delete or purge from the file and destroy any documents or

information concerning or arising from offenses for or of which the parent has been arrested, charged, or convicted, other than for offenses related to the parent's having failed to provide support for minor children, consistent with the requirements of Section 17531 of the Family Code.

(17) County child welfare agency personnel who have been delegated the authority of county probation officers to access state summary criminal history information pursuant to Section 272 of the Welfare and Institutions Code for the purposes specified in Section 16504.5 of the Welfare and Institutions Code. Information from criminal history records provided pursuant to this subdivision shall not be used for any purposes other than those specified in this section and Section 16504.5 of the Welfare and Institutions Code. When an agency obtains records obtained both on the basis of name checks and fingerprint checks, final placement decisions shall be based only on the records obtained pursuant to the fingerprint check.

(c) The Attorney General may furnish state summary criminal history information upon a showing of a compelling need to any of the following, provided that when information is furnished to assist an agency, officer, or official of state or local government, a public utility, or any other entity, in fulfilling employment, certification, or licensing duties, Chapter 1321 of the Statutes of 1974 and Section 432.7 of the Labor Code shall apply:

(1) Any public utility as defined in Section 216 of the Public Utilities Code that operates a nuclear energy facility when access is needed in order to assist in employing persons to work at the facility, provided that, if the Attorney General supplies the data, he or she shall furnish a copy of the data to the person to whom the data relates.

(2) To a peace officer of the state other than those included in subdivision (b).

(3) To a peace officer of another country.

(4) To public officers (other than peace officers) of the United States, other states, or possessions or territories of the United States, provided that access to records similar to state summary criminal history information is expressly authorized by a statute of the United States, other states, or possessions or territories of the United States if the information is needed for the performance of their official duties.

(5) To any person when disclosure is requested by a probation, parole, or peace officer with the consent of the subject of the state summary criminal history information and for purposes of furthering the rehabilitation of the subject.

(6) The courts of the United States, other states, or territories or possessions of the United States.

(7) Peace officers of the United States, other states, or territories or possessions of the United States.

(8) To any individual who is the subject of the record requested if needed in conjunction with an application to enter the United States or any foreign nation.

(9) Any public utility as defined in Section 216 of the Public Utilities Code, if access is needed in order to assist in employing current or prospective employees who in the course of their employment may be seeking entrance to private residences. The information provided shall be limited to the record of convictions and any arrest for which the person is released on bail or on his or her own recognizance pending trial.

If the Attorney General supplies the data pursuant to this paragraph, the Attorney General shall furnish a copy of the data to the current or prospective employee to whom the data relates.

Any information obtained from the state summary criminal history is confidential and the receiving public utility shall not disclose its contents, other than for the purpose for which it was acquired. The state summary criminal history information in the possession of the public utility and all copies made from it shall be destroyed not more than 30 days after employment or promotion or transfer is denied or granted, except for those cases where a current or prospective employee is out on bail or on his or her own recognizance pending trial, in which case the state summary criminal history information and all copies shall be destroyed not more than 30 days after the case is resolved.

A violation of this paragraph is a misdemeanor, and shall give the current or prospective employee who is injured by the violation a cause of action against the public utility to recover damages proximately caused by the violations. Any public utility's request for state summary criminal history information for purposes of employing current or prospective employees who may be seeking entrance to private residences in the course of their employment shall be deemed a ''compelling need'' as required to be shown in this subdivision.

Nothing in this section shall be construed as imposing any duty upon public utilities to request state summary criminal history information on any current or prospective employees.

(10) To any campus of the California State University or the University of California, or any four-year college or university accredited by a regional accreditation organization approved by the United States Department of Education, if needed in conjunction with an application for admission by a convicted felon to any special education program for convicted felons, including, but not limited to, university alternatives and halfway houses. Only conviction information shall be furnished. The college or university may require the convicted felon to be fingerprinted, and any inquiry to the department

under this section shall include the convicted felon's fingerprints and any other information specified by the department.

(d) Whenever an authorized request for state summary criminal history information pertains to a person whose fingerprints are on file with the Department of Justice and the department has no criminal history of that person, and the information is to be used for employment, licensing, or certification purposes, the fingerprint card accompanying the request for information, if any, may be stamped "no criminal record" and returned to the person or entity making the request.

(e) Whenever state summary criminal history information is furnished as the result of an application and is to be used for employment, licensing, or certification purposes, the Department of Justice may charge the person or entity making the request a fee that it determines to be sufficient to reimburse the department for the cost of furnishing the information. In addition, the Department of Justice may add a surcharge to the fee to fund maintenance and improvements to the systems from which the information is obtained. Notwithstanding any other law, any person or entity required to pay a fee to the department for information received under this section may charge the applicant a fee sufficient to reimburse the person or entity for this expense. All moneys received by the department pursuant to this section, Sections 11105.3 and 12054 of the Penal Code, and Section 13588 of the Education Code shall be deposited in a special account in the General Fund to be available for expenditure by the department to offset costs incurred pursuant to those sections and for maintenance and improvements to the systems from which the information is obtained upon appropriation by the Legislature.

(f) Whenever there is a conflict, the processing of criminal fingerprints and fingerprints of applicants for security guard or alarm agent registrations or firearms qualification permits submitted pursuant to Section 7583.9, 7583.23, 7596.3, or 7598.4 of the Business and Professions Code shall take priority over the processing of other applicant fingerprints.

(g) It is not a violation of this section to disseminate statistical or research information obtained from a record, provided that the identity of the subject of the record is not disclosed.

(h) It is not a violation of this section to include information obtained from a record in (1) a transcript or record of a judicial or administrative proceeding or (2) any other public record if the inclusion of the information in the public record is authorized by a court, statute, or decisional law.

(i) Notwithstanding any other law, the Department of Justice or any state or local law enforcement agency may require the submission of

fingerprints for the purpose of conducting summary criminal history information checks that are authorized by law.

(j) The state summary criminal history information shall include any finding of mental incompetence pursuant to Chapter 6 (commencing with Section 1367) of Title 10 of Part 2 arising out of a complaint charging a felony offense specified in Section 290.

(k) (1) This subdivision shall apply whenever state or federal summary criminal history information is furnished by the Department of Justice as the result of an application by an authorized agency or organization and is to be used for peace officer employment or certification purposes. As used in this subdivision, a peace officer is defined in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2.

(2) Notwithstanding any other provision of law, whenever state summary criminal history information is furnished pursuant to paragraph (1), the Department of Justice shall disseminate the following information:

(A) Every conviction rendered against the applicant.

(B) Every arrest for an offense for which the applicant is presently awaiting trial, whether the applicant is incarcerated or has been released on bail or on his or her own recognizance pending trial.

(C) Every arrest for an offense for which the records of the Department of Justice do not contain a disposition, provided that the Department of Justice first makes a genuine effort to determine the disposition of the arrest.

(D) Every detention or successful diversion.

(*l*) (1) This subdivision shall apply whenever state or federal summary criminal history information is furnished by the Department of Justice as the result of an application by a criminal justice agency or organization as defined in Section 13101 of the Penal Code, and the criminal history information is to be used for criminal justice employment, licensing, or certification purposes.

(2) Notwithstanding any other provision of law, whenever state summary criminal history information is furnished pursuant to paragraph (1), the Department of Justice shall disseminate the following information:

(A) Every conviction rendered against the applicant.

(B) Every arrest for an offense for which the applicant is presently awaiting trial, whether the applicant is incarcerated or has been released on bail or on his or her own recognizance pending trial.

(C) Every arrest for an offense for which the records of the Department of Justice do not contain a disposition, provided that the Department of Justice first makes a genuine effort to determine the disposition of the arrest.

(m) (1) This subdivision shall apply whenever state or federal summary criminal history information is furnished by the Department of Justice as the result of an application by an authorized agency or organization and it is to be used for employment, licensing, or certification purposes pursuant to any of the following sections, or pursuant to any statute that incorporates the criteria of any of these sections by reference:

Section 1522, 1568.09, 1569.17, or 1596.871 of the Health and Safety Code.

(2) Notwithstanding any other provision of law, whenever state summary criminal history information is furnished pursuant to paragraph (1), the Department of Justice shall disseminate the following information:

(A) Every conviction of an offense rendered against the applicant.

(B) Every arrest for an offense for which the applicant is presently awaiting trial, whether the applicant is incarcerated or has been released on bail or on his or her own recognizance pending trial.

(C) Every arrest for an offense for which the Department of Social Services is required by paragraph (1) of subdivision (a) of Section 1522 of the Health and Safety Code to determine if an applicant has been arrested. However, if the records of the Department of Justice do not contain a disposition for an arrest, the Department of Justice shall first make a genuine effort to determine the disposition of the arrest.

(3) Notwithstanding the requirements of the sections referenced in paragraph (1) of this subdivision, the Department of Justice shall not disseminate information about an arrest subsequently deemed a detention or an arrest that resulted in either the successful completion of a diversion program or exoneration.

(n) (1) This subdivision shall apply whenever state or federal summary criminal history information is furnished by the Department of Justice as the result of an application by an agency, organization, or individual pursuant to Section 11105.3 or 11105.4 of this code, or Section 15660 of the Welfare and Institutions Code and is to be used for employment, licensing, or certification purposes.

(2) With the exception of applications submitted by transportation companies authorized pursuant to Section 11105.3, and notwithstanding any other provision of law, whenever state summary criminal history information is furnished pursuant to paragraph (1), the Department of Justice shall disseminate the following information:

(A) Every conviction rendered against the applicant for a violation or attempted violation of any offense specified in subdivision (a) of Section 15660 of the Welfare and Institutions Code. However, with the exception of those offenses for which registration is required pursuant to Section 290, the Department of Justice shall not disseminate information

pursuant to this subdivision unless the conviction occurred within 10 years of the date of the application or the conviction is over 10 years old but the subject of the request was incarcerated within 10 years of the application.

(B) Every arrest for a violation or attempted violation of an offense specified in subdivision (a) of Section 15660 of the Welfare and Institutions Code for which the applicant is presently awaiting trial, whether the applicant is incarcerated or has been released on bail or on his or her own recognizance pending trial.

(o) (1) This subdivision shall apply whenever state or federal summary criminal history information is furnished by the Department of Justice as the result of an application by an agency or organization pursuant to Section 777.5 of the Financial Code and is to be used for employment, licensing, or certification purposes.

(2) Notwithstanding any other provision of law, whenever state summary criminal history information is furnished pursuant to paragraph (1), the Department of Justice shall disseminate the following information:

(A) Every conviction rendered against the applicant for a violation or attempted violation of any offense specified in Section 777.5 of the Financial Code.

(B) Every arrest for a violation or attempted violation of an offense specified in Section 777.5 of the Financial Code for which the applicant is presently awaiting trial, whether the applicant is incarcerated or has been released on bail or on his or her own recognizance pending trial.

(p) (1) This subdivision shall apply whenever state or federal criminal history information is furnished by the Department of Justice as the result of an application by an agency, organization, or individual not defined in subdivision (k), (*l*), (m), (n), or (o), or by a transportation company authorized pursuant to Section 11105.3, and is to be used for employment, licensing, or certification purposes.

(2) Notwithstanding any other provisions of law, whenever state summary criminal history information is furnished pursuant to paragraph (1), the Department of Justice shall disseminate the following information:

(A) Every conviction rendered against the applicant.

(B) Every arrest for an offense for which the applicant is presently awaiting trial, whether the applicant is incarcerated or has been released on bail or on his or her own recognizance pending trial.

(q) All agencies, organizations, or individuals defined in subdivisions (k), (*l*), (m), (n), (o), and (p) may contract with the Department of Justice for subsequent arrest notification pursuant to Section 11105.2. This subdivision shall not supersede sections that mandate an agency, organization, or individual to contract with the

Department of Justice for subsequent arrest notification pursuant to Section 11105.2.

(r) Nothing in this section shall be construed to mean that the Department of Justice shall cease compliance with any other statutory notification requirements.

SEC. 3. Section 11105.02 of the Penal Code is amended to read:

11105.02. In addition to furnishing state summary criminal history information to the persons and entities set forth in Section 11105 and subject to the requirements and conditions set forth in that section, the Attorney General shall furnish state summary criminal history information upon a showing of a compelling need to any city, county, city and county, or district, or any officer or official thereof, when needed to assist in the screening of a prospective concessionaire and their affiliates or associates, as these terms are defined in subdivision (k) of Section 432.7 of the Labor Code for purposes of consenting to, or approving of, the prospective concessionaire's application for, or acquisition of, any beneficial interest in a concession, lease, or other property interest.

Any local government's request for state summary criminal history information for purposes of screening a prospective concessionaire and their affiliates or associates before approving or denying an application for, or acquisition of, any beneficial interest in a concession, lease, or other property interest is deemed a ''compelling need'' as required by this section. However, only state summary criminal history information pertaining to criminal convictions, or to arrests for offenses for which the person being screened is incarcerated or has been released on bail or on his or her own recognizance pending trial, may be obtained pursuant to this section.

Any information obtained from the state summary criminal history information is confidential and the receiving local government shall not disclose its contents, other than for the purpose for which it was acquired. The state summary criminal history information in the possession of the local government and all copies made from it shall be destroyed not more than 30 days after the local government's final decision to grant or deny consent to, or approval of, the prospective concessionaire's application for, or acquisition of, a beneficial interest in a concession, lease, or other property interest. Nothing in this section shall be construed as imposing any duty upon a local government, or any officer or official thereof, to request state summary criminal history information on any current or prospective concessionaire or the affiliates or associates of that concessionaire.

SEC. 4. Section 11105.3 of the Penal Code is amended to read:

11105.3. (a) Notwithstanding any other law, a human resource agency or an employer may request from the Department of Justice

records of all convictions or any arrest pending adjudication involving the offenses specified in subdivision (a) of Section 15660 of the Welfare and Institutions Code of a person who applies for a license, employment, or volunteer position, in which he or she would have supervisory or disciplinary power over a minor or any person under his or her care. The department shall furnish the information to the requesting employer and shall also send a copy of the information to the applicant.

(b) Any request for records under subdivision (a) shall include the applicant's fingerprints, which may be taken by the requester, and any other data specified by the department. The request shall be on a form approved by the department, and the department may charge a fee to be paid by the employer, human resource agency, or applicant for the actual cost of processing the request. However, no fee shall be charged to a nonprofit organization.

(c) (1) Where a request pursuant to this section reveals that a prospective employee or volunteer has been convicted of a violation or attempted violation of Section 220, 261.5, 262, 273a, 273d, or 273.5, or any sex offense listed in Section 290, except for the offense specified in subdivision (d) of Section 243.4, and where the agency or employer hires the prospective employee or volunteer, the agency or employer shall notify the parents or guardians of any minor who will be supervised or disciplined by the employee or volunteer. A conviction for a violation or attempted violation of an offense committed outside the State of California shall be included in this notice if the offense would have been a crime specified in this subdivision if committed in California. The notice shall be given to the parents or guardians with whom the child resides, and shall be given at least 10 days prior to the day that the employee or volunteer begins his or her duties or tasks. Notwithstanding any other provision of law, any person who conveys or receives information in good faith, and in conformity with this section, is exempt from prosecution under Section 11142 or 11143 for that conveying or receiving of information. Notwithstanding subdivision (d), the notification requirements of this subdivision shall apply as an additional requirement of any other provision of law requiring criminal record access or dissemination of criminal history information.

(2) The notification requirement pursuant to paragraph (1) shall not apply to a misdemeanor conviction for violating Section 261.5 or to a conviction for violating Section 262 or 273.5. Nothing in this paragraph shall preclude an employer from requesting records of convictions for violating Section 261.5, 262, or 273.5 from the Department of Justice pursuant to this section.

(d) Nothing in this section supersedes any law requiring criminal record access or dissemination of criminal history information. In any conflict with another statute, dissemination of criminal history

information shall be pursuant to the mandatory statute. This subdivision applies to, but is not limited to, requirements pursuant to Article 1 (commencing with Section 1500) of Chapter 3 of, and Chapter 3.2 (commencing with Section 1569) and Chapter 3.4 (commencing with Section 1596.70) of, Division 2 of, and Section 1522 of, the Health and Safety Code, and Sections 8712, 8811, and 8908 of the Family Code.

(e) The department may adopt regulations to implement the provisions of this section as necessary.

(f) As used in this section, ''employer'' means any nonprofit corporation or other organization specified by the Attorney General which employs or uses the services of volunteers in positions in which the volunteer or employee has supervisory or disciplinary power over a child or children.

(g) As used in this section, ''human resource agency'' means a public or private entity, excluding any agency responsible for licensing of facilities pursuant to the California Community Care Facilities Act (Chapter 3 (commencing with Section 1500)), the California Residential Care Facilities for the Elderly Act (Chapter 3.2 (commencing with Section 1569)), Chapter 3.01 (commencing with Section 1568.01), and the California Child Day Care Facilities Act (Chapter 3.4 (commencing with Section 1596.70)) of Division 2 of the Health and Safety Code, responsible for determining the character and fitness of a person who is (1) applying for a license, employment, or as a volunteer within the human services field that involves the care and security of children, the elderly, the handicapped, or the mentally impaired, or (2) applying to adopt a child or to be a foster parent.

(h) Except as provided in subdivision (c), any criminal history information obtained pursuant to this section is confidential and no recipient shall disclose its contents other than for the purpose for which it was acquired.

SEC. 4.5. Section 11105.3 of the Penal Code is amended to read:

11105.3. (a) Notwithstanding any other law, a human resource agency or an employer may request from the Department of Justice records of all convictions or any arrest pending adjudication involving the offenses specified in subdivision (a) of Section 15660 of the Welfare and Institutions Code of a person who applies for a license, employment, or volunteer position, in which he or she would have supervisory or disciplinary power over a minor or any person under his or her care. The department shall furnish the information to the requesting employer and shall also send a copy of the information to the applicant.

(b) Any request for records under subdivision (a) shall include the applicant's fingerprints, which may be taken by the requester, and any other data specified by the department. The request shall be on a form approved by the department, and the department may charge a fee to be

paid by the employer, human resource agency, or applicant for the actual cost of processing the request. However, no fee shall be charged to a nonprofit organization.

(c) (1) Where a request pursuant to this section reveals that a prospective employee or volunteer has been convicted of a violation or attempted violation of Section 220, 261.5, 262, 273a, 273d, or 273.5, or any sex offense listed in Section 290, except for the offense specified in subdivision (d) of Section 243.4, and where the agency or employer hires the prospective employee or volunteer, the agency or employer shall notify the parents or guardians of any minor who will be supervised or disciplined by the employee or volunteer. A conviction for a violation or attempted violation of an offense committed outside the State of California shall be included in this notice if the offense would have been a crime specified in this subdivision if committed in California. The notice shall be given to the parents or guardians with whom the child resides, and shall be given at least 10 days prior to the day that the employee or volunteer begins his or her duties or tasks. Notwithstanding any other provision of law, any person who conveys or receives information in good faith and in conformity with this section is exempt from prosecution under Section 11142 or 11143 for that conveying or receiving of information. Notwithstanding subdivision (d), the notification requirements of this subdivision shall apply as an additional requirement of any other provision of law requiring criminal record access or dissemination of criminal history information.

(2) The notification requirement pursuant to paragraph (1) shall not apply to a misdemeanor conviction for violating Section 261.5 or to a conviction for violating Section 262 or 273.5. Nothing in this paragraph shall preclude an employer from requesting records of convictions for violating Section 261.5, 262, or 273.5 from the Department of Justice pursuant to this section.

(d) Nothing in this section supersedes any law requiring criminal record access or dissemination of criminal history information. In any conflict with another statute, dissemination of criminal history information shall be pursuant to the mandatory statute. This subdivision applies to, but is not limited to, requirements pursuant to Article 1 (commencing with Section 1500) of Chapter 3 of, and Chapter 3.2 (commencing with Section 1569) and Chapter 3.4 (commencing with Section 1596.70) of, Division 2 of, and Section 1522 of, the Health and Safety Code, and Sections 8712, 8811, and 8908 of the Family Code.

(e) The department may adopt regulations to implement the provisions of this section as necessary.

(f) As used in this section, ‘‘employer’’ means any nonprofit corporation or other organization specified by the Attorney General which employs or uses the services of volunteers in positions in which

the volunteer or employee has supervisory or disciplinary power over a child or children.

(g) As used in this section, ''human resource agency'' means a public or private entity, excluding any agency responsible for licensing of facilities pursuant to the California Community Care Facilities Act (Chapter 3 (commencing with Section 1500)), the California Residential Care Facilities for the Elderly Act (Chapter 3.2 (commencing with Section 1569)), Chapter 3.01 (commencing with Section 1568.01), and the California Child Day Care Facilities Act (Chapter 3.4 (commencing with Section 1596.70)) of Division 2 of the Health and Safety Code, responsible for determining the character and fitness of a person who is:

(1) Applying for a license, employment, or as a volunteer within the human services field that involves the care and security of children, the elderly, the handicapped, or the mentally impaired.

(2) Applying to be a volunteer who transports individuals impaired by drugs or alcohol.

(3) Applying to adopt a child or to be a foster parent.

(h) Except as provided in subdivision (c), any criminal history information obtained pursuant to this section is confidential and no recipient shall disclose its contents other than for the purpose for which it was acquired.

SEC. 5. Section 11105.4 of the Penal Code is amended to read:

11105.4. (a) Notwithstanding any other provision of law, a contract or proprietary security organization may request any criminal history information concerning its prospective employees that may be furnished pursuant to subdivision (n) of Section 11105.

(b) The Department of Justice shall promulgate regulations to assure that criminal record information is not released to persons or entities not authorized to receive the information under this section.

(c) Any criminal history information obtained pursuant to this section shall be subject to the same requirements and conditions that the information is subject to when obtained by a human resource agency or a bank.

(d) The Legislature finds that contract security organizations and private security organizations often provide security service for financial institutions and human resource agencies, and, consequently, they have the same need for criminal history information as do those entities. Therefore, the Legislature intends to provide authority for contract security organizations and proprietary security organizations to obtain criminal history information to the extent that financial institutions and human resource agencies have that authority concerning their own employees.

(e) As used in this section, ''contract security organization'' means a person, business, or organization licensed to provide services as a private

patrol operator, as defined in subdivision (a) of Section 7582.1 of the Business and Professions Code.

As used in this section, ''proprietary security organization'' means an organization within a business entity that has the primary responsibility of protecting the employees and property of its employer, and which allocates a substantial part of its annual budget to providing security and protective services for its employer, including providing qualifying and in-service training to members of the organization.

(f) Any criminal history information obtained pursuant to this section is confidential and no recipient shall disclose its contents other than for the purpose for which it was acquired.

SEC. 6. Section 15660 of the Welfare and Institutions Code is amended to read:

15660. (a) The Department of Justice shall secure any criminal record of a person to determine whether the person has ever been convicted of a violation or attempted violation of Section 243.4 of the Penal Code, a sex offense against a minor, or of any felony which requires registration pursuant to Section 290 of the Penal Code, or whether the person has been convicted or incarcerated within the last 10 years as the result of committing a violation or attempted violation of Section 273a, 273d, or subdivision (a) or (b) of Section 368, of the Penal Code, or as the result of committing a theft, robbery, burglary, or any felony, and shall provide a subsequent arrest notification pursuant to Section 11105.2 of the Penal Code, if both of the following conditions are met:

(1) An employer of the person requests the determination and submits fingerprints of the person to the Department of Justice. For purposes of this paragraph, ''employer'' includes, but is not limited to, an in-home supportive services recipient, as defined by Section 12302.2 and any recipient of personal care services under the Medi-Cal program pursuant to Section 14132.95.

(2) The person is unlicensed and provides nonmedical domestic or personal care to an aged or disabled adult in the adult's own home.

(b) (1) If it is found that the person has ever been convicted of a violation or attempted violation of Section 243.4 of the Penal Code, a sex offense against a minor, or of any felony which requires registration pursuant to Section 290 of the Penal Code, or that the person has been convicted or incarcerated within the last 10 years as the result of committing a violation or attempted violation of Section 273a, 273d, or subdivision (a) or (b) of Section 368, of the Penal Code, or as the result of committing a theft, robbery, burglary, or any felony, the Department of Justice shall notify the employer of that fact. If no criminal record information has been recorded, the Department of Justice shall provide the employer with a statement of that fact.

(2) Any employer may deny employment to any person who is the subject of a report under paragraph (1) when the report indicates that the person has committed any of the crimes identified in paragraph (1).

(3) Nothing in this section shall be construed to require any employer to hire any person who is the subject of a report under paragraph (1) when the report indicates that the person has not committed any of the crimes indicated in paragraph (1).

(c) (1) Fingerprints shall be on a card provided by the Department of Justice for the purpose of obtaining a set of fingerprints. The employer shall submit the fingerprints to the Department of Justice. Within 30 calendar days of the receipt of the fingerprints, the Department of Justice shall notify the employer of the criminal record information, as provided in this subdivision. If no criminal record information has been recorded, the Department of Justice shall provide the employer with a statement of that fact as soon as possible, but not later than 30 calendar days of receipt of the fingerprints. If new fingerprints are required for processing, the Department of Justice shall, as soon as possible, but not later than 30 calendar days from the date of receipt of the fingerprints, notify the employer that the fingerprints were illegible.

(2) Fingerprints may be taken by any local law enforcement officer or agency for purposes of paragraph (1).

(3) Counties shall notify any recipient of, or applicant for, in-home supportive services or personal care services under the Medi-Cal program, upon his or her application for in-home supportive services or personal care services or during his or her annual redetermination, or upon the recipient's changing providers, that a criminal record check is available, and that the check can be performed by the Department of Justice.

(d) The Department of Justice shall charge a fee to the employer to cover the costs of administering this section.

(e) It is the intent of the Legislature that the Department of Justice charge a fee to cover its cost in providing services in accordance with this section to comply with the 30-calendar-day requirement for provision to the department of the criminal record information, as contained in subdivision (c).

SEC. 7. Section 4.5 of this bill incorporates amendments to Section 11105.3 of the Penal Code proposed by both this bill and AB 1855. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2003, (2) each bill amends Section 11105.3 of the Penal Code, and (3) this bill is enacted after AB 1855, in which case Section 4 of this bill shall not become operative.

CHAPTER 628

An act to amend Sections 48100, 48101, 48102, 48103, 48104, 48105, and 48106 of the Public Resources Code, relating to solid waste.

[Approved by Governor September 17, 2002. Filed with Secretary of State September 17, 2002.]

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

SECTION 1. It is the intent of the Legislature that the authority granted under this act to provide funding for tribes and special districts under the Farm and Ranch Solid Waste Cleanup and Abatement Program not be construed to authorize the total amount deposited in the Farm and Ranch Solid Waste Cleanup and Abatement Account to be more than one million dollars ($1,000,000) per year, plus interest earned on the money in the account.

SEC. 2. Section 48100 of the Public Resources Code is amended to read:

48100. (a) The Legislature hereby finds and declares that illegal disposal of solid waste on property owned by innocent parties is a longstanding problem needing attention and that grants provided under this chapter will support the cleanup of farm and ranch property.

(b) The board shall establish a farm and ranch solid waste cleanup and abatement grant program for the purposes of cleaning up and abating the effects of illegally disposed solid waste pursuant to this chapter.

(c) (1) The Farm and Ranch Solid Waste Cleanup and Abatement Account is hereby created in the General Fund and may be expended by the board, upon appropriation by the Legislature in the annual Budget Act, for the purposes of this chapter.

(2) The following funds shall be deposited into the account:

(A) Money appropriated by the Legislature from the Integrated Waste Management Fund or the California Used Oil Recycling Fund to the board for the grant program, or from the California Tire Recycling Management Fund to the board for the purposes set forth in subdivision (j) of Section 42889.

(B) Notwithstanding Section 16475 of the Government Code, any interest earned on the money in the account.

(3) The board may expend the money in the account for both of the following purposes:

(A) To pay the costs of implementing this chapter, which costs shall not exceed 7 percent of the funds available for the grant program.

(B) To make payments for grants authorized by this chapter.

(4) Upon authorization by the Legislature in the annual Budget Act, the sum of all funds transferred into the account from other funds or accounts shall not exceed one million dollars ($1,000,000) annually.

(5) Notwithstanding any other provision of law, the grant program shall be funded from the following funds:

(A) The Integrated Waste Management Fund.

(B) The California Tire Recycling Management Fund, for the purposes set forth in subdivision (j) of Section 42889.

(C) The California Used Oil Recycling Fund.

(d) For purposes of this chapter, the following definitions shall apply:

(1) ''Native American tribe'' has the same meaning as tribe, as defined in subdivision (b) of Section 44201.

(2) ''Public entity'' means a city, county, or resource conservation district.

SEC. 3. Section 48101 of the Public Resources Code is amended to read:

48101. (a) The grant program shall be established to make grants available to public entities and Native American tribes for the purposes described in subdivision (b) of Section 48100 in an amount not to exceed the sum of two hundred thousand dollars ($200,000) per year for any single public entity or Native American tribe, and not to exceed fifty thousand dollars ($50,000) for any single cleanup or abatement project. A Native American tribe or public entity may not expend more than 7 percent of the grant for administrative costs.

(b) The board shall give priority to the provision of grants to public entities and Native American tribes that have established innovative and cost-effective programs designed to discourage the illegal disposal of solid waste and to encourage the proper disposal of solid waste in permitted solid waste disposal facilities.

(c) A grant agreement between the board and a public entity or Native American tribe may provide for, but is not limited to, all of the following provisions:

(1) Site-specific cleanup and removal of solid waste that is illegally disposed on farm or ranch property.

(2) Comprehensive, ongoing enforcement programs for the cleanup and removal of solid waste that is illegally disposed of on farm or ranch property.

(3) Waiver of tipping fees or other solid waste fees at permitted solid waste facilities for solid waste that was illegally disposed of on farm or ranch property.

(d) On and after the adoption of grant program regulations by the board, any fines levied on, or abatement orders issued against, a farm or ranch owner by the local enforcement agency or other local agency as the result of solid waste disposed of on the owner's farm or ranch property,

regarding which the owner has made application to a public entity or Native American tribe for a grant under this chapter, shall be stayed, upon the owner's written request to the local enforcement agency or other local agency, if (1) the local agency makes a decision that the property owner was not responsible for the dumping or (2) the property owner has filed a written appeal of the local agency's decision to the board and the board's decision on the matter is pending.

SEC. 4. Section 48102 of the Public Resources Code is amended to read:

48102. No farm or ranch property is eligible for a grant pursuant to this chapter if it is determined by the public entity or Native American tribe that the owner was responsible for the illegal disposal of the solid waste.

SEC. 5. Section 48103 of the Public Resources Code is amended to read:

48103. (a) The board shall adopt regulations to implement this chapter.

(b) The regulations adopted pursuant to this section shall include criteria for grant eligibility and shall establish a process that is open and accessible to the public under which grant applications may be reviewed, ranked, and awarded. The regulations shall also develop a process for a farm or ranch property owner to appeal a public entity's or Native American tribe's determination of responsibility pursuant to Section 48102.

(c) The regulations adopted under this section shall require the applicant public entity or Native American tribe to certify to both of the following:

(1) That the public entity or Native American tribe is the only applicant for funding under the program for any particular farm or ranch property.

(2) That the owner of the farm or ranch property is not responsible for the illegal disposal of the solid waste.

(3) That the public entity or Native American tribe has in place a program that is sufficient to prevent future incidents of illegal solid waste disposal.

(d) If a public entity or Native American tribe denies a grant application, it shall notify the farm or ranch property owner in writing as to why the application was denied.

(e) Nothing in this section is intended to prevent a farm or ranch property owner from receiving reimbursement for solid waste cleanup or abatement costs under the grant program or pursuant to any other law.

SEC. 6. Section 48104 of the Public Resources Code is amended to read:

48104. Each year, as part of the annual report required to be submitted pursuant to Section 40507, the board shall report to the Governor and the Legislature on all of the following:

(a) Actions the board has taken under the grant program.

(b) The costs and effectiveness in cleaning up and abating solid waste illegally disposed of on farm and ranch property.

(c) The number of sites cleaned up and abated in each county.

(d) The number of participant cities, counties, districts, and Native American tribes, and the sites cleaned up and abated through those cities, counties, districts, and Native American tribes.

(e) The types of solid waste cleaned up and abated.

(f) The number of sites not approved for the grant program, and the reasons for that disapproval.

(g) The types of property on which solid waste has been cleaned up and abated.

SEC. 7. Section 48105 of the Public Resources Code is amended to read:

48105. All solid waste collected as a result of cleanup or abatement under the grant program shall be recycled or reused to the maximum extent feasible and cleanup or abatement activities shall be conducted in compliance with existing laws governing the handling of solid wastes, hazardous wastes, liquid wastes, or medical wastes, as appropriate.

SEC. 8. Section 48106 of the Public Resources Code is amended to read:

48106. Nothing in this chapter is intended to relieve any party who is responsible for the generation or illegal deposition of the solid waste from liability for removal costs if the party can be identified. Farm or ranch property owners whose property is the subject of solid waste cleanup or abatement under this chapter and who are not responsible for the generation or deposition of the solid waste shall not be subject to any cost recovery action for cleanup or abatement costs borne by public entities or Native American tribes or the board under this chapter.

CHAPTER 629

An act to add Section 1037.8 to the Evidence Code, and to amend Section 13964 of the Government Code, relating to victims of crime, and making an appropriation therefor.

[Approved by Governor September 17, 2002. Filed with Secretary of State September 17, 2002.]

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

SECTION 1. Section 1037.8 is added to the Evidence Code, to read:

1037.8. A domestic violence counselor shall inform a domestic violence victim of any applicable limitations on confidentiality of communications between the victim and the domestic violence counselor. This information may be given orally.

SEC. 2. Section 13964 of the Government Code, as amended by Section 7 of Chapter 712 of the Statutes of 2001, 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 that 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. In the case of a minor, the board shall consider the minor's age, physical condition, and psychological state as well as any compelling health and safety concerns in determining whether the minor's application should be denied pursuant to this section.

(c) No victim shall be eligible for assistance under this article under either of the following circumstances:

(1) The board finds that the victim knowingly and willingly participated in the commission of the crime. This paragraph shall not apply if the injury occurred as a direct result of a crime committed in violation of subdivision (d) of Section 261.5 of the Penal Code.

(2) The board finds that the victim failed to cooperate reasonably with a law enforcement agency in the apprehension and conviction of a criminal committing the crime. In the case of a minor, the board shall consider the minor's age, physical condition, and psychological state as well as any compelling health and safety concerns in determining whether the minor is eligible for assistance pursuant to this section.

(d) No derivative victim shall be eligible for assistance under this article under either 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 reasonably with a law enforcement agency in the apprehension and conviction of a criminal committing the crime.

(e) (1) Notwithstanding paragraph (2) of subdivision (c) and paragraph (2) of subdivision (d), for claims based on domestic violence the Board of Control shall adopt guidelines that allow the board to

consider and approve applications for assistance based on domestic violence, taking into account the victim's age, physical condition, psychological state, and any compelling health or safety reasons, including, but not limited to, a reasonable fear of retaliation or harm that would jeopardize the well-being of the victim or the victim's family, in evaluating a victim's cooperation with law enforcement, and giving due consideration to the degree of cooperation of which the victim is capable in light of the presence of any of these factors.

(2) For the purposes of this section, the application of a derivative victim of domestic violence under the age of 18 years shall not be deemed ineligible on the basis of ineligibility of the victim under subdivision (b).

(3) An application for a claim based on domestic violence may not be denied solely because no police report was made by the victim. The board shall adopt guidelines that allow the board to consider and approve applications for assistance based on domestic violence relying upon evidence other than a police report to establish that a domestic violence crime has occurred. Factors evidencing that a domestic violence crime has occurred may include, but are not limited to, medical records documenting injuries consistent with allegations of domestic violence, mental health records, or the fact that the victim has obtained a temporary or permanent restraining order, or all of these.

(f) 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).

(g) 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.

(h) 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.

(i) This section shall remain in effect only until January 1, 2004, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2004, deletes or extends that date.

SEC. 3. Section 13964 of the Government Code, as amended by Section 8 of Chapter 712 of the Statutes of 2001, 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.

(h) An application for a claim based on domestic violence may not be denied solely because no police report was made by the victim. The board shall adopt guidelines that allow the board to consider and approve

applications for assistance based on domestic violence relying upon evidence other than a police report to establish that a domestic violence crime has occurred. Factors evidencing that a domestic violence crime has occurred may include, but are not limited to, medical records documenting injuries consistent with allegations of domestic violence, mental health records, or the fact that the victim has obtained a temporary or permanent restraining order, or all of these.

(i) This section shall become operative on January 1, 2004.

CHAPTER 630

An act to amend Section 13964 of the Government Code, relating to victims of crime, and making an appropriation therefor.

[Approved by Governor September 17, 2002. Filed with Secretary of State September 17, 2002.]

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

SECTION 1. Section 13964 of the Government Code, as amended by Section 7 of Chapter 712 of the Statutes of 2001, 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 that 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. In the case of a minor, the board shall consider the minor's age, physical condition, and psychological state as well as any compelling health and safety concerns in determining whether the minor's application should be denied pursuant to this section.

(c) No victim shall be eligible for assistance under this article under either of the following circumstances:

(1) The board finds that the victim knowingly and willingly participated in the commission of the crime. This paragraph shall be inapplicable if the injury occurred as a direct result of a crime committed in violation of Section 261, 262, or 273.5 of, or subdivision (d) of Section 261.5 of, the Penal Code.

(2) The board finds that the victim failed to cooperate reasonably with a law enforcement agency in the apprehension and conviction of a

criminal committing the crime. In the case of a victim of domestic violence or sexual assault, the board shall consider factors such as the victim's age, physical condition, and psychological or emotional condition, compelling health or personal safety factors, reasonable fears of retaliation, and cultural or linguistic barriers, in determining whether the victim is eligible for assistance pursuant to this section. In the case of a minor, the board shall consider the minor's age, physical condition, and psychological state as well as any compelling health and safety concerns in determining whether the minor is eligible for assistance pursuant to this section.

(d) No derivative victim shall be eligible for assistance under this article under either 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 reasonably with a law enforcement agency in the apprehension and conviction of a criminal committing the crime.

(e) Notwithstanding paragraph (2) of subdivision (c) and paragraph (2) of subdivision (d), for claims based on domestic violence the California Victim Compensation and Government Claims Board shall adopt guidelines that allow the board to consider and approve applications for assistance based on domestic violence, taking into account the victim's age, physical condition, psychological state, and any compelling health or safety reasons, including, but not limited to, a reasonable fear of retaliation or harm that would jeopardize the well-being of the victim or the victim's family, in evaluating a victim's cooperation with law enforcement, and giving due consideration to the degree of cooperation of which the victim is capable in light of the presence of any of these factors.

For the purposes of this section, the application of a derivative victim of domestic violence under the age of 18 years shall not be deemed ineligible on the basis of ineligibility of the victim under subdivision (b).

(f) 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).

(g) 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.

(h) 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.

(i) This section shall remain in effect only until January 1, 2004, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2004, deletes or extends that date.

SEC. 2. Section 13964 of the Government Code, as amended by Section 8 of Chapter 712 of the Statutes of 2001, 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. This paragraph shall be inapplicable if the injury occurred as a direct result of a crime committed in violation of Section 261, 262, or 273.5 of the Penal Code.

(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. In the case of a victim of domestic violence or sexual assault, the board shall consider factors such as the victim's age, physical condition, and psychological or emotional condition, compelling health or personal safety factors, reasonable fears of retaliation, and cultural or linguistic barriers, in determining whether the victim is eligible for assistance pursuant to this section.

(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.

(h) This section shall become operative on January 1, 2004.

CHAPTER 631

An act relating to state property, and making an appropriation therefor.

[Approved by Governor September 17, 2002. Filed with Secretary of State September 17, 2002.]

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

SECTION 1. (a) (1) Pursuant to Section 11011.1 and notwithstanding Section 54222 of the Government Code or any other provision of law, the Director of General Services, subject to the following two conditions, may sell, lease, or exchange the real property consisting of approximately 17 acres in the City of Santa Clara, known as the Bay Area Research Extension Center, upon terms and conditions and subject to reservations and exceptions that the director determines are in the best interests of the state:

(2) The Department of General Services shall market the property referred to in paragraph (1) with the condition that the sale, lease, or exchange of the property cannot be completed until the appropriate local governmental entity has granted entitlements for the buyer's or lessee's development project.

(3) The Department of General Services shall, prior to sale, lease, or exchange, perform preliminary studies to determine the presence of hazardous materials on the site referred to in paragraph (1).

(b) From the proceeds of the sale of property pursuant to this section, the Department of General Services shall be reimbursed for its costs

related to the sale, including, but not limited to, any survey costs, title transfer fees, and department staff time.

CHAPTER 632

An act to amend Section 298.1 of the Penal Code, relating to criminal identification, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 17, 2002. Filed with Secretary of State September 18, 2002.]

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

SECTION 1. Section 298.1 of the Penal Code is amended to read:

298.1. (a) As of the effective date of this chapter, any person who refuses to give any or all of the following, blood specimens, saliva samples, or thumb or palm print impressions as required by this chapter, once he or she has received written notice from the Department of Justice, the Department of Corrections, any law enforcement personnel, or officer of the court that he or she is required to provide specimens, samples, and print impressions pursuant to this chapter is guilty of a misdemeanor. The refusal or failure to give any or all of the following, a blood specimen, saliva sample, or thumb or palm print impression is punishable as a separate offense by both a fine of five hundred dollars ($500) and imprisonment of up to one year in a county jail, or if the person is already imprisoned in the state prison, by sanctions for misdemeanors according to a schedule determined by the Department of Corrections.

(b) (1) Notwithstanding subdivision (a), authorized law enforcement, custodial, or corrections personnel, including peace officers as defined in Sections 830, 830.1, 830.5, and 830.55, or subdivision (d) of Section 830.2, may employ reasonable force to collect blood specimens, saliva samples, or thumb or palm print impressions pursuant to this chapter from individuals who, after written or oral request, refuse to provide those specimens, samples, or thumb or palm print impressions.

(2) The withdrawal of blood shall be performed in a medically approved manner in accordance with the requirements of paragraph (2) of subdivision (b) of Section 298.

(3) The use of reasonable force as provided in this subdivision shall be carried out in a manner consistent with regulations and guidelines adopted pursuant to subdivision (c).

(c) (1) The Department of Corrections and the Department of the Youth Authority shall adopt regulations governing the use of reasonable force as provided in subdivision (b), which shall include the following:

(A) The term ''use of reasonable force'' shall be defined as the force that an objective, trained and competent correctional employee, faced with similar facts and circumstances, would consider necessary and reasonable to gain compliance with this chapter.

(B) The use of reasonable force shall not be authorized without the prior written authorization of the supervising officer on duty. The authorization shall include information that reflects the fact that the offender was asked to provide the requisite specimen, sample, or impression and refused.

(C) The use of reasonable force shall be preceded by efforts to secure voluntary compliance with this section.

(D) If the use of reasonable force includes a cell extraction, the regulations shall provide that the extraction be videotaped.

(2) The Board of Corrections shall adopt guidelines governing the use of reasonable force as provided in subdivision (b) for local detention facilities, which shall include the following:

(A) The term ''use of reasonable force'' shall be defined as the force that an objective, trained and competent correctional employee, faced with similar facts and circumstances, would consider necessary and reasonable to gain compliance with this chapter.

(B) The use of reasonable force shall not be authorized without the prior written authorization of the supervising officer on duty. The authorization shall include information that reflects the fact that the offender was asked to provide the requisite specimen, sample, or impression and refused.

(C) The use of reasonable force shall be preceded by efforts to secure voluntary compliance with this section.

(D) If the use of reasonable force includes a cell extraction, the extraction shall be videotaped.

(3) The Department of Corrections, the Department of the Youth Authority, and the Board of Corrections shall report to the Legislature not later than January 1, 2005, on the use of reasonable force pursuant to this section . The report shall include, but is not limited to, the number of refusals, the number of incidents of the use of reasonable force under this section, the type of force used, the efforts undertaken to obtain voluntary compliance, if any, and whether any medical attention was needed by the prisoner or personnel as a result of force being used.

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 enable the state's DNA and Forensic Identification Data Base and Data Bank program to expeditiously and accurately solve crime and exonerate the innocent in accordance with its statutory mandate, it is necessary that this act take immediate effect.

CHAPTER 633

An act to amend Section 340.3 of the Code of Civil Procedure, relating to actions against felons, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 17, 2002. Filed with Secretary of State September 18, 2002.]

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

SECTION 1. Section 340.3 of the Code of Civil Procedure is amended to read:

340.3. (a) Unless a longer period is prescribed for a specific action, in any action for damages against a defendant based upon the defendant's commission of a felony offense for which the defendant has been convicted, the time for commencement of the action shall be within one year after judgment is pronounced.

(b) (1) Notwithstanding subdivision (a), an action for damages against a defendant based upon the defendant's commission of a felony offense for which the defendant has been convicted may be commenced within 10 years of the date on which the defendant is discharged from parole if the conviction was for any offense specified in paragraph (1), except voluntary manslaughter, (2), (3), (4), (5), (6), (7), (9), (16), (17), (20), (22), (25), (34), or (35) of subdivision (c) of Section 1192.7 of the Penal Code.

(2) No civil action may be commenced pursuant to paragraph (1) if any of the following applies:

(A) The defendant has received either a certificate of rehabilitation as provided in Chapter 3.5 (commencing with Section 4852.01) of Title 6 of Part 3 of the Penal Code or a pardon as provided in Chapter 1 (commencing with Section 4800) or Chapter 3 (commencing with Section 4850) of Title 6 of Part 3 of the Penal Code.

(B) Following a conviction for murder or attempted murder, the defendant has been paroled based in whole or in part upon evidence presented to the Board of Prison Terms that the defendant committed the crime because he or she was the victim of battered women's syndrome.

(C) The defendant was convicted of murder or attempted murder in the second degree in a trial at which substantial evidence was presented that the person committed the crime because he or she was a victim of battered women's syndrome.

(c) If the sentence or judgment is stayed, the time for the commencement of the action shall be tolled until the stay is lifted. For purposes of this section, a judgment is not stayed if the judgment is appealed or the defendant is placed on probation.

(d) (1) Subdivision (b) shall apply to any action commenced before, on, or after the effective date of this section, including any action otherwise barred by a limitation of time in effect prior to the effective date of this section, thereby reviving those causes of action that had lapsed or expired under the law in effect prior to the effective date of this section.

(2) Paragraph (1) does not apply to either of the following:

(A) Any claim that has been litigated to finality on the merits in any court of competent jurisdiction prior to January 1, 2003. For purposes of this section, termination of a prior action on the basis of the statute of limitations does not constitute a claim that has been litigated to finality on the merits.

(B) Any written, compromised settlement agreement that has been entered into between a plaintiff and a defendant if the plaintiff was represented by an attorney who was admitted to practice law in this state at the time of the settlement, and the plaintiff signed the agreement.

(e) Any restitution paid by the defendant to the victim shall be credited against any judgment, award, or settlement obtained pursuant to this section. Any judgment, award, or settlement obtained pursuant to an action under this section shall be subject to the provisions of Section 13966.01 of the Government Code.

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 for the Legislature to initiate procedures to clarify the status of existing law regarding the issues addressed by this act, it is necessary that this act take immediate effect.

CHAPTER 634

An act relating to public schools.

[Approved by Governor September 17, 2002. Filed with Secretary of State September 18, 2002.]

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

SECTION 1. (a) The Office of the State Architect shall conduct a study to evaluate the safety of the various means currently available for providing emergency exit from portable classrooms and report the results of the study along with recommendations to the Legislature by July 1, 2003.

(b) For the purposes of this section, ''portable classroom'' shall have the same meaning as set forth in subdivision (b) of Section 17042.5 of the Education Code.

CHAPTER 635

An act to add Section 10609.7 to the Welfare and Institutions Code, relating to social services.

[Approved by Governor September 17, 2002. Filed with Secretary of State September 18, 2002.]

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

SECTION 1. Section 10609.7 is added to the Welfare and Institutions Code, to read:

10609.7. (a) The Legislature finds and declares all of the following:

(1) The department has convened the Child Welfare Services Stakeholders Group for the purpose of making recommendations to redesign California's child welfare system to create and sustain a flexible system, comprising public and private partnerships, that provides a comprehensive system of support for families and communities to ensure the well-being of every child.

(2) In the first year of the stakeholders group, there was significant attention brought to the carrying capacity of direct service professionals through the development of an implementation plan of child welfare services workload study pursuant to Section 10609.5.

(3) The stakeholders group has convened a series of working groups, including the Human Resources Workgroup, whose tasks are to develop core strategies and recommendations resulting in a high capacity, competent, satisfied child welfare services workforce able to perform the essential functions of the redesigned child welfare system.

(4) In the second year, the Human Resources Workgroup report found that workload issues have not appreciably declined and that for the child welfare services redesign to be successful, workforce considerations need to be at the forefront of all redesign efforts.

(5) The stakeholders group and its Human Resources Workgroup have entered the third year of the redesign process for the state's child welfare services.

(b) It is the intent of the Legislature that the Human Resources Workgroup of the Child Welfare Services Stakeholders Group include in its next planned report the core strategies needed to establish minimum caseload standards under the redesigned child welfare services system for all service areas.

(c) It is the intent of the Legislature that the Human Resources Workgroup also make recommendations for implementing the new caseload standards, including a recommendation that would achieve at least 20 percent of the caseload reductions annually over a specified period of time, as required under the newly recommended standards.

CHAPTER 636

An act relating to public resources, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 17, 2002. Filed with Secretary of State September 18, 2002.]

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

SECTION 1. The remainder of any unencumbered funds appropriated to the Department of Parks and Recreation pursuant to Schedule (7) of Item 3790-302-0005 of Section 2.00 of the Budget Act of 2001 (Ch. 106, Stats. 2001), and reappropriated pursuant to Section 11 of Chapter 400 of the Statutes of 2001, is hereby reappropriated to the department for the acquisition, planning, preliminary plans, working drawings, equipment, and construction, including, but not limited to, trail development and improvement and habitat restoration, of the project specified in that schedule, and shall be available for expenditure in the 2002–03, 2003–04, and 2004–05 fiscal years.

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 reappropriate certain funds to the Department of Parks and Recreation for a project in the Kenneth Hahn Recreation Area at the earliest possible time, it is necessary that this act take effect immediately.

CHAPTER 637

An act to add and repeal Chapter 3.5 (commencing with Section 81700) of Part 49 of the Education Code, relating to public works.

[Approved by Governor September 17, 2002. Filed with Secretary of State September 18, 2002.]

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

SECTION 1. Chapter 3.5 (commencing with Section 81700) is added to Part 49 of the Education Code, to read:

CHAPTER 3.5. DESIGN-BUILD CONTRACTS

81700. (a) It is the intent of the Legislature to enable community college districts to utilize safe and cost effective options for building and modernizing community college facilities. The Legislature has recognized the merits of the design-build procurement process in the past by authorizing its use for projects undertaken by the University of California, specified local government projects, including school districts, and state office buildings.

(b) The Legislature also finds and declares that community college districts utilizing a design-build contract require a clear understanding of the roles and responsibilities of each participant in the design-build process. The benefits of a design-build contract project delivery system include an accelerated completion of the projects, cost containment, reduction of construction complexity, and reduced exposure to risk for the community college district. The Legislature also finds that the cost effective benefits to the community college districts are achieved by shifting the liability and risk for cost containment and project completion to the design-build entity.

(c) It is the intent of the Legislature to provide an optional, alternative procedure for bidding and building community college construction projects.

(d) In addition, it is the intent of the Legislature that the full scope of design, construction, and equipment awarded to a design-build entity under this chapter shall be authorized in a single funding phase. The funding phase may be authorized concurrently with, or separately from, the phase that authorizes the creation of the performance criteria and concept drawings.

(e) It is the intent of the Legislature that design-build procurement as authorized by this chapter shall not be construed to extend, limit, or change in any manner the legal responsibility of public agencies and contractors to comply with existing laws.

(f) It is the intent of the Legislature to authorize three community college districts, and up to five community college facility construction projects selected by the Chancellor of the California Community Colleges, to use the procedures of this chapter and to receive a report detailing the effectiveness of these procedures.

81700.5. This chapter applies only with respect to all of the following:

(a) The Los Angeles Community College District.

(b) The San Jose-Evergreen Community College District.

(c) The San Mateo Community College District.

(d) Up to five community college facility construction projects selected by the chancellor pursuant to Section 81700.7.

81700.7. The chancellor may select up to five community college facility construction projects, from districts, other than the districts specified in Section 81700.5, that apply for this designation, that he or she deems appropriate to use the procedures of this chapter.

81701. As used in this chapter, the following terms have the following meanings:

(a) ''Best value'' means a value determined by objective criteria and may include, but need not be limited to, price, features, functions, life-cycle costs, and other criteria deemed appropriate by the community college district.

(b) ''Design-build'' means a procurement process in which both the design and construction of a project are procured from a single entity.

(c) ''Design-build entity'' means a corporation, limited partnership, partnership, or other association that is able to provide appropriately licensed contracting, architectural, and engineering services as needed pursuant to a design-build contract.

81702. (a) Upon a determination by a community college district governing board that it is in the best interest of the community college district, the governing board may enter into a design-build contract for both the design and construction of a community college facility if that expenditure exceeds ten million dollars ($10,000,000) if, after evaluation of the traditional design, bid, and build process of community college facility construction and of the design-build process in a public meeting, the governing board makes written findings that use of the design-build process on the specific project under consideration will accomplish one of the following objectives: reduce comparable project costs, expedite the project's completion, or provide features not achievable through the traditional design-bid-build method. The governing board shall also review the guidelines developed pursuant to Section 81706 and shall adopt a resolution approving the use of a design-build contract pursuant to this chapter prior to entering into a design-build contract.

(b) No state funds appropriated for a design-build capital outlay project may be expended until the Department of Finance and the State Public Works Board have approved performance criteria, or performance criteria and concept drawings, for the project to be financed from the appropriation for capital outlay.

81703. Design-build projects shall progress as follows:

(a) (1) The community college district governing board shall prepare a request for proposal setting forth the scope of the project that may include, but is not limited to, the size, type and desired design character of the buildings and site, performance specifications covering the quality of materials, equipment, and workmanship, preliminary plans or building layouts, or any other information deemed necessary to describe adequately the community college district's needs. The performance specifications and any plans shall be prepared by a design professional duly licensed or registered in this state to perform the services required by the Field Act, as defined in Section 17281.

(2) Each request for proposal shall do all of the following:

(A) Identify the basic scope and needs of the project or contract, the expected cost range, and other information deemed necessary by the community college district to inform interested parties of the contracting opportunity.

(B) Invite interested parties to submit competitive sealed proposals in the manner prescribed by the community college district.

(C) Include a section identifying and describing the following:

(i) All significant factors and subfactors that the community college district reasonably expects to consider in evaluating proposals, including cost or price and all nonprice related factors and subfactors.

(ii) The methodology and rating or weighting scheme that will be used by the community college district governing board in evaluating competitive proposals and specifically whether proposals will be rated according to numeric or qualitative values.

(iii) The relative importance or weight assigned to each of the factors identified in the request for proposal.

(iv) As an alternative to clause (iii), the governing board of a community college district shall specifically disclose whether all evaluation factors other than cost or price, when combined, are any of the following:

(I) Significantly more important than cost or price.

(II) Approximately equal in importance to cost or price.

(III) Significantly less important than cost or price.

(v) If the community college district governing board wishes to reserve the right to hold discussions or negotiations with responsive bidders, it shall so specify in the request for proposal and shall publish separately or incorporate into the request for proposal applicable rules

and procedures to be observed by the community college district to ensure that any discussions or negotiations are conducted in a fair and impartial manner.

(3) Notwithstanding Section 4-315 of Title 24 of the California Code of Regulations, an architect or structural engineer who is party to a design-build entity may perform the services set forth in Section 81138.

(b) The community college district shall establish a procedure to prequalify design-build entities using a standard questionnaire developed by the Director of the Department of Industrial Relations pursuant to subdivision (b) of Section 17250.25.

(c) The community college district shall establish a procedure for final selection of the design-build entity. Selection shall be based on either of the following criteria:

(1) A competitive bidding process resulting in lump-sum bids by the prequalified design-build entities. Award shall be made on the basis of the lowest responsible bid.

(2) Notwithstanding any other provision of this code or of Section 20650 of the Public Contract Code, a community college district may use a design-build competition based upon performance and other criteria set forth by the governing board in the solicitation of proposals. Criteria used in this evaluation of proposals may include, but need not be limited to, the proposed design approach, life cycle costs, project features, and project functions. However, competitive proposals shall be evaluated by using the criteria and source selection procedures specifically identified in the request for proposal. Once the evaluation is complete, all responsive bidders shall be ranked from the most advantageous to least advantageous to the community college district. A community college district that limits the number of responsible bidders participating in the design-build competition, at any time after a request for a proposal has been issued, shall use the source selection procedures and minimum factors set forth in subparagraph (C).

(A) Any architectural firm, engineering firm, construction manager, contractor, subcontractor, consultant, or individual retained by the governing body of the community college district directly or indirectly prior to the award of the project to assist in the planning of the project, including, but not necessarily limited to, the development criteria or preparation of the request for proposal, shall not be eligible to participate in the competition with the design-build entity or to perform work on the project as a subcontractor.

(B) The award of the contract shall be made to the responsible bidder whose proposal is determined, in writing by the community college district, to be the best value to the community college district.

(C) Proposals shall be evaluated and scored solely on the basis of the factors and source selection procedures identified in the request for

proposal. However, the following minimum factors shall each represent at least 10 percent of the total weight or consideration given to all criteria factors: price, technical expertise, life cycle costs over 15 years or more, skilled labor force availability, and acceptable safety record.

(D) The community college district governing board shall issue a written decision supporting its contract award and stating in detail the basis of the award. The decision and the contract file must be sufficient to satisfy an external audit.

(E) Notwithstanding any provision of the Public Contract Code, upon issuance of a contract award, the community college district governing board shall publicly announce its awards identifying the contractor to whom the award is made, the winning contractor's price proposal and its overall combined rating on the request for proposal evaluation factors. The notice of award shall also include the agency's ranking in relation to all other responsive bidders and their respective price proposals and a summary of the community college district's rationale for the contract award.

(F) For the purposes of this chapter, ''skilled labor force availability'' means that an agreement exists with a registered apprenticeship program, approved by the California Apprenticeship Council, which has graduated apprentices in each of the immediately preceding five years. This graduation requirement shall not apply to programs providing apprenticeship training for any craft that has not been deemed by the Department of Labor and the Department of Industrial Relations to be an apprenticable craft in the five years prior to enactment of the act adding this section.

(G) For the purposes of this chapter, a bidder's ''safety record'' shall be deemed ''acceptable'' if its experience modification rate for the most recent three-year period is an average of 1.00 or less, and its average total recordable injury or illness rate and average lost work rate for the most recent three-year period does not exceed the applicable statistical standards for its business category, or if the bidder is a party to an alternative dispute resolution system as provided for in Section 3201.5 of the Labor Code.

(H) For the purposes of this chapter, when a community college district determines a design-build entity's ''experience,'' the district shall give credit only to design-build experience and to California school design and construction experience.

81704. (a) Any design-build entity that is selected to design and build a project pursuant to this chapter shall possess or obtain sufficient bonding to cover the contract amount for nondesign services, and errors and omission insurance coverage sufficient to cover all design and architectural services provided in the contract. This chapter does not prohibit a general or engineering contractor from being designated the

lead entity on a design-build entity for the purposes of purchasing necessary bonding to cover the activities of the design-build entity.

(b) Any payment or performance bond written for the purposes of this chapter shall use a bond form developed by the Department of General Services pursuant to subdivision (i) of Section 14661 of the Government Code. The purpose of this subdivision is to promote uniformity of bond forms to be used on community college district design-build projects throughout the state.

(c) (1) All subcontracts that were not listed by the design-build entity in accordance with Section 81703 shall be awarded by the design-build entity in accordance with the design-build process set forth by the community college district in the design-build package.

(2) The design-build entity shall do all of the following:

(A) Provide public notice of the availability of work to be subcontracted.

(B) Provide a fixed date and time on which the subcontracted work will be awarded.

(3) Subcontractors bidding on contracts pursuant to this subdivision shall be afforded the protections contained in Chapter 4 (commencing with Section 4100) of Part 1 of Division 2 of the Public Contract Code.

(4) In a contract between the design-build entity and a subcontractor, and in a contract between a subcontractor and any subcontractor thereunder, the percentage of the retention proceeds withheld may not exceed the percentage specified in the contract between the community college district and the design-build entity. If the design-build entity provides written notice to any subcontractor who is not a member of the design-build entity, prior to or at the time the bid is requested, that a bond may be required and the subcontractor subsequently is unable or refuses to furnish a bond to the design-build entity, then the design-build entity may withhold retention proceeds in excess of the percentage specified in the contract between the community college district and the design-build entity from any payment made by the design-build entity to the subcontractor.

(5) In accordance with the provisions of applicable state law, the design-build entity may be permitted to substitute securities in lieu of the withholding from progress payments. Substitutions shall be made in accordance with Section 22300 of the Public Contract Code.

(d) The community college district shall establish and enforce a labor compliance program containing the requirements outlined in Section 1771.5 of the Labor Code or shall contract with a third party to operate a labor compliance program containing the requirements outlined in Section 1771.5 of the Labor Code. This requirement shall not apply to projects where the school district or the design-build entity has entered

into a collective bargaining agreement that binds all of the contractors performing work on the project.

81705. (a) The minimum performance criteria and design standards established pursuant to this chapter by a community college district for quality, durability, longevity, and life cycle costs, and other criteria deemed appropriate by the community college district shall be adhered to by the design-build entity. Any deviations from those standards may only be allowed by written consent of the community college district. The governing board may, and is strongly encouraged to, retain the services of an architect or structural engineer throughout the course of the project in order to ensure compliance with this chapter. Any architect or structural engineer retained pursuant to this subdivision shall be duly licensed and registered in California.

(b) The community college district governing board shall be the employer of the inspector. The project inspector shall be fully independent from any member of the design-build entity and may not have any affiliation with any member of the design-build entity or any of the project subcontractors. The total price of the project shall be determined either upon receipt of the lump-sum bids as set forth in paragraph (1) of subdivision (c) of Section 81703, or by completion of the process pursuant to paragraph (2) of subdivision (c) of Section 81703.

(c) The project inspector shall act under the direction of either the Director of General Services or a competent, qualified agent of the community college district.

(d) Each contract with a design-build entity shall provide that no construction or alteration of any community college facility pursuant to this section shall commence prior to the receipt of the written approval of the plans, as to the safety of design and construction, from the Department of General Services. Compliance with this provision shall be deemed to be in compliance with Section 81133.

(e) The design-build entity shall be liable for building the facility to specifications set forth in the design-build contract in the absence of contractual language to the contrary.

81706. The Board of Governors of the California Community Colleges, in consultation with the Secretary for Education, the Department of General Services, the Energy Resources, Conservation and Development Commission, Seismic Safety Commission, community college district representatives, and industry representatives, develop guidelines for design-build projects. The guidelines shall be developed no later than June 30, 2003.

81707. Each community college district governing board that adopts the design-build process for a project pursuant to this chapter shall submit to the Legislative Analyst a report on the project at the

completion of the project. Completion shall have the same meaning as defined in subdivision (c) of Section 7107 of the Public Contract Code. This report shall be submitted within 60 days after completion of the project. The Legislative Analyst shall submit an interim report to the Legislature by January 1, 2005, and a final report to the Legislature by January 1, 2007. The reports shall include, but not be limited to, all of the following information as to each project:

(a) The type of facility.

(b) The gross square footage of the facility.

(c) The company or contractor who was awarded the project.

(d) The estimated and actual length of time to complete the project.

(e) The estimated and actual project cost.

(f) A description of the relative merits of a project procured pursuant to this chapter and similar projects procured pursuant to other provisions of this code.

(g) A description of any written protest concerning any aspect of the solicitation, bid, proposal, or award of the design-build project, including the resolution of the protest.

(h) Other pertinent information that may be instructive in evaluating whether the design-build method of procurement should be continued, expanded, or prohibited.

(i) The findings established pursuant to Section 81702 and a postcompletion evaluation as to whether the findings were achieved.

(j) Any Labor Code violations discovered during the course of construction or following completion of the project, as well as any fines or penalties assessed.

81708. A community college district shall not commence any additional design-build projects if 60 days has elapsed after completion of a design-build project without having filed the report to the Legislative Analyst's Office required pursuant to Section 81707.

SEC. 2. This act does not exempt design-build contracts from otherwise applicable provisions of the Public Contract Code unless the exemption is granted expressly, or by necessary implication.

SEC. 3. Unless expressly authorized in this act, no otherwise applicable provision of the Field Act (Article 3 (commencing with Section 17365) of Chapter 3 of Part 10.5 of, and Article 7 (commencing with Section 81130) of Chapter 1 of Part 49 of, the Education Code) may be waived, amended, or ignored by the community college district or the design-build entity.

SEC. 4. This act shall remain in effect only until January 1, 2008, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2008, deletes or extends that date.

SEC. 5. This act shall not apply to contracts in effect prior to the operative date of this act. Unless expressly set forth in this act, nothing

in this act is intended to affect, expand, alter, or limit rights or remedies otherwise available at law.

CHAPTER 638

An act to amend Section 21083.9 of, and to add Sections 21098 and 21098.1 to, the Public Resources Code, relating to environmental protection.

[Approved by Governor September 17, 2002. Filed with Secretary of State September 18, 2002.]

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

SECTION 1. Section 21083.9 of the Public Resources Code is amended to read:

21083.9. (a) Notwithstanding Section 21080.4, 21104, or 21153, a lead agency shall call at least one scoping meeting for either of the following:

(1) A proposed project that may affect highways or other facilities under the jurisdiction of the Department of Transportation if the meeting is requested by the department. The lead agency shall call the scoping meeting as soon as possible, but not later than 30 days after receiving the request from the Department of Transportation.

(2) A project of statewide, regional, or areawide significance.

(b) The lead agency shall provide notice of at least one scoping meeting held pursuant to paragraph (2) of subdivision (a) to all of the following:

(1) Any county or city that borders on a county or city within which the project is located, unless otherwise designated annually by agreement between the lead agency and the county or city.

(2) Any responsible agency.

(3) Any public agency that has jurisdiction by law with respect to the project.

(4) Any organization or individual who has filed a written request for the notice.

(c) For any entity, organization, or individual that is required to be provided notice of a lead agency public meeting, the requirement for notice of a scoping meeting pursuant to subdivision (b) may be met by including the notice of a scoping meeting in the public meeting notice.

(d) A scoping meeting that is held in the city or county within which the project is located pursuant to the National Environmental Policy Act (42 U.S.C. Sec. 4321 et seq.) and the regulations adopted pursuant to that

act shall be deemed to satisfy the requirement that a scoping meeting be held for a project subject to paragraph (2) of subdivision (a) if the lead agency meets the notice requirements of subdivision (b) or subdivision (c).

SEC. 2. Section 21098 is added to the Public Resources Code, to read:

21098. (a) For the purposes of this section, the following terms have the following meanings:

(1) ''Low-level flight path'' includes any flight path for any aircraft owned, maintained, or that is under the jurisdiction of the United States Department of Defense that flies lower than 1,500 feet above ground level, as indicated in the United States Department of Defense Flight Information Publication, ''Area Planning Military Training Routes: North and South America (AP/1B)'' published by the United States National Imagery and Mapping Agency.

(2) ''Military impact zone'' includes any area, including airspace, that meets both of the following criteria:

(A) Is within two miles of a military installation, including, but not limited to, any base, military airport, camp, post, station, yard, center, homeport facility for a ship, or any other military activity center that is under the jurisdiction of the United States Department of Defense.

(B) Covers greater than 500 acres of unincorporated land, or greater than 100 acres of city incorporated land.

(3) ''Military service'' means any branch of the United States Armed Forces.

(4) ''Special use airspace'' means the land area underlying the airspace that is designated for training, research, development, or evaluation for a military service, as that land area is established by the United States Department of Defense Flight Information Publication, ''Area Planning: Special Use Airspace: North and South America (AP/1A)'' published by the United States National Imagery and Mapping Agency.

(b) If the United States Department of Defense or a military service notifies a lead agency of the contact office and address for the military service and the specific boundaries of a low-level flight path, military impact zone, or special use airspace, the lead agency shall submit notices, as required pursuant to Sections 21080.4 and 21092, to the military service if the project is within those boundaries and any of the following apply:

(1) The project includes a general plan amendment.

(2) The project is of statewide, regional, or areawide significance.

(3) The project is required to be referred to the airport land use commission, or appropriately designated body, pursuant to Article 3.5

(commencing with Section 21670) of Chapter 4 of Part 1 of Division 9 of the Public Utilities Code.

(c) The requirement to submit notices imposed by this section does not apply to any of the following:

(1) Response actions taken pursuant to Chapter 6.8 (commencing with Section 25300) of Division 20 of the Health and Safety Code.

(2) Response actions taken pursuant to Chapter 6.85 (commencing with Section 25396) of Division 20 of the Health and Safety Code.

(3) Sites subject to corrective action orders issued pursuant to Section 25187 of the Health and Safety Code.

(d) (1) The effect or potential effect that a project may have on military activities does not itself constitute an adverse effect on the environment for the purposes of this division.

(2) Notwithstanding paragraph (1), a project's impact on military activities may cause, or be associated with, adverse effects on the environment that are subject to the requirements of this division, including, but not limited to, Section 21081. 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.

CHAPTER 639

An act to amend Section 1559.110 of the Health and Safety Code, and to amend Sections 11403.2 and 11403.3 of the Welfare and Institutions Code, relating to public social services.

[Approved by Governor September 17, 2002. Filed with Secretary of State September 18, 2002.]

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

SECTION 1. Section 1559.110 of the Health and Safety Code is amended to read:

1559.110. (a) Except as specified in subdivision (e), the State Department of Social Services shall license community care facilities participating in transitional housing placement programs, as designated in Sections 11400 and 16522 of the Welfare and Institutions Code.

(b) Transitional housing placement programs shall provide supervised housing services to persons who are at least 16 years of age and not more than 18 years of age, except as provided in Section 11403

of the Welfare and Institutions Code, and who meet all of the following conditions:

(1) Meet the requirements of Section 11401 of the Welfare and Institutions Code.

(2) Are in out-of-home placement under the supervision of the county department of social services or the county probation department.

(3) Are participating in, or have successfully completed, an independent living program.

(c) A transitional housing placement program may also serve any person less than 21 years of age pursuant to paragraph (2) of subdivision (a) of Section 11403.2 of the Welfare and Institutions Code.

(d) Transitional housing placement program services shall include any of the following:

(1) Programs in which one or more participants in the program live in an apartment, single-family dwelling, or condominium with an adult employee of the provider.

(2) Programs in which a participant lives independently in an apartment, single-family dwelling, or condominium rented or leased by the provider located in a building in which one or more adult employees of the provider reside and provide supervision.

(3) Programs in which a participant lives independently in an apartment, single-family dwelling, or condominium rented or leased by a provider under the supervision of the provider if the State Department of Social Services provides approval.

(e) A transitional housing placement facility that serves only eligible youth over 18 years of age who have emancipated from the foster care system shall not be subject to subdivision (a), provided the facility has been certified to provide transitional housing services by the appropriate county social services or probation department, and has obtained a local fire clearance. No later than June 30, 2002, the department shall establish certification standards and procedures in consultation with the County Welfare Directors Association, the California Youth Connection, the county probation departments, and provider representatives. The certification standards shall include, but not be limited to, a criminal background check of transitional housing providers and staff.

(f) (1) The department shall adopt regulations to govern transitional housing placement facilities licensed pursuant to this section.

(2) The regulations shall be age-appropriate and recognize that youth who are about to emancipate from the foster care system should be subject to fewer restrictions than those who are younger. At a minimum, the regulations shall provide for both of the following:

(A) Require programs that serve youth who are both in and out of the foster care system to have separate rules and program design, as appropriate, for these two groups of youth.

(B) Allow youth who have emancipated from the foster care system to have the greatest amount of freedom possible in order to prepare them for self-sufficiency.

SEC. 2. Section 11403.2 of the Welfare and Institutions Code is amended to read:

11403.2. (a) The following persons shall be eligible for transitional housing placement program services provided pursuant to Article 4 (commencing with Section 16522) of Chapter 5 of Part 4:

(1) Any minor at least 16 years of age and not more than 18 years of age, except as provided in Section 11403, who is eligible for AFDC-Foster Care benefits under this chapter and who meets the requirements in Section 16522.2.

(2) Any person less than 21 years of age who has emancipated from a county that has elected to participate in a transitional housing placement program for youths who are at least 18 years of age and under 21 years of age, as described in subdivision (r) of Section 11400, provided he or she has not received services under this paragraph for more than a total of 24 months, whether or not consecutive. If the person participating in a transitional housing placement program is not receiving aid under Section 11403.1, he or she, as a condition of participation, shall enter into, and execute the provisions of, a transitional independent living plan that shall be mutually agreed upon, and annually reviewed, by the emancipated foster youth and the county welfare or probation department or independent living program coordinator. The youth participating under this paragraph shall inform the county of any changes to conditions specified in the agreed upon plan that affect eligibility, including changes in address, living circumstances, and the educational or training program.

(b) Payment on behalf of an eligible person receiving transitional housing services shall be made to the transitional housing placement program pursuant to the conditions and limitations set forth in Section 11403.3.

SEC. 3. Section 11403.3 of the Welfare and Institutions Code is amended to read:

11403.3. (a) (1) Subject to subdivision (b), a transitional housing placement program, as defined in Section 11400, that provides transitional housing services to an eligible youth in a facility licensed pursuant to subdivision (a) of Section 1559.110 of the Health and Safety Code, shall be paid a monthly rate that is 75 percent of the average foster care expenditures for foster youth 16 to 18 years of age, inclusive, in group home care in the county in which the program operates.

(2) Subject to subdivision (c), a transitional housing placement program, as defined in Section 11400, that provides transitional housing services to an eligible youth in a facility certified pursuant to subdivision

(e) of Section 1559.110 of the Health and Safety Code, shall be paid a monthly rate that is 70 percent of the average foster care expenditures for foster youth 16 to 18 years of age, inclusive, in group home care in the county in which the program operates.

(b) Payment to a transitional housing placement program for transitional housing services provided to a person described in paragraph (1) of subdivision (a) of Section 11403.2 shall be subject to the following conditions:

(1) An amount equal to the base rate, as defined in subdivision (d), shall be paid for transitional housing services provided.

(2) Any additional amount payable pursuant to subdivision (a) shall be contingent on both of the following:

(A) The availability of moneys in the Transitional Housing for Foster Youth Fund established in Section 11403.4 to pay the state share of cost of the additional amount.

(B) Election by the county placing the youth in the transitional housing placement program to participate in the costs of the additional amount, pursuant to subdivision (g).

(c) (1) Payment to a transitional housing placement program for transitional housing services provided pursuant to paragraph (2) of subdivision (a) of Section 11403.2 shall be subject to the following conditions:

(A) Any Supportive Transitional Emancipation Program (STEP) payment payable pursuant to Section 11403.1 shall be paid for transitional housing services provided.

(B) Any amount payable pursuant to subdivision (a) to a transitional housing placement program for services provided to a person described in paragraph (2) of subdivision (a) of Section 11403.2 shall be paid contingent on both of the following:

(i) The availability of moneys in the Transitional Housing for Foster Youth Fund established in Section 11403.4 to pay the state share of cost of the payment.

(ii) Election by the county from which the person has emancipated to participate in the costs of the payment, pursuant to subdivision (g).

(2) The department may limit new participants into transitional housing placement programs if costs for this subdivision are projected to exceed moneys available in the Transitional Housing for Foster Youth Fund established in Section 11403.4.

(d) (1) As used in this section, ‘‘base rate’’ means the rate a transitional housing placement program was approved to receive on June 30, 2001. If a program commences operation after this date, the base rate shall be the rate the program would have received if it had been operational on June 30, 2001.

(2) Notwithstanding subdivision (a), no transitional housing placement program with an approved rate on July 1, 2001, shall receive a lower rate than its base rate.

(e) Any reductions in payments to a transitional housing placement program pursuant to the implementation of paragraph (2) of subdivision (b) or subparagraph (B) of paragraph (1) of subdivision (c) shall not preclude the program from acquiring from other sources, additional funding necessary to provide program services.

(f) The department shall develop, implement, and maintain a ratesetting system schedule for transitional housing placement programs pursuant to subdivisions (a) to (d), inclusive.

(g) Funding for the rates payable under this section shall be subject to the sharing ratios specified in subdivision (c) of Section 15200.

CHAPTER 640

An act to amend Sections 22500 and 40215 of, and to add Sections 22511, 22511.1, 40226, and 42001.6 to, the Vehicle Code, relating to parking violations.

[Approved by Governor September 17, 2002. Filed with Secretary of State September 18, 2002.]

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

SECTION 1. Section 22500 of the Vehicle Code is amended to read:

22500. No person shall stop, park, or leave standing any vehicle whether attended or unattended, except when necessary to avoid conflict with other traffic or in compliance with the directions of a peace officer or official traffic control device, in any of the following places:

(a) Within an intersection, except adjacent to curbs as may be permitted by local ordinance.

(b) On a crosswalk, except that a bus engaged as a common carrier or a taxicab may stop in an unmarked crosswalk to load or unload passengers when authorized by the legislative body of any city pursuant to an ordinance.

(c) Between a safety zone and the adjacent right-hand curb or within the area between the zone and the curb as may be indicated by a sign or red paint on the curb, which sign or paint was erected or placed by local authorities pursuant to an ordinance.

(d) Within 15 feet of the driveway entrance to any fire station. This subdivision does not apply to any vehicle owned or operated by a fire department and clearly marked as a fire department vehicle.

(e) In front of a public or private driveway, except that a bus engaged as a common carrier, schoolbus, or a taxicab may stop to load or unload passengers when authorized by local authorities pursuant to an ordinance.

In unincorporated territory, where the entrance of a private road or driveway is not delineated by an opening in a curb or by other curb construction, so much of the surface of the ground as is paved, surfaced, or otherwise plainly marked by vehicle use as a private road or driveway entrance, shall constitute a driveway.

(f) On any portion of a sidewalk, or with the body of the vehicle extending over any portion of a sidewalk, except electric carts when authorized by local ordinance, as specified in Section 21114.5. Lights, mirrors, or devices that are required to be mounted upon a vehicle under this code may extend from the body of the vehicle over the sidewalk to a distance of not more than 10 inches.

(g) Alongside or opposite any street or highway excavation or obstruction when stopping, standing, or parking would obstruct traffic.

(h) On the roadway side of any vehicle stopped, parked, or standing at the curb or edge of a highway, except for a schoolbus when stopped to load or unload pupils in a business or residence district where the speed limit is 25 miles per hour or less.

(i) Except as provided under Section 22500.5, alongside curb space authorized for the loading and unloading of passengers of a bus engaged as a common carrier in local transportation when indicated by a sign or red paint on the curb erected or painted by local authorities pursuant to an ordinance.

(j) In a tube or tunnel, except vehicles of the authorities in charge, being used in the repair, maintenance, or inspection of the facility.

(k) Upon a bridge, except vehicles of the authorities in charge, being used in the repair, maintenance, or inspection of the facility, and except that buses engaged as a common carrier in local transportation may stop to load or unload passengers upon a bridge where sidewalks are provided, when authorized by local authorities pursuant to an ordinance, and except that local authorities pursuant to an ordinance or the Department of Transportation pursuant to an order, within their respective jurisdictions, may permit parking on bridges having sidewalks and shoulders of sufficient width to permit parking without interfering with the normal movement of traffic on the roadway. Local authorities, by ordinance or resolution, may permit parking on these bridges on state highways in their respective jurisdictions if the ordinance or resolution is first approved in writing by the Department of Transportation. Parking shall not be permitted unless there are signs in place, as may be necessary, to indicate the provisions of local ordinances or the order of the Department of Transportation.

(*l*) In front of or upon that portion of a curb that has been cut down, lowered, or constructed to provide wheelchair accessibility to the sidewalk.

SEC. 2. Section 22511 is added to the Vehicle Code, to read:

22511. (a) Any local authority, by ordinance or resolution, and any person in lawful possession of an offstreet parking facility may designate stalls or spaces in an offstreet parking facility owned or operated by that local authority or person for the exclusive purpose of fueling and parking a vehicle that displays a valid zero-emission vehicle (ZEV) decal identification posted on the driver's side rear window or bumper of the vehicle or, notwithstanding any other provision of law, if the vehicle does not have a rear window or bumper, on the driver's side of the windshield issued by the Department of Motor Vehicles pursuant to this section. The designation shall be made by posting a sign in compliance with subdivision (d) or (e).

(b) If posted in accordance with subdivision (d) or (e), the owner or person in lawful possession of a privately owned or operated offstreet parking facility, after notifying the police or sheriff's department, may cause the removal of a vehicle from a stall or space designated pursuant to subdivision (a) in the facility to the nearest public garage if a valid ZEV decal identification issued pursuant to this section is not displayed on the vehicle.

(c) If posted in accordance with subdivision (d), the local authority owning or operating an offstreet parking facility, after notifying the police or sheriff's department, may cause the removal of a vehicle from a stall or space designated pursuant to subdivision (a) in the facility to the nearest garage, as defined in Section 340, that is owned, leased, or approved for use by a public agency if a valid ZEV decal identification issued pursuant to this section is not displayed on the vehicle.

(d) The posting required for an offstreet parking facility owned or operated either privately or by a local authority shall consist of a sign not less than 17 by 22 inches in size with lettering not less than one inch in height which clearly and conspicuously states the following: "Unauthorized vehicles not displaying valid zero-emission vehicle decal identifications will be towed away at owner's expense. Towed vehicles may be reclaimed at

_____ or by telephoning
(Address)
_____."
(Telephone number of local law enforcement agency)

The sign shall be posted in either of the following locations:

(1) Immediately adjacent to, and visible from, the stall or space.

(2) In a conspicuous place at each entrance to the offstreet parking facility.

(e) If the parking facility is privately owned and public parking is prohibited by the posting of a sign meeting the requirements of paragraph (1) of subdivision (a) of Section 22658, the requirements of subdivision (b) may be met by the posting of a sign immediately adjacent to, and visible from, each stall or space indicating that a vehicle not meeting the requirements of subdivision (a) will be removed at the owner's expense and containing the telephone number of the local traffic law enforcement agency.

(f) (1) For purposes of implementing this section, the Department of Motor Vehicles shall make available for issuance, beginning July 1, 2003, for a fee determined by the Department of Motor Vehicles to be sufficient to reimburse it for actual costs incurred pursuant to this section, distinctive decals for zero-emission vehicles.

(2) The department shall design the decal, which shall be two inches by two inches, and be placed on the driver's side rear window or bumper of the vehicle, or, notwithstanding any other provision of law, if the vehicle does not have a rear window or bumper, on the driver's side of the windshield. Each decal shall display a unique number. The decal may be provided to car dealers who sell electric vehicles for distribution to ZEV purchasers.

(g) For purposes of this section, ''zero-emission vehicle'' means any car, truck, or any other vehicle that produces no tailpipe or evaporative emissions.

(h) Nothing in this section is intended to interfere with existing law governing the ability of local authorities to adopt ordinances related to parking programs within their jurisdiction, such as programs that provide free parking in metered areas or municipal garages for electric vehicles.

SEC. 3. Section 22511.1 is added to the Vehicle Code, to read:

22511.1. (a) A person may not park or leave standing any vehicle in a stall or space designated pursuant to Section 22511 unless a valid zero-emission vehicle decal identification issued pursuant to Section 22511 is displayed on that vehicle.

(b) A person may not obstruct, block, or otherwise bar access to parking stalls or spaces described in subdivision (a) except as provided in subdivision (a).

(c) A person shall not display a decal issued pursuant to Section 22511 on a vehicle that does not use electricity as the motive power.

SEC. 4. Section 40215 of the Vehicle Code is amended to read:

40215. (a) For a period of 21 calendar days from the issuance of a notice of parking violation or 14 calendar days from the mailing of a notice of delinquent parking violation, a person may request an initial

review of the notice by the issuing agency. The request may be made by telephone, in writing, or in person. There shall be no charge for this review. If, following the initial review, the issuing agency is satisfied that the violation did not occur, that the registered owner was not responsible for the violation, or that extenuating circumstances make dismissal of the citation appropriate in the interest of justice, the issuing agency shall cancel the notice of parking violation or notice of delinquent parking violation. The issuing agency shall advise the processing agency, if any, of the cancellation. The issuing agency or the processing agency shall mail the results of the initial review to the person contesting the notice.

(b) If the person is dissatisfied with the results of the initial review, the person may request an administrative hearing of the violation no later than 21 calendar days following the mailing of the results of the issuing agency's initial review. The request may be made by telephone, in writing, or in person. The person requesting an administrative hearing shall deposit the amount of the parking penalty with the processing agency. The issuing agency shall provide a written procedure to allow a person to request an administrative hearing without payment of the parking penalty upon satisfactory proof of an inability to pay the amount due. Notice of this procedure shall be provided to all persons requesting an administrative hearing. After January 1, 1996, an administrative hearing shall be held within 90 calendar days following the receipt of a request for an administrative hearing, excluding time tolled pursuant to this article. The person requesting the hearing may request one continuance, not to exceed 21 calendar days.

(c) The administrative hearing process shall include the following:

(1) The person requesting a hearing shall have the choice of a hearing by mail or in person. An in-person hearing shall be conducted within the jurisdiction of the issuing agency. If an issuing agency contracts with an administrative provider, hearings shall be held within the jurisdiction of the issuing agency or no more than 21 miles outside the county.

(2) If the person requesting a hearing is a minor, that person shall be permitted to appear at a hearing or admit responsibility for the parking violation without the necessity of the appointment of a guardian. The processing agency may proceed against the minor in the same manner as against an adult.

(3) The administrative hearing shall be conducted in accordance with written procedures established by the issuing agency and approved by the governing body or chief executive officer of the issuing agency. The hearing shall provide an independent, objective, fair, and impartial review of contested parking violations.

(4) (A) The issuing agency's governing body or chief executive officer shall appoint or contract with qualified examiners or administrative hearing providers that employ qualified examiners to

conduct the administrative hearings. Examiners shall demonstrate those qualifications, training, and objectivity necessary to conduct a fair and impartial review. An examiner shall not be employed, managed, or controlled by a person whose primary duties are parking enforcement, parking citation, processing, collection, or issuance. The examiner shall be separate and independent from the citation collection or processing function. An examiner's continued employment, performance evaluation, compensation, and benefits shall not, directly or indirectly, be linked to the amount of fines collected by the examiner.

(B) Examiners shall have a minimum of 20 hours of training. The examiner is responsible for the costs of the training. The issuing agency may reimburse the examiner for those costs. Training may be provided through (i) an accredited college or university, (ii) a program conducted by the Commission on Peace Officer Standards and Training, (iii) American Arbitration Association or a similar established organization, or (iv) through any program approved by the governing board of the issuing agency, including a program developed and provided by, or for, the agency. Training programs may include topics relevant to the administrative hearing, including, but not limited to, applicable laws and regulations, parking enforcement procedures, due process, evaluation of evidence, hearing procedures, and effective oral and written communication. Upon the approval of the governing board of the issuing agency, up to 12 hours of relevant experience may be substituted for up to 12 hours of training. In addition, up to eight hours of the training requirements described in this subparagraph may be credited to an individual, at the discretion of the governing board of the issuing agency, based upon training programs or courses described in (i) to (iv), inclusive, that the individual attended within the last five years.

(5) The officer or person who issues a notice of parking violation shall not be required to participate in an administrative hearing. The issuing agency shall not be required to produce any evidence other than the notice of parking violation or copy thereof and information received from the Department of Motor Vehicles identifying the registered owner of the vehicle. The documentation in proper form shall be prima facie evidence of the violation.

(6) The examiner's decision following the administrative hearing may be personally delivered to the person by the examiner or sent by first-class mail.

(7) Following a determination by the examiner that a person has committed the violation, the examiner may, consistent with the written guidelines established by the issuing agency, allow payment of the parking penalty in installments, or an issuing agency may allow for deferred payment or allow for payments in installments, if the person provides evidence satisfactory to the examiner or the issuing agency, as

the case may be, of an inability to pay the parking penalty in full. If authorized by the governing board of the issuing agency, the examiner may permit the performance of community service in lieu of payment of a parking penalty.

(d) The provisions of this section relating to the administrative appeal process do not apply to an issuing agency that is a law enforcement agency if the issuing agency does not also act as the processing agency.

SEC. 5. Section 40226 is added to the Vehicle Code, to read:

40226. An issuing agency may, in lieu of collecting a fine for a citation for failure to display a disabled placard, charge an administrative fee not to exceed twenty-five dollars ($25) to process cancellation of a citation in any case where the individual who received the citation can show proof that he or she had been issued a valid placard at the time the citation was received.

SEC. 6. Section 42001.6 is added to the Vehicle Code, to read:

42001.6. Every person convicted of an infraction for a violation of Section 22511.1 is punishable by a fine of one hundred dollars ($100).

No part of any fine imposed shall be suspended, except the court may suspend that portion of the fine above twenty-five dollars ($25) for a violation of Section 22511.1 if the person convicted possessed at the time of the offense, but failed to display, a valid zero-emission vehicle decal identification issued pursuant to subdivisions (a) and (b) of Section 5205.5. The fine may be paid in installments if the court determines that the defendant is unable to pay the entire amount in one payment.

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.

CHAPTER 641

An act to amend Sections 14500.5, 14501, 14502, 14503, 14503.5, 14509, 14509.1, 14510, and 14512 of the Welfare and Institutions Code, relating to family planning.

[Approved by Governor September 17, 2002. Filed with Secretary of State September 18, 2002.]

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

SECTION 1. Section 14500.5 of the Welfare and Institutions Code is amended to read:

14500.5. (a) It is the intent of the Legislature that family planning includes, but is not limited to, an effective means to improve reproductive health by disease prevention and treatment, to reduce the incidence of unintended pregnancies, and to reduce the demand for abortions. It is the intent of the Legislature that no family planning shall be expended other than for the services enumerated in this chapter. It is also the intent of the Legislature that no funds received pursuant to this chapter be used for abortions or services ancillary to abortions.

(b) For purposes of this chapter, the following definitions shall apply:

(1) ''Family planning'' means the process of establishing objectives for the number and spacing of children, and selecting the means by which those objectives may be achieved. These means include a broad range of acceptable and effective methods and services to limit or enhance fertility, including contraceptive methods, natural family planning, abstinence methods, and the management of infertility. Family planning services include preconceptional counseling, maternal and fetal health counseling, and general reproductive health care, including diagnosis and treatment of infections and conditions, including cancer, that threaten reproductive capability, and other services as described in Section 14503, except for abortions and services ancillary to abortions as prohibited in Section 14509. Family planning does not include abortion, pregnancy testing solely for the purposes of referral for abortion or services ancillary to abortions, or pregnancy care which is not incident to the diagnosis of a pregnancy, except as otherwise provided for in this chapter.

(2) ''Abortion as a method of family planning'' means the deliberate choice of abortion over other methods to limit the number, gender, and spacing of children, including, but not limited to, contraception, abstinence, and natural family planning methods.

(3) ''Department'' means the State Department of Health Services.

(4) ''Director'' means the Director of Health Services.

(5) ''Grantee'' means an agency, institution, or organization approved by the department to provide family planning services pursuant to this chapter.

SEC. 2. Section 14501 of the Welfare and Institutions Code is amended to read:

14501. The Office of Family Planning has all of the following functions, powers, and duties:

(a) To make available to citizens of the state of childbearing age comprehensive medical knowledge, assistance, and services relating to the planning of families.

(b) To consult with state and local agencies that provide or administer family planning services and to participate in the formulation of regulations and other policy decisions governing the provision or administration of family planning services pursuant to state law or regulation.

(c) To establish goals and priorities for all state agencies providing or administering family planning services.

(d) To coordinate all family planning services and related programs conducted or administered by state agencies with the federal government so as to maximize the availability of these services by utilizing all available federal funds.

(e) To conduct a survey of all of the existing facilities within the state having to do with family planning and infertility and the rendering of advice and assistance on birth control techniques and information.

(f) To evaluate all existing programs and to establish in each county a viable program for the dispensation of family planning, infertility, and birth control information and techniques.

(g) To develop and administer scientific investigation into problems of infertility and existing and new family planning and birth control techniques.

(h) To survey, evaluate, and establish programs of professional education and training for physicians, nurses, medical and nursing students, and other health care practitioners in rendering advice on family planning, infertility, and birth control techniques and information.

(i) To enter into agreements with, and award grants to, individuals, colleges, universities, associations, corporations, municipalities, and other units of government as may be deemed necessary and advisable to carry out the general intent and purposes of this article, which may provide for payment by the state within the limit of funds available for material, equipment, and services.

(j) To submit a biennial report to the Legislature including, but not limited to, the subjects specified above.

(k) To annually update and analyze family planning data. The data shall include, but not be limited to, the following:

(1) Client number.

(2) Ethnicity.

(3) Family size.

(4) Method.

(5) Family income.

(6) Service type.

(7) Birthdate.

(8) Total billing amount.

(9) Pay source.

(10) Date of visit.

(11) Site number.

(12) County of residence.

(13) Updated estimates of women in need of subsidized family planning services from the federal government, when available, for all Office of Family Planning clinical service grantees by county of service, as well as statewide totals.

SEC. 3. Section 14502 of the Welfare and Institutions Code is amended to read:

14502. The Office of Family Planning may, to the extent funds are available, and not more frequently than once each year, advance up to 25 percent of the yearly allocation to an individual or entity to which it has awarded a grant, pursuant to subdivision (i) of Section 14501, to provide material, equipment, and services.

SEC. 4. Section 14503 of the Welfare and Institutions Code is amended to read:

14503. (a) Family planning services shall be offered to all former, current, or potential recipients of childbearing age (as provided by Public Law 92-603) and provided to all eligible individuals who voluntarily request the services. The services shall be offered and provided without regard to marital status, age, or parenthood. Notwithstanding any other provisions of law, the furnishing of these family planning services shall not require the consent of anyone other than the person who is to receive them. Within the meaning of this section, the term ''former, current, or potential recipient'' means all persons eligible for Medi-Cal benefits under Chapter 7 (commencing with Section 14000) and all persons eligible for public social services for which federal reimbursement is available under the federal Social Security Act (42 U.S.C. Sec. 301 et seq.), except that the term ''potential recipients'' includes all persons in a family where current social, economic, and health conditions of the family indicate that the family would likely become a recipient of financial assistance within the next five years.

(b) Family planning services shall include, but not be limited to:

(1) Medical treatment and procedures defined as family planning services under the published Medi-Cal scope of benefits.

(2) Medical contraceptive services such as diagnosis, treatment, supplies, and followup.

(3) Informational and educational services.

(4) Facilitating services such as transportation and child care services needed to attend clinic or other appointments.

(5) Screening for chlamydia.

(c) To the extent the services under this section are not available under the Medi-Cal program, they shall be provided by a grantee pursuant to a grant awarded by the Office of Family Planning. These grants shall include to the maximum extent possible, cooperative funding and other financial arrangements that permit maximum use of available federal funds. All grants awarded by the Office of Family Planning shall be exempt from Division 2 (commencing with Section 1100) of the Public Contract Code. Information and referral services only shall be available to all other families and children.

(d) As the single state agency responsible for the state plan under Title XX of the federal Social Security Act (42 U.S.C. Sec. 1397 et seq.), the State Department of Social Services may provide family planning services pursuant to a purchase of services agreement with the department from funds appropriated for those services. The agreement shall authorize the Office of Family Planning to implement a sliding fee schedule for family planning services provided to clients pursuant to Title XX of the federal Social Security Act in accordance with Section 14501.5.

SEC. 5. Section 14503.5 of the Welfare and Institutions Code is amended to read:

14503.5. (a) As used in this section:

(1) ''AIDS'' means acquired immune deficiency syndrome.

(2) ''Human immunodeficiency virus'' or ''HIV'' means the etiologic virus of AIDS.

(3) ''HIV test'' means ''HIV test'' as defined in Section 120775 of the Health and Safety Code.

(b) The purpose of this article is to ensure that state-funded family planning programs offer AIDS information and referral services to their client population.

(c) It is the intent of the Legislature that family planning clients learn how to prevent the transmission of HIV, and that they take steps to prevent its transmission.

(d) For purposes of this section, ''clients'' shall include, but shall not be limited to, all of the following:

(1) New clients to a family planning program.

(2) Clients making annual visits to a family planning program.

(3) Clients seeking pregnancy testing or family planning services.

(4) Clients seeking diagnosis and treatment for sexually transmitted diseases.

(e) Any family planning program that has a grant from the Office of Family Planning to provide family planning services shall do all of the following:

(1) Provide brochures or other written materials to family planning clients that describe the high-risk conditions and behaviors for becoming infected with HIV and ways to prevent the transmission of HIV infection. To the maximum extent possible, the brochure or other written materials provided by any family planning program shall be culturally relevant and appropriate to the client populations served by the programs.

(2) Provide, as needed, family planning clients with information about and referrals to local confidential or anonymous testing and counseling sites, AIDS education programs, and other supportive services.

(f) Brochures and information required pursuant to subdivision (e) may be incorporated into existing information and health education programs provided by a family planning program.

(g) The department shall make every effort to obtain brochures and other written materials from existing resources. Local family planning programs are encouraged to supplement the brochures with other available resources, to the extent that they deem necessary and appropriate.

SEC. 6. Section 14509 of the Welfare and Institutions Code is amended to read:

14509. (a) The department shall award grants to persons to provide family planning services pursuant to this chapter.

(b) No funds received pursuant to grants awarded by the department pursuant to this chapter shall be used to perform abortions.

(c) No funds received pursuant to grants awarded by the department pursuant to this chapter shall be used to fund services ancillary to abortions, including, but not limited to, postabortion examinations. Nothing in this chapter shall be construed to limit the provision of pregnancy testing and counseling as required by the Office of Family Planning on the effective date of this section.

(d) Any person awarded a grant by the department pursuant to this chapter shall agree that during the term of the grant it will not be a group, clinic, or organization that, with funds provided pursuant to this chapter, advertises, advocates, or promotes abortion as a method of family planning, or that receives any fee or other consideration as payment for referrals for abortion services. Any person awarded a grant by the department pursuant to this chapter shall agree to the termination of the grant and to return all unexpended funds to the department that have been received from the department pursuant to that grant if the department finds that the grantee has violated this section.

SEC. 7. Section 14509.1 of the Welfare and Institutions Code is amended to read:

14509.1. (a) A grantee shall maintain records and accounts, including property, personnel, and financial records, in a form, format, and content that ensures a proper accounting for all family planning funds received pursuant to this chapter. These records shall be made available for examination during normal business hours, and shall be retained at a location determined by the director for four years after the expiration of the grant, with the exception of patient medical records, which shall be retained for at least seven years. Records for nonexpendable personal property shall be retained for three years after final disposition.

(b) A grantee shall arrange for an independent audit of the family planning program. The audit shall be done in accordance with department directives and with generally accepted accounting principles for nonprofit corporations and governmental entities.

SEC. 8. Section 14510 of the Welfare and Institutions Code is amended to read:

14510. (a) The department shall include provisions in grants with all grantees that explicitly describe the requirements and restrictions of this chapter.

(b) The department shall establish a copayment system for services provided pursuant to this chapter. No person whose documented family income is at or below 100 percent of the federal poverty level shall be subject to copayments.

(c) The department shall require a grantee to obtain the signature of clients receiving services pursuant to this chapter on a document that, under penalty of perjury, acknowledges that the client meets and complies with the income eligibility requirements of this chapter.

SEC. 9. Section 14512 of the Welfare and Institutions Code is amended to read:

14512. It is the intent of the Legislature that all grants for the provision of direct services entered into by the Office of Family Planning under this chapter shall be competitively awarded.

CHAPTER 642

An act to amend Section 5777 of, and to add Section 5405 to, the Welfare and Institutions Code, relating to mental health.

[Approved by Governor September 17, 2002. Filed with Secretary of State September 18, 2002.]

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

SECTION 1. Section 5405 is added to the Welfare and Institutions Code, to read:

5405. (a) This section shall apply to each facility licensed by the State Department of Mental Health, or its delegated agent, on or after January 1, 2003. For purposes of this section, ''facility'' includes psychiatric health facilities, as defined in Section 1250.2 of the Health and Safety Code, licensed pursuant to Chapter 9 (commencing with Section 77001) of Division 5 of Title 22 of the California Code of Regulations and mental health rehabilitation centers licensed pursuant to Chapter 3.5 (commencing with Section 781.00) of Division 1 of Title 9 of the California Code of Regulations.

(b) (1) (A) Prior to the initial licensure or first renewal of a license on or after January 1, 2003, of any person to operate or manage a facility specified in subdivision (a), the department shall submit fingerprint images and related information pertaining to the applicant or licensee to the Department of Justice for purposes of a criminal record check, as specified in paragraph (2), at the expense of the applicant or licensee. The Department of Justice shall provide the results of the criminal record check to the department. The department shall determine whether the applicant or licensee has ever been convicted of a crime specified in subdivision (c). The department shall submit fingerprint images and related information each time the position of administrator, manager, program director, or fiscal officer of a facility is filled and prior to actual employment for initial licensure or an individual who is initially hired on or after January 1, 2003. For purposes of this subdivision, ''applicant'' and ''licensee'' includes the administrator, manager, program director, or fiscal officer of a facility.

(B) Commencing January 1, 2003, upon the employment of any direct care staff the department shall submit fingerprint images and related information pertaining to the direct care staff person to the Department of Justice for purposes of a criminal record check, as specified in paragraph (2), at the expense of the direct care staff person or licensee. The Department of Justice shall provide the results of the criminal record check to the department. The department shall determine whether the direct care staff person has ever been convicted of a crime specified in subdivision (c). The department shall notify the licensee of these results.

(C) Commencing January 1, 2003, any contract for services provided directly to patients or residents shall contain provisions to ensure that the direct services contractor submits to the department fingerprint images and related information pertaining to the direct services contractor for submission to the Department of Justice for purposes of a criminal

record check, as specified in paragraph (2), at the expense of the direct services contractor or licensee. The Department of Justice shall provide the results of the criminal record check to the department. The department shall determine whether the direct services contractor has ever been convicted of a crime specified in subdivision (c). The department shall notify the licensee of these results.

(2) If the applicant, licensee, direct care staff person, or direct services contractor specified in paragraph (1) has resided in California for at least the previous seven years, the department shall only require the submission of one set of fingerprint images and related information. The Department of Justice shall charge a fee sufficient to cover the reasonable cost of processing the fingerprint submission. Fingerprints submitted pursuant to this subdivision include fingerprints taken by the use of live scan technology. When requested, the Department of Justice shall forward one set of fingerprint images to the Federal Bureau of Investigation for the purpose of obtaining any record of previous convictions or arrests pending adjudication of the applicant, licensee, direct care staff person, or direct services contractor. The results of a criminal record check provided by the Department of Justice shall contain every conviction rendered against an applicant, licensee, direct care staff person, or direct services contractor, and every offense for which the applicant, licensee, direct care staff person, or direct services contractor is presently awaiting trial, whether the person is incarcerated or has been released on bail or on his or her own recognizance pending trial. The department shall request subsequent arrest notification from the Department of Justice pursuant to Section 11105.2 of the Penal Code.

(c) (1) The department shall deny any application for any license, suspend or revoke any existing license, and disapprove or revoke any employment or contract for direct services, if the applicant, licensee, employee, or direct services contractor has been convicted of or incarcerated for a felony defined in subdivision (c) of Section 667.5 of, or subdivision (c) of Section 1192.7 of, the Penal Code, within the preceding 10 years.

(2) The application for licensure or renewal of any license shall be denied, and any employment or contract to provide direct services shall be disapproved or revoked, if the criminal record of the person includes a conviction in another jurisdiction for an offense that, if committed or attempted in this state, would have been punishable as one or more of the offenses referred to in paragraph (1).

(d) (1) The department may approve an application for, or renewal of, a license, or continue any employment or contract for direct services, if the person has been convicted of a misdemeanor offense that is not a crime upon the person of another, the nature of which has no bearing upon the duties for which the person will perform as a licensee, direct

care staff person, or direct services contractor. In determining whether to approve the application, employment, or contract for direct services, the department shall take into consideration the factors enumerated in paragraph (2).

(2) Notwithstanding subdivision (c), if the criminal record of a person indicates any conviction other than a minor traffic violation the department may deny the application for license or renewal, and may disapprove or revoke any employment or contract for direct services. In determining whether or not to deny the application for licensure or renewal, or to disapprove or revoke any employment or contract for direct services, the department shall take into consideration the following factors:

(A) The nature and seriousness of the offense under consideration and its relationship to the person's employment, duties, and responsibilities.

(B) Activities since conviction, including employment or participation in therapy or education, that would indicate changed behavior.

(C) The time that has elapsed since the commission of the conduct or offense and the number of offenses.

(D) The extent to which the person has complied with any terms of parole, probation, restitution, or any other sanction lawfully imposed against the person.

(E) Any rehabilitation evidence, including character references, submitted by the person.

(F) Employment history and current employer recommendations.

(G) Circumstances surrounding the commission of the offense that would demonstrate the unlikelihood of repetition.

(H) The granting by the Governor of a full and unconditional pardon.

(I) A certificate of rehabilitation from a superior court.

(e) Denial, suspension, or revocation of a license, or disapproval or revocation of any employment or contract for direct services specified in subdivision (c) and paragraph (2) of subdivision (d) are not subject to appeal, except as provided in subdivision (f).

(f) After a review of the record, the director may grant an exemption from denial, suspension, or revocation of any license, or disapproval of any employment or contract for direct services, if the crime for which the person was convicted was a property crime that did not involve injury to any person and the director has substantial and convincing evidence to support a reasonable belief that the person is of such good character as to justify issuance or renewal of the license or approval of the employment or contract.

(g) A plea or verdict of guilty, or a conviction following a plea of nolo contendere shall be deemed a conviction within the meaning of this section. The department may deny any application, or deny, suspend, or

revoke a license, or disapprove or revoke any employment or contract for direct services based on a conviction specified in subdivision (c) when the judgment of conviction is entered or when an order granting probation is made suspending the imposition of sentence.

(h) (1) For purposes of this section, ''direct care staff'' means any person who is an employee, contractor, or volunteer who has contact with other patients or residents in the provision of services. Administrative and licensed personnel shall be considered direct care staff when directly providing program services to participants.

(2) An additional background check shall not be required pursuant to this section if the direct care staff or licensee has received a prior criminal history background check while working in a mental health rehabilitation center or psychiatric health facility licensed by the department, and provided the department has maintained continuous subsequent arrest notification on the individual from the Department of Justice since the prior criminal background check was initiated.

(3) When an application is denied on the basis of a conviction pursuant to this section, the department shall provide the individual whose application was denied with notice, in writing, of the specific grounds for the proposed denial.

SEC. 2. Section 5777 of the Welfare and Institutions Code is amended to read:

5777. (a) (1) Except as otherwise specified in this part, a contract entered into pursuant to this part shall include a provision that the mental health plan contractor shall bear the financial risk for the cost of providing medically necessary mental health services to Medi-Cal beneficiaries irrespective of whether the cost of those services exceeds the payment set forth in the contract. If the expenditures for services do not exceed the payment set forth in the contract, the mental health plan contractor shall report the unexpended amount to the department, but shall not be required to return the excess to the department.

(2) If the mental health plan is not the county's, the mental health plan may not transfer the obligation for any mental health services to Medi-Cal beneficiaries to the county. The mental health plan may purchase services from the county. The mental health plan shall establish mutually agreed-upon protocols with the county that clearly establish conditions under which beneficiaries may obtain non-Medi-Cal reimbursable services from the county. Additionally, the plan shall establish mutually agreed-upon protocols with the county for the conditions of transfer of beneficiaries who have lost Medi-Cal eligibility to the county for care under Part 2 (commencing with Section 5600), Part 3 (commencing with Section 5800), and Part 4 (commencing with Section 5850).

(3) The mental health plan shall be financially responsible for ensuring access and a minimum required scope of benefits, consistent with state and federal requirements, to the services to the Medi-Cal beneficiaries of that county regardless of where the beneficiary resides. The department shall require that the definition of medical necessity used, and the minimum scope of benefits offered, by each mental health contractor be the same, except to the extent that any variations receive prior federal approval and are consistent with state and federal statutes and regulations.

(b) Any contract entered into pursuant to this part may be renewed if the plan continues to meet the requirements of this part, regulations promulgated pursuant thereto, and the terms and conditions of the contract. Failure to meet these requirements shall be cause for nonrenewal of the contract. The department may base the decision to renew on timely completion of a mutually agreed upon plan of correction of any deficiencies, submissions of required information in a timely manner, or other conditions of the contract. At the discretion of the department, each contract may be renewed for a period not to exceed three years.

(c) (1) The obligations of the mental health plan shall be changed only by contract or contract amendment.

(2) A 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 when required by a change in the interpretation or implementation of any law or regulation. To the extent permitted by federal law and except as provided under subdivision (r) of Section 5778, if any change in obligations occurs that affects the cost to the mental health plan of performing under the terms of its contract, the department may reopen contracts to negotiate the state General Fund allocation to the mental health plan under Section 5778, if the mental health plan is reimbursed through a fee-for-service payment system, or the capitation rate to the mental health plan under Section 5779, if the mental health plan is reimbursed through a capitated rate payment system. During the time period required to redetermine the allocation or rate, payment to the mental health plan of the allocation or rate in effect at the time the 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 the change is effective.

(3) To the extent permitted by federal law, either the department or the mental health plan may request that contract negotiations be reopened during the course of a contract due to substantial changes in the cost of covered benefits that result from an unanticipated event.

(d) The department shall immediately terminate a contract when the director finds that there is an immediate threat to the health and safety

of Medi-Cal beneficiaries. Termination of the contract for other reasons shall be subject to reasonable notice of the department's intent to take that action and notification of affected beneficiaries. The plan may request a public hearing by the Office of Administrative Hearings.

(e) A plan may terminate its contract in accordance with the provisions in the contract. The plan shall provide written notice to the department at least 180 days prior to the termination or nonrenewal of the contract.

(f) Upon the request of the Director of Mental Health, the Director of the Department of Managed Health Care may exempt a mental health plan contractor or a capitated rate contract from the Knox-Keene Health Care Service Plan Act of 1975 (Chapter 2.2 (commencing with Section 1340) of Division 2 of the Health and Safety Code). These exemptions may be subject to conditions the director deems appropriate. Nothing in this part shall be construed to impair or diminish the authority of the Director of the Department of Managed Health Care under the Knox-Keene Health Care Service Plan Act of 1975, nor shall anything in this part be construed to reduce or otherwise limit the obligation of a mental health plan contractor licensed as a health care service plan to comply with the requirements of the Knox-Keene Health Care Service Plan Act of 1975, and the rules of the Director of the Department of Managed Health Care promulgated thereunder. The Director of Mental Health, in consultation with the Director of the Department of Managed Health Care, shall analyze the appropriateness of licensure or application of applicable standards of the Knox-Keene Health Care Service Plan Act of 1975.

(g) The department, pursuant to an agreement with the State Department of Health Services, shall provide oversight to the mental health plans to ensure quality, access, and cost efficiency. At a minimum, the department shall, through a method independent of any agency of the mental health plan contractor, monitor the level and quality of services provided, expenditures pursuant to the contract, and conformity with federal and state law.

(h) County employees implementing or administering a mental health plan act in a discretionary capacity when they determine whether or not to admit a person for care or to provide any level of care pursuant to this part.

(i) If a county chooses to discontinue operations as the local mental health plan, the new plan shall give reasonable consideration to affiliation with nonprofit community mental health agencies that were under contract with the county and that meet the mental health plan's quality and cost efficiency standards.

(j) Nothing in this part shall be construed to modify, alter, or increase the obligations of counties as otherwise limited and defined in Chapter

3 (commencing with Section 5700) of Part 2. The county's maximum obligation for services to persons not eligible for Medi-Cal shall be no more than the amount of funds remaining in the mental health subaccount pursuant to Sections 17600, 17601, 17604, 17605, 17606, and 17609 after fulfilling the Medi-Cal contract obligations.

CHAPTER 643

An act to amend Sections 48900 and 48900.4 of the Education Code, relating to pupils.

[Approved by Governor September 17, 2002. Filed with Secretary of State September 18, 2002.]

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

SECTION 1. 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 committed an act as defined pursuant to one or more of subdivisions (a) to (q), inclusive:

(a) (1) Caused, attempted to cause, or threatened to cause physical injury to another person.

(2) Willfully used force or violence upon the person of another, except in self-defense.

(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.

(n) Committed or attempted to commit a sexual assault as defined in Section 261, 266c, 286, 288, 288a, or 289 of the Penal Code or committed a sexual battery as defined in Section 243.4 of the Penal Code.

(o) Harassed, threatened, or intimidated a pupil who is a complaining witness or witness in a school disciplinary proceeding for the purpose of either preventing that pupil from being a witness or retaliating against that pupil for being a witness, or both.

(p) 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.

(q) A pupil who aids or abets, as defined in Section 31 of the Penal Code, the infliction or attempted infliction of physical injury to another

person may suffer suspension, but not expulsion, pursuant to the provisions of this section.

Except that a pupil who has been adjudged by a juvenile court to have committed, as an aider and abettor, a crime of physical violence in which the victim suffered great bodily injury or serious bodily injury shall be subject to discipline pursuant to subdivision (a).

(r) As used in this section, ''school property'' includes, but is not limited to, electronic files and databases.

(s) A superintendent or principal may use their discretion to provide alternatives to suspension or expulsion, including, but not limited to, counseling and an anger management program, for a pupil subject to discipline under this section.

(t) 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. 1.5. 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 committed an act as defined pursuant to one or more of subdivisions (a) to (p), inclusive:

(a) (1) Caused, attempted to cause, or threatened to cause physical injury to another person.

(2) Willfully used force or violence upon the person of another, except in self-defense.

(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.

(n) Committed or attempted to commit a sexual assault as defined in Section 261, 266c, 286, 288, 288a, or 289 of the Penal Code or committed a sexual battery as defined in Section 243.4 of the Penal Code.

(o) Harassed, threatened, or intimidated a pupil who is a complaining witness or witness in a school disciplinary proceeding for the purpose of either preventing that pupil from being a witness or retaliating against that pupil for being a witness, or both.

(p) Unlawfully offered, arranged to sell, negotiated to sell, or sold the prescription drug Soma.

(q) 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.

(r) A pupil who aids or abets, as defined in Section 31 of the Penal Code, the infliction or attempted infliction of physical injury to another person may suffer suspension, but not expulsion, pursuant to the

provisions of this section, except that a pupil who has been adjudged by a juvenile court to have committed, as an aider and abettor, a crime of physical violence in which the victim suffered great bodily injury or serious bodily injury shall be subject to discipline pursuant to subdivision (a).

(s) As used in this section, ''school property'' includes, but is not limited to, electronic files and databases.

(t) A superintendent or principal may use their discretion to provide alternatives to suspension or expulsion, including, but not limited to, counseling and an anger management program, for a pupil subject to discipline under this section.

(u) 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. 2. Section 48900.4 of the Education Code is amended to read:

48900.4. In addition to the grounds specified in Sections 48900 and 48900.2, a pupil enrolled in any of grades 4 to 12, inclusive, may be suspended from school or recommended for expulsion if the superintendent or the principal of the school in which the pupil is enrolled determines that the pupil has intentionally engaged in harassment, threats, or intimidation, directed against school district personnel or pupils, that is sufficiently severe or pervasive to have the actual and reasonably expected effect of materially disrupting classwork, creating substantial disorder, and invading the rights of either school personnel or pupils by creating an intimidating or hostile educational environment.

SEC. 3. Section 1.5 of this bill incorporates amendments to Section 48900 of the Education Code proposed by both this bill and AB 662. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2003, (2) each bill amends Section 48900 of the Education Code, and (3) this bill is enacted after AB 662, in which case Section 1 of this bill shall not become operative.

CHAPTER 644

An act to add and repeal Section 2920.5 of the Probate Code, relating to public guardians.

[Approved by Governor September 17, 2002. Filed with Secretary of State September 18, 2002.]

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

SECTION 1. Section 2920.5 is added to the Probate Code, to read:

2920.5. (a) (1) When a court or an agency designated to perform adult protective services refers a conservatee or potential conservatee to a person or entity listed in paragraph (2), that person or entity may submit to the Department of Justice the fingerprints of, and information regarding, a person who is being investigated as a potential conservator. A potential conservatee also may request that fingerprints and information regarding a person being investigated as a potential conservator be submitted to the Department of Justice, if the person being investigated has offered to provide assistance that may make a conservatorship unnecessary. The person or entity listed in paragraph (2) shall inform the potential conservatee of this right. If the potential conservatee requests this background check, the person or entity shall submit the necessary fingerprints and information to the Department of Justice. The Department of Justice shall provide the information described in subdivision (b). Fingerprints taken by the use of live-scan technology may be submitted.

(2) The following persons and entities are authorized to make submissions pursuant to subdivision (a):

(A) A public guardian providing conservatorship services pursuant to this part or Chapter 3 (commencing with Section 5350) of Part 2 of Division 5 of the Welfare and Institutions Code.

(B) An agency designated as a county conservatorship investigator pursuant to Section 5351 of the Welfare and Institutions Code.

(b) Upon a proper request pursuant to the provisions of subdivision (a), the Department of Justice shall provide information to the requesting person or agency regarding the existence and nature of the following:

(1) Every conviction rendered against the subject of the request for a violation or attempted violation of an offense specified in subdivision (a) of Section 15660 of the Welfare and Institutions Code. However, excepting those offenses for which registration is required pursuant to Section 290 of the Penal Code, the Department of Justice may only provide information on a conviction that occurred within 10 years of the date of the request, or on a conviction that occurred over 10 years after the date of the request, if the subject of the request was incarcerated within 10 years of the date of the request.

(2) Every arrest for a violation or attempted violation of an offense specified in subdivision (a) of Section 15660 of the Welfare and Institutions Code that the Department of Justice has established is still pending and for which the subject of the request is presently awaiting trial, whether the subject of the request is incarcerated, or has been released on bail or on his or her own recognizance pending trial.

(c) The Department of Justice may not retain fingerprints or related information submitted pursuant to this subdivision to provide subsequent arrest notification pursuant to Section 11105.2 of the Penal Code.

(d) The Department of Justice shall charge a fee sufficient to cover the cost of processing a request for information pursuant to this section. This fee shall be paid by the requesting agency.

(e) Notwithstanding subdivision (a), a private professional conservator who is in compliance with the requirements of Section 2342 in the county conducting the investigation may not be the subject of a background check pursuant to this section.

(f) The criminal records information received by a public guardian shall be kept confidential, except that it may be disclosed under seal to the court and to the attorney for the person for whom a conservatorship is being considered, when the appointment of a conservator as an alternative to the public guardian is being considered by the court. The person or entity described in paragraph (2) of subdivision (a) shall disclose the information provided by the Department of Justice to the subject of the background check. The attorney for the proposed conservatee shall keep any disclosed criminal records information confidential.

(g) The Legislative Analyst's office shall, as part of its analysis of the Budget Bill for the 2006–07 fiscal year, include a sampling of counties, to the extent that data is made available from the persons or entities listed in paragraph (2) of subdivision (a), on the annual number of requests for information that were brought pursuant to this section, and a recommendation as to whether this information helped the public guardian or other person or entity in assessing the competency and trustworthiness of a potential conservator.

(h) This section shall remain in effect only until January 1, 2007, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2007, deletes or extends that date.

CHAPTER 645

An act to add Article 1.3 (commencing with Section 7260) to Chapter 2 of Part 2 of Division 6 of the Fish and Game Code, relating to fish, and making an appropriation therefor.

[Approved by Governor September 17, 2002. Filed with Secretary of State September 18, 2002.]

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

SECTION 1. Article 1.3 (commencing with Section 7260) is added to Chapter 2 of Part 2 of Division 6 of the Fish and Game Code, to read:

Article 1.3. Native California Trout

7260. (a) The Legislature finds and declares that California has the greatest biodiversity of native trout species of any state in the nation. Trout can be found in more than 18,000 miles of California's cooler streams. California's trout are the principal sport fish in 3,581 cold-water lakes and reservoirs.

(b) The commission may designate "Heritage Trout Waters" to recognize the beauty, diversity, historical significance, and special values of California's native trout. The commission's designation shall meet both of the following criteria:

(1) Only waters supporting populations that best exemplify indigenous strains of native trout within their historic drainages may qualify for designation.

(2) Only waters providing anglers with an opportunity to catch native trout consistent with the conservation of the native trout may qualify for designation.

7261. The following are native California trout:

(a) Coastal cutthroat trout.
(b) Lahontan cutthroat trout.
(c) Paiute cutthroat trout.
(d) Coastal rainbow trout/steelhead.
(e) Eagle Lake rainbow trout.
(f) Kern River rainbow trout.
(g) Goose Lake redband trout.
(h) McCloud River redband trout.
(i) Warner Valley redband trout.
(j) Little Kern golden trout.
(k) California golden trout.

CHAPTER 646

An act to amend Section 8482.3 of the Education Code, relating to after school programs.

[Approved by Governor September 17, 2002. Filed with Secretary of State September 18, 2002.]

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

SECTION 1. (a) The Legislature finds and declares that educating pupils on the importance of healthy eating habits and exercise is essential for the health and well-being of children.

(b) It is the intent of the Legislature to combat childhood obesity by encouraging after school programs to include nutrition education as a component of their educational enrichment programs.

SEC. 2. Section 8482.3 of the Education Code is amended to read:

8482.3. (a) The Before and After School Learning and Safe Neighborhoods Partnerships Program shall be established to serve pupils in kindergarten and grades 1 to 9, inclusive, at participating elementary, middle, junior high, and charter schoolsites.

(b) A program may operate a before school component of a program, an after school component, or both the before and after school components of a program, on one or multiple schoolsites. If a program operates at multiple schoolsites, only one application shall be required for its establishment.

(c) Each component of a program established pursuant to this article shall consist of the following two components:

(1) An educational and literacy component whereby tutoring or homework assistance is provided in one or more of the following areas: language arts, mathematics, history and social science, or science.

(2) A component whereby educational enrichment, which may include, but need not be limited to, nutrition education, recreation, and prevention activities, is provided.

(d) Applicants for programs established pursuant to this article may include any of the following:

(1) A local education agency, including a charter school.

(2) A city, county, or nonprofit organization in partnership with, and with the approval of, a local education agency or agencies.

(e) Applicants for grants pursuant to this article shall ensure that each of the following requirements is fulfilled, if applicable:

(1) The application documents the commitments of each partner to operate a program on that schoolsite or schoolsites.

(2) The application has been approved by the school district and the principal of each schoolsite.

(3) Each partner in the application agrees to share responsibility for the quality of the program.

(4) The application designates the public agency or local education agency partner to act as the fiscal agent. For purposes of this section, ‘‘public agency’’ means only a county board of supervisors or, where the city is incorporated or has a charter, a city council.

(5) Applicants agree to follow all fiscal reporting and auditing standards required by the State Department of Education.

CHAPTER 647

An act to add and repeal Article 2 (commencing with Section 18711) of Chapter 3 of Part 10.2 of Division 2 of the Revenue and Taxation Code, and to amend Section 18969 of the Welfare and Institutions Code, relating to children, making an appropriation therefor.

[Approved by Governor September 17, 2002. Filed with Secretary of State September 18, 2002.]

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

SECTION 1. Article 2 (commencing with Section 18711) is added to Chapter 3 of Part 10.2 of Division 2 of the Revenue and Taxation Code, to read:

Article 2. State Children's Trust Fund

18711. (a) Any individual may designate on the tax return that a contribution in excess of the tax liability, if any, be made to the State Children's Trust Fund.

(b) The contribution shall be in full dollar amounts and may be made individually by each signatory on the joint return.

(c) A designation under subdivision (a) shall be made for any taxable year on the initial return for that taxable year, and once made shall be irrevocable. In the event that payments and credits reported on the return, together with any other credits associated with the taxpayer's account do not exceed the tax liability, if any, shown thereupon, the return shall be treated as though no designation had been made.

(d) The Franchise Tax Board shall revise the form of the return to include a space labeled the "State Children's Trust Fund for the Prevention of Child Abuse" to allow for the designation permitted under subdivision (a).

(e) A deduction shall be allowed under Article 6 (commencing with Section 17201) of Chapter 3 of Part 10 for any contribution made pursuant to subdivision (a).

18712. The Franchise Tax Board shall notify the Controller of both the amount of money paid by taxpayers in excess of their tax liability and the amount of refund money that taxpayers have designated pursuant to Section 18711 to be transferred to the State Children's Trust Fund as

established by Section 18969 of the Welfare and Institutions Code. The Controller shall transfer from the Personal Income Tax Fund to the State Children's Trust Fund an amount not in excess of the sum of the amounts designated by individuals pursuant to Section 18861 for payment into that fund.

18713. All money transferred to the State Children's Trust Fund, upon appropriation by the Legislature, shall be allocated as follows:

(a) To the Franchise Tax Board and the Controller for reimbursement of all cost incurred by the Franchise Tax Board and the Controller in connection with their duties under this article.

(b) The State Department of Social Services for innovative child abuse and neglect prevention and intervention programs operated by private nonprofit organizations or public institutions of higher education with recognized expertise in fields related to child welfare and for evaluation, research, or dissemination of information concerning existing program models for the purpose of replication of successful models as specified in Article 5 (commencing with Section 18969) of Chapter 11 of Part 6 of Division 10 of the Welfare and Institutions Code.

18714. It is the intent of the Legislature that this article creates an additional source of funding for a specified purpose. The funds generated by this article shall not be used in place of funds from other sources that are available to the State Children's Trust Fund.

18715. This article applies to returns for taxable years beginning on or after January 1, 2002.

18716. (a) This article shall remain in effect only until January 1, 2008, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 2008, deletes or extends that date.

(b) If, any calendar year, the Franchise Tax Board estimates by September 1 that contributions described in this article made on returns filed in that calendar year will be less than two hundred fifty thousand dollars ($250,000) for taxable years beginning in 2002, or the adjusted amount specified in subdivision (c), as may be applicable, then this article is repealed with respect to taxable years beginning on or after January 1 of that calendar year. The Franchise Tax Board shall estimate the annual contribution amount by September 1 of each year using the actual amounts known to be contributed and an estimate of the remaining year's contributions.

(c) For each calendar year, beginning with calendar year 2003, the Franchise Tax Board shall adjust, on or before September 1, of that calendar year, the minimum estimated contribution amount specified in subdivision (b) as follows:

(1) The minimum estimated contribution amount for the calendar year shall be an amount equal to the product of the minimum estimated contribution amount for the prior September 1 multiplied by the

inflation factor adjustment as specified in paragraph (2) of subdivision (h) of Section 17041, rounded off to the nearest dollar.

(2) The inflation factor adjustment used for the calendar year shall be based on the figures for the percentage change in the California Consumer Price Index received on or before August 1 of the calendar year pursuant to paragraph (1) of subdivision (h) of Section 17041.

SEC. 2. Section 18969 of the Welfare and Institutions Code is amended to read:

18969. (a) There is hereby created in the State Treasury a fund which shall be known as the State Children's Trust Fund. The fund shall consist of funds received from a county pursuant to Section 18968, funds collected by the state and transferred to the fund pursuant to subdivision (b) of Section 103625 of the Health and Safety Code and Article 2 (commencing with Section 18711) of Chapter 3 of Part 10.2 of Division 2 of the Revenue and Taxation Code, grants, gifts, or bequests made to the state from private sources to be used for innovative and distinctive child abuse and neglect prevention and intervention projects and money appropriated to the fund for this purpose by the Legislature. The State Registrar may retain a percentage of the fees collected pursuant to Section 10605 of the Health and Safety Code, not to exceed 10 percent, in order to defray the costs of collection.

(b) Notwithstanding Section 13340 of the Government Code, money in the State Children's Trust Fund, upon appropriation by the Legislature, shall be allocated to the State Department of Social Services for the purpose of funding child abuse and neglect prevention and intervention programs. The department may not supplant any federal, state, or county funds with any funds made available through the State Children's Trust Fund.

(c) The department may establish positions as needed for the purpose of implementing and administering child abuse and neglect prevention and intervention programs that are funded by the State Children's Trust Fund. However, the department shall use no more than 5 percent of the funds appropriated pursuant to this section for administrative costs.

(d) No children's trust fund money shall be used to supplant state General Fund money for any purpose.

(e) It is the intent of the Legislature that the State Children's Trust Fund provide for all of the following:

(1) The development of a public-private partnership by encouraging consistent outreach to the private foundation and corporate community.

(2) Funds for large-scale dissemination of information that will promote public awareness regarding the nature and incidence of child abuse and the availability of services for intervention. These public awareness activities shall include, but not be limited to, the production

of public service announcements, well designed posters, pamphlets, booklets, videos, and other media tools.

(3) Research and demonstration projects that explore the nature and incidence and the development of long-term solutions to the problem of child abuse.

(4) The development of a mechanism to provide ongoing public awareness through activities that will promote the charitable tax deduction for the trust fund and seek continued contributions. These activities may include convening a philanthropic roundtable, developing literature for use by the State Bar for dissemination, and whatever other activities are deemed necessary and appropriate to promote the trust fund.

CHAPTER 648

An act to amend Section 1 of Chapter 367 of the Statutes of 2001, relating to mental health, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 17, 2002. Filed with Secretary of State September 18, 2002.]

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

SECTION 1. Section 1 of Chapter 367 of the Statutes of 2001 is amended to read:

Sec. 1. (a) The State Department of Mental Health shall work cooperatively with the California Mental Health Directors Association and other relevant parties to submit data on the current status of the county mental health programs. This data shall, at a minimum, address all of the following:

(1) The current structure and status of the financing of mental health services established in the statutes affected by Chapters 89, 91, and 611 of the Statutes of 1991, commonly referred to as realignment.

(2) Changes in the current service delivery system of mental health programs that have occurred since the enactment of Chapters 89, 91, and 611 of the Statutes of 1991.

(3) Trends in the financial status and service delivery systems within county mental health programs.

(b) By October 1, 2002, the department shall submit all of the data specified in subdivision (a) to the Legislature.

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 ensure the health and safety, at the earliest possible time, of persons receiving mental health services pursuant to Chapter 89, 91, or 611 of the Statutes of 1991, it is necessary that this act take effect immediately.

CHAPTER 649

An act to add and repeal Section 1357.18 of the Health and Safety Code, and to add and repeal Section 10718.6 of the Insurance Code, relating to health care.

[Approved by Governor September 17, 2002. Filed with Secretary of State September 18, 2002.]

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

SECTION 1. Section 1357.18 is added to the Health and Safety Code, to read:

1357.18. (a) Notwithstanding the provisions of this article, any employer subject to a local living wage law or other legislation enacted by a local government that regulates the minimum hourly compensation of employees, whether mandatory or voluntary, shall be a small employer for purposes of obtaining coverage under this article. This provision applies whether those employees are employed on a part-time or full-time basis. For the purposes of this subdivision, part-time means employment of a permanent employee who works at least 20 hours but no more than 29 hours each week.

(b) If an employer described in subdivision (a) elects to provide health care coverage to those employees who are subject to the local living wage law or other local legislation regulating their minimum hourly compensation, the employer shall obtain that coverage under the provisions of this article, subject to all of its requirements. The employer may not obtain coverage under this article for other employees, unless either of the following applies:

(1) The employer is a small employer under a provision of this article other than subdivision (a).

(2) The employer satisfies both of the following conditions:

(A) The employer has within the prior 12 months provided coverage under this article for employees subject to a local living wage law or other local legislation regulating the minimum hourly compensation.

(B) The employer has 50 or fewer other employees to whom the employer has not previously offered coverage.

(c) Any coverage offered to an employee that qualifies under paragraph (2) of subdivision (b) shall be subject to all of the provisions of this article.

(d) A self-employed individual who is subject to a local living wage law or other local legislation regulating his or her minimum hourly compensation shall not be a small employer for purposes of this section.

(e) Notwithstanding the provisions of subdivision (b), if an employer provided health care coverage before January 1, 2003, to employees subject to a local living wage law or other local legislation regulating their minimum hourly compensation, the employer is not required to obtain that coverage under this article and is not eligible to obtain coverage under its provisions.

(f) This section shall remain in effect only until January 1, 2007, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2007, deletes or extends that date.

SEC. 2. Section 10718.6 is added to the Insurance Code, to read:

10718.6. (a) Notwithstanding the provisions of this chapter, any employer subject to a local living wage law or other legislation enacted by a local government that regulates the minimum hourly compensation of employees, whether mandatory or voluntary, shall be a small employer for purposes of obtaining coverage under this chapter. This provision applies whether those employees are employed on a part-time or full-time basis. For the purposes of this subdivision, part-time means employment of a permanent employee who works at least 20 hours but no more than 29 hours each week.

(b) If an employer described in subdivision (a) elects to provide health care coverage to those employees who are subject to the local living wage law or other local legislation regulating their minimum hourly compensation, the employer shall obtain that coverage under the provisions of this chapter subject to all of its requirements. The employer may not obtain coverage under this chapter for other employees, unless either of the following applies:

(1) The employer is a small employer under a provision of this chapter other than subdivision (a).

(2) The employer satisfies both of the following conditions:

(A) The employer has within the prior 12 months provided coverage under this article for employees subject to a local living wage law or other local legislation regulating the minimum hourly compensation.

(B) The employer has 50 or fewer other employees to whom the employer has not previously offered coverage.

(c) Any coverage offered to an employee that qualifies under paragraph (2) of subdivision (b) shall be subject to all of the provisions of this article.

(d) A self-employed individual who is subject to a local living wage law or other local legislation regulating his or her minimum hourly compensation shall not be a small employer for purposes of this section.

(e) Notwithstanding the provisions of subdivision (b), if an employer provided health care coverage before January 1, 2003, to employees subject to a local living wage law or other local legislation regulating their minimum hourly compensation, the employer is not required to obtain that coverage under this chapter and is not eligible to obtain coverage under its provisions.

(f) This section shall remain in effect only until January 1, 2007, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2007, deletes or extends that date.

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.

CHAPTER 650

An act to add Section 99170 to the Public Utilities Code, relating to transit districts.

[Approved by Governor September 17, 2002. Filed with Secretary of State September 18, 2002.]

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

SECTION 1. Section 99170 is added to the Public Utilities Code, to read:

99170. (a) No person shall do any of the following with respect to the property, facilities, or vehicles of a transit district:

(1) Operate, interfere with, enter into, or climb on or in, the property, facilities, or vehicles owned or operated by the transit district without the permission or approval of the transit district.

(2) Interfere with the operator or operation of a transit vehicle, or impede the safe boarding or alighting of passengers.

(3) Extend any portion of the body through any window opening of a transit vehicle in a manner that may cause harm or injury.

(4) Throw any object from a transit vehicle.

(5) Commit any act or engage in any behavior that may, with reasonable foreseeability, cause harm or injury to any person or property.

(6) Violate a notice, prohibition, instruction, or direction on any sign that is intended to provide for the safety and security of transit passengers, or the safe and secure operation of the transit system.

(b) For purposes of this section, ''transit district'' means an entity that qualifies as a claimant, as defined in Section 99203, eligible to receive allocations under Chapter 4 (commencing with Section 99200).

(c) A violation of this section is an infraction under Section 19.8 of the Penal Code punishable by a fine not exceeding seventy-five dollars ($75), and that a violation by a person after a second conviction is punishable by a fine not exceeding two hundred fifty dollars ($250) or by community service that does not conflict with the violator's hours of school attendance or employment for a total time not to exceed 48 hours over a period not to exceed 60 days.

(d) A transit district shall provide reasonable notification to the public of the activities prohibited by this section and the penalties for violations of those prohibitions.

(e) This section does not prohibit any person from engaging in activities that are protected under the laws of the United States or of this state, including, but not limited to, picketing, demonstrating, or distributing handbills.

(f) Transit districts shall maintain records of violations and the number of citations issued with respect to the actions prohibited under this section until January 1, 2005. The transit districts shall prepare a summary report of these actions and related findings with respect to the implementation and operation of this section and shall submit the report to the Legislature on or before January 1, 2006.

(g) No revenue from fines imposed pursuant to subdivision (c) shall be distributed or allocated to the transit agency issuing citations under this section. Fine revenue instead shall be allocated to the other entities eligible to receive those funds under existing law.

SEC. 2. 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.

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.

CHAPTER 651

An act to amend Section 52499.6 of the Education Code, relating to public schools.

[Approved by Governor September 17, 2002. Filed with Secretary of State September 18, 2002.]

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

SECTION 1. Section 52499.6 of the Education Code is amended to read:

52499.6. This article shall remain in effect only until January 1, 2008, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2008, deletes or extends that date.

CHAPTER 652

An act to amend Sections 1055, 1055.2, 1536, 1825, 1831, 1832, 1834, 1845, and 1850 of, and to repeal Sections 1003.5 and 1833 of, the Water Code, relating to water.

[Approved by Governor September 17, 2002. Filed with Secretary of State September 18, 2002.]

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

SECTION 1. Section 1003.5 of the Water Code is repealed.

SEC. 2. Section 1055 of the Water Code is amended to read:

1055. (a) The executive director of the board may issue a complaint to any person or entity on which administrative civil liability may be imposed pursuant to Section 1052, Section 1536, Section 1845, or Section 5107. The complaint shall allege the act or failure to act that constitutes a trespass or violation, the provision of law authorizing civil liability to be imposed, and the proposed civil liability.

(b) The complaint shall be served by personal notice or certified mail, and shall inform the party served that the party may request a hearing not later than 20 days from the date the party was served. The hearing shall be before a member of the board as it may specify.

(c) After any hearing, the member shall report a proposed decision and order to the board and shall supply a copy to the party served with the complaint, the board's executive director, and any other person requesting a copy. The member of the board acting as hearing officer may sit as a member of the board in deciding the matter. The board, after making an independent review of the record and taking any additional evidence as may be necessary that could not reasonably have been offered before the hearing officer, may adopt, with or without revision, the proposed decision and order.

(d) Orders setting administrative civil liability shall become effective and final upon issuance thereof and payment shall be made.

SEC. 3. Section 1055.2 of the Water Code is amended to read:

1055.2. No person or entity shall be subject to both civil liability imposed under Section 1055 and civil liability imposed by the superior court under subdivision (d) of Section 1052, Section 1536, or Section 1845 for the same act or failure to act.

SEC. 4. Section 1536 of the Water Code is amended to read:

1536. (a) If an annual application fee is not paid when due the board shall notify the applicant by registered mail of the amount due, and of the provisions of this section.

(b) If the fee is not received by the board within 30 days after the notice has been mailed, the application may be canceled.

(c) (1) If the fee is not received by the board within 30 days after the notice has been mailed, the applicant may be liable civilly for a sum not to exceed five hundred dollars ($500) for each day until the fee is received, the application is canceled, or the application is withdrawn, whichever occurs first.

(2) Civil liability may be imposed by the superior court. The Attorney General, upon request of the board, shall petition the superior court to impose, assess, and recover those sums.

(3) Civil liability may be imposed administratively by the board pursuant to Section 1055.

SEC. 5. Section 1825 of the Water Code is amended to read:

1825. It is the intent of the Legislature that the state should take vigorous action to enforce the terms and conditions of permits licenses, certifications, and registrations to appropriate water, to enforce state board orders and decisions, and to prevent the unlawful diversion of water.

SEC. 6. Section 1831 of the Water Code is amended to read:

1831. (a) When the board determines that any person is violating, or threatening to violate, any requirement described in subdivision (d), the board may issue an order to that person to cease and desist from that violation.

(b) The cease and desist order shall require that person to comply forthwith or in accordance with a time schedule set by the board.

(c) The board may issue a cease and desist order only after notice and an opportunity for hearing pursuant to Section 1834.

(d) The board may issue a cease and desist order in response to a violation or threatened violation of any of the following:

(1) The prohibition set forth in Section 1052 against the unauthorized diversion or use of water subject to this division.

(2) Any term or condition of a permit, license, certification, or registration issued under this division.

(3) Any decision or order of the board issued under this part, Section 275, or Article 7 (commencing with Section 13550) of Chapter 7 of Division 7, in which decision or order the person to whom the cease and desist order will be issued, or a predecessor in interest to that person, was named as a party directly affected by the decision or order.

(e) This article shall not authorize the board to regulate in any manner, the diversion or use of water not otherwise subject to regulation of the board under this part.

SEC. 7. Section 1832 of the Water Code is amended to read:

1832. Cease and desist orders of the board shall be effective upon the issuance thereof. The board may, after notice and opportunity for hearing, upon its own motion or upon receipt of an application from an aggrieved person, modify, revoke, or stay in whole or in part any cease and desist order issued pursuant to this chapter.

SEC. 8. Section 1833 of the Water Code is repealed.

SEC. 9. Section 1834 of the Water Code is amended to read:

1834. (a) In the event that a violation of a requirement described in subdivision (d) of Section 1831 is occurring or threatening to occur, the board shall give notice by personal notice or certified mail, pursuant to which the party shall be informed that he or she may request a hearing not later than 20 days from the date on which the notice is received, to the person allegedly engaged in the violation. The notice shall contain a statement of facts and information that would tend to show the proscribed action, and notification of the requirements of subdivision (b).

(b) Unless a written request for a hearing signed by or on behalf of the notified party is delivered to or received by mail by the board within 20 days after receipt of the notice, the board may adopt a cease and desist order, based on the statement of facts and information set forth in the notice, without a hearing.

SEC. 10. Section 1845 of the Water Code is amended to read:

1845. (a) Upon the failure of any person to comply with a cease and desist order issued by the board pursuant to this chapter, the Attorney General, upon the request of the board, shall petition the superior court for the issuance of prohibitory or mandatory injunctive relief as appropriate, including a temporary restraining order, preliminary injunction, or permanent injunction.

(b) (1) Any person or entity who violates a cease and desist order issued pursuant to this chapter may be liable for a sum not to exceed one thousand dollars ($1,000) for each day in which the violation occurs.

(2) Civil liability may be imposed by the superior court. The Attorney General, upon the request of the board, shall petition the superior court to impose, assess, and recover those sums.

(3) Civil liability may be imposed administratively by the board pursuant to Section 1055.

(c) In determining the appropriate amount, the court, or the board, as the case may be, shall take into consideration all relevant circumstances, including, but not limited to, the extent of harm caused by the violation, the nature and persistence of the violation, the length of time over which the violation occurs, and the corrective action, if any, taken by the violator.

(d) All funds recovered pursuant to this section shall be transferred to the General Fund of the state.

SEC. 11. Section 1850 of the Water Code is amended to read:

1850. Any factual or legal determinations made pursuant to a cease and desist order shall be conclusive and shall preclude any party to the order from raising those issues in any subsequent administrative proceeding.

CHAPTER 653

An act to add Section 56351.7 to the Education Code, relating to public schools.

[Approved by Governor September 17, 2002. Filed with Secretary of State September 18, 2002.]

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

SECTION 1. Section 56351.7 is added to the Education Code, to read:

56351.7. (a) The Superintendent of Public Instruction shall form an advisory task force to develop standards for the mastery of the braille code as a child progresses through kindergarten to grade 12, inclusive.

(b) The task force shall include, but shall not be limited to, members approved by the State Board of Education representing all of the following:

(1) Parents of visually impaired pupils.

(2) Teachers of visually impaired pupils.

(3) Researchers in the field of visual impairment.

(4) Braille experts.

(5) Groups that advocate for teaching of, and use of, braille.

(6) Groups that advocate for the visually impaired.

(c) The task force shall report to the Governor and to the education committees of the Assembly and the Senate by June 30, 2004.

CHAPTER 654

An act to amend Section 87103.5 of the Government Code, relating to the Political Reform Act of 1974.

[Approved by Governor September 17, 2002. Filed with Secretary of State September 18, 2002.]

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

SECTION 1. Section 87103.5 of the Government Code is amended to read:

87103.5. (a) Notwithstanding subdivision (c) of Section 87103, a retail customer of a business entity engaged in retail sales of goods or services to the public generally is not a source of income to an official who owns a 10-percent or greater interest in the entity if the retail customers of the business entity constitute a significant segment of the public generally, and the amount of income received by the business entity from the customer is not distinguishable from the amount of income received from its other retail customers.

(b) Notwithstanding subdivision (c) of Section 87103, in a jurisdiction with a population of 10,000 or less which is located in a county with 350 or fewer retail businesses, a retail customer of a business entity engaged in retail sales of goods or services to the public generally is not a source of income to an official of that jurisdiction who owns a 10-percent or greater interest in the entity, if the retail customers of the business entity constitute a significant segment of the public generally, and the amount of income received by the business entity from the

customer does not exceed one percent of the gross sales revenues that the business entity earned during the 12 months prior to the time the decision is made.

(c) For the purposes of subdivision (b):

(1) Population in a jurisdiction shall be established by the United States Census.

(2) The number of retail businesses in a county shall be established by the previous quarter's Covered Employment and Wages Report (ES-202) of the Labor Market Information Division of the California Employment Development Department.

SEC. 2. The Legislature finds and declares that this bill furthers the purposes of the Political Reform Act of 1974 within the meaning of subdivision (a) of Section 81012 of the Government Code.

CHAPTER 655

An act to add Division 3.5 (commencing with Section 7000) to the Public Utilities Code, relating to public utilities.

[Approved by Governor September 17, 2002. Filed with Secretary of State September 18, 2002.]

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

SECTION 1. The Legislature finds and declares all of the following:

(a) For many transportation capital improvement projects, it is necessary for utilities to be moved and relocated in advance of construction.

(b) If utility relocation work cannot be performed expeditiously, or cannot be completed at all by the appropriate utility, cable television corporation, or cable operator, the result is significant costs to the public because construction work for these projects is delayed.

(c) The Santa Clara Valley Transportation Authority has found that for public transit capital improvement projects in its jurisdiction, delays resulting from utility relocation work not being done in a timely manner can cost between five hundred thousand dollars ($500,000) and one million dollars ($1,000,000) per month.

(d) It is in the best interest of the state that utility relocation work on transportation capital improvement projects be completed expeditiously, whether by a utility, cable television corporation, or cable operator or a public entity, as set forth in an executed utility relocation agreement, to avoid unnecessary costs and delays in completing these vital projects.

(e) If a utility, cable television corporation, or cable operator decides, for financial or other reasons, not to perform utility relocation work for a transit or transportation capital improvement project pursuant to the terms of an executed utility relocation agreement, in many cases, the only recourse for a public entity is to initiate a potentially lengthy court process to force the utility, cable television corporation, or cable operator to perform the work. This situation could result in significant delays and cost increases to a transit or transportation capital improvement project.

(f) It is the intent of the Legislature in enacting the act adding this section to authorize the Santa Clara Valley Transportation Authority, when implementing a transit or transportation capital improvement project, to assume utility relocation work from a utility, cable television company, or cable operator, but only when the following occurs:

(1) The Santa Clara Valley Transportation Authority has executed a formal, written utility relocation agreement with the utility, cable television corporation, or cable operator.

(2) The utility, cable television corporation, or cable operator refuses to move its utilities or abandons the relocation work in violation of the relocation agreement, because of financial hardship or other reasons.

(3) The utility relocation agreement executed by the Santa Clara Valley Transportation Authority and the utility, cable television corporation, or cable operator allows for the authority to assume the utility relocation work as recourse for the work being abandoned by the utility, cable television corporation, or cable operator.

SEC. 2. Division 3.5 (commencing with Section 7000) is added to the Public Utilities Code, to read:

DIVISION 3.5. UTILITY RELOCATION AGREEMENTS

CHAPTER 1. RELOCATION FOR TRANSIT OR TRANSPORTATION CAPITAL IMPROVEMENT PROJECTS

7000. (a) For purposes of this chapter, a utility shall mean all of the following:

(1) An electric corporation, as defined in Section 218.

(2) A water corporation, as defined in Section 241.

(3) A telephone corporation, as defined in Section 234.

(4) A telecommunications carrier, as defined in Section 153 of Title 47 of the United States Code.

(5) A gas corporation, as defined in Section 222.

(6) A local publicly owned electric utility, as defined in Section 9604, and a publicly owned gas utility.

(7) a special district that owns or operates utilities.

(b) This chapter shall also apply to the following entities:

(1) A cable television corporation, as defined in Section 215.5.

(2) A cable operator, as defined in Section 522 of Title 47 of the United States Code.

7001. For purposes of this chapter, ''authority'' means the Santa Clara Valley Transportation Authority, as defined in Section 100011.

7002. When a utility enters into a relocation agreement with the authority in connection with a transit or transportation capital improvement project, the agreement may include, but not be limited to, the following elements, as agreed to by the parties:

(a) Location of the work to be completed.

(b) Cost arrangements between the parties for the work to be conducted.

(c) Schedule for the work to be completed.

(d) Remedies for contract impairment.

(e) Definition of default on the part of either party.

(f) Remedies for default by either party.

(g) What constitutes abandonment of utility relocation work, and remedies for addressing any abandonment.

7003. (a) If a utility, cable television corporation, or cable operator abandons utility relocation work under a relocation agreement with the authority in connection with a transit or transportation capital improvement project, the authority may, pursuant to the terms of the relocation agreement made pursuant to subdivision (g) of Section 7002, assume from the utility, cable television corporation, or cable operator the work of relocating utilities that relates to the project within the jurisdiction of the authority.

(b) (1) The authority may issue contracts with another qualified entity to conduct the utility relocation work.

(2) If a collective bargaining agreement specifically does not prohibit a crew or other subgroup of employees of a utility, cable television corporation, or cable operator from performing utility relocation work under a contract with the authority in the case where work has been abandoned by the utility, cable television corporation, or cable operator, then the authority shall offer a first right of refusal to a crew or other subgroup of employees of the utility, cable television corporation, or cable operator, that are qualified to conduct utility relocation work to contract with the authority for the utility relocation work.

(3) If the crew or subgroup identified in paragraph (2) elects not to contract with the authority to conduct the utility relocation work, the authority shall choose a qualified entity from a single list provided by the utility, cable television corporation, or cable operator and, if applicable, the collective bargaining representative of the utility employees that would otherwise perform the work, provided that the

utility, cable television corporation, or cable operator, and, if applicable, the collective bargaining representative, choose to provide a list.

(c) Any utility relocation work performed or caused to be performed by the authority shall be done according to industry standards, under the oversight of the utility, cable television corporation, or cable operator, and upon acceptance by the utility, cable television corporation, or cable operator.

7004. The rights and remedies available to the authority under this article are nonexclusive and are cumulative to each other and to the remedies or penalties available to the authority under all other laws or pursuant to contract.

7005. This chapter applies only if all of the following occurs:

(a) The authority has executed a formal, written utility relocation agreement with the utility, cable television corporation, or cable operator.

(b) The utility, cable television corporation, or cable operator abandons the relocation work because of financial hardship or other reasons.

(c) The utility relocation agreement executed by the authority and the utility, cable television corporation, or cable operator allows for the authority to assume the utility relocation work as recourse for the work being abandoned by the utility, cable television corporation, or cable operator.

SEC. 3. The Legislature finds and declares that, because of the unique circumstances applicable only to the Santa Clara Valley Transportation Authority, a statute of general applicability cannot be enacted within the meaning of subdivision (b) of Section 16 of Article IV of the California Constitution. Therefore, this special statute is necessary.

CHAPTER 656

An act to add Section 216.5 to the Streets and Highways Code, relating to highways.

[Approved by Governor September 17, 2002. Filed with Secretary of State September 18, 2002.]

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

SECTION 1. The Legislature finds and declares the following:

(a) In September 2001, the Rice Straw Burning Reduction Act restricted rice straw burning to burning for disease control purposes only

and limited rice straw burning to 25 percent of individual planted acres, subject to a maximum annual allocation of 125,000 acres.

(b) The reduction in rice straw burning mandated by the Connelly-Areias-Chandler Rice Straw Burning Reduction Act of 1991, Section 41865 of the Health and Safety Code, should bear a reasonable relationship to the increase in rice straw uses.

(c) Notwithstanding the statutory requirement that the state produce an implementation plan and a schedule to achieve diversion of not less than 50 percent of rice straw produced toward off-field uses by the year 2000, as of June 2001, only 2 percent of the available rice straw was used off-field.

(d) In 2000, there were approximately 521,000 acres of rice planted in the Sacramento Valley, which could have yielded a potential of 1.17 million tons of rice straw.

(e) Products made from rice straw may be economically viable alternatives to substitute products.

(f) Recycling and reusing rice straw leading to sustainable economic development is a very desirable alternative to the current methods for disposing of rice straw.

(g) Rice fields flooded during the winter provide habitat that is an integral part of efforts to restore historic waterfowl and shore bird populations.

(h) The California Rice Commission has noted that over 141 species of birds, 28 species of mammals, and 24 species of amphibians and reptiles, many of which are categorized by state and federal agencies as endangered or threatened, consider California rice fields home.

(i) Existing means of building soundwalls are costly to the State of California.

(j) It is estimated that the construction costs for all soundwalls range from $1 million to $2.4 million per mile. The statewide average cost is approximately $1.5 million per mile, however, costs are somewhat higher in Los Angeles and other metropolitan areas.

(k) Currently, most soundwalls are constructed with masonry blocks. Recycled plastic materials have been used in several sound wall projects and other projects have used "living wall" construction that involves placing rocks and earth in wire-mesh cages.

SEC. 2. Section 216.5 is added to the Streets and Highways Code, to read:

216.5. (a) The department shall construct at least one demonstration noise attenuation barrier fabricated from rice straw upon meeting the conditions and requirements of this section.

(b) Prior to construction of the barrier specified in subdivision (a) the department shall identify an appropriate location, and shall develop separate cost estimates for constructing a barrier at that location using

a standard noise attenuation barrier design and constructing the barrier using the rice straw design.

(c) If a noise barrier system fabricated from rice straw appears on the department's list of approved noise barrier systems, the department shall, within one year, identify a suitable regularly programmed transportation project that includes a noise barrier element for construction of the demonstration noise barrier system. In making its project selection, the department shall consider projected completion schedules for potential candidate projects with the intent of completing the demonstration project expeditiously.

(d) The department shall not be required to construct the rice straw barrier specified in subdivision (a) until all the following have occurred:

(1) A noise barrier system fabricated from rice straw is approved by the department and appears on the department's list of approved noise barrier systems.

(2) Funding has been secured and made available by the manufacturer of the selected rice straw system to offset any additional costs incurred by the department in using the rice straw barrier design based on the cost estimates prepared pursuant to subdivision (b).

(3) A location has been identified for construction of the rice straw barrier system that meets safety, environmental, and related project requirements, and sufficient funding has been programmed and is available for construction of the barrier based on the cost estimate for the standard noise barrier design.

(e) The department may select any approved rice straw barrier system for use in the demonstration project as long as the manufacturer of the selected system secures and provides the required funding specified in paragraph (2) of subdivision (d). In the event that no manufacturer of an approved rice straw barrier system provides the required funding, the department shall not be required to complete the demonstration project.

(f) The department shall, on or before January 1, 2005, transmit to the Legislature a report regarding the implementation of this bill.

CHAPTER 657

An act to amend Section 114870 of the Health and Safety Code, relating to health care.

[Approved by Governor September 17, 2002. Filed with Secretary of State September 18, 2002.]

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

SECTION 1. Section 114870 of the Health and Safety Code is amended to read:

114870. The department shall do all of the following:

(a) Upon recommendation of the committee, adopt regulations as may be necessary to accomplish the purposes of this chapter.

(b) Provide for certification of radiologic technologists, without limitation as to procedures or areas of application, except as provided in Section 106980. Separate certificates shall be provided for diagnostic radiologic technology, for mammographic radiologic technology, and for therapeutic radiologic technology. If a person has received accreditation to perform mammography from a private accreditation organization, the department shall consider this accreditation when deciding to issue a mammographic radiologic technology certificate.

(c) Provide, as may be deemed appropriate, for granting limited permits to persons to conduct radiologic technology limited to the performance of certain procedures or the application of X-rays to specific areas of the human body, except for mammography, prescribe minimum standards of training and experience for these persons, and prescribe procedures for examining applicants for limited permits. The minimum standards shall include a requirement that persons granted limited permits under this subdivision shall meet those fundamental requirements in basic radiological health training and knowledge similar to those required for persons certified under subdivision (b) as the department determines are reasonably necessary for the protection of the health and safety of the public.

(d) Provide for the approval of schools for radiologic technologists.

(e) Provide, upon recommendation of the committee, for certification of licentiates of the healing arts to supervise the operation of X-ray machines or to operate X-ray machines, or both, prescribe minimum standards of training and experience for these licentiates of the healing arts, and prescribe procedures for examining applicants for certification. This certification may limit the use of X-rays to certain X-ray procedures and the application of X-rays to specific areas of the human body.

(f) (1) Provide for certification of any physician and surgeon to operate, and supervise the operation of, a bone densitometer, if that physician and surgeon provides the department a certificate that evidences training in the use of a bone densitometer by a representative of a bone densitometer machine manufacturer, or through any radiologic technology school. The certification shall be valid for the particular bone densitometer the physician and surgeon was trained to use, and for any other bone densitometer that meets all of the criteria specified in subparagraphs (A) to (C), inclusive, if the physician and surgeon has

completed training, as specified in subparagraph (A) of paragraph (2), for the use of that bone densitometer. The physician and surgeon shall, upon request of the department, provide evidence of training, pursuant to subparagraph (A) of paragraph (2), for the use of any bone densitometer used by the physician and surgeon. The activity covered by the certificate shall be limited to the use of an X-ray bone densitometer to which all of the following is applicable:

(A) The bone densitometer does not require user intervention for calibration.

(B) The bone densitometer does not provide an image for diagnosis.

(C) The bone densitometer is used only to estimate bone density of the heel, wrist, or finger of the patient.

(2) The certificate shall be accompanied by a copy of the curriculum covered by the manufacturer's representative or radiologic technology school. The curriculum shall include, at a minimum, instruction in all of the following areas:

(A) Procedures for operation of the bone densitometer by the physician and surgeon, and for the supervision of the operation of the bone densitometer by other persons, including procedures for quality assurance of the bone densitometer.

(B) Proper radiation protection of the operator, the patient, and third parties in proximity to the bone densitometer.

(C) Provisions of Article 5 (commencing with Section 106955) of Chapter 4 of Part 1 of Division 104.

(D) Provisions of Chapter 6 (commencing with Section 114840) of Part 9 of Division 104.

(E) Provisions of Group 1 (commencing with Section 30100) of Subchapter 4 of Chapter 5 of Division 1 of Title 17 of the California Code of Regulations.

(F) Provisions of Group 1.5 (commencing with Section 30108) of Subchapter 4 of Chapter 5 of Division 1 of Title 17 of the California Code of Regulations.

(G) Provisions of Article 1 (commencing with Section 30250) of Group 3 of Subchapter 4 of Chapter 5 of Division 1 of Title 17 of the California Code of Regulations.

(H) Provisions of Article 2 (commencing with Section 30254) of Group 3 of Subchapter 4 of Chapter 5 of Division 1 of Title 17 of the California Code of Regulations.

(I) Provisions of Article 3 (commencing with Section 30265) of Group 3 of Subchapter 4 of Chapter 5 of Division 1 of Title 17 of the California Code of Regulations.

(J) Provisions of Article 4 (commencing with Section 30305) of Group 3 of Subchapter 4 of Chapter 5 of Division 1 of Title 17 of the California Code of Regulations.

(K) Provisions of Subchapter 4.5 (commencing with Section 30400) of Chapter 5 of Division 1 of Title 17 of the California Code of Regulations.

(3) (A) Notwithstanding any other provision of law, this subdivision shall constitute all the requirements that must be met by a physician and surgeon in order to operate, and supervise the operation of, a bone densitometer. The department may adopt regulations consistent with this section in order to administer the certification requirements.

(B) No person may be supervised by a physician and surgeon in the use of a bone densitometer unless that person possesses the necessary license or permit required by the department.

(C) Nothing in this subdivision shall affect the requirements imposed by the committee or the department for the registration of a bone densitometer machine, or for the inspection of facilities in which any bone densitometer machine is operated.

(D) This subdivision shall not apply to a licentiate of the healing arts who is certified pursuant to subdivision (e) or pursuant to Section 107111.

(E) The department shall charge a fee for a certificate issued pursuant to this subdivision to the extent necessary to administer certification. The fee shall be in an amount sufficient to cover the department's costs of implementing this subdivision and shall not exceed the fee for certification to operate or supervise the operation of an X-ray machine pursuant to subdivision (e). The fees collected pursuant to this subparagraph shall be deposited into the Radiation Control Fund established pursuant to Section 114980.

(g) Upon recommendation of the committee, exempt from certification requirements those licentiates of the healing arts who have successfully completed formal courses in schools certified by the department and who have successfully passed a roentgenology technology and radiation protection examination approved by the department and administered by the board that issued his or her license.

CHAPTER 658

An act to amend Sections 10700, 10702, and 10703 of, and to add Chapter 3 (commencing with Section 10730) to Part 6 of Division 10 of, the Elections Code, and to add Section 1773.5 to the Government Code, relating to elections.

[Approved by Governor September 17, 2002. Filed with Secretary of State September 18, 2002.]

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

SECTION 1. Section 10700 of the Elections Code is amended to read:

10700. The Governor shall call all statewide special elections by issuing a proclamation pursuant to Section 12000. Except as provided by Chapter 3 (commencing with Section 10730), in the case of a vacancy in a congressional or legislative office the Governor shall issue a proclamation, within 14 calendar days of the occurrence of the vacancy, calling a special election in accordance with Section 10703. A copy of the proclamation shall be sent to the board of supervisors of each affected county.

SEC. 2. Section 10702 of the Elections Code is amended to read:

10702. Except as provided by Chapter 3 (commencing with Section 10730), this chapter provides the procedures for nomination and election of candidates at any special election to fill a vacancy in the office of Representative in Congress, State Senator, or Member of the Assembly.

SEC. 3. Section 10703 of the Elections Code is amended to read:

10703. (a) A special election to fill a vacancy in the office of Representative in Congress, State Senator, or Member of Assembly shall be conducted on a Tuesday at least 112 days, but not more than 119 days, following the issuance of an election proclamation by the Governor pursuant to Section 1773 of the Government Code, except that any special election may be conducted within 180 days following the proclamation in order that the election or the primary election may be consolidated with the next regularly scheduled statewide election or local election occurring wholly or partially within the same territory in which the vacancy exists, provided that the voters eligible to vote in the local election comprise at least 50 percent of all the voters eligible to vote on the vacancy.

(b) Except as provided in Chapter 3 (commencing with Section 10730), a special election or a primary election may not be conducted on the day after a state holiday.

SEC. 4. Chapter 3 (commencing with Section 10730) is added to Part 6 of Division 10 of the Elections Code, to read:

CHAPTER 3. VACANCIES IN CONGRESSIONAL OFFICES CAUSED BY CATASTROPHE

10730. (a) This chapter provides the procedures for nomination and election of candidates at a special election to fill vacancies in the House of Representatives caused by a catastrophe.

(b) The procedures provided by Chapter 1 (commencing with Section 10700) shall apply to special elections to the extent those provisions are not inconsistent with this chapter.

10731. For purposes of this chapter:

(a) ''Catastrophe'' means a natural or man-made event that causes a vacancy in at least one-fourth of the total number of offices of the United States House of Representatives, including any number of offices representing California, or at least one-fourth of the total number of offices representing California.

(b) ''Vacancy'' means the death or disappearance, as a result of a catastrophe, of a Representative in Congress.

(c) ''Disappearance'' means the inability to establish conclusively whether a Representative in Congress has survived a catastrophe.

10732. Within seven calendar days of a catastrophe, the Governor shall issue a proclamation calling a special election pursuant to Section 10703.

10733. In the event of a catastrophe, a special election to fill a vacancy in the office of Representative in Congress shall be conducted on a Tuesday at least 56 days, but not more than 63 days, following the issuance of an election proclamation by the Governor, except that any special election may be conducted within 90 days following the proclamation in order that the special election may be consolidated with the next regularly scheduled statewide election or local election occurring wholly or partially within the same territory in which the vacancy exists, provided that the voters eligible to vote in the local election comprise at least 50 percent of all the voters eligible to vote on the vacancy.

10734. (a) No special primary election shall be held. Candidates at the special general election shall be nominated in the manner set forth in Chapter 1 (commencing with Section 8000) of Part 1 of Division 8, except that nomination papers shall not be circulated more than 46 days before the special general election, shall be left with the county elections official for examination not less than 32 days before the special general election, and shall be filed with the Secretary of State not less than 28 days before the special general election.

(b) Notwithstanding Section 3001, applications for absent voter ballots may be submitted not more than 28 days before the special general election, except that Section 3001 shall apply if the special general election is consolidated with a statewide election. Applications received by the elections official prior to the 28th day shall not be returned to the sender, but shall be held by the elections official and processed by him or her following the 28th day prior to the election in the same manner as if received at that time.

SEC. 5. Section 1773.5 is added to the Government Code, to read:

1773.5. In addition to any other applicable provision of law, a vacancy occurs in the office of Representative in Congress in the event of his or her disappearance, as defined in subdivision (c) of Section 10731 of the Elections Code.

SEC. 6. 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.

CHAPTER 659

An act to amend Section 69625 of, to repeal Section 69629 of, and to repeal Article 7.5 (commencing with Section 69630) of Chapter 2 of Part 42 of, the Education Code, relating to student financial aid, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 17, 2002. Filed with Secretary of State September 18, 2002.]

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

SECTION 1. Section 69625 of the Education Code is amended to read:

69625. (a) In order to accomplish the purposes set forth in this article, commencing January 1, 1998, the Controller, the State Department of Education, the State Department of Social Services, or any other state agency receiving funds from the Child Care Development Block Grant Act of 1990 (P.L. 97-35) shall make these funds available to the Student Aid Commission for this program only to the extent this program is incorporated into, and approved in, the state plan established pursuant to subsection (a) of Section 658E of Subchapter C as contained in Section 5082 of the Omnibus Budget Reconciliation Act of 1990 (P.L. 101-508).

(b) For the purpose of implementing this article, the State Department of Education or designated state agency shall enter into an interagency agreement with the Student Aid Commission to allocate federal funds received annually for purposes of this program and to include funds for the administrative costs.

(c) On or before January 1, 1999, and each year thereafter, the Student Aid Commission shall report to the State Department of Education or designated state agency regarding the federal funding level required to award 100 new grants and all of the renewal grants annually. The State Department of Education or designated state agency shall take these amounts into consideration when developing the state plan referenced in subdivision (a). The State Department of Education or designated state agency shall notify the Student Aid Commission of any revision to the federal funding level as reflected in changes to the Child Care and Development Block Grant State Plan.

(d) This program is contingent upon the receipt of federal funds for the childcare and development block grant for the purposes of implementing this program.

SEC. 2. Section 69629 of the Education Code is repealed.

SEC. 3. Article 7.5 (commencing with Section 69630) of Chapter 2 of Part 42 of the Education Code is repealed.

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 prevent the Child Development Teacher and Supervisor Grant Program from going out of operation as of June 30, 2002, and to repeal the inoperative Child Development Teacher Loan Assumption Program before the beginning of the 2002–03 academic year, it is necessary that this act take immediate effect.

CHAPTER 660

An act relating to local government finance.

[Approved by Governor September 17, 2002. Filed with Secretary of State September 18, 2002.]

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

SECTION 1. Notwithstanding any other provision of law, upon notification by the Department of Finance, the Controller shall allocate payments as required under Section 11005 of the Revenue and Taxation Code based on a population estimate provided by the Department of Finance for cities affected by prison geocoding errors in the 2000 census, as determined by the Department of Finance. This allocation shall only remain in effect for the two-month period commencing on May 1, 2003. Upon the expiration of this two-month period, the population used for

the allocation under Section 11005 of the Revenue and Taxation Code shall revert to the payment factor population in effect prior to the intervening two-month period. For purposes of the payments made under Section 11005 of the Revenue and Taxation Code, the population estimate provided by the Department of Finance shall be calculated using the payment factor population in effect prior to the intervening two-month period, plus an estimate of the population in the applicable prisons in which the geocoding error was made.

SEC. 2. Notwithstanding any other provision of law, the apportionments made on the basis of population under Sections 2105 and 2107 of the Streets and Highways Code shall be based on a population estimate provided by the Department of Finance for cities affected by prison geocoding errors in the 2000 census, as determined by the Department of Finance. These apportionments shall remain in effect for the one-month period commencing on the first day of the month following notification from the Department of Finance. Upon the expiration of this one-month period, the population used for the population apportionment under Sections 2105 and 2107 of the Streets and Highways Code shall revert to the payment factor population in effect prior to the intervening one-month period. For purposes of the apportionments made under Sections 2105 and 2107 of the Streets and Highways Code, the population estimate provided by the Department of Finance shall be calculated using the payment factor population in effect prior to the intervening one-month period, plus an estimate of the population in the applicable prisons in which the geocoding error was made.

CHAPTER 661

An act to amend Sections 68543.5, 75071, and 75072 of, and to add Section 75074 to, the Government Code, relating to judges' retirement.

[Approved by Governor September 17, 2002. Filed with Secretary of State September 17, 2002.]

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

SECTION 1. Section 68543.5 of the Government Code is amended to read:

68543.5. (a) Whenever a judge who has retired under the Judges' Retirement System or the Judges' Retirement System II is assigned to serve in a court of record, the state shall pay the judge for each day of service in the court in the amount specified in Section 68543.7, without

loss or interruption of retirement benefits, unless the judge waives compensation under this section. Whenever a retired judge of a justice court who is not a member of the Judges' Retirement System nor the Judges' Retirement System II is assigned to serve in a court of record, the state shall pay the judge for each day of service in the court in the amount specified in Section 68543.7, or the compensation specified in Section 68541, whichever is greater. The compensation shall be paid by the Judicial Council out of any appropriation for extra compensation of judges assigned by the Chairperson of the Judicial Council.

(b) If a judge who has retired under the Judges' Retirement System or the Judges' Retirement System II is assigned to serve in a court of record, the 8-percent difference between the compensation of the retired judge while so assigned and the compensation of a judge of the court to which the retired judge is assigned shall be paid to the Judges' Retirement Fund or the Judges' Retirement System II Fund, as applicable.

(c) During the period of assignment, a retired judge shall be allowed expenses for travel, board, and lodging incurred in the discharge of the assignment. When assigned to sit in the county in which he or she resides, the judge shall be allowed expenses for travel and board incurred in the discharge of the assignment. The expenses for travel, board, and lodging shall be paid by the state under the rules adopted by the Board of Control that are applicable to officers of the state provided for in Article VI of the Constitution while traveling on official state business.

(d) Notwithstanding the above provisions pertaining to compensation, a retired judge on senior judge status shall receive compensation from the state as provided in Sections 75028 and 75028.2, and shall be allowed expenses for travel, board, and lodging incurred in the discharge of the assignment as provided in this section.

SEC. 2. Section 75071 of the Government Code is amended to read:

75071. (a) Optional settlement one consists of the right to have a retirement allowance paid to him or her for life and if he or she dies before he or she receives the amount of his or her accumulated contributions at retirement, to have the balance at death paid to his or her designated beneficiary or his or her estate.

(b) (1) Optional settlement two consists of the right to have a retirement allowance paid to him or her for life and thereafter to his or her designated beneficiary for life.

(2) If the judge's designated beneficiary predeceases the judge and the judge elected this optional settlement to be effective on or after January 1, 2002, the judge's allowance shall be adjusted effective the first day of the month following the death of the beneficiary to reflect the benefit that would have been paid had the judge not elected an optional settlement.

(3) If the marriage of a retired judge is dissolved or annulled or if the retired judge and his or her beneficiary spouse are legally separated and the judgment dividing their community property awards the total interest in this system to the retired judge, and the retired judge elected this optional settlement to be effective on or after January 1, 2002, the retired judge's allowance shall be adjusted effective the first day of the month following the filing of the judgment with the board to reflect the benefit that would have been paid had the judge not elected an optional settlement.

(c) (1) Optional settlement three consists of the right to have a retirement allowance paid him or her for life, and thereafter to have one-half of his or her retirement allowance paid to his or her designated beneficiary for life.

(2) If the judge's designated beneficiary predeceases the judge and the judge elected this optional settlement to be effective on or after January 1, 2002, the judge's allowance shall be adjusted effective the first day of the month following the death of the beneficiary to reflect the benefit that would have been paid had the judge not elected an optional settlement.

(3) If the marriage of a retired judge is dissolved or annulled or if the retired judge and his or her beneficiary spouse are legally separated and the judgment dividing their community property awards the total interest in this system to the retired judge, and the retired judge elected this optional settlement to be effective on or after January 1, 2002, the retired judge's allowance shall be adjusted effective the first day of the month following the filing of the judgment with the board to reflect the benefit that would have been paid had the judge not elected an optional settlement.

(d) Optional settlement four consists of other benefits that are the actuarial equivalent of his or her retirement allowance, that he or she may select subject to the approval of the Judges' Retirement System.

(e) When a judge elects, on or after January 1, 2003, to receive benefits provided by paragraph (2) of subdivision (b) or paragraph (2) of subdivision (c), and the judge and his or her optional settlement beneficiary both die before receiving in annuity payments the full amount of the judge's accumulated contributions at retirement, the balance of the judge's accumulated contributions shall be paid to the judge's estate.

SEC. 3. Section 75072 of the Government Code is amended to read:

75072. If, during the life of a judge who has elected to receive an optional settlement in lieu of a retirement allowance for his or her life alone, or during the life of a beneficiary under an optional settlement upon whose life contingency the optional settlement elected depends, the compensation payable to the judge holding the judicial office to which the retired judge was last appointed or elected by the people prior

to his or her retirement is increased, the amounts payable to the retired judge or to his or her beneficiary, or both, shall be recomputed and increased to be the actuarial equivalent of the increased amount of the retirement allowance to which the retired judge would be entitled if he or she had not elected an optional settlement. However, this section does not give any retired judge or his or her beneficiary any claim against the state for any increase in retirement allowance or other benefit for time prior to the increase in the compensation of the incumbent judge.

SEC. 4. Section 75074 is added to the Government Code, to read:

75074. (a) Except as provided in subdivision (b), a judge may, at any time, including, but not limited to, at any time after reaching retirement age, designate a beneficiary to receive the benefits as may be payable to his or her beneficiary under this article, by a writing filed with the board.

(b) No designation may be made in derogation of the community property share of any nonmember spouse when any benefit is derived, in whole or in part, from community property contributions or service credited during the period of marriage, unless the nonmember spouse has previously obtained an alternative order for division pursuant to Section 2610 of the Family Code.

(c) The designation, subject to conditions imposed by board rule, may be by class, in which case the members of the class at the time of the judge's death shall be entitled as beneficiaries. The designation shall also be subject to the board's conclusive determination, upon evidence satisfactory to it, of the existence, identity, or other facts relating to entitlement of any person designated as beneficiary, and payment made by this system in reliance on any determination made in good faith, notwithstanding that it may not have discovered a beneficiary otherwise entitled to share in the benefit, shall constitute a complete discharge and release of this system for further liability for the benefit.

CHAPTER 662

An act relating to employee wages and hours.

[Approved by Governor September 17, 2002. Filed with Secretary of State September 18, 2002.]

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

SECTION 1. The Labor and Workforce Development Agency shall contract with a nonprofit, nonpartisan independent research organization with a proven record of conducting objective research on

labor and employment issues in the State of California to study the most effective and efficient means of enforcing wage and hour laws. The study shall also identify all available federal and state resources that may be utilized to enforce wage and hour laws. The study shall be completed and submitted to the Legislature by December 31, 2003. The costs of the study shall be paid from existing agency funds not to exceed fifty thousand dollars ($50,000).

CHAPTER 663

An act to amend Sections 11146 and 11146.3 of the Government Code, relating to state agencies.

[Approved by Governor September 17, 2002. Filed with Secretary of State September 18, 2002.]

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

SECTION 1. Section 11146 of the Government Code is amended to read:

11146. For purposes of this article, the following terms have the following meanings:

(a) ''State agency'' has the same meaning as set forth in Section 82049, but does not include the Legislature.

(b) ''Filer'' means each member, officer, or designated employee of a state agency who is required to file a statement of economic interests under either Article 2 (commencing with Section 87200) or Article 3 (commencing with Section 87300) of Chapter 7 of Title 9 because of the position he or she holds with the agency.

SEC. 2. Section 11146.3 of the Government Code is amended to read:

11146.3. Except as set forth in Section 11146.4, each filer shall attend the orientation course required in Section 11146.1, as follows:

(a) For a filer who holds a position with the agency on January 1, 2003, not later than December 31, 2003 and, thereafter, at least once during each consecutive period of two calendar years commencing on January 1, 2005.

(b) For a person who becomes a filer with the agency after January 1, 2003, within six months after he or she becomes a filer and at least once during each consecutive period of two calendar years commencing on the first odd-numbered year thereafter.

CHAPTER 664

An act to amend Sections 805.2, 1680, 2028, 2249, 2313, 2401, 3508, 4052, 4982.05, 5081.1, 5093, 6060, 6062, 6072, 6450, 7685, 8008, 8020, 8027, 8538, 8560, 10153.6, 10176.1, 13405, 19455, 19549.14, 20007, and 23987 of the Business and Professions Code, to amend Sections 43.8, 789, 827, 1102.6, 1375, 1375.05, 1632, 1708, 1748.13, 1785.11, 1785.11.2, 1798.85, 1936, 1940.7.5, and 3110.5 of the Civil Code, to amend Sections 116.950, 488.455, 700.140, 912, 1162, 1174.3, 1206, and 1299.3 of the Code of Civil Procedure, to amend Sections 25607 and 31011 of the Corporations Code, to amend Sections 8277.6, 8278.3, 17250.30, 19325.1, 24209.3, 44303, 44468, 47634.2, 48431.6, 49431, 49433.9, 51727, 56404, 64001, 89005.5, 94945, and 99226 of, and to amend and renumber Section 92665.1 of, the Education Code, to amend Sections 1405, 2185, 3017, 3201, and 13102 of, and to add a heading to Chapter 2 (commencing with Section 21100) of Division 21 of, the Elections Code, to amend Section 8814.5 of the Family Code, to amend Section 21200.1 of the Financial Code, to amend Sections 1103, 6047.7, 8769, 8770, 20437, 21052, and 75090.5 of the Food and Agricultural Code, to amend Sections 1091.3, 9353.5, 9353.6, 9353.7, 9355, 9355.1, 9355.16, 9355.2, 9355.4, 9355.45, 9355.5, 9355.7, 9355.8, 9356, 9356.1, 9356.15, 9356.2, 9356.3, 9356.5, 9357, 9357.05, 9357.1, 9357.2, 9357.4, 9357.45, 9357.46, 9357.5, 9359.15, 9359.16, 9359.17, 9359.4, 9359.85, 9359.95, 9360.3, 9360.4, 9360.5, 9360.6, 9360.7, 9360.11, 9361.1, 9361.2, 9361.3, 9361.4, 9371, 9374, 9375, 9378, 9509, 11126, 11550, 12800, 12940, 12965, 13964, 13965, 14672.99, 14684, 19574, 20423.5, 20429, 20683.2, 20816, 21327, 21354.3, 21354.4, 21354.5, 21363, 21423, 21661, 30071, 31461.45, 31491.1, 31491.2, 31676.17, 31676.19, 31966, 32271, 53601, 56334, 65892.13, 67940, 68110, 71639.1 75028.5, 75029, 75030.9, 75031, 75033, 75060.1, 75077, 75083, 75095.5, 75104, 75104.4, 75104.5, and 75106 of, and to add the heading of Article 2.11 (commencing with Section 65892.13) to Chapter 4 of Division 1 of Title 7 of, the Government Code, to repeal Section 71.7 of the Harbors and Navigation Code, to amend Sections 1276.65, 11054, 11377, 11382, 25395.20, 26148, 32121, 33334.2, 33334.22, 33368, 33430, 41705, 42801.1, 42840, 44265, 51452, 104324.2, 114090, and 130140.1 of, to amend the heading of Chapter 5 (commencing with Section 127630) of Part 2 of Division 107 of, to amend and renumber the heading of Chapter 2.5 (commencing with Section 1399.900) of Division 2 of, and to repeal Section 33331.5 of, the Health and Safety Code, to amend Sections 1874.85, 10139.5, 10145.4, and 12699.56 of the Insurance Code, to amend Sections 98.7, 230.1, 1161, 1776, 2695.1, 2695.2, 3212, 3212.10, 9102, and 9103 of the Labor Code, to amend Section 1011 of

the Military and Veterans Code, to amend Sections 68, 86, 290, 299.5, 637.5, 1370, 11174.4, 12035, 12071, and 12078 of, and to amend the heading of Title 10.2 (commencing with Section 14125) of Part 4 of, the Penal Code, to amend Sections 2620.2 and 6122 of the Probate Code, to amend Sections 615, 5095.2, 21158.6, 21167.7, 25403.5, 31007, 42645, and 71040 of, and to amend and renumber the heading of Article 5 (commencing with Section 5096.652) of Chapter 1.696 of Division 2 of, the Public Resources Code, to amend Sections 331, 332.1, 332.2, 399.6, 2774.5, 3350, 170016, and 170018 of the Public Utilities Code, to amend Sections 62.1, 756, 11273, 12209, 17053.57, 17073, 17942, 18836, 19551.1, 20543, 21015.6, 23684, and 32402 of the Revenue and Taxation Code, to amend Section 730.5 of the Streets and Highways Code, to amend Section 15076.5 of the Unemployment Insurance Code, to amend Sections 286, 672, 5017, 5068, 9250.7, 12517.5, 12811, 14602.6, 14602.7, 15302, 15620, and 23580 of the Vehicle Code, to amend Sections 10013, 10610.2, 10631, 11912, and 13627.4 of the Water Code, to amend Sections 213.5, 727.4, 903.5, 9320, 9681, 11203, 14087.961, 14103.5, 14132.99, 15657, and 19000 of the Welfare and Institutions Code, and to amend Section 5 of the Santa Clara Valley Water District Act (Chapter 1405 of the Statutes of 1951), relating to maintenance of the codes.

[Approved by Governor September 17, 2002. Filed with Secretary of State September 18, 2002.]

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

SECTION 1. Section 805.2 of the Business and Professions Code is amended to read:

805.2. (a) It is the intent of the Legislature to provide for a comprehensive study of the peer review process as it is conducted by peer review bodies defined in paragraph (1) of subdivision (a) of Section 805, in order to evaluate the continuing validity of Section 805 and Sections 809 to 809.8, inclusive, and their relevance to the conduct of peer review in California. The Medical Board of California shall contract with the Institute for Medical Quality to conduct this study, which shall include, but not be limited to, the following components:

(1) A comprehensive description of the various steps of decisionmakers in the peer review process as it is conducted by peer review bodies throughout the state, including the role of other related committees of acute care health facilities and clinics involved in the peer review process.

(2) A survey of peer review cases to determine the incidence of peer review by peer review bodies and whether they are complying with the reporting requirement in Section 805.

(3) A description and evaluation of the roles and performance of various state agencies, including the State Department of Health Services and occupational licensing agencies that regulate healing arts professionals, in receiving, reviewing, investigating, and disclosing peer review actions, and in sanctioning peer review bodies for failure to comply with Section 805.

(4) An assessment of the cost of peer review to licentiates and the facilities which employ them.

(5) An assessment of the time consumed by the average peer review proceeding, including the hearing provided pursuant to Section 809.2, and a description of any difficulties encountered by either licentiates or facilities in assembling peer review bodies or panels to participate in peer review decisionmaking.

(6) An assessment of the need to amend Section 805 and Sections 809 to 809.8, inclusive, to ensure that they continue to be relevant to the actual conduct of peer review as described in paragraph (1), to evaluate whether the current reporting requirement is yielding timely and accurate information to aid licensing boards in their responsibility to regulate and discipline healing arts practitioners when necessary, and to assure that peer review bodies function in the best interest of patient care.

(7) Recommendations of additional mechanisms to stimulate the appropriate reporting of peer review actions under Section 805.

(8) Recommendations regarding the Section 809 hearing process to improve its overall effectiveness and efficiency.

(b) The Institute of Medical Quality shall exercise no authority over the peer review processes of peer review bodies. However, peer review bodies, health care facilities, health care clinics, and health care service plans shall cooperate with the institute and provide data, information, and case files as requested in the timeframe specified by the institute.

(c) The institute shall work in cooperation with and under the general oversight of the Medical Director of the Medical Board of California and shall submit a written report with its findings and recommendations to the board and the Legislature no later than November 1, 2002.

SEC. 2. Section 1680 of the Business and Professions Code is amended to read:

1680. Unprofessional conduct by a person licensed under this chapter is defined as, but is not limited to, the violation of any one of the following:

(a) The obtaining of any fee by fraud or misrepresentation.

(b) The employment directly or indirectly of any student or suspended or unlicensed dentist to practice dentistry as defined in this chapter.

(c) The aiding or abetting of any unlicensed person to practice dentistry.

(d) The aiding or abetting of a licensed person to practice dentistry unlawfully.

(e) The committing of any act or acts of gross immorality substantially related to the practice of dentistry.

(f) The use of any false, assumed, or fictitious name, either as an individual, firm, corporation, or otherwise, or any name other than the name under which he or she is licensed to practice, in advertising or in any other manner indicating that he or she is practicing or will practice dentistry, except that name as is specified in a valid permit issued pursuant to Section 1701.5.

(g) The practice of accepting or receiving any commission or the rebating in any form or manner of fees for professional services, radiograms, prescriptions, or other services or articles supplied to patients.

(h) The making use by the licentiate or any agent of the licentiate of any advertising statements of a character tending to deceive or mislead the public.

(i) The advertising of either professional superiority or the advertising of performance of professional services in a superior manner. This subdivision shall not prohibit advertising permitted by subdivision (h) of Section 651.

(j) The employing or the making use of solicitors.

(k) The advertising in violation of Section 651.

(*l*) The advertising to guarantee any dental service, or to perform any dental operation painlessly. This subdivision shall not prohibit advertising permitted by Section 651.

(m) The violation of any of the provisions of law regulating the procurement, dispensing, or administration of dangerous drugs, as defined in Article 7 (commencing with Section 4211) of Chapter 9, or controlled substances, as defined in Division 10 (commencing with Section 11000) of the Health and Safety Code.

(n) The violation of any of the provisions of this division.

(o) The permitting of any person to operate dental radiographic equipment who has not met the requirements of Section 1656.

(p) The clearly excessive prescribing or administering of drugs or treatment, or the clearly excessive use of diagnostic procedures, or the clearly excessive use of diagnostic or treatment facilities, as determined by the customary practice and standards of the dental profession.

Any person who violates this subdivision is guilty of a misdemeanor and shall be punished by a fine of not less than one hundred dollars ($100) or more than six hundred dollars ($600), or by imprisonment for a term of not less than 60 days or more than 180 days, or by both a fine and imprisonment.

(q) The use of threats or harassment against any patient or licentiate for providing evidence in any possible or actual disciplinary action, or other legal action; or the discharge of an employee primarily based on the employee's attempt to comply with the provisions of this chapter or to aid in the compliance.

(r) Suspension or revocation of a license issued, or discipline imposed, by another state or territory on grounds which would be the basis of discipline in this state.

(s) The alteration of a patient's record with intent to deceive.

(t) Unsanitary or unsafe office conditions, as determined by the customary practice and standards of the dental profession.

(u) The abandonment of the patient by the licentiate, without written notice to the patient that treatment is to be discontinued and before the patient has ample opportunity to secure the services of another dentist and provided the health of the patient is not jeopardized.

(v) The willful misrepresentation of facts relating to a disciplinary action to the patients of a disciplined licentiate.

(w) Use of fraud in the procurement of any license issued pursuant to this chapter.

(x) Any action or conduct which would have warranted the denial of the license.

(y) The aiding or abetting of a licensed dentist or dental auxiliary to practice dentistry in a negligent or incompetent manner.

(z) The failure to report to the board in writing within seven days any of the following: (1) the death of his or her patient during the performance of any dental procedure; (2) the discovery of the death of a patient whose death is related to a dental procedure performed by him or her; or (3) except for a scheduled hospitalization, the removal to a hospital or emergency center for medical treatment for a period exceeding 24 hours of any patient to whom oral conscious sedation, conscious sedation, or general anesthesia was administered, or any patient as a result of dental treatment. With the exception of patients to whom oral conscious sedation, conscious sedation, or general anesthesia was administered, removal to a hospital or emergency center that is the normal or expected treatment for the underlying dental condition is not required to be reported. Upon receipt of a report pursuant to this subdivision the board may conduct an inspection of the dental office if the board finds that it is necessary.

(aa) Participating in or operating any group advertising and referral services that are in violation of Section 650.2.

(bb) The failure to use a fail-safe machine with an appropriate exhaust system in the administration of nitrous oxide. The board shall, by regulation, define what constitutes a fail-safe machine.

(cc) Engaging in the practice of dentistry with an expired license.

(dd) Except for good cause, the knowing failure to protect patients by failing to follow infection control guidelines of the board, thereby risking transmission of blood-borne infectious diseases from dentist or dental auxiliary to patient, from patient to patient, and from patient to dentist or dental auxiliary. In administering this subdivision, the board shall consider referencing the standards, regulations, and guidelines of the State Department of Health Services developed pursuant to Section 1250.11 of the Health and Safety Code and the standards, guidelines, and regulations pursuant to the California Occupational Safety and Health Act of 1973 (Part 1 (commencing with Section 6300), Division 5, Labor Code) for preventing the transmission of HIV, hepatitis B, and other blood-borne pathogens in health care settings. As necessary, the board shall consult with the Medical Board of California, the Board of Podiatric Medicine, the Board of Registered Nursing, and the Board of Vocational Nursing and Psychiatric Technicians, to encourage appropriate consistency in the implementation of this subdivision.

The board shall seek to ensure that licentiates and others regulated by the board are informed of the responsibility of licentiates and others to follow infection control guidelines, and of the most recent scientifically recognized safeguards for minimizing the risk of transmission of blood-borne infectious diseases.

(ee) The utilization by a licensed dentist of any person to perform the functions of a registered dental assistant, registered dental assistant in extended functions, registered dental hygienist, or registered dental hygienist in extended functions who, at the time of initial employment, does not possess a current, valid license to perform those functions.

SEC. 3. Section 2028 of the Business and Professions Code is amended to read:

2028. (a) The Medical Board of California shall consult with the California State Board of Pharmacy and commission a study and report its results to the Legislature on or before January 1, 2003, on the electronic transmission of prescriptions by physicians and surgeons.

(b) This report shall include recommendations on the following matters:

(1) Whether the electronic transmission of prescriptions should be encouraged.

(2) Methods to encourage physicians and surgeons, health care providers specified in subdivision (a) of Section 4024, and persons licensed to prescribe in another state who meet the requirements described in subdivision (b) of Section 4005 to issue prescriptions by electronic transmission.

(3) Identification of systems to protect confidential personal and medical information of patients for whom prescriptions are issued using electronic transmission, including, but not limited to, the issuance of

digital certification to physicians and surgeons, health care providers specified in subdivision (a) of Section 4024, and persons licensed to prescribe in another state who meet the requirements described in subdivision (b) of Section 4005 to use when transmitting prescriptions electronically.

(c) ''Digital certification'' is an electronic signature verifying the identity of the physician and surgeon, health care provider specified in subdivision (a) of Section 4024, or person licensed to prescribe in another state who meets the requirements described in subdivision (b) of Section 4005 who is transmitting the prescription electronically.

SEC. 4. Section 2249 of the Business and Professions Code is amended to read:

2249. (a) A physician and surgeon primarily responsible for providing a patient an annual gynecological examination shall provide that patient during the annual examination in layperson's language and in a language understood by the patient a standardized summary containing a description of the symptoms and appropriate methods of diagnoses for gynecological cancers. This section does not preclude the use of existing publications or pamphlets developed by nationally recognized cancer organizations or by the State Department of Health Services pursuant to Section 138.4 of the Health and Safety Code.

(b) A physician and surgeon who violates this section may be cited and assessed an administrative fine. No citation shall be issued and no fine shall be assessed upon the first complaint against a physician and surgeon who violates this section. Upon the second and subsequent complaints against a physician and surgeon who violates this section, a citation may be issued and an administrative fine may be assessed.

(c) Notwithstanding any other provision of law, all fines collected pursuant to this section shall be credited to the Contingent Fund of the Medical Board of California to be used by the Office of Women's Health within the State Department of Health Services for outreach services that provide information to women about gynecological cancers, but shall not be expended until they are appropriated by the Legislature in the Budget Act or another statute.

(d) Section 2314 shall not apply to this section.

SEC. 5. Section 2313 of the Business and Professions Code is amended to read:

2313. The Division of Medical Quality shall report annually to the Legislature, no later than October 1 of each year, the following information:

(a) The total number of temporary restraining orders or interim suspension orders sought by the board or the division to enjoin licensees pursuant to Sections 125.7, 125.8, and 2311, the circumstances in each case that prompted the board or division to seek that injunctive relief, and

whether a restraining order or interim suspension order was actually issued.

(b) The total number and types of actions for unprofessional conduct taken by the board or a division against licensees, the number and types of actions taken against licensees for unprofessional conduct related to prescribing drugs, narcotics, or other controlled substances, including those related to the undertreatment or undermedication of pain.

(c) Information relative to the performance of the division, including the following: number of consumer calls received; number of consumer calls or letters designated as discipline-related complaints; number of calls resulting in complaint forms being sent to complainants and number of forms returned; number of Section 805 reports by type; number of Section 801 and Section 803 reports; coroner reports received; number of convictions reported to the division; number of criminal filings reported to the division; number of complaints and referrals closed, referred out, or resolved without discipline, respectively, prior to accusation; number of accusations filed and final disposition of accusations through the division and court review, respectively; final physician discipline by category; number of citations issued with fines and without fines, and number of public reprimands issued; number of cases in process more than six months from receipt by the division of information concerning the relevant acts to the filing of an accusation; average and median time in processing complaints from original receipt of complaint by the division for all cases at each stage of discipline and court review, respectively; number of persons in diversion, and number successfully completing diversion programs and failing to do so, respectively; probation violation reports and probation revocation filings and dispositions; number of petitions for reinstatement and their dispositions; and caseloads of investigators for original cases and for probation cases, respectively.

''Action,'' for purposes of this section, includes proceedings brought by, or on behalf of, the division against licensees for unprofessional conduct which have not been finally adjudicated, as well as disciplinary actions taken against licensees.

(d) The total number of reports received pursuant to Section 805 by the type of peer review body reporting and, where applicable, the type of health care facility involved and the total number and type of administrative or disciplinary actions taken by the Medical Board of California with respect to the reports.

SEC. 6. Section 2401 of the Business and Professions Code is amended to read:

2401. (a) Notwithstanding Section 2400, a clinic operated primarily for the purpose of medical education by a public or private nonprofit university medical school, which is approved by the Division

of Licensing or the Osteopathic Medical Board of California, may charge for professional services rendered to teaching patients by licensees who hold academic appointments on the faculty of the university, if the charges are approved by the physician and surgeon in whose name the charges are made.

(b) Notwithstanding Section 2400, a clinic operated under subdivision (p) of Section 1206 of the Health and Safety Code may employ licensees and charge for professional services rendered by those licensees. However, the clinic shall not interfere with, control, or otherwise direct the professional judgment of a physician and surgeon in a manner prohibited by Section 2400 or any other provision of law.

(c) Notwithstanding Section 2400, a narcotic treatment program operated under Section 11876 of the Health and Safety Code and regulated by the State Department of Alcohol and Drug Programs, may employ licensees and charge for professional services rendered by those licensees. However, the narcotic treatment program shall not interfere with, control, or otherwise direct the professional judgment of a physician and surgeon in a manner prohibited by Section 2400 or any other provision of law.

SEC. 7. Section 3508 of the Business and Professions Code is amended to read:

3508. (a) The committee may convene from time to time as deemed necessary by the committee.

(b) Notice of each meeting of the committee shall be given at least two weeks in advance to those persons and organizations who express an interest in receiving notification.

(c) The committee shall receive permission of the director to meet more than six times annually. The director shall approve meetings that are necessary for the committee to fulfill its legal responsibilities.

SEC. 8. Section 4052 of the Business and Professions Code is amended to read:

4052. (a) Notwithstanding any other provision of law, a pharmacist may:

(1) Furnish a reasonable quantity of compounded medication to a prescriber for office use by the prescriber.

(2) Transmit a valid prescription to another pharmacist.

(3) Administer, orally or topically, drugs and biologicals pursuant to a prescriber's order.

(4) Perform the following procedures or functions in a licensed health care facility in accordance with policies, procedures, or protocols developed by health professionals, including physicians, pharmacists, and registered nurses, with the concurrence of the facility administrator:

(A) Ordering or performing routine drug therapy-related patient assessment procedures including temperature, pulse, and respiration.

(B) Ordering drug therapy-related laboratory tests.

(C) Administering drugs and biologicals by injection pursuant to a prescriber's order (the administration of immunizations under the supervision of a prescriber may also be performed outside of a licensed health care facility).

(D) Initiating or adjusting the drug regimen of a patient pursuant to an order or authorization made by the patient's prescriber and in accordance with the policies, procedures, or protocols of the licensed health care facility.

(5) (A) Perform the following procedures or functions as part of the care provided by a health care facility, a licensed home health agency, a licensed clinic in which there is a physician oversight, a provider who contracts with a licensed health care service plan with regard to the care or services provided to the enrollees of that health care service plan, or a physician, in accordance, as applicable, with policies, procedures, or protocols of that facility, the home health agency, the licensed clinic, the health care service plan, or that physician, in accordance with subparagraph (C):

(i) Ordering or performing routine drug therapy-related patient assessment procedures including temperature, pulse, and respiration.

(ii) Ordering drug therapy-related laboratory tests.

(iii) Administering drugs and biologicals by injection pursuant to a prescriber's order (the administration of immunizations under the supervision of a prescriber may also be performed outside of a licensed health care facility).

(iv) Initiating or adjusting the drug regimen of a patient pursuant to a specific written order or authorization made by the patient's prescriber for the individual patient, and in accordance with the policies, procedures, or protocols of the health care facility, home health agency, licensed clinic, health care service plan, or physician. Adjusting the drug regimen does not include substituting or selecting a different drug, except as authorized by the protocol. The pharmacist shall provide written notification to the patient's prescriber, or enter the appropriate information in an electronic patient record system shared by the prescriber, of any drug regimen initiated pursuant to this clause within 24 hours.

(B) A patient's prescriber may prohibit, by written instruction, any adjustment or change in the patient's drug regimen by the pharmacist.

(C) The policies, procedures, or protocols referred to in this paragraph shall be developed by health care professionals, including physicians, pharmacists, and registered nurses, and, at a minimum, meet all of the following requirements:

(i) Require that the pharmacist function as part of a multidisciplinary group that includes physicians and direct care registered nurses. The

multidisciplinary group shall determine the appropriate participation of the pharmacist and the direct care registered nurse.

(ii) Require that the medical records of the patient be available to both the patient's prescriber and the pharmacist.

(iii) Require that the procedures to be performed by the pharmacist relate to a condition for which the patient has first been seen by a physician.

(iv) Except for procedures or functions provided by a health care facility, a licensed clinic in which there is physician oversight, or a provider who contracts with a licensed health care plan with regard to the care or services provided to the enrollees of that health care service plan, require the procedures to be performed in accordance with a written, patient-specific protocol approved by the treating or supervising physician. Any change, adjustment, or modification of an approved preexisting treatment or drug therapy shall be provided in writing to the treating or supervising physician within 24 hours.

(6) Manufacture, measure, fit to the patient, or sell and repair dangerous devices or furnish instructions to the patient or the patient's representative concerning the use of those devices.

(7) Provide consultation to patients and professional information, including clinical or pharmacological information, advice, or consultation to other health care professionals.

(8) Initiate emergency contraception drug therapy in accordance with standardized procedures or protocols developed by the pharmacist and an authorized prescriber who is acting within his or her scope of practice. Prior to performing any procedure authorized under this paragraph, a pharmacist shall have completed a training program on emergency contraception, which includes, but is not limited to, conduct of sensitive communications, quality assurance, referral to additional services, and documentation.

(b) (1) Prior to performing any procedure authorized by paragraph (4) of subdivision (a), a pharmacist shall have received appropriate training as prescribed in the policies and procedures of the licensed health care facility.

(2) Prior to performing any procedure authorized by paragraph (5) of subdivision (a), a pharmacist shall have either (A) successfully completed clinical residency training or (B) demonstrated clinical experience in direct patient care delivery.

(3) For each emergency contraception drug therapy initiated pursuant to paragraph (8) of subdivision (a), the pharmacist shall provide the recipient of the emergency contraception drugs with a standardized factsheet that includes, but is not limited to, the indications for use of the drug, the appropriate method for using the drug, the need for medical followup, and other appropriate information. The board shall develop

this form in consultation with the State Department of Health Services, the American College of Obstetricians and Gynecologists, the California Pharmacists Association, and other health care organizations. The provisions of this section do not preclude the use of existing publications developed by nationally recognized medical organizations.

(c) Nothing in this section shall affect the requirements of existing law relating to maintaining the confidentiality of medical records.

(d) Nothing in this section shall affect the requirements of existing law relating to the licensing of a health care facility.

SEC. 9. Section 4982.05 of the Business and Professions Code is amended to read:

4982.05. (a) Except as provided in subdivisions (b), (c), and (e), any accusation filed against a licensee pursuant to Section 11503 of the Government Code shall be filed within three years from the date the board discovers the alleged act or omission that is the basis for disciplinary action, or within seven years from the date the alleged act or omission that is the basis for disciplinary action occurred, whichever occurs first.

(b) An accusation filed against a licensee pursuant to Section 11503 of the Government Code alleging the procurement of a license by fraud or misrepresentation is not subject to the limitations set forth in subdivision (a).

(c) The limitation provided for by subdivision (a) shall be tolled for the length of time required to obtain compliance when a report required to be filed by the licensee or registrant with the board pursuant to Article 11 (commencing with Section 800) of Chapter 1 is not filed in a timely fashion.

(d) If an alleged act or omission involves a minor, the seven-year limitations period provided for by subdivision (a) and the 10-year limitations period provided for by subdivision (e) shall be tolled until the minor reaches the age of majority.

(e) An accusation filed against a licensee pursuant to Section 11503 of the Government Code alleging sexual misconduct shall be filed within three years after the board discovers the act or omission alleged as the ground for disciplinary action, or within 10 years after the act or omission alleged as the grounds for disciplinary action occurs, whichever occurs first. This subdivision shall apply to a complaint alleging sexual misconduct received by the board on and after January 1, 2002.

(f) The limitations period provided by subdivision (a) shall be tolled during any period if material evidence necessary for prosecuting or determining whether a disciplinary action would be appropriate is unavailable to the board due to an ongoing criminal investigation.

SEC. 10. Section 5081.1 of the Business and Professions Code is amended to read:

5081.1. Pursuant to subdivision (b) of Section 5090, an applicant for admission to the examination for a certified public accountant certificate may qualify for admission with one of the following:

(a) The applicant shall present satisfactory evidence that the applicant has either of the following:

(1) A baccalaureate degree from a university, college or other four-year institution of learning accredited by a regional institutional accrediting agency included in a list of these agencies published by the United States Secretary of Education under the requirements of the Higher Education Act of 1965 as amended (20 U.S.C. Sec. 1001 et seq.) with a major in accounting or related subjects requiring a minimum of 45 semester units of instruction in these subjects. If the applicant has received a baccalaureate degree in a nonaccounting major, the applicant shall present satisfactory evidence of study substantially the equivalent of an accounting major, including courses in related business administration subjects.

(2) A degree or degrees from a college, university, or other institution of learning located outside the United States that is approved by the board as the equivalent of the baccalaureate degree described in paragraph (1). The board may require an applicant under this paragraph to submit documentation of his or her education to a credentials evaluation service approved by the board for evaluation and to cause the results of this evaluation to be reported to the board. The board shall adopt regulations specifying the criteria and procedures for approval of credential evaluation services. These regulations shall, at a minimum, require that the credential evaluation service (A) furnish evaluations directly to the board, (B) furnish evaluations written in English, (C) be a member of the American Association of Collegiate Registrars and Admission Officers, the National Association of Foreign Student Affairs, or the National Association of Credential Evaluation Services, (D) be used by accredited colleges and universities, (E) be reevaluated by the board every five years, (F) maintain a complete set of reference materials as specified by the board, (G) base evaluations only upon authentic, original transcripts and degrees and have a written procedure for identifying fraudulent transcripts, (H) include in the evaluation report, for each degree held by the applicant, the equivalent degree offered in the United States, the date the degree was granted, the institution granting the degree, an English translation of the course titles, and the semester unit equivalence for each of the courses, (I) have an appeal procedure for applicants, and (J) furnish the board with information concerning the credential evaluation service that includes biographical information on evaluators and translators, three letters of

reference from public or private agencies, statistical information on the number of applications processed annually for the past five years, and any additional information the board may require in order to ascertain that the credential evaluation service meets the standards set forth in this paragraph and in any regulations adopted by the board.

(b) The applicant shall present satisfactory evidence that the applicant has successfully completed a two-year course of college level study or received an associate of arts degree from a community college, either institution accredited by a regional institutional accrediting agency that is included in a list published by the United States Secretary of Education under the provisions of federal law specified in paragraph (1) of subdivision (a), and that the applicant has completed a minimum of 120 semester units which includes the study of accounting and related business administration subjects.

(c) The applicant shall show to the satisfaction of the board that he or she has had the equivalent of the educational qualifications required by subdivision (b), or shall pass a preliminary written examination approved and administered by an agency approved by the California State Department of Education and shall have completed a minimum of 10 semester units or the equivalent in accounting subjects. The 10 semester units in accounting subjects shall be completed at a college, university, or other institution of higher learning accredited at the college level by an agency or association that is included in a list published by the United States Secretary of Education under the federal law specified in paragraph (1) of subdivision (a).

(d) The applicant shall be a public accountant registered under this chapter.

(e) This section shall remain in effect only until January 1, 2006, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2006, deletes or extends that date.

SEC. 11. Section 5093 of the Business and Professions Code is amended to read:

5093. (a) To qualify for the certified public accountant license, an applicant who is applying under this section shall meet the education, examination, and experience requirements specified in subdivisions (b), (c), and (d) of this section. The board may adopt regulations as necessary to implement this section.

(b) (1) An applicant for admission to the certified public accountant examination under the provisions of this section shall present satisfactory evidence that the applicant has completed a baccalaureate or higher degree conferred by a college or university, meeting, at a minimum, the standards described in Section 5094, the total educational program to include a minimum of 24 semester units in accounting subjects and 24 semester units in business related subjects. This

evidence shall be provided at the time of application for admission to the examination, except that an applicant who passed the examination before December 31, 2001, may provide this evidence at the time of application for licensure provided the applicant applies and qualifies for licensure before January 1, 2006.

(2) An applicant for issuance of the certified public accountant license under the provisions of this section shall present satisfactory evidence that the applicant has completed at least 150 semester units of college education including a baccalaureate or higher degree conferred by a college or university, meeting, at a minimum, the standards described in Section 5094, the total educational program to include a minimum of 24 semester units in accounting subjects and 24 semester units in business related subjects. This evidence shall be presented at the time of application for the certified public accountant license.

(c) An applicant for the certified public accountant license shall pass an examination in accounting, auditing, and other subjects the board deems appropriate. An applicant who fails this examination has the right to reexamination. During the time this examination is a written, paper and pencil examination, the applicant shall pass the examination in accordance with the requirements of paragraphs (1) and (2) of this subdivision.

(1) If at a given sitting of the examination an applicant passes two or more subjects, but does not pass all subjects, the applicant shall be given conditional credit for those subjects and the applicant does not need to sit for reexamination in those subjects, provided that:

(A) At that sitting the applicant sat for all subjects for which the applicant does not have credit.

(B) The applicant attained a minimum standardized score of 50 as determined by the board on each subject taken at that sitting.

(2) In order to pass the examination pursuant to the conditional credit described in paragraph (1), the applicant shall pass the remaining subjects within six subsequent consecutive examinations given after the one at which the first subjects were passed provided that:

(A) At each subsequent sitting at which the applicant seeks to pass any additional subjects, the applicant shall sit for all subjects for which the applicant does not have credit.

(B) In order to receive credit for passing additional subjects in any subsequent sitting, the applicant shall attain a minimum standardized score of 50 as determined by the board on the subjects taken at that sitting.

The conditional credit period provided in this section may be extended by the board upon a showing of extraordinary extenuating circumstances which prevented the applicant from retaking the examination period.

(d) The applicant shall show, to the satisfaction of the board, that the applicant has had one year of qualifying experience. This experience may include providing any type of service or advice involving the use of accounting, attest, compilation, management advisory, financial advisory, tax or consulting skills. To be qualifying under this section, experience shall have been performed in accordance with applicable professional standards. Experience in public accounting shall be completed under the supervision or in the employ of a person licensed or otherwise having comparable authority under the laws of any state or country to engage in the practice of public accountancy. Experience in private or governmental accounting or auditing shall be completed under the supervision of an individual licensed by a state to engage in the practice of public accountancy.

SEC. 12. Section 6060 of the Business and Professions Code is amended to read:

6060. To be certified to the Supreme Court for admission and a license to practice law, a person who has not been admitted to practice law in a sister state, United States jurisdiction, possession, territory, or dependency or in a foreign country shall:

(a) Be of the age of at least 18 years.

(b) Be of good moral character.

(c) Before beginning the study of law, have done either of the following:

(1) Completed at least two years of college work, which college work shall be not less than one-half of the collegiate work acceptable for a bachelor's degree granted upon the basis of a four-year period of study by a college or university approved by the examining committee.

(2) Have attained in apparent intellectual ability the equivalent of at least two years of college work by taking any examinations in subject matters and achieving the scores thereon as are prescribed by the examining committee.

(d) Have registered with the examining committee as a law student within 90 days after beginning the study of law. The examining committee, upon good cause being shown, may permit a later registration.

(e) Have done any of the following:

(1) Had conferred upon him or her a juris doctor (J.D.) degree or a bachelor of laws (LL.B.) degree by a law school accredited by the examining committee or approved by the American Bar Association.

(2) Studied law diligently and in good faith for at least four years in any of the following manners:

(A) In a law school that is authorized or approved to confer professional degrees and requires classroom attendance of its students for a minimum of 270 hours a year.

A person who has received his or her legal education in a foreign state or country wherein the common law of England does not constitute the basis of jurisprudence shall demonstrate to the satisfaction of the examining committee that his or her education, experience, and qualifications qualify him or her to take the examination.

(B) In a law office in this state and under the personal supervision of a member of the State Bar of California who is, and for at least the last five years continuously has been, engaged in the active practice of law. It is the duty of the supervising attorney to render any periodic reports to the examining committee as the committee may require.

(C) In the chambers and under the personal supervision of a judge of a court of record of this state. It is the duty of the supervising judge to render any periodic reports to the examining committee as the committee may require.

(D) By instruction in law from a correspondence law school authorized or approved to confer professional degrees by this state, which requires 864 hours of preparation and study per year for four years.

(E) By any combination of the methods referred to in this paragraph (2).

(f) Have passed any examination in professional responsibility or legal ethics as the examining committee may prescribe.

(g) Have passed the general bar examination given by the examining committee.

(h) (1) Have passed a law students' examination administered by the examining committee after completion of his or her first year of law study. Those who pass the examination within its first three administrations upon becoming eligible to take the examination shall receive credit for all law studies completed to the time the examination is passed. Those who do not pass the examination within its first three administrations upon becoming eligible to take the examination, but who subsequently pass the examination, shall receive credit for one year of legal study only.

(2) This requirement does not apply to a student who has satisfactorily completed his or her first year of law study at a law school accredited by the examining committee and who has completed at least two years of college work prior to matriculating in the accredited law school, nor shall this requirement apply to an applicant who has passed the bar examination of a sister state or of a country in which the common law of England constitutes the basis of jurisprudence.

The law students' examination shall be administered twice a year at reasonable intervals.

SEC. 13. Section 6062 of the Business and Professions Code is amended to read:

6062. (a) To be certified to the Supreme Court for admission, and a license to practice law, a person who has been admitted to practice law in a sister state, United States jurisdiction, possession, territory, or dependency the United States may hereafter acquire shall:

(1) Be of the age of at least 18 years.

(2) Be of good moral character.

(3) Have passed the general bar examination given by the examining committee. However, if that person has been an active member in good standing of the bar of the admitting sister state or United States jurisdiction, possession, or territory for at least four years immediately preceding the first day of the examination applied for, he or she may elect to take the Attorneys' Examination rather than the general bar examination. Attorneys admitted less than four years and attorneys admitted four years or more in another jurisdiction but who have not been active members in good standing of their admitting jurisdiction for at least four years immediately preceding the first day of the examination applied for must take the general bar examination administered to general applicants not admitted as attorneys in other jurisdictions.

(4) Have passed an examination in professional responsibility or legal ethics as the examining committee may prescribe.

(b) To be certified to the Supreme Court for admission, and a license to practice law, a person who has been admitted to practice law in a jurisdiction other than in a sister state, United States jurisdiction, possession, or territory shall:

(1) Be of the age of at least 18 years.

(2) Be of good moral character.

(3) Have passed the general bar examination given by the examining committee.

(4) Have passed an examination in professional responsibility or legal ethics as the examining committee may prescribe.

(c) The amendments to this section made at the 1997–98 Regular Session of the Legislature shall be applicable on and after January 1, 1997, and do not constitute a change in, but are declaratory of, existing law.

SEC. 14. Section 6072 of the Business and Professions Code is amended to read:

6072. (a) A contract with the state for legal services that exceeds fifty thousand dollars ($50,000) shall include a certification by the contracting law firm that the firm agrees to make a good faith effort to provide, during the duration of the contract, a minimum number of hours of pro bono legal services during each year of the contract equal to the lesser of 30 multiplied by the number of full-time attorneys in the firm's offices in the state, with the number of hours prorated on an actual day

basis for any contract period of less than a full year or 10 percent of its contract with the state.

(b) Failure to make a good faith effort may be cause for nonrenewal of a state contract for legal services and may be taken into account when determining the award of future contracts with the state for legal services. If a firm fails to provide the hours of pro bono legal services set forth in its certification, the following factors shall be considered in determining whether the firm made a good faith effort:

(1) The actual number of hours of pro bono legal services provided by the firm during the term of the contract.

(2) The firm's efforts to obtain pro bono legal work from legal services programs, pro bono programs, and other relevant communities or groups.

(3) The firm's history of providing pro bono legal services, or other activities of the firm that evidence a good faith effort to provide pro bono legal services such as the adoption of a pro bono policy or the creation of a pro bono committee.

(4) The types of pro bono legal services provided, including the quantity and complexity of cases as well as the nature of the relief sought.

(5) The extent to which the failure to provide the hours of pro bono legal services set forth in the certification is the result of extenuating circumstances unforeseen at the time of the certification.

(c) In awarding a contract with the state for legal services that exceeds fifty thousand dollars ($50,000), the awarding department shall consider the efforts of a potential contracting law firm to provide, during the 12-month period prior to award of the contract, the minimum number of hours of pro bono legal services described in subdivision (a). Other things being equal, the awarding department shall award a contract for legal services to firms that have provided, during the 12-month period prior to award of the contract, the minimum number of hours of pro bono legal services described in subdivision (a).

(d) As used in this section, ''pro bono legal services'' means the provision of legal services either:

(1) Without fee or expectation of fee to either of the following:

(A) Persons who are indigent or of limited means.

(B) Charitable, religious, civic, community, governmental, and educational organizations in matters designed primarily to address the economic, health, and social needs of persons who are indigent or of limited means.

(2) At no fee or substantially reduced fee to groups or organizations seeking to secure or protect civil rights, civil liberties, or public rights.

(e) Nothing in this section shall subject a contracting law firm that fails to provide the minimum number of hours of pro bono legal services

described in subdivision (a) to civil or criminal liability, nor shall that failure be grounds for invalidating an existing contract for legal services.

(f) This article shall not apply to state contracts with, or appointments made by the judiciary of, an attorney, law firm, or organization for the purposes of providing legal representation to low- or middle-income persons, in either civil, criminal, or administrative matters.

(g) This article shall not apply to contracts entered into between the state and an attorney or law firm if the legal services contracted for are to be performed outside the State of California.

(h) The provisions of this article shall become operative on January 1, 2003.

SEC. 15. Section 6450 of the Business and Professions Code, as amended by Section 1 of Chapter 311 of the Statutes of 2001, is amended to read:

6450. (a) ''Paralegal'' means a person who holds himself or herself out to be a paralegal, who is qualified by education, training, or work experience, who either contracts with or is employed by an attorney, law firm, corporation, governmental agency, or other entity, and who performs substantial legal work under the direction and supervision of an active member of the State Bar of California, as defined in Section 6060, or an attorney practicing law in the federal courts of this state, that has been specifically delegated by the attorney to him or her. Tasks performed by a paralegal may include, but are not limited to, case planning, development, and management; legal research; interviewing clients; fact gathering and retrieving information; drafting and analyzing legal documents; collecting, compiling, and utilizing technical information to make an independent decision and recommendation to the supervising attorney; and representing clients before a state or federal administrative agency if that representation is permitted by statute, court rule, or administrative rule or regulation.

(b) Notwithstanding subdivision (a), a paralegal shall not do any of the following:

(1) Provide legal advice.

(2) Represent a client in court.

(3) Select, explain, draft, or recommend the use of any legal document to or for any person other than the attorney who directs and supervises the paralegal.

(4) Act as a runner or capper, as defined in Sections 6151 and 6152.

(5) Engage in conduct that constitutes the unlawful practice of law.

(6) Contract with, or be employed by, a natural person other than an attorney to perform paralegal services.

(7) In connection with providing paralegal services, induce a person to make an investment, purchase a financial product or service, or enter

a transaction from which income or profit, or both, purportedly may be derived.

(8) Establish the fees to charge a client for the services the paralegal performs, which shall be established by the attorney who supervises the paralegal's work. This paragraph does not apply to fees charged by a paralegal in a contract to provide paralegal services to an attorney, law firm, corporation, governmental agency, or other entity as provided in subdivision (a).

(c) A paralegal shall possess at least one of the following:

(1) A certificate of completion of a paralegal program approved by the American Bar Association.

(2) A certificate of completion of a paralegal program at, or a degree from, a postsecondary institution that requires the successful completion of a minimum of 24 semester, or equivalent, units in law-related courses and that has been accredited by a national or regional accrediting organization or approved by the Bureau for Private Postsecondary and Vocational Education.

(3) A baccalaureate degree or an advanced degree in any subject, a minimum of one year of law-related experience under the supervision of an attorney who has been an active member of the State Bar of California for at least the preceding three years or who has practiced in the federal courts of this state for at least the preceding three years, and a written declaration from this attorney stating that the person is qualified to perform paralegal tasks.

(4) A high school diploma or general equivalency diploma, a minimum of three years of law-related experience under the supervision of an attorney who has been an active member of the State Bar of California for at least the preceding three years or who has practiced in the federal courts of this state for at least the preceding three years, and a written declaration from this attorney stating that the person is qualified to perform paralegal tasks. This experience and training shall be completed no later than December 31, 2003.

(d) All paralegals shall be required to certify completion every three years of four hours of mandatory continuing legal education in legal ethics. All continuing legal education courses shall meet the requirements of Section 6070. Every two years, all paralegals shall be required to certify completion of four hours of mandatory continuing education in either general law or in a specialized area of law. Certification of these continuing education requirements shall be made with the paralegal's supervising attorney. The paralegal shall be responsible for keeping a record of the paralegal's certifications.

(e) A paralegal does not include a nonlawyer who provides legal services directly to members of the public or a legal document assistant or unlawful detainer assistant as defined in Section 6400.

(f) If a legal document assistant, as defined in subdivision (c) of Section 6400, has registered, on or before January 1, 2001, as required by law, a business name that includes the word "paralegal," that person may continue to use that business name until he or she is required to renew registration.

(g) This section shall remain in effect only until January 1, 2004, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 2004, deletes or extends that date.

SEC. 16. Section 6450 of the Business and Professions Code, as amended by Section 2 of Chapter 311 of the Statutes of 2001, is amended to read:

6450. (a) "Paralegal" means a person who holds himself or herself out to be a paralegal, who is qualified by education, training, or work experience, who either contracts with or is employed by an attorney, law firm, corporation, governmental agency, or other entity, and who performs substantial legal work under the direction and supervision of an active member of the State Bar of California, as defined in Section 6060, or an attorney practicing law in the federal courts of this state, that has been specifically delegated by the attorney to him or her. Tasks performed by a paralegal include, but are not limited to, case planning, development, and management; legal research; interviewing clients; fact gathering and retrieving information; drafting and analyzing legal documents; collecting, compiling, and utilizing technical information to make an independent decision and recommendation to the supervising attorney; and representing clients before a state or federal administrative agency if that representation is permitted by statute, court rule, or administrative rule or regulation.

(b) Notwithstanding subdivision (a), a paralegal shall not do the following:

(1) Provide legal advice.

(2) Represent a client in court.

(3) Select, explain, draft, or recommend the use of any legal document to or for any person other than the attorney who directs and supervises the paralegal.

(4) Act as a runner or capper, as defined in Sections 6151 and 6152.

(5) Engage in conduct that constitutes the unlawful practice of law.

(6) Contract with, or be employed by, a natural person other than an attorney to perform paralegal services.

(7) In connection with providing paralegal services, induce a person to make an investment, purchase a financial product or service, or enter a transaction from which income or profit, or both, purportedly may be derived.

(8) Establish the fees to charge a client for the services the paralegal performs, which shall be established by the attorney who supervises the

paralegal's work. This paragraph does not apply to fees charged by a paralegal in a contract to provide paralegal services to an attorney, law firm, corporation, governmental agency, or other entity as provided in subdivision (a).

(c) A paralegal shall possess at least one of the following:

(1) A certificate of completion of a paralegal program approved by the American Bar Association.

(2) A certificate of completion of a paralegal program at, or a degree from, a postsecondary institution that requires the successful completion of a minimum of 24 semester, or equivalent, units in law-related courses and that has been accredited by a national or regional accrediting organization or approved by the Bureau for Private Postsecondary and Vocational Education.

(3) A baccalaureate degree or an advanced degree in any subject, a minimum of one year of law-related experience under the supervision of an attorney who has been an active member of the State Bar of California for at least the preceding three years or who has practiced in the federal courts of this state for at least the preceding three years, and a written declaration from this attorney stating that the person is qualified to perform paralegal tasks.

(4) A high school diploma or general equivalency diploma, a minimum of three years of law-related experience under the supervision of an attorney who has been an active member of the State Bar of California for at least the preceding three years or who has practiced in the federal courts of this state for at least the preceding three years, and a written declaration from this attorney stating that the person is qualified to perform paralegal tasks. This experience and training shall be completed no later than December 31, 2003.

(d) All paralegals shall be required to certify completion every three years of four hours of mandatory continuing legal education in legal ethics. All continuing legal education courses shall meet the requirements of Section 6070. Every two years, all paralegals shall be required to certify completion of four hours of mandatory continuing education in either general law or in a specialized area of law. Certification of these continuing education requirements shall be made with the paralegal's supervising attorney. The paralegal shall be responsible for keeping a record of the paralegal's certifications.

(e) A paralegal does not include a nonlawyer who provides legal services directly to members of the public, or a legal document assistant or unlawful detainer assistant as defined in Section 6400, unless the person is a person described in subdivision (a).

(f) This section shall become operative on January 1, 2004.

SEC. 17. Section 7685 of the Business and Professions Code is amended to read:

7685. (a) Every funeral director shall provide to any person, upon beginning discussion of prices or of the funeral goods and services offered, a written or printed list containing, but not necessarily limited to, the price for professional services offered, which may include the funeral director's services, the preparation of the body, the use of facilities, and the use of automotive equipment. All services included in this price or prices shall be enumerated.

(b) The list shall also include a statement indicating that the survivor of the deceased who is handling the funeral arrangements, or the responsible party, is entitled to receive, prior to the drafting of any contract, a copy of any preneed agreement that has been signed and paid for, in full or in part, by or on behalf of the deceased, and that is in the possession of the funeral establishment.

(c) The funeral director shall also provide a statement on that list that gives the price range for all caskets offered for sale. The funeral director shall also provide a written statement or list that, at a minimum, specifically identifies a particular casket or caskets by price and by thickness of metal, or type of wood, or other construction, interior and color, in addition to other casket identification requirements under Title 16, Code of Federal Regulations, Part 453 and any subsequent version of this regulation, when a request for specific information on a casket or caskets is made in person by any individual. Prices of caskets and other identifying features such as thickness of metal, or type of wood, or other construction, interior and color, in addition to other casket identification requirements required to be given over the telephone by Title 16, Code of Federal Regulations, Part 453 and any subsequent version of this regulation, shall be provided over the telephone, if requested.

SEC. 18. Section 8008 of the Business and Professions Code is amended to read:

8008. The board has the following powers and duties:

(a) To adopt a seal.

(b) By affirmative vote of at least three members of the board, to suspend, revoke, or impose any other disciplinary action against a certificate for any cause specified in this chapter.

(c) To charge and collect all fees as provided for in this chapter.

(d) To require the renewal of all certificates.

(e) To issue subpoenas, to administer oaths, and to take testimony concerning any matter within the jurisdiction of the board.

(f) To investigate the actions of any licensee, upon receipt of a verified complaint in writing from any person, for alleged acts or omissions constituting grounds for disciplinary action under the chapter.

(g) To administer the Transcript Reimbursement Fund described in Section 8030.2.

SEC. 19. Section 8020 of the Business and Professions Code, as amended by Section 3 of Chapter 616 of the Statutes of 2001, is amended to read:

8020. Any person over the age of 18 years, who has not committed any acts or crimes constituting grounds for the denial of licensure under Sections 480, 8025, and 8025.1, who has a high school education or its equivalent as determined by the board, and who has satisfactorily passed an examination under any regulations that the board may prescribe, shall be entitled to a certificate and shall be styled and known as a certified shorthand reporter. No person shall be admitted to the examination without first presenting satisfactory evidence to the board that, within the five years immediately preceding the date of application for a certificate, the applicant has obtained one of the following:

(a) One year of experience in making verbatim records of depositions, arbitrations, hearings, or judicial or related proceedings by means of written symbols or abbreviations in shorthand or machine shorthand writing and transcribing these records.

(b) A verified certificate of satisfactory completion of a prescribed course of study in a recognized court reporting school or a certificate from the school that evidences an equivalent proficiency and the ability to make a verbatim record of material dictated in accordance with regulations adopted by the board contained in Title 16 of the California Code of Regulations.

(c) A certificate from the National Court Reporters Association demonstrating proficiency in machine shorthand reporting.

(d) A passing grade on the California state hearing reporters examination.

(e) A valid certified shorthand reporters certificate or license to practice shorthand reporting issued by a state other than California whose requirements and licensing examination are substantially the same as those in California.

(f) This section shall remain in effect only until January 1, 2004, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2004, deletes or extends that date.

SEC. 20. Section 8020 of the Business and Professions Code, as added by Section 4 of Chapter 616 of the Statutes of 2001, is amended to read:

8020. Any person over the age of 18 years, who has not committed any acts or crimes constituting grounds for the denial of licensure under Sections 480, 8025, and 8025.1, who has a high school education or its equivalent as determined by the board, and who has satisfactorily passed an examination under any regulations that the board may prescribe, shall be entitled to a certificate and shall be styled and known as a certified shorthand reporter. No person shall be admitted to the examination

without first presenting satisfactory evidence to the board that, within the three years immediately preceding the date of application for a certificate, the applicant has obtained one of the following:

(a) One year of experience in making verbatim records of depositions, arbitrations, hearings, or judicial or related proceedings by means of written symbols or abbreviations in shorthand or machine shorthand writing and transcribing these records.

(b) A verified certificate of satisfactory completion of a prescribed course of study in a recognized court reporting school or a certificate from the school that evidences equivalent proficiency and the ability to make a verbatim record of material dictated in accordance with regulations adopted by the board contained in Title 16 of the California Code of Regulations.

(c) A certificate from the National Court Reporters Association demonstrating proficiency in machine shorthand writing.

(d) A passing grade on the California state hearing reporters examination.

(e) A valid certified shorthand reporters certificate or license to practice shorthand reporting issued by a state other than California whose requirements and licensing examination are substantially the same as those in California.

(f) This section shall become operative on January 1, 2004.

SEC. 21. Section 8027 of the Business and Professions Code is amended to read:

8027. (a) As used in this section, ''school'' means a court reporter training program or an institution that provides a course of instruction approved by the board and the Bureau for Private Postsecondary and Vocational Education, is a public school in this state, or is accredited by the Western Association of Schools and Colleges.

(b) A court reporting school shall be primarily organized to train students for the practice of shorthand reporting, as defined in Sections 8016 and 8017. Its educational program shall be on the postsecondary or collegiate level. It shall be legally organized and authorized to conduct its program under all applicable laws of the state, and shall conform to and offer all components of the minimum prescribed course of study established by the board. Its records shall be kept and shall be maintained in a manner to render them safe from theft, fire, or other loss. The records shall indicate positive daily and clock-hour attendance of each student for all classes, apprenticeship and graduation reports, high school transcripts or the equivalent or self-certification of high school graduation or the equivalent, transcripts of other education, and student progress to date, including all progress and counseling reports.

(c) Any school intending to offer a program in court reporting shall notify the board within 30 days of the date on which it provides notice

to, or seeks approval from, the California Department of Education, the Bureau for Private Postsecondary and Vocational Education, the Chancellor's Office of the California Community Colleges, or the Western Association of Schools and Colleges, whichever is applicable. The board shall review the proposed curriculum and provide the school tentative approval, or notice of denial, within 60 days of receipt of the notice. The school shall apply for provisional recognition pursuant to subdivision (d) within no more than one year from the date it begins offering court reporting classes.

(d) The board may grant provisional recognition to a new court reporting school upon satisfactory evidence that it has met all of the provisions of subdivision (b) and this subdivision. Recognition may be granted by the board to a provisionally recognized school after it has been in continuous operation for a period of no less than three consecutive years from the date provisional recognition was granted, during which period the school shall provide satisfactory evidence that at least one person has successfully completed the entire course of study established by the board and complied with the provisions of Section 8020, and has been issued a certificate to practice shorthand reporting as defined in Sections 8016 and 8017. The board may, for good cause shown, extend the three-year provisional recognition period for not more than one year. Failure to meet the provisions and terms of this section shall require the board to deny recognition. Once granted, recognition may be withdrawn by the board for failure to comply with all applicable laws and regulations.

(e) Application for recognition of a court reporting school shall be made upon a form prescribed by the board and shall be accompanied by all evidence, statements, or documents requested. Each branch, extension center, or off-campus facility requires separate application.

(f) All recognized and provisionally recognized court reporting schools shall notify the board of any change in school name, address, telephone number, responsible court reporting program manager, owner of private schools, and the effective date thereof, within 30 days of the change. All of these notifications shall be made in writing.

(g) A school shall notify the board in writing immediately of the discontinuance or pending discontinuance of its court reporting program or any of the program's components. Within two years of the date this notice is sent to the board, the school shall discontinue its court reporting program in its entirety. The board may, for good cause shown, grant not more than two one-year extensions of this period to a school. If a student is to be enrolled after this notice is sent to the board, a school shall disclose to the student the fact of the discontinuance or pending discontinuance of its court reporting program or any of its program components.

(h) The board shall maintain a roster of currently recognized and provisionally recognized court reporting schools, including, but not limited to, the name, address, telephone number, and the name of the responsible court reporting program manager of each school.

(i) The board shall maintain statistics that display the number and passing percentage of all first-time examinees, including, but not limited to, those qualified by each recognized or provisionally recognized school and those first-time examinees qualified by other methods as defined in Section 8020.

(j) Inspections and investigations shall be conducted by the board as necessary to carry out this section, including, but not limited to, unannounced site visits.

(k) All recognized and provisionally recognized schools shall print in their school or course catalog the name, address, and telephone number of the board. At a minimum, the information shall be in 8-point bold type and include the following statement:

"IN ORDER FOR A PERSON TO QUALIFY FROM A SCHOOL TO TAKE THE STATE LICENSING EXAMINATION, THE PERSON SHALL COMPLETE A PROGRAM AT A RECOGNIZED SCHOOL. FOR INFORMATION CONCERNING THE MINIMUM REQUIREMENTS THAT A COURT REPORTING PROGRAM MUST MEET IN ORDER TO BE RECOGNIZED, CONTACT: THE COURT REPORTERS BOARD OF CALIFORNIA; (ADDRESS); (TELEPHONE NUMBER)."

(*l*) Each court reporting school shall file with the board, not later than June 30 of each year, a current school catalog that shows all course offerings and staff, and for private schools, the owner, except that where there have been no changes to the catalog within the previous year, no catalog need be sent. In addition, each school shall also file with the board a statement certifying whether the school is in compliance with all statutes and the rules and regulations of the board, signed by the responsible court reporting program manager.

(m) A school offering court reporting may not make any written or verbal claims of employment opportunities or potential earnings unless those claims are based on verified data and reflect current employment conditions.

(n) If a school offers a course of instruction that exceeds the board's minimum requirements, the school shall disclose orally and in writing the board's minimum requirements and how the course of instruction differs from those criteria. The school shall make this disclosure before a prospective student executes an agreement obligating that person to pay any money to the school for the course of instruction. The school

shall also make this disclosure to all students enrolled on January 1, 2002.

(o) Private schools shall provide each prospective student with all of the following and have the prospective student sign a document that shall become part of that individual's permanent record, acknowledging receipt of each item:

(1) A student consumer information brochure published by the board.

(2) A list of the school's graduation requirements, including the number of tests, the pass point of each test, the speed of each test, and the type of test, such as jury charge or literary.

(3) A list of requirements to qualify for the state certified shorthand reporter licensing examination, including the number of tests, the pass point of each test, the speed of each test, and the type of test, such as jury charge or literary, if different than those requirements listed in paragraph (2).

(4) A copy of the school's board-approved benchmarks for satisfactory progress as identified in subdivision (u).

(5) A report showing the number of students from the school who qualified for each of the certified shorthand reporter licensing examinations within the preceding two years, the number of those students that passed each examination, the time, as of the date of qualification, that each student was enrolled in court reporting school, and the placement rate for all students that passed each examination.

(6) On and after January 1, 2005, the school shall also provide to prospective students the number of hours each currently enrolled student who has qualified to take the next licensing test, exclusive of transfer students, has attended court reporting classes.

(p) Public schools shall provide the information in paragraphs (1) to (6) of subdivision (o), inclusive, to each new student the first day he or she attends theory or machine speed class, if it was not provided previously.

(q) Each enrolled student shall be provided written notification of any change in qualification or graduation requirements that is being implemented due to the requirements of any one of the school's oversight agencies. This notice shall be provided to each affected student at least 30 days before the effective date of the change and shall state the new requirement and the name, address, and telephone number of the agency that is requiring it of the school. Each student shall initial and date a document acknowledging receipt of that information and that document, or a copy thereof, shall be made part of the student's permanent file.

(r) Schools shall make available a comprehensive final examination in each academic subject to any student desiring to challenge an academic class in order to obtain credit towards certification for the state

licensing examination. The points required to pass a challenge examination shall not be higher than the minimum points required of other students completing the academic class.

(s) An individual serving as a teacher, instructor, or reader shall meet the qualifications specified by regulation for his or her position.

(t) Each school shall provide a substitute teacher or instructor for any class for which the teacher or instructor is absent for two consecutive days or more.

(u) The board has the authority to approve or disapprove benchmarks for satisfactory progress which each school shall develop for its court reporting program. Schools shall use only board-approved benchmarks to comply with the provisions of paragraph (4) of subdivision (o) and subdivision (u).

(v) Each school shall counsel each student a minimum of one time within each 12-month period to identify the level of attendance and progress, and the prognosis for completing the requirements to become eligible to sit for the state licensing examination. If the student has not progressed in accordance with the board-approved benchmarks for that school, the student shall be counseled a minimum of one additional time within that same 12-month period.

(w) The school shall provide to the board, for each student qualifying through the school as eligible to sit for the state licensing examination, the number of hours the student attended court reporting classes, both academic and machine speed classes, including theory.

(x) The pass rate of first-time exam takers for each school offering court reporting shall meet or exceed the average pass rate of all first-time test takers for a majority of examinations given for the preceding three years. Failure to do so shall require the board to conduct a review of the program. In addition, the board may place the school on probation and may withdraw recognition if the school continues to place below the above described standard on the two exams that follow the three-year period.

(y) A school shall not require more than one 10-minute qualifying examination, as defined in the regulations of the board, for a student to be eligible to sit for the state certification examination.

(z) A school shall provide the board the actual number of hours of attendance for each applicant the school qualifies for the state licensing examination.

(aa) The board shall, by December 1, 2001, do the following by regulation as necessary:

(1) Establish the format that shall be used by schools to report tracking of all attendance hours and actual timeframes for completed coursework.

(2) Require schools to provide a minimum of 10 hours of live dictation class each school week for every full-time student.

(3) Require schools to provide students with the opportunity to read back from their stenographic notes a minimum of one time each day to his or her instructor.

(4) Require schools to provide students with the opportunity to practice with a school-approved speed-building tape, or other assigned material, a minimum of one hour per day after school hours as a homework assignment and provide the notes from this tape to their instructor the following day for review.

(5) Develop standardization of policies on the use and administration of qualifier examinations by schools.

(6) Define qualifier exam as follows: the qualifier exam shall consist of 4-voice testimony of 10-minute duration at 200 wpm, graded at 97.5 percent accuracy, and in accordance with the guidelines followed by the board. Schools shall be required to date and number each qualifier and announce the date and number to the students at the time of administering the qualifier. All qualifiers shall indicate the actual dictation time of the test and the school shall catalog and maintain the qualifier for a period of not less than three years for the purpose of inspection by the board.

(7) Require schools to develop a program to provide students with the opportunity to interact with professional court reporters to provide skill support, mentoring, or counseling which they can document at least quarterly.

(8) Define qualifications and educational requirements required of instructors and readers that read test material and qualifiers.

(bb) The board shall adopt regulations to implement the requirements of this section not later than September 1, 2002.

(cc) The board may recover costs for any additional expenses incurred under the enactment amending this section in the 2001–02 Regular Session of the Legislature pursuant to its fee authority in Section 8031.

SEC. 22. Section 8538 of the Business and Professions Code is amended to read:

8538. (a) A registered structural pest control company shall provide the owner, or owner's agent, and tenant of the premises for which the work is to be done with clear written notice which contains the following statements and information using words with common and everyday meaning:

(1) The pest to be controlled.

(2) The pesticide or pesticides proposed to be used, and the active ingredient or ingredients.

(3) "State law requires that you be given the following information: CAUTION—PESTICIDES ARE TOXIC CHEMICALS. Structural Pest Control Companies are registered and regulated by the Structural Pest Control Board, and apply pesticides which are registered and approved for use by the California Department of Pesticide Regulation and the United States Environmental Protection Agency. Registration is granted when the state finds that, based on existing scientific evidence, there are no appreciable risks if proper use conditions are followed or that the risks are outweighed by the benefits. The degree of risk depends upon the degree of exposure, so exposure should be minimized."

"If within 24 hours following application you experience symptoms similar to common seasonal illness comparable to the flu, contact your physician or poison control center (telephone number) and your pest control company immediately." (This statement shall be modified to include any other symptoms of overexposure which are not typical of influenza.)

"For further information, contact any of the following: Your Pest Control Company (telephone number); for Health Questions—the County Health Department (telephone number); for Application Information—the County Agricultural Commissioner (telephone number) and for Regulatory Information—the Structural Pest Control Board (telephone number and address)."

(4) If a contract for periodic pest control has been executed, the frequency with which the treatment is to be done.

(b) In the case of Branch 1 applications, the notice prescribed by subdivision (a) shall be provided at least 48 hours prior to application unless fumigation follows inspection by less than 48 hours.

In the case of Branch 2 or Branch 3 registered company applications, the notice prescribed by subdivision (a) shall be provided no later than prior to application.

In either case, the notice shall be given to the owner, or owner's agent, and tenant, if there is a tenant, in at least one of the following ways:

(1) First-class mail.

(2) Posting in a conspicuous place on the real property.

(3) Personal delivery.

If the building is commercial or industrial, a notice shall be posted in a conspicuous place, unless the owner or owner's agent objects, in addition to any other notification required by this section.

The notice shall only be required to be provided at the time of the initial treatment if a contract for periodic service has been executed. If the pesticide to be used is changed, another notice shall be required to be provided in the manner previously set forth herein.

(c) Any person or licensee who, or registered company which, violates any provision of this section is guilty of a misdemeanor and is punishable as set forth in Section 8553.

SEC. 23. Section 8560 of the Business and Professions Code is amended to read:

8560. (a) Licenses issued to operators, field representatives, or applicators shall be limited to the branch or branches of pest control for which the applicant has qualified by application and examination.

For the purpose of delimiting the type and character of work authorized by the various branch licenses, the practice of pest control is classified into the following branches:

Branch 1. Fumigation. The practice relating to the control of household and wood-destroying pests or organisms by fumigation with poisonous or lethal gases.

Branch 2. General pest. The practice relating to the control of household pests, excluding fumigation with poisonous or lethal gases.

Branch 3. Termite. The practice relating to the control of wood-destroying pests or organisms by the use of insecticides, or structural repairs and corrections, excluding fumigation with poisonous or lethal gases.

(b) The board may issue a license for a combination of two or more branches for which an applicant qualifies under the provisions of this chapter, and the combination license shall be considered one license.

(c) Unless otherwise authorized by the board, all written examinations shall be in ink in books supplied by the board. All examination papers shall be kept for a period of one year, upon the expiration of which these papers may be destroyed on order of the board. Each applicant for license as an operator or a field representative shall be designated by a number instead of by name, and the identity thereof shall not be disclosed until the examination papers are graded. No person shall be admitted to the examination room except members of the board, the examining personnel, and the applicants for license.

(d) The board shall make rules and regulations for the purpose of securing fair, impartial, and proper examinations.

(e) Licensees may be licensed in other branches upon complying with the requirements for qualification and by examination in those other branches. No failure of the licensee to pass examination in the other branch or branches shall have any effect on existing licenses.

(f) The examination shall be in each of the subjects specified in the branch or branches relating to the respective applications. A license according to the applications shall be granted to any applicant who shall make a general average of not less than 70 percent on each of the subjects of the branch or branches.

SEC. 24. Section 10153.6 of the Business and Professions Code is amended to read:

10153.6. All real estate broker licenses issued by the commissioner shall be for a period of four years.

Applicants shall qualify in the appropriate examination and satisfy all other requirements prior to issuance of the license.

The four-year license may be renewed upon filing the required application and fee, and complying with the provisions of Article 2.5 (commencing with Section 10170).

SEC. 25. Section 10176.1 of the Business and Professions Code is amended to read:

10176.1. (a) (1) Whenever the commissioner takes any enforcement or disciplinary action against a licensee, and the enforcement or disciplinary action is related to escrow services provided pursuant to paragraph (4) of subdivision (a) of Section 17006 of the Financial Code, upon the action becoming final the commissioner shall notify the Insurance Commissioner and the Commissioner of Corporations of the action or actions taken. The purpose of this notification is to alert the departments that enforcement or disciplinary action has been taken, if the licensee seeks or obtains employment with entities regulated by the departments.

(2) The commissioner shall provide the Insurance Commissioner and the Commissioner of Corporations, in addition to the notification of the action taken, with a copy of the written accusation, statement of issues, or order issued or filed in the matter and, at the request of the Insurance Commissioner or the Commissioner of Corporations, with any underlying factual material relevant to the enforcement or disciplinary action. Any confidential information provided by the commissioner to the Insurance Commissioner or the Commissioner of Corporations shall not be made public pursuant to this section. Notwithstanding any other provision of law, the disclosure of any underlying factual material to the Insurance Commissioner or the Commissioner of Corporations shall not operate as a waiver of confidentiality or any privilege that the commissioner may assert.

(b) The commissioner shall establish and maintain, on the Web site maintained by the Department of Real Estate, a database of its licensees, including those who have been subject to any enforcement or disciplinary action that triggers the notification requirements of this section. The database shall also contain a direct link to the databases, described in Section 17423.1 of the Financial Code and Section 12414.31 of the Insurance Code and required to be maintained on the Web sites of the Department of Corporations and the Department of Insurance, respectively, of persons who have been subject to enforcement or disciplinary action for malfeasance or misconduct

related to the escrow industry by the Insurance Commissioner and the Commissioner of Corporations.

(c) There shall be no liability on the part of, and no cause of action of any nature shall arise against, the State of California, the Department of Real Estate, the Real Estate Commissioner, any other state agency, or any officer, agent, employee, consultant, or contractor of the state, for the release of any false or unauthorized information pursuant to this section, unless the release of that information was done with knowledge and malice, or for the failure to release any information pursuant to this section.

SEC. 26. Section 13405 of the Business and Professions Code is amended to read:

13405. (a) The Department of Food and Agriculture may grant a variance from the specifications of this chapter for developmental engine fuels if all of the following conditions apply:

(1) Variances may only be granted to provide for the development of information under controlled test conditions to assist in the creation of chemical and performance standards for engine fuels.

(2) Developmental engine fuel shall only be distributed or sold to fleet-type centrally fueled vehicle and equipment users.

(3) The applicant shall warn all parties in writing of any potential risk associated with the use of the developmental engine fuel.

(4) The applicant shall report information when and as the department may prescribe in order for the department to monitor the progress of the developmental engine fuel technology evaluation.

(b) The applicant for a variance shall comply with all other requirements, terms, and conditions that are contained in regulations adopted by the department to further the purposes and administration of this section.

(c) (1) In granting a variance, the department expresses no opinion as to whether an applicant's developmental engine fuel will perform as represented by the applicant nor any opinion to the extent, if at all, that the developmental engine fuel may be safely and effectively used as a substitute for other spark-ignition or compression-ignition engine fuels without incident.

(2) Damages caused by the sale, delivery, storage, handling, and usage of the developmental engine fuel shall be addressed in accordance with contractual provisions negotiated and agreed upon by the applicant and the user.

(d) The department may withdraw a variance if the applicant does not adhere to the conditions required to obtain the variance or if the department recognizes a high probability of equipment harm with the continued use of the developmental engine fuel or to protect public safety.

SEC. 27. Section 19455 of the Business and Professions Code, as added by Chapter 198 of the Statutes of 2001, is amended to read:

19455. (a) The Legislature finds and declares that Section 923 of the Labor Code recognizes that it is necessary that the individual worker have full freedom of association, self-organization, and designation of representatives of his or her own choosing, to negotiate the terms and conditions of his or her employment, and that he or she shall be free from the interference, restraint, or coercion of employers of labor, or their agents, in the designation of representatives or in self-organization or in other concerted activities for the purpose of collective bargaining.

(b) The Legislature finds that the National Labor Relations Board has formally declined to assert jurisdiction over horse racing because of extensive state control over the industry, the dominant pattern of sporadic short-term employment which poses problems for the effective enforcement of the National Labor Relations Act, and a unique and special relationship that has developed between the states and the industry.

(c) It is the intent of the Legislature to establish an orderly procedure for backstretch employees to exercise their statutory rights to organize a labor union, in order to reduce the prospect of any strikes, disruptions, or economic action that would interfere with the operation of horse racing meetings in California.

(d) Except as provided in subdivision (e), the board shall oversee the conduct of a union recognition procedure for backstretch employees under the following conditions:

(1) Employees shall have the right to join, or refuse to join, a labor organization for purposes of collective bargaining and mutual aid and protection. Existing state-recognized organizations of trainers or horsemen established pursuant to the Horse Racing Law shall not use funds derived or distributed from parimutuel wagering pursuant to state law to advocate or advance any position with respect to unionization of employees. Individual trainers and horsemen, and their agents, shall not coerce or threaten any employee of any trainer or horseman because of the exercise of rights pursuant to this article. No employee shall be discharged or discriminated against for expressing any opinion concerning the selection of a labor union or collective bargaining agent for employees under this article. No trainer or horseman, or group of trainers or horsemen, shall dominate or interfere with the formation or administration of any labor organization established under this article nor contribute financial or other support to it.

(2) The labor union and its representatives shall not coerce or threaten any employee of any trainer or horseman because of the exercise of rights pursuant to this article.

(3) Notwithstanding any other provision of law, within 30 days of a request by a bona fide labor organization representing workers in the horse racing industry in California, accompanied by a petition of 125 licensed backstretch workers, the board shall provide the labor organization with a list of all backstretch workers including the type of licenses they hold, their employer, the location at which they are employed, and their address and telephone number. The board may require of any trainer licensee information in the licensee's possession necessary to comply with this requirement. The labor union shall use this list solely for the purposes of this article, and maintain it in a manner, as the board may require, to preserve the integrity of horse racing. The board may impose an appropriate penalty for any other use.

(4) Every licensed trainer who employs backstretch employees shall file with the board, not later than February 1, 2002, and, within seven days of the commencement of each race meeting thereafter, a complete and accurate list of the names of its backstretch workers. In addition, every trainer shall file with the board a complete, accurate, and updated list within seven days of any changes which occur to the most recently filed list. The lists described in this section, together with any updates thereto, shall be provided within 72 hours after receipt by the board, to any bona fide labor organization which has requested copies thereof and submitted a petition containing the names of 125 backstretch workers pursuant to paragraph (3). Any request need only be made one time and the board shall thereafter be required to provide these lists and any updates thereto in accordance with the provisions of this section so long as a bona fide labor organization seeks to represent licensed backstretch workers.

(5) The labor union may obtain board recognition as the exclusive bargaining agent for employees of employers pursuant to the provisions and procedures described in paragraph (8).

(6) For the purposes of this article:

(A) ''Backstretch employee'' or ''backstretch worker'' means a person licensed by the board pursuant to subdivision (c) of Section 1481 of Division 4 of Title 4 of the California Code of Regulations.

(B) ''Multiemployer bargaining unit'' means any bargaining unit created and recognized pursuant to the terms of clause (iii) of subparagraph (A) of paragraph (8).

(C) ''Approved election unit'' means any election unit created and recognized pursuant to paragraph (7).

(7) There are four election units created and recognized pursuant to this section, as follows:

(A) Backstretch employees working for trainers of thoroughbred horses stabled at licensed racetracks, including fairs and approved auxiliary training facilities in the combined central and southern zones.

(B) Backstretch employees working for trainers of thoroughbred horses stabled at licensed racetracks, including fairs and approved auxiliary training facilities in the northern zone.

(C) Backstretch employees working for trainers of quarter horses stabled at licensed racetracks and approved auxiliary training facilities in the combined central and southern zones.

(D) Backstretch employees working for trainers of harness horses stabled at licensed racetracks, including fairs and approved auxiliary training facilities in the northern zone.

The board shall use the California State Mediation and Conciliation Service for all appropriate purposes of this act, including operations related to the conduct of recognition procedures and elections.

(8) (A) With respect to backstretch workers, a labor organization seeking recognition as the collective bargaining agent for these workers shall collect signed cards indicating individual worker's intent to be represented by that organization for collective bargaining purposes and submit those cards to the California State Mediation and Conciliation Service for review and validation. When the labor organization is in receipt of cards signed by workers equaling at least 30 percent of the employees in an election unit described in paragraph (4), the California State Mediation and Conciliation Service shall conduct a secret ballot election with respect to the election unit as soon as is practicable thereafter, but in no event more than 30 calendar days after validation by the service of the cards.

Those backstretch employees entitled to vote in the election shall be those who appear on the licensed trainer's most recent list described in paragraph (3). However, each employer may update his or her list not more than 72 hours prior to the election. If it is determined by the stewards pursuant to the provisions in paragraph (11), that the employer filed an inaccurate or erroneous list with a willful intention to manipulate the results of an election, and that the inaccuracy or error may have affected the outcome of the election, the stewards shall decree that the employer lost the election, regardless of the actual outcome thereof, and the stewards shall issue an order to the trainer to negotiate with the union.

(i) Any election shall be conducted by the California State Mediation and Conciliation Service under rules established by the service consistent with standard practice. The rules shall be established no more than 60 days after the effective date of this section, shall be made available to the bona fide labor union and employers of backstretch employees, and shall be exempt from the Administrative Procedure Act. The rules shall provide for a secret ballot system for the conduct of the election pursuant to which ballots cast by backstretch employees of individual employers shall be cast by insertion into envelopes appropriately identified with respect to each employer. The envelopes

shall be collected and tabulated in secret by the service, subject to observation by one representative designated by the bona fide labor organization and one representative designated by the organization representing trainers pursuant to subdivision (a) of Section 19613.2. Upon completion of the tabulation, the service shall issue a report certifying those employers, the majority of whose employees who participated in the election voted in favor of representation by the union. Those employers so certified shall be required to bargain with the labor union pursuant to this subdivision. All other employers shall not be required to negotiate with the union and there shall not be another election with respect to those employers for at least one year from the date of the prior election. The service shall not make public the numerical tabulation of votes by employer.

(ii) Protests over challenged ballots shall be resolved by the service in a consolidated hearing commencing no later than three business days after the election.

(iii) Within 45 days of the certification of the results of the election by the service to the board, those trainers who are required to bargain pursuant to this subparagraph may form multiple employer bargaining units in accordance with the provisions of this subdivision. Further, the organization representing trainers pursuant to subdivision (a) of Section 19613.2 shall conduct a meeting regarding the formulation of multiple employer bargaining units within five days of the certification of the results of the election. For licensed trainers described in subparagraph (A) of paragraph (7), the minimum number of backstretch employees employed by licensed trainers comprising the multiple employer bargaining unit as of the date of the election shall be the lesser of 100 employees or 10 percent of the total employees subject to bargaining. For licensed trainers described in subparagraphs (B), (C), and (D), of paragraph (7), the minimum number of backstretch employees employed by licensed trainers comprising the multiple employer bargaining unit as of the date of the election shall be the lesser of 50 employees or 10 percent of the total employees subject to bargaining. The minimum number of backstretch employees employed by licensed trainers in order to qualify as a multiple employer bargaining unit pursuant to this subdivision may, with the consent of the recognized labor union, be reduced. On or before the 45th day following the certification of the results of the election, each representative of a multiple employer bargaining unit formed pursuant to this subdivision shall notify the board and the exclusive collective bargaining agent, in writing, that a unit has been formed, disclose the names of the licensed trainers which comprise the unit, and indicate the number and names of the backstretch employees which are employed by the licensed trainers comprising the unit. Except to join another multiple employer

bargaining unit, without the consent of the bona fide labor organization, a trainer who has elected to join a multiple employer bargaining unit may not thereafter elect to resign from the unit except within a 30-day period prior to the date of the expiration of the collective bargaining agreement resulting from the negotiations. The employees of a licensed trainer who has resigned from a multiple employer bargaining unit and has not joined another unit, shall not be entitled to petition to decertify the union for a period of one year from the date of the expiration of the collective bargaining agreement which resulted from the negotiation between the union and the multiple employer bargaining unit of which he or she was formerly a member and which was in effect at the time of the trainer's resignation. Upon completion and certification of the election results the union shall be recognized as the exclusive collective bargaining agent for those workers whose employers are required to bargain, and the executive director of the board shall issue an order to affected employers to begin good faith negotiations for approval of employment agreements pursuant to the procedures set forth in this section.

(B) If an individual employer of backstretch workers declines to be represented in the multiemployer collective bargaining procedure described in clause (iii), the board shall issue an order to begin good faith negotiations for employment agreements on an individual employer basis. The board may provide mediation and conciliation services upon request of the parties at any time. If an employer is required under this subparagraph to collectively bargain with the union, and the parties do not reach an agreement within 90 days of the order, the board shall require the parties to participate in mandatory mediation and conciliation services for a period of 30 days. If no agreement results from this mediation, either or both parties may declare an impasse. Upon a party's declaration of an impasse, the executive director of the board shall appoint an arbitrator in the manner described in paragraph (11) to determine the issues and issue a final and binding order establishing the terms of a collective bargaining agreement.

(9) No labor agreement under this article shall apply to any trainer or horseman with respect to employment associated with fair meetings prior to January 1, 2003. After this date, employees shall be added by accretion into an existing contract where applicable. For racing meetings conducted in the central and southern zones during the first three months of any calendar year and for fair racing meetings, this section shall not apply to trainers who normally reside and work outside of California and who are engaged in racing in this state for a limited period of time, not exceeding 90 racing days in any calendar year. For any other racing meeting conducted during any calendar year, this section shall not apply to trainers, backstretch workers, or both, who normally reside and work

outside of California and who are engaged in racing in this state for a limited period of time, not exceeding 50 racing days in any calendar year.

(10) Except as provided in subparagraph (A) of paragraph (8), at any time subsequent to the expiration of an agreement under paragraph (8), when the agreement is not in effect, the board may recognize a majority interest, obtained during this period in the same manner as union recognition of employees, within a multiple employer bargaining unit who no longer desire to be represented by the union, and withdraw the recognition granted pursuant to this section from that union. An employer may inform his or her employees that a process for decertification exists and direct them to the board for information. However, any card, signature, vote, or other indicator obtained for this purpose by means of coercion or threat or with the assistance or inducement of any employer shall be invalid.

(11) Disputes, other than disputes concerning the operation and application of ongoing contracts, disputes subject to binding interest arbitration pursuant to subparagraph (B) of paragraph (8), and economic disputes arising in the context of multiemployer bargaining pursuant to subparagraph (A) of paragraph (8), but including disputes concerning the rights established in paragraphs (1) and (2), upon complaint shall be adjudicated by the stewards. The stewards shall have the authority to order any remedy, including reinstatement of employment, injunctive relief, damages, and attorney's fees. An investigation and adjudication by the stewards shall be concluded as expeditiously as possible, consistent with applicable standards of due process. In addition, the board may require the parties to submit the issue to binding arbitration subject to judicial review in the same manner as decisions of the board. Disputes subject to this paragraph include disputes involving any backstretch employee or group of employees, and any trainer or group of trainers.

(12) Upon submission of a complaint to binding arbitration under any provision of this article, the executive director of the board shall select an arbitrator from a panel of professional arbitrators with expertise in labor negotiations selected by the California State Mediation and Conciliation Service or from a panel identified in collective bargaining agreements between labor organizations and employers in the horse racing industry in California, or both. The arbitrators selected by the service or identified in collective bargaining agreements shall be available to resolve the matter expeditiously. The arbitrator selected by the executive director shall have the authority to convene an immediate hearing and require the parties to exercise all due diligence in promptly attending to the issue in controversy. In all matters pertaining to the rights established by this article, an arbitrator shall have the authority to fashion an appropriate remedy, including reinstatement of employment,

injunctive relief, damages, and attorney's fees, and issuance of a make-whole remedy in the event of a persistent failure of a party to bargain in good faith. The board may take any administrative action within its authority to ensure compliance with decisions of arbitrators authorized by this section. Either party may also bring an action in state court to compel a party to go into arbitration or to enforce the decision of an arbitrator. Costs of arbitration shall be shared equally by the parties, and any party shall be entitled to recover any reasonable fees or costs incurred in securing compliance with or enforcement of an award or order of the arbitrator.

(e) Nothing in this section shall prevent a labor union and an individual trainer, or any group of trainers, from entering into a mutually acceptable agreement, which may substitute for the requirements of subdivision (d), for union organizing of employees of the horsemen or trainers. Nothing in this article shall be interpreted to require representative parties in negotiation to enter into any labor agreement, as long as each party is negotiating in a good faith effort to reach an agreement.

SEC. 28. Section 19549.14 of the Business and Professions Code is amended to read:

19549.14. (a) Notwithstanding, Section 19489 or any other provision of this chapter, the board may permit the San Mateo County Fair to conduct live racing meetings at another site within or without San Mateo County if its present site, Bay Meadows, closes.

(b) Live horse racing meetings conducted by the San Mateo County Fair, whether they are conducted within or without San Mateo County, shall be subject to the same provisions as are presently applicable to the San Mateo County Fair's conduct of live horse racing meetings at Bay Meadows.

SEC. 29. Section 20007 of the Business and Professions Code is amended to read:

20007. "Franchise fee" means any fee or charge that a franchisee or subfranchisor is required to pay or agrees to pay for the right to enter into a business under a franchise agreement, including, but not limited to, any payment for goods and services.

However, the following shall not be considered the payment of a franchise fee:

(a) The purchase or agreement to purchase goods at a bona fide wholesale price if no obligation is imposed upon the purchaser to purchase or pay for a quantity of goods in excess of that which a reasonable businessperson normally would purchase by way of a starting inventory or supply or to maintain a going inventory or supply.

(b) The payment of a reasonable service charge to the issuer of a credit card by an establishment accepting or honoring that credit card.

(c) Amounts paid to a trading stamp company under Chapter 3 (commencing with Section 17750) of Part 3 of Division 7 by a person issuing trading stamps in connection with the retail sale of merchandise or service.

(d) The payment, directly or indirectly, of a franchise fee which, on an annual basis, does not exceed the sum of one hundred dollars ($100).

(e) The payment of a sum of not exceeding one thousand dollars ($1,000) annually on account of the purchase price or rental of fixtures, equipment, or other tangible property to be utilized in, and necessary for, the operation of the franchised business, if the price or rental so charged does not exceed the cost which would be incurred by the franchisee acquiring the item or items from other persons or in the open market.

SEC. 30. Section 23987 of the Business and Professions Code is amended to read:

23987. Upon the receipt by the department of an original application for any license or an application for transfer of any license, written notice thereof, consisting of a copy of the application, shall immediately be mailed by the department to the sheriff, chief of police, and district attorney of the locality in which the premises are situated, to the city or county planning director, whoever has jurisdiction, the board of supervisors of the county in which the premises are situated, if within an unincorporated area, and to the city council or other governing body of the city in which the premises are situated, if within an incorporated area.

Except as specified in paragraph (2) of subdivision (e) of Section 23800, no license shall be issued or transferred by the department until at least 30 days after the mailing by the department of the notices required by this section. The department may extend the 30-day period specified in the preceding sentence for a period not to exceed an additional 20 days, upon the written request of any local law enforcement agency that states proper grounds for extension. Proper grounds for extension are limited to the requesting agency or official being in the process of preparing either a protest or proposed conditions with respect to the issuance or transfer of a license.

SEC. 31. Section 43.8 of the Civil Code is amended to read:

43.8. In addition to the privilege afforded by Section 47, there shall be no monetary liability on the part of, and no cause of action for damages shall arise against, any person on account of the communication of information in the possession of that person to any hospital, hospital medical staff, veterinary hospital staff, professional society, medical, dental, podiatric, or veterinary school, professional licensing board or division, committee or panel of a licensing board, the Senior Assistant Attorney General of the Health Quality Enforcement Section appointed under Section 12529 of the Government Code, peer review committee, quality assurance committees established in

compliance with Sections 4070 and 5624 of the Welfare and Institutions Code, or underwriting committee described in Section 43.7 when the communication is intended to aid in the evaluation of the qualifications, fitness, character, or insurability of a practitioner of the healing or veterinary arts. The immunities afforded by this section and by Section 43.7 shall not affect the availability of any absolute privilege which may be afforded by Section 47.

SEC. 32. Section 789 of the Civil Code is amended to read:

789. A tenancy or other estate at will, however created, may be terminated by the landlord's giving notice in writing to the tenant, in the manner prescribed by Section 1162 of the Code of Civil Procedure, to remove from the premises within a period of not less than 30 days, to be specified in the notice.

SEC. 33. Section 827 of the Civil Code, as amended by Section 1 of Chapter 593 of the Statutes of 2001, is amended to read:

827. (a) Except as provided in subdivision (b), in all leases of lands or tenements, or of any interest therein, from week to week, month to month, or other period less than a month, the landlord may, upon giving notice in writing to the tenant, in the manner prescribed by Section 1162 of the Code of Civil Procedure, change the terms of the lease to take effect, as to tenancies for less than one month, upon the expiration of a period at least as long as the term of the hiring itself, and, as to tenancies from month to month, to take effect at the expiration of not less than 30 days, but if that change takes effect within a rental term, the rent accruing from the first day of the term to the date of that change shall be computed at the rental rate obtained immediately prior to that change; provided, however, that it shall be competent for the parties to provide by an agreement in writing that a notice changing the terms thereof may be given at any time not less than seven days before the expiration of a term, to be effective upon the expiration of the term.

The notice, when served upon the tenant, shall in and of itself operate and be effectual to create and establish, as a part of the lease, the terms, rents, and conditions specified in the notice, if the tenant shall continue to hold the premises after the notice takes effect.

(b) (1) In all leases of a residential dwelling, or of any interest therein, from week to week, month to month, or other period less than a month, the landlord may increase the rent provided in the lease or rental agreement, upon giving written notice to the tenant, as follows, by either of the following procedures:

(A) By delivering a copy to the tenant personally.

(B) By serving a copy by mail under the procedures prescribed in Section 1013 of the Code of Civil Procedure.

(2) If the proposed rent increase for that tenant is 10 percent or less of the rental amount charged to that tenant at any time during the 12

months prior to the effective date of the increase, either in and of itself or when combined with any other rent increases for the 12 months prior to the effective date of the increase, the notice shall be delivered at least 30 days prior to the effective date of the increase, and subject to Section 1013 of the Code of Civil Procedure if served by mail.

(3) For an increase in rent greater than the amount described in paragraph (2), the minimum notice period required pursuant to that paragraph shall be increased by an additional 30 days, and subject to Section 1013 of the Code of Civil Procedure if served by mail. This paragraph shall not apply to an increase in rent caused by a change in a tenant's income or family composition as determined by a recertification required by statute or regulation.

(c) If a state or federal statute, state or federal regulation, recorded regulatory agreement, or contract provides for a longer period of notice regarding a rent increase than that provided in subdivision (a) or (b), the personal service or mailing of the notice shall be in accordance with the longer period.

(d) This section shall be operative only until January 1, 2006, and as of that date is repealed, unless a later enacted statute, which is enacted on or before January 1, 2006, deletes or extends that date.

SEC. 34. Section 827 of the Civil Code, as amended by Section 3 of Chapter 680 of the Statutes of 2000, is amended to read:

827. (a) In all leases of lands or tenements, or of any interest therein, from week to week, month to month, or other period less than a month, the landlord may, upon giving notice in writing to the tenant, in the manner prescribed by Section 1162 of the Code of Civil Procedure, change the terms of the lease to take effect, as to tenancies for less than one month, upon the expiration of a period at least as long as the term of the hiring itself, and, as to tenancies from month to month, to take effect at the expiration of not less than 30 days, but if that change takes effect within a rental term, the rent accruing from the first day of the term to the date of that change shall be computed at the rental rate obtained immediately prior to that change; provided, however, that it shall be competent for the parties to provide by an agreement in writing that a notice changing the terms thereof may be given at any time not less than seven days before the expiration of a term, to be effective upon the expiration of the term.

The notice, when served upon the tenant, shall in and of itself operate and be effectual to create and establish, as a part of the lease, the terms, rents, and conditions specified in the notice, if the tenant shall continue to hold the premises after the notice takes effect.

(b) This section shall become operative on January 1, 2006.

SEC. 35. Section 1102.6 of the Civil Code is amended to read:

1102.6. The disclosures required by this article pertaining to the property proposed to be transferred are set forth in, and shall be made on a copy of, the following disclosure form:

REAL ESTATE TRANSFER DISCLOSURE STATEMENT

THIS DISCLOSURE STATEMENT CONCERNS THE REAL PROPERTY SITUATED IN THE CITY OF _____, COUNTY OF _____, STATE OF CALIFORNIA, DESCRIBED AS _____ _____. THIS STATEMENT IS A DISCLOSURE OF THE CONDITION OF THE ABOVE DESCRIBED PROPERTY IN COMPLIANCE WITH SECTION 1102 OF THE CIVIL CODE AS OF _____, 20___. IT IS NOT A WARRANTY OF ANY KIND BY THE SELLER(S) OR ANY AGENT(S) REPRESENTING ANY PRINCIPAL(S) IN THIS TRANSACTION, AND IS NOT A SUBSTITUTE FOR ANY INSPECTIONS OR WARRANTIES THE PRINCIPAL(S) MAY WISH TO OBTAIN.

I

COORDINATION WITH OTHER DISCLOSURE FORMS

This Real Estate Transfer Disclosure Statement is made pursuant to Section 1102 of the Civil Code. Other statutes require disclosures, depending upon the details of the particular real estate transaction (for example: special study zone and purchase-money liens on residential property).

Substituted Disclosures: The following disclosures have or will be made in connection with this real estate transfer, and are intended to satisfy the disclosure obligations on this form, where the subject matter is the same:

☐ Inspection reports completed pursuant to the contract of sale or receipt for deposit.

☐ Additional inspection reports or disclosures:

_____

_____

_____

II

SELLER'S INFORMATION

The Seller discloses the following information with the knowledge that even though this is not a warranty, prospective Buyers may rely on this information in deciding whether and on what terms to purchase the subject property. Seller hereby authorizes any agent(s) representing any principal(s) in this transaction to provide a copy of this statement to any person or entity in connection with any actual or anticipated sale of the property.

THE FOLLOWING ARE REPRESENTATIONS MADE BY THE SELLER(S) AND ARE NOT THE REPRESENTATIONS OF THE AGENT(S), IF ANY. THIS INFORMATION IS A DISCLOSURE AND IS NOT INTENDED TO BE PART OF ANY CONTRACT BETWEEN THE BUYER AND SELLER.

Seller __is __is not occupying the property.
A. The subject property has the items checked below (read across):

__Range	__Oven	__Microwave
__Dishwasher	__Trash Compactor	__Garbage Disposal
__Washer/Dryer Hookups		__Rain Gutters
__Burglar Alarms	__Smoke Detector(s)	__Fire Alarm
__TV Antenna	__Satellite Dish	__Intercom
__Central Heating	__Central Air Cndtng.	__Evaporator Cooler(s)
__Wall/Window Air Cndtng.	__Sprinklers	__Public Sewer System
__Septic Tank	__Sump Pump	__Water Softener
__Patio/Decking	__Built-in Barbecue	__Gazebo
__Sauna		
__Hot Tub__Locking Safety Cover *	__Pool __Child Resistant Barrier *	__Spa__Locking Safety Cover *
__Security Gate(s)	__Automatic Garage Door Opener(s) *	__Number Remote Controls
Garage:__Attached	__Not Attached	__Carport
Pool/Spa Heater: __Gas	__Solar	__Electric
Water Heater: __Gas	__Water Heater Anchored, Braced, or Strapped *	__Private Utility or Other_____
Water Supply: __City	__Well	
Gas Supply: __Utility	__Bottled	
__Window Screens	__Window Security Bars__Quick Release Mechanism on Bedroom Windows *	

Exhaust Fan(s) in _____ 220 Volt Wiring in _____ Fireplace(s) in _____
Gas Starter _____ Roof(s): Type: _____ Age: _____ (approx.)
Other: _____
Are there, to the best of your (Seller's) knowledge, any of the above that are not in operating condition? __Yes __No. If yes, then describe.
(Attach additional sheets if necessary): _____
_____
_____
_____

B. Are you (Seller) aware of any significant defects/malfunctions in any of the following? __Yes __No. If yes, check appropriate space(s) below.
__Interior Walls __Ceilings __Floors __Exterior Walls __Insulation __Roof(s) __Windows __Doors __Foundation __Slab(s) __Driveways __Sidewalks __Walls/Fences __Electrical Systems __Plumbing/Sewers/Septics __Other Structural Components (Describe: _____
_____)
If any of the above is checked, explain. (Attach additional sheets if necessary):___
_____
_____
_____

* This garage door opener or child resistant pool barrier may not be in compliance with the safety standards relating to automatic reversing devices as set forth in Chapter 12.5 (commencing with Section 19890) of Part 3 of Division 13 of, or with the pool safety standards of Article 2.5 (commencing with Section 115920) of Chapter 5 of Part 10 of Division 104 of, the Health and Safety Code. The water heater may not be anchored, braced, or strapped in accordance with Section 19211 of the Health and Safety Code. Window security bars may not have quick-release mechanisms in compliance with the 1995 edition of the California Building Standards Code.

C. Are you (Seller) aware of any of the following:

1. Substances, materials, or products which may be an environmental hazard such as, but not limited to, asbestos, formaldehyde, radon gas, lead-based paint, mold, fuel or chemical storage tanks, and contaminated soil or water on the subject property ..... __Yes __No
2. Features of the property shared in common with adjoining landowners, such as walls, fences, and driveways, whose use or responsibility for maintenance may have an effect on the subject property ..... __Yes __No
3. Any encroachments, easements or similar matters that may affect your interest in the subject property ..... __Yes __No
4. Room additions, structural modifications, or other alterations or repairs made without necessary permits ..... __Yes __No
5. Room additions, structural modifications, or other alterations or repairs not in compliance with building codes ..... __Yes __No
6. Fill (compacted or otherwise) on the property or any portion thereof ..... __Yes __No
7. Any settling from any cause, or slippage, sliding, or other soil problems ..... __Yes __No
8. Flooding, drainage or grading problems ..... __Yes __No
9. Major damage to the property or any of the structures from fire, earthquake, floods, or landslides ..... __Yes __No
10. Any zoning violations, nonconforming uses, violations of "setback" requirements ..... __Yes __No
11. Neighborhood noise problems or other nuisances ..... __Yes __No
12. CC&R's or other deed restrictions or obligations ..... __Yes __No
13. Homeowners' Association which has any authority over the subject property ..... __Yes __No
14. Any "common area" (facilities such as pools, tennis courts, walkways, or other areas coowned in undivided interest with others) ..... __Yes __No
15. Any notices of abatement or citations against the property ..... __Yes __No
16. Any lawsuits by or against the Seller threatening to or affecting this real property, including any lawsuits alleging a defect or deficiency in this real property or "common areas" (facilities such as pools, tennis courts, walkways, or other areas coowned in undivided interest with others) ..... __Yes __No

If the answer to any of these is yes, explain. (Attach additional sheets if necessary.): _____

_____

_____

Seller certifies that the information herein is true and correct to the best of the Seller's knowledge as of the date signed by the Seller.

Seller _____ Date _____
Seller _____ Date _____

III

AGENT'S INSPECTION DISCLOSURE

(To be completed only if the Seller is represented by an agent in this transaction.)

THE UNDERSIGNED, BASED ON THE ABOVE INQUIRY OF THE SELLER(S) AS TO THE CONDITION OF THE PROPERTY AND BASED ON A REASONABLY COMPETENT AND DILIGENT VISUAL INSPECTION OF THE ACCESSIBLE AREAS OF THE PROPERTY IN CONJUNCTION WITH THAT INQUIRY, STATES THE FOLLOWING:

☐ Agent notes no items for disclosure.

☐ Agent notes the following items:

_____
_____
_____
_____

Agent (Broker
Representing Seller) _____ By _____ Date _____
(Please Print) (Associate Licensee or Broker-Signature)

IV

AGENT'S INSPECTION DISCLOSURE

(To be completed only if the agent who has obtained the offer is other than the agent above.)

THE UNDERSIGNED, BASED ON A REASONABLY COMPETENT AND DILIGENT VISUAL INSPECTION OF THE ACCESSIBLE AREAS OF THE PROPERTY, STATES THE FOLLOWING:

☐ Agent notes no items for disclosure.

☐ Agent notes the following items:

_____
_____
_____
_____

Agent (Broker
Obtaining the Offer) _____ By _____ Date _____
(Please Print) (Associate Licensee or Broker-Signature)

V

BUYER(S) AND SELLER(S) MAY WISH TO OBTAIN PROFESSIONAL ADVICE AND/OR INSPECTIONS OF THE PROPERTY AND TO PROVIDE FOR APPROPRIATE PROVISIONS IN A CONTRACT BETWEEN BUYER(S) AND SELLER(S) WITH RESPECT TO ANY ADVICE/INSPECTIONS/DEFECTS.

I/WE ACKNOWLEDGE RECEIPT OF A COPY OF THIS STATEMENT.

Seller _____ Date _____ Buyer_____ Date _____
Seller _____ Date _____ Buyer_____ Date _____

Agent (Broker
Representing Seller) _____ By _____ Date _____
(Associate Licensee
or Broker-Signature)

Agent (Broker
Obtaining the Offer) _____ By _____ Date _____
(Associate Licensee
or Broker-Signature)

SECTION 1102.3 OF THE CIVIL CODE PROVIDES A BUYER WITH THE RIGHT TO RESCIND A PURCHASE CONTRACT FOR AT LEAST THREE DAYS AFTER THE DELIVERY OF THIS DISCLOSURE IF DELIVERY OCCURS AFTER THE SIGNING OF AN OFFER TO PURCHASE. IF YOU WISH TO RESCIND THE CONTRACT, YOU MUST ACT WITHIN THE PRESCRIBED PERIOD.

A REAL ESTATE BROKER IS QUALIFIED TO ADVISE ON REAL ESTATE.
IF YOU DESIRE LEGAL ADVICE, CONSULT YOUR ATTORNEY.

SEC. 36. Section 1375 of the Civil Code, as amended by Chapter 824 of the Statutes of 2001, is amended to read:

1375. (a) Before an association files a complaint for damages against a builder, developer, or general contractor (''respondent'') 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 this section shall be satisfied with respect to the builder, developer, or general contractor.

(b) The association shall serve upon the respondent a ''Notice of Commencement of Legal Proceedings.'' The notice shall be served by certified mail to the registered agent of the respondent, or if there is no registered agent, then to any officer of the respondent. If there are no current officers of the respondent, service shall be upon the person or entity otherwise authorized by law to receive service of process. Service upon the general contractor shall be sufficient to initiate the process set forth in this section with regard to any builder or developer, if the builder or developer is not amenable to service of process by the foregoing methods. This notice shall toll all applicable statutes of limitation and repose, whether contractual or statutory, by and against all potentially responsible parties, regardless of whether they were named in the notice, including claims for indemnity applicable to the claim for the period set forth in subdivision (c). The notice shall include all of the following:

(1) The name and location of the project.

(2) An initial list of defects sufficient to apprise the respondent of the general nature of the defects at issue.

(3) A description of the results of the defects, if known.

(4) A summary of the results of a survey or questionnaire distributed to homeowners to determine the nature and extent of defects, if a survey has been conducted or a questionnaire has been distributed.

(5) Either a summary of the results of testing conducted to determine the nature and extent of defects or the actual test results, if that testing has been conducted.

(c) Service of the notice shall commence a period, not to exceed 180 days, during which the association, the respondent, and all other participating parties shall try to resolve the dispute through the processes set forth in this section. This 180-day period may be extended for one additional period, not to exceed 180 days, only upon the mutual agreement of the association, the respondent, and any parties not deemed peripheral pursuant to paragraph (3) of subdivision (e). Any extensions beyond the first extension shall require the agreement of all participating parties. Unless extended, the dispute resolution process prescribed by this section shall be deemed completed. All extensions shall continue the tolling period described in subdivision (b).

(d) Within 25 days of the date the association serves the Notice of Commencement of Legal Proceedings, the respondent may request in writing to meet and confer with the board of directors of the association. Unless the respondent and the association otherwise agree, there shall be not more than one meeting, which shall take place no later than 10 days from the date of the respondent's written request, at a mutually agreeable time and place. The meeting shall be subject to subdivision (b) of Section 1363.05. The discussions at the meeting are privileged communications and are not admissible in evidence in any civil action, unless the association and the respondent consent in writing to their admission.

(e) Upon receipt of the notice, the respondent shall, within 60 days, comply with the following:

(1) The respondent shall provide the association with access to, for inspection and copying of, all plans and specifications, subcontracts, and other construction files for the project that are reasonably calculated to lead to the discovery of admissible evidence regarding the defects claimed. The association shall provide the respondent with access to, for inspection and copying of, all files reasonably calculated to lead to the discovery of admissible evidence regarding the defects claimed, including all reserve studies, maintenance records and any survey questionnaires, or results of testing to determine the nature and extent of defects. To the extent any of the above documents are withheld based on privilege, a privilege log shall be prepared and submitted to all other parties. All other potentially responsible parties shall have the same rights as the respondent regarding the production of documents upon receipt of written notice of the claim, and shall produce all relevant documents within 60 days of receipt of the notice of the claim.

(2) The respondent shall provide written notice by certified mail to all subcontractors, design professionals, their insurers, and the insurers of any additional insured whose identities are known to the respondent or readily ascertainable by review of the project files or other similar sources and whose potential responsibility appears on the face of the notice. This notice to subcontractors, design professionals, and insurers shall include a copy of the Notice of Commencement of Legal Proceedings, and shall specify the date and manner by which the parties shall meet and confer to select a dispute resolution facilitator pursuant to paragraph (1) of subdivision (f), advise the recipient of its obligation to participate in the meet and confer or serve a written acknowledgment of receipt regarding this notice, advise the recipient that it will waive any challenge to selection of the dispute resolution facilitator if it elects not to participate in the meet and confer, advise the recipient that it may be bound by any settlement reached pursuant to subdivision (d) of Section 1375.05, advise the recipient that it may be deemed to have waived rights to conduct inspection and testing pursuant to subdivision (c) of Section

1375.05, advise the recipient that it may seek the assistance of an attorney, and advise the recipient that it should contact its insurer, if any. Any subcontractor or design professional, or insurer for that subcontractor, design professional, or additional insured, who receives written notice from the respondent regarding the meet and confer shall, prior to the meet and confer, serve on the respondent a written acknowledgment of receipt. That subcontractor or design professional shall, within 10 days of service of the written acknowledgment of receipt, provide to the association and the respondent a Statement of Insurance that includes both of the following:

(A) The names, addresses, and contact persons, if known, of all insurance carriers, whether primary or excess and regardless of whether a deductible or self-insured retention applies, whose policies were in effect from the commencement of construction of the subject project to the present and which potentially cover the subject claims.

(B) The applicable policy numbers for each policy of insurance provided.

(3) Any subcontractor or design professional, or insurer for that subcontractor, design professional, or additional insured, who so chooses, may, at any time, make a written request to the dispute resolution facilitator for designation as a peripheral party. That request shall be served contemporaneously on the association and the respondent. If no objection to that designation is received within 15 days, or upon rejection of that objection, the dispute resolution facilitator shall designate that subcontractor or design professional as a peripheral party, and shall thereafter seek to limit the attendance of that subcontractor or design professional only to those dispute resolution sessions deemed peripheral party sessions or to those sessions during which the dispute resolution facilitator believes settlement as to peripheral parties may be finalized. Nothing in this subdivision shall preclude a party who has been designated a peripheral party from being reclassified as a nonperipheral party, nor shall this subdivision preclude a party designated as a nonperipheral party from being reclassified as a peripheral party after notice to all parties and an opportunity to object. For purposes of this subdivision, a peripheral party is a party having total claimed exposure of less than twenty-five thousand dollars ($25,000).

(f) (1) Within 20 days of sending the notice set forth in paragraph (2) of subdivision (e), the association, respondent, subcontractors, design professionals, and their insurers who have been sent a notice as described in paragraph (2) of subdivision (e) shall meet and confer in an effort to select a dispute resolution facilitator to preside over the mandatory dispute resolution process prescribed by this section. Any subcontractor or design professional who has been given timely notice of this meeting but who does not participate, waives any challenge he or she may have

as to the selection of the dispute resolution facilitator. The role of the dispute resolution facilitator is to attempt to resolve the conflict in a fair manner. The dispute resolution facilitator shall be sufficiently knowledgeable in the subject matter and be able to devote sufficient time to the case. The dispute resolution facilitator shall not be required to reside in or have an office in the county in which the project is located. The dispute resolution facilitator and the participating parties shall agree to a date, time, and location to hold a case management meeting of all parties and the dispute resolution facilitator, to discuss the claims being asserted and the scheduling of events under this section. The case management meeting with the dispute resolution facilitator shall be held within 100 days of service of the Notice of Commencement of Legal Proceedings at a location in the county where the project is located. Written notice of the case management meeting with the dispute resolution facilitator shall be sent by the respondent to the association, subcontractors and design professionals, and their insurers who are known to the respondent to be on notice of the claim, no later than 10 days prior to the case management meeting, and shall specify its date, time, and location. The dispute resolution facilitator in consultation with the respondent shall maintain a contact list of the participating parties.

(2) No later than 10 days prior to the case management meeting, the dispute resolution facilitator shall disclose to the parties all matters that could cause a person aware of the facts to reasonably entertain a doubt that the proposed dispute resolution facilitator would be able to resolve the conflict in a fair manner. The facilitator's disclosure shall include the existence of any ground specified in Section 170.1 of the Code of Civil Procedure for disqualification of a judge, any attorney-client relationship the facilitator has or had with any party or lawyer for a party to the dispute resolution process, and any professional or significant personal relationship the facilitator or his or her spouse or minor child living in the household has or had with any party to the dispute resolution process. The disclosure shall also be provided to any subsequently noticed subcontractor or design professional within 10 days of the notice.

(3) A dispute resolution facilitator shall be disqualified by the court if he or she fails to comply with this paragraph and any party to the dispute resolution process serves a notice of disqualification prior to the case management meeting. If the dispute resolution facilitator complies with this paragraph, he or she shall be disqualified by the court on the basis of the disclosure if any party to the dispute resolution process serves a notice of disqualification prior to the case management meeting.

(4) If the parties cannot mutually agree to a dispute resolution facilitator, then each party shall submit a list of three dispute resolution facilitators. Each party may then strike one nominee from the other

parties' list, and petition the court, pursuant to the procedure described in subdivisions (n) and (o), for final selection of the dispute resolution facilitator. The court may issue an order for final selection of the dispute resolution facilitator pursuant to this paragraph.

(5) Any subcontractor or design professional who receives notice of the association's claim without having previously received timely notice of the meet and confer to select the dispute resolution facilitator shall be notified by the respondent regarding the name, address, and telephone number of the dispute resolution facilitator. Any such subcontractor or design professional may serve upon the parties and the dispute resolution facilitator a written objection to the dispute resolution facilitator within 15 days of receiving notice of the claim. Within seven days after service of this objection, the subcontractor or design professional may petition the superior court to replace the dispute resolution facilitator. The court may replace the dispute resolution facilitator only upon a showing of good cause, liberally construed. Failure to satisfy the deadlines set forth in this subdivision shall constitute a waiver of the right to challenge the dispute resolution facilitator.

(6) The costs of the dispute resolution facilitator shall be apportioned in the following manner: one-third to be paid by the association; one-third to be paid by the respondent; and one-third to be paid by the subcontractors and design professionals, as allocated among them by the dispute resolution facilitator. The costs of the dispute resolution facilitator shall be recoverable by the prevailing party in any subsequent litigation pursuant to Section 1032 of the Code of Civil Procedure, provided however that any nonsettling party may, prior to the filing of the complaint, petition the facilitator to reallocate the costs of the dispute resolution facilitator as they apply to any nonsettling party. The determination of the dispute resolution facilitator with respect to the allocation of these costs shall be binding in any subsequent litigation. The dispute resolution facilitator shall take into account all relevant factors and equities between all parties in the dispute resolution process when reallocating costs.

(7) In the event the dispute resolution facilitator is replaced at any time, the case management statement created pursuant to subdivision (h) shall remain in full force and effect.

(8) The dispute resolution facilitator shall be empowered to enforce all provisions of this section.

(g) (1) No later than the case management meeting, the parties shall begin to generate a data compilation showing the following information regarding the alleged defects at issue:

(A) The scope of the work performed by each potentially responsible subcontractor.

(B) The tract or phase number in which each subcontractor provided goods or services, or both.

(C) The units, either by address, unit number, or lot number, at which each subcontractor provided goods or services, or both.

(2) This data compilation shall be updated as needed to reflect additional information. Each party attending the case management meeting, and any subsequent meeting pursuant to this section, shall provide all information available to that party relevant to this data compilation.

(h) At the case management meeting, the parties shall, with the assistance of the dispute resolution facilitator, reach agreement on a case management statement, which shall set forth all of the elements set forth in paragraphs (1) to (8), inclusive, except that the parties may dispense with one or more of these elements if they agree that it is appropriate to do so. The case management statement shall provide that the following elements shall take place in the following order:

(1) Establishment of a document depository, located in the county where the project is located, for deposit of documents, defect lists, demands, and other information provided for under this section. All documents exchanged by the parties and all documents created pursuant to this subdivision shall be deposited in the document depository, which shall be available to all parties throughout the prefiling dispute resolution process and in any subsequent litigation. When any document is deposited in the document depository, the party depositing the document shall provide written notice identifying the document to all other parties. The costs of maintaining the document depository shall be apportioned among the parties in the same manner as the costs of the dispute resolution facilitator.

(2) Provision of a more detailed list of defects by the association to the respondent after the association completes a visual inspection of the project. This list of defects shall provide sufficient detail for the respondent to ensure that all potentially responsible subcontractors and design professionals are provided with notice of the dispute resolution process. If not already completed prior to the case management meeting, the Notice of Commencement of Legal Proceedings shall be served by the respondent on all additional subcontractors and design professionals whose potential responsibility appears on the face of the more detailed list of defects within seven days of receipt of the more detailed list. The respondent shall serve a copy of the case management statement, including the name, address, and telephone number of the dispute resolution facilitator, to all the potentially responsible subcontractors and design professionals at the same time.

(3) Nonintrusive visual inspection of the project by the respondent, subcontractors, and design professionals.

(4) Invasive testing conducted by the association, if the association deems appropriate. All parties may observe and photograph any testing conducted by the association pursuant to this paragraph, but may not take samples or direct testing unless, by mutual agreement, costs of testing are shared by the parties.

(5) Provision by the association of a comprehensive demand which provides sufficient detail for the parties to engage in meaningful dispute resolution as contemplated under this section.

(6) Invasive testing conducted by the respondent, subcontractors, and design professionals, if they deem appropriate.

(7) Allowance for modification of the demand by the association if new issues arise during the testing conducted by the respondent, subcontractor, or design professionals.

(8) Facilitated dispute resolution of the claim, with all parties, including peripheral parties, as appropriate, and insurers, if any, present and having settlement authority. The dispute resolution facilitators shall endeavor to set specific times for the attendance of specific parties at dispute resolution sessions. If the dispute resolution facilitator does not set specific times for the attendance of parties at dispute resolution sessions, the dispute resolution facilitator shall permit those parties to participate in dispute resolution sessions by telephone.

(i) In addition to the foregoing elements of the case management statement described in subdivision (h), upon mutual agreement of the parties, the dispute resolution facilitator may include any or all of the following elements in a case management statement: the exchange of consultant or expert photographs; expert presentations; expert meetings; or any other mechanism deemed appropriate by the parties in the interest of resolving the dispute.

(j) The dispute resolution facilitator, with the guidance of the parties, shall at the time the case management statement is established, set deadlines for the occurrence of each event set forth in the case management statement, taking into account such factors as the size and complexity of the case, and the requirement of this section that this dispute resolution process not exceed 180 days absent agreement of the parties to an extension of time.

(k) (1) (A) At a time to be determined by the dispute resolution facilitator, the respondent may submit to the association all of the following:

(i) A request to meet with the board to discuss a written settlement offer.

(ii) A written settlement offer, and a concise explanation of the reasons for the terms of the offer.

(iii) A statement that the respondent has access to sufficient funds to satisfy the conditions of the settlement offer.

(iv) A summary of the results of testing conducted for the purposes of determining the nature and extent of defects, if this testing has been conducted, unless the association provided the respondent with actual test results.

(B) If the respondent does not timely submit the items required by this subdivision, the association shall be relieved of any further obligation to satisfy the requirements of this subdivision only.

(C) No less than 10 days after the respondent submits the items required by this paragraph, the respondent and the board of directors of the association shall meet and confer about the respondent's settlement offer.

(D) If the association's board of directors rejects a settlement offer presented at the meeting held pursuant to this subdivision, 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 respondent.

(E) 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 and a statement of the various alternatives that are reasonably foreseeable by the association to pay for those options and whether these payments are expected to be made from the use of reserve account funds or the imposition of regular or special assessments, or emergency assessment increases.

(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 at the meeting held pursuant to subdivision (d) that was received from the respondent.

(F) The respondent shall pay all expenses attributable to sending the settlement offer to all members of the association. The respondent shall also pay the expense of holding the meeting, not to exceed three dollars ($3) per association member.

(G) The discussions at the meeting and the contents of the notice and the items required to be specified in the notice pursuant to paragraph (E) are privileged communications and are not admissible in evidence in any civil action, unless the association consents to their admission.

(H) No more than one request to meet and discuss a written settlement offer may be made by the respondent pursuant to this subdivision.

(*l*) Except for the purpose of in camera review as provided in subdivision (c) of Section 1375.05, all defect lists and demands, communications, negotiations, and settlement offers made in the course

of the prelitigation dispute resolution process provided by this section shall be inadmissible pursuant to Sections 1119 to 1124, inclusive, of the Evidence Code and all applicable decisional law. This inadmissibility shall not be extended to any other documents or communications which would not otherwise be deemed inadmissible.

(m) Any subcontractor or design professional may, at any time, petition the dispute resolution facilitator to release that party from the dispute resolution process upon a showing that the subcontractor or design professional is not potentially responsible for the defect claims at issue. The petition shall be served contemporaneously on all other parties, who shall have 15 days from the date of service to object. If a subcontractor or design professional is released, and it later appears to the dispute resolution facilitator that it may be a responsible party in light of the current defect list or demand, the respondent shall renotice the party as provided by paragraph (2) of subdivision (e), provide a copy of the current defect list or demand, and direct the party to attend a dispute resolution session at a stated time and location. A party who subsequently appears after having been released by the dispute resolution facilitator shall not be prejudiced by its absence from the dispute resolution process as the result of having been previously released by the dispute resolution facilitator.

(n) Any party may, at any time, petition the superior court in the county where the project is located, upon a showing of good cause, and the court may issue an order, for any of the following, or for appointment of a referee to resolve a dispute regarding any of the following:

(1) To take a deposition of any party to the process, or subpoena a third party for deposition or production of documents, which is necessary to further prelitigation resolution of the dispute.

(2) To resolve any disputes concerning inspection, testing, production of documents, or exchange of information provided for under this section.

(3) To resolve any disagreements relative to the timing or contents of the case management statement.

(4) To authorize internal extensions of timeframes set forth in the case management statement.

(5) To seek a determination that a settlement is a good faith settlement pursuant to Section 877.6 of the Code of Civil Procedure and all related authorities. The page limitations and meet and confer requirements specified in this section shall not apply to these motions, which may be made on shortened notice. Instead, these motions shall be subject to other applicable state law, rules of court, and local rules. A determination made by the court pursuant to this motion shall have the same force and effect as the determination of a postfiling application or motion for good faith settlement.

(6) To ensure compliance, on shortened notice, with the obligation to provide a Statement of Insurance pursuant to paragraph (2) of subdivision (e).

(7) For any other relief appropriate to the enforcement of the provisions of this section, including the ordering of parties, and insurers, if any, to the dispute resolution process with settlement authority.

(o) (1) A petition filed pursuant to subdivision (n) shall be filed in the superior court in the county in which the project is located. The court shall hear and decide the petition within 10 days after filing. The petitioning party shall serve the petition on all parties, including the date, time, and location of the hearing no later than five business days prior to the hearing. Any responsive papers shall be filed and served no later than three business days prior to the hearing. Any petition or response filed under this section shall be no more than three pages in length.

(2) All parties shall meet with the dispute resolution facilitator, if one has been appointed and confer in person or by the telephone prior to the filing of that petition to attempt to resolve the matter without requiring court intervention.

(p) 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.

(3) ''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.

(q) The alternative dispute resolution process and procedures described in this section shall have no application or legal effect other than as described in this section.

(r) This section shall become operative on July 1, 2002, however it shall not apply to any pending suit or claim for which notice has previously been given.

(s) This section shall become inoperative on July 1, 2010, and as of January 1, 2011, is repealed, unless a later enacted statute, that is enacted before January 1, 2011, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 37. Section 1375.05 of the Civil Code is amended to read:

1375.05. (a) Upon the completion of the mandatory prefiling dispute resolution process described in Section 1375, if the parties have not settled the matter, the association or its assignee may file a complaint in the superior court in the county in which the project is located. Those matters shall be given trial priority.

(b) In assigning trial priority, the court shall assign the earliest possible trial date, taking into consideration the pretrial preparation

completed pursuant to Section 1375, and shall deem the complaint to have been filed on the date of service of the Notice of Commencement of Legal Proceedings described under Section 1375.

(c) Any respondent, subcontractor, or design professional who received timely prior notice of the inspections and testing conducted under Section 1375 shall be prohibited from engaging in additional inspection or testing, except if all of the following specific conditions are met, upon motion to the court:

(1) There is an insurer for a subcontractor or design professional, that did not have timely notice that legal proceedings were commenced under Section 1375 at least 30 days prior to the commencement of inspections or testing pursuant to paragraph (6) of subdivision (h) of Section 1375.

(2) The insurer's insured did not participate in any inspections or testing conducted under the provisions of paragraph (6) of subdivision (h) of Section 1375.

(3) The insurer has, after receiving notice of a complaint filed in superior court under subdivision (a), retained separate counsel, who did not participate in the Section 1375 dispute resolution process, to defend its insured as to the allegations in the complaint.

(4) It is reasonably likely that the insured would suffer prejudice if additional inspections or testing are not permitted.

(5) The information obtainable through the proposed additional inspections or testing is not available through any reasonable alternative sources.

If the court permits additional inspections or testing upon finding that these requirements are met, any additional inspections or testing shall be limited to the extent reasonably necessary to avoid the likelihood of prejudice and shall be coordinated among all similarly situated parties to ensure that they occur without unnecessary duplication. For purposes of providing notice to an insurer prior to inspections or testing under paragraph (6) of subdivision (h) of Section 1375, if notice of the proceedings was not provided by the insurer's insured, notice may be made via certified mail either by the subcontractor, design professional, association, or respondent to the address specified in the Statement of Insurance provided under paragraph (2) of subdivision (e) of Section 1375. Nothing herein shall affect the rights of an intervenor who files a complaint in intervention. If the association alleges defects that were not specified in the prefiling dispute resolution process under Section 1375, the respondent, subcontractor, and design professionals shall be permitted to engage in testing or inspection necessary to respond to the additional claims. A party who seeks additional inspections or testing based upon the amendment of claims shall apply to the court for leave to conduct those inspections or that testing. If the court determines that it must review the defect claims alleged by the association in the

prefiling dispute resolution process in order to determine whether the association alleges new or additional defects, this review shall be conducted in camera. Upon objection of any party, the court shall refer the matter to a judge other than the assigned trial judge to determine if the claim has been amended in a way that requires additional testing or inspection.

(d) Any subcontractor or design professional who had notice of the facilitated dispute resolution conducted under Section 1375 but failed to attend, or attended without settlement authority, shall be bound by the amount of any settlement reached in the facilitated dispute resolution in any subsequent trial, although the affected party may introduce evidence as to the allocation of the settlement. Any party who failed to participate in the facilitated dispute resolution because the party did not receive timely notice of the mediation shall be relieved of any obligation to participate in the settlement. Notwithstanding any privilege applicable to the prefiling dispute resolution process provided by Section 1375, evidence may be introduced by any party to show whether a subcontractor or design professional failed to attend or attended without settlement authority. The binding effect of this subdivision shall in no way diminish or reduce a nonsettling subcontractor or design professional's right to defend itself or assert all available defenses relevant to its liability in any subsequent trial. For purposes of this subdivision, a subcontractor or design professional shall not be deemed to have attended without settlement authority because it asserted defenses to its potential liability.

(e) Notice of the facilitated dispute resolution conducted under Section 1375 must be mailed by the respondent no later than 20 days prior to the date of the first facilitated dispute resolution session to all parties. Notice shall also be mailed to each of these parties' known insurance carriers. Mailing of this notice shall be by certified mail. Any subsequent facilitated dispute resolution notices shall be served by any means reasonably calculated to provide those parties actual notice.

(f) As to the complaint, the order of discovery shall, at the request of any defendant, except upon a showing of good cause, permit the association's expert witnesses to be deposed prior to any percipient party depositions. The depositions shall, at the request of the association, be followed immediately by the defendant's experts and then by the subcontractors' and design professionals' experts, except on a showing of good cause. For purposes of this section, in determining what constitutes "good cause," the court shall consider, among other things, the goal of early disclosure of defects and whether the expert is prepared to render a final opinion, except that the court may modify the scope of any expert's deposition to address those concerns.

(g) (1) The only method of seeking judicial relief for the failure of the association or the respondent to complete the dispute resolution process under Section 1375 shall be the assertion, as provided for in this subdivision, of a procedural deficiency to an action for damages by the association against the respondent after that action has been filed. A verified application asserting 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 respondent alleging substantial noncompliance with Section 1375, the court shall schedule a hearing within 21 days of the application to determine whether the association or respondent 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 or the respondent did not substantially comply with this paragraph, the court shall stay the action for up to 90 days to allow the noncomplying party to establish substantial compliance. The court shall set a hearing within 90 days to determine substantial compliance. At any time, the court may, for good cause shown, extend the period of the stay upon application of the noncomplying party.

(B) If, within the time set by the court pursuant to this paragraph, the association or the respondent 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 respondent has complied with this section.

(h) This section is operative on July 1, 2002, but does not apply to any action or proceeding pending on that date.

(i) This section shall become inoperative on July 1, 2010, and, as of January 1, 2011, is repealed, unless a later enacted statute that is enacted before January 1, 2011, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 38. Section 1632 of the Civil Code is amended to read:

1632. (a) Any person engaged in a trade or business who negotiates primarily in the Spanish language orally or in writing in the course of entering into:

(1) A contract or agreement subject to the provisions of Title 2 (commencing with Section 1801) of, and Chapter 2b (commencing

with Section 2981) and Chapter 2d (commencing with Section 2985.7) of Title 14 of, Part 4 of Division 3;

(2) A loan or extension of credit secured other than by real property, or unsecured, for use primarily for personal, family or household purposes;

(3) A lease, sublease, rental contract or agreement, or other term of tenancy contract or agreement, for a period of longer than one month, covering a dwelling, an apartment, or mobilehome, or other dwelling unit normally occupied as a residence; or

(4) Notwithstanding paragraph (2), a loan or extension of credit for use primarily for personal, family or household purposes where the loan or extension of credit is subject to the provisions of Article 7 (commencing with Section 10240) of Chapter 3 of Part 1 of Division 4 of the Business and Professions Code, or Division 7 (commencing with Section 18000), or Division 9 (commencing with Section 22000) of the Financial Code; or

(5) A contract or agreement, containing a statement of fees or charges, entered into for the purpose of obtaining legal services, when the person who is engaged in business is currently licensed to practice law pursuant to Chapter 4 (commencing with Section 6000) of Division 3 of the Business and Professions Code;

shall, deliver to the party to the contract or agreement and prior to the execution thereof, an unexecuted Spanish-language translation of the contract or agreement, except that for a loan subject to this part and to the provisions of Article 7 (commencing with Section 10240) of Chapter 3 of Part 1 of Division 4 of the Business and Professions Code, the delivery of a Spanish-language translation of the statement to borrower required by Section 10240 of the Business and Professions Code shall be deemed compliance with this subdivision. At the time and place where a contract or agreement described in this subdivision is executed, a Spanish-language notice shall be provided to the lessee or tenant.

(b) Provision by a supervised financial organization of a Spanish-language translation of the disclosures required by Regulation M or Regulation Z, and, if applicable, Division 7 (commencing with Section 18000) or Division 9 (commencing with Section 22000) of the Financial Code, prior to the execution of the contract shall also be deemed compliance with the requirements of subdivision (a) with regard to the original contract or agreement.

(1) ''Regulation M'' and ''Regulation Z'' mean any rule, regulation, or interpretation promulgated by the Board of Governors of the Federal Reserve System and any interpretation or approval issued by an official or employee duly authorized by the board to issue interpretations or approvals dealing with, respectively, consumer leasing or consumer

lending, pursuant to the Federal Truth in Lending Act, as amended (15 U.S.C. Sec. 1601 et seq.).

(2) As used in this section, ''supervised financial organization'' means a bank, savings association, as defined in Section 5102 of the Financial Code, credit union, or holding company, affiliate, or subsidiary thereof, or any person subject to Article 7 (commencing with Section 10240) of Chapter 3 of Part 1 of Division 4 of the Business and Professions Code, or Division 7 (commencing with Section 18000) or Division 9 (commencing with Section 22000) of the Financial Code.

(c) At the time and place where a contract or agreement described in paragraph (1) or (2) of subdivision (a) is executed, a Spanish-language notice shall be conspicuously displayed to the effect that the person described in subdivision (a) is required to provide an unexecuted Spanish-language contract or agreement, or a Spanish-language translation of the disclosures required by law, as the case may be. If a person described in subdivision (a) does business at more than one location or branch, the requirements of this section shall apply only with respect to the location or branch at which the Spanish language is used.

(d) The term ''contract'' or ''agreement,'' as used in this section, means the document creating the rights and obligations of the parties and includes any subsequent document making substantial changes in the rights and obligations of the parties. The term ''contract'' or ''agreement'' does not include any subsequent documents authorized or contemplated by the original document such as periodic statements, sales slips or invoices representing purchases made pursuant to a credit card agreement, a retail installment contract or account or other revolving sales or loan account, memoranda of purchases in an add-on sale, or refinancing of a purchase as provided by, or pursuant to, the original document.

The term ''contract'' or ''agreement'' does not include a home improvement contract as defined in Sections 7151.2 and 7159 of the Business and Professions Code, nor does it include plans, specifications, description of work to be done and materials to be used, or collateral security taken or to be taken for the retail buyer's obligation contained in a contract for the installation of goods by a contractor licensed pursuant to Chapter 9 (commencing with Section 7000) of Division 3 of the Business and Professions Code, if the home improvement contract or installation contract is otherwise a part of a contract described in subdivision (a).

Matters ordinarily incorporated by reference in contracts or agreements as described in paragraph (3) of subdivision (a), including, but not limited to, rules and regulations governing a tenancy and inventories of furnishings to be provided by the person described in subdivision (a), are not included in the term ''contract'' or ''agreement.''

(e) This section does not apply to any person engaged in a trade or business who negotiates primarily in the Spanish language as described by subdivision (a) if the party with whom he or she is negotiating is a buyer of goods or services, or receives a loan or extension of credit, or enters an agreement obligating himself or herself as a tenant, lessee, or sublessee, or similarly obligates himself or herself by contract or lease, and the party negotiates the terms of the contract, lease, or other obligation through his or her own interpreter.

As used in this subdivision, ''his or her own interpreter'' means a person, not a minor, able to speak fluently and read with full understanding the English and Spanish languages, and who is not employed by, or whose service is made available through, the person engaged in the trade or business.

(f) The terms of the contract or agreement which is executed in the English language shall determine the rights and obligations of the parties. However, the Spanish-language translation of the contract or the disclosures required by subdivision (b) shall be admissible in evidence only to show that no contract was entered into because of a substantial difference in the material terms and conditions of the contract and the translation.

(g) Upon a failure to comply with the provisions of this section, the person aggrieved may rescind the contract or agreement in the manner provided by this chapter. When the contract for a consumer credit sale or consumer lease which has been sold and assigned to a financial institution is rescinded pursuant to this subdivision, the consumer shall make restitution to and have restitution made by the person with whom he or she made the contract, and shall give notice of rescission to the assignee. Notwithstanding that the contract was assigned without recourse, the assignment shall be deemed rescinded and the assignor shall promptly repurchase the contract from the assignee.

SEC. 38.5. Section 1708 of the Civil Code is amended to read:

1708. Every person is bound, without contract, to abstain from injuring the person or property of another, or infringing upon any of his or her rights.

SEC. 39. Section 1748.13 of the Civil Code is amended to read:

1748.13. (a) A credit card issuer shall, with each billing statement provided to a cardholder in this state, provide the following on the front of the first page of the billing statement in type no smaller than that required for any other required disclosure, but in no case in less than 8-point capitalized type:

(1) A written statement in the following form: ''Minimum Payment Warning: Making only the minimum payment will increase the interest you pay and the time it takes to repay your balance.''

(2) Either of the following:

(A) A written statement in the form of and containing the information described in clause (i) or (ii), as applicable, as follows:

(i) A written three-line statement, as follows:

"A one thousand dollar ($1,000) balance will take 17 years and three months to pay off at a total cost of two thousand five hundred ninety dollars and thirty-five cents ($2,590.35).

A two thousand five hundred dollar ($2,500) balance will take 30 years and three months to pay off at a total cost of seven thousand seven hundred thirty-three dollars and forty-nine cents ($7,733.49).

A five thousand dollar ($5,000) balance will take 40 years and two months to pay off at a total cost of sixteen thousand three hundred five dollars and thirty-four cents ($16,305.34).

This information is based on an annual percentage rate of 17 percent and a minimum payment of 2 percent or ten dollars ($10), whichever is greater."

In the alternative, a credit card issuer may provide this information for the three specified amounts at the annual percentage rate and required minimum payment which are applicable to the cardholder's account. The statement provided shall be immediately preceded by the statement required by paragraph (1).

(ii) Instead of the information required by clause (i), retail credit card issuers shall provide a written three-line statement to read, as follows:

"A two hundred fifty dollar ($250) balance will take two years and eight months to pay off a total cost of three hundred twenty-five dollars and twenty-four cents ($325.24).

A five hundred dollar ($500) balance will take four years and five months to pay off at a total cost of seven hundred nine dollars and ninety cents ($709.90).

A seven hundred fifty dollar ($750) balance will take five years and five months to pay off at a total cost of one thousand ninety-four dollars and forty-nine cents ($1,094.49).

This information is based on an annual percentage rate of 21 percent and a minimum payment of 5 percent or ten dollars ($10), whichever is greater."

In the alternative, a retail credit card issuer may provide this information for the three specified amounts at the annual percentage rate and required minimum payment which are applicable to the cardholder's account. The statement provided shall be immediately preceded by the statement required by paragraph (1). A retail credit card issuer is not required to provide this statement if the cardholder has a balance of less than five hundred dollars ($500).

(B) A written statement providing individualized information indicating an estimate of the number of years and months and the approximate total cost to pay off the entire balance due on an open-end credit card account if the cardholder were to pay only the minimum amount due on the open-ended account based upon the terms of the credit agreement. For purposes of this subparagraph only, if the account is subject to a variable rate, the creditor may make disclosures based on the rate for the entire balance as of the date of the disclosure and indicate that the rate may vary. In addition, the cardholder shall be provided with referrals or, in the alternative, with the "800" telephone number of the National Foundation for Credit Counseling through which the cardholder can be referred, to credit counseling services in, or closest to, the cardholder's county of residence. The credit counseling service shall be in good standing with the National Foundation for Credit Counseling or accredited by the Council on Accreditation for Children and Family Services. The creditor is required to provide, or continue to provide, the information required by this paragraph only if the cardholder has not paid more than the minimum payment for six consecutive months, after July 1, 2002.

(3) (A) A written statement in the following form: "For an estimate of the time it would take to repay your balance, making only minimum payments, and the total amount of those payments, call this toll-free telephone number: (Insert toll-free telephone number)." This statement shall be provided immediately following the statement required by subparagraph (A) of paragraph (2). A credit card issuer is not required to provide this statement if the disclosure required by subparagraph (B) of paragraph (2) has been provided.

(B) The toll-free telephone number shall be available between the hours of 8 a.m. and 9 p.m., Pacific standard time, seven days a week, and shall provide consumers with the opportunity to speak with a person, rather than a recording, from whom the information described in subparagraph (A) may be obtained.

(C) The Department of Financial Institutions shall establish a detailed table illustrating the approximate number of months that it would take and the approximate total cost to repay an outstanding balance if the consumer pays only the required minimum monthly payments and if no other additional charges or fees are incurred on the

account, such as additional extension of credit, voluntary credit insurance, late fees, or dishonored check fees by assuming all of the following:

(i) A significant number of different annual percentage rates.

(ii) A significant number of different account balances, with the difference between sequential examples of balances being no greater than one hundred dollars ($100).

(iii) A significant number of different minimum payment amounts.

(iv) That only minimum monthly payments are made and no additional charges or fees are incurred on the account, such as additional extensions of credit, voluntary credit insurance, late fees, or dishonored check fees.

(D) A creditor that receives a request for information described in subparagraph (A) from a cardholder through the toll-free telephone number disclosed under subparagraph (A), or who is required to provide the information required by subparagraph (B) of paragraph (2), may satisfy its obligation to disclose an estimate of the time it would take and the approximate total cost to repay the cardholder's balance by disclosing only the information set forth in the table described in subparagraph (C). Including the full chart along with a billing statement does not satisfy the obligation under this section.

(b) For purposes of this section:

(1) ''Credit card'' has the same meaning as in paragraph (2) of subdivision (a) of Section 1748.12.

(2) ''Open-end credit card account'' means an account in which consumer credit is granted by a creditor under a plan in which the creditor reasonably contemplates repeated transactions, the creditor may impose a finance charge from time to time on an unpaid balance, and the amount of credit that may be extended to the consumer during the term of the plan is generally made available to the extent that any outstanding balance is repaid and up to any limit set by the creditor.

(3) ''Retail credit card'' means a credit card is issued by or on behalf of a retailer, or a private label credit card that is limited to customers of a specific retailer.

(c) (1) This section shall not apply in any billing cycle in which the account agreement requires a minimum payment of at least 10 percent of the outstanding balance.

(2) This section shall not apply in any billing cycle in which finance charges are not imposed.

SEC. 40. Section 1785.11 of the Civil Code is amended to read:

1785.11. (a) A consumer credit reporting agency shall furnish a consumer credit report only under the following circumstances:

(1) In response to the order of a court having jurisdiction to issue an order.

(2) In accordance with the written instructions of the consumer to whom it relates.

(3) To a person whom it has reason to believe:

(A) Intends to use the information in connection with a credit transaction, or entering or enforcing an order of a court of competent jurisdiction for support, involving the consumer as to whom the information is to be furnished and involving the extension of credit to, or review or collection of an account of, the consumer; or

(B) Intends to use the information for employment purposes; or

(C) Intends to use the information in connection with the underwriting of insurance involving the consumer, or for insurance claims settlements; or

(D) Intends to use the information in connection with a determination of the consumer's eligibility for a license or other benefit granted by a governmental instrumentality required by law to consider the applicant's financial responsibility or status; or

(E) Intends to use the information in connection with the hiring of a dwelling unit, as defined in subdivision (c) of Section 1940; or

(F) Otherwise has a legitimate business need for the information in connection with a business transaction involving the consumer.

(b) A consumer credit reporting agency may furnish information for purposes of a credit transaction specified in subparagraph (A) of paragraph (3) of subdivision (a), where it is a credit transaction that is not initiated by the consumer, only under the circumstances specified in paragraph (1) or (2), as follows:

(1) The consumer authorizes the consumer credit reporting agency to furnish the consumer credit report to the person.

(2) The proposed transaction involves a firm offer of credit to the consumer, the consumer credit reporting agency has complied with subdivision (d), and the consumer has not elected pursuant to paragraph (1) of subdivision (d) to have the consumer's name excluded from lists of names provided by the consumer credit reporting agency for purposes of reporting in connection with the potential issuance of firm offers of credit. A consumer credit reporting agency may provide only the following information pursuant to this paragraph:

(A) The name and address of the consumer.

(B) Information pertaining to a consumer that is not identified or identifiable with a particular consumer.

(c) Except as provided in paragraph (3) of subdivision (a) of Section 1785.15, a consumer credit reporting agency shall not furnish to any person a record of inquiries solely resulting from credit transactions that are not initiated by the consumer.

(d) (1) A consumer may elect to have his or her name and address excluded from any list provided by a consumer credit reporting agency

pursuant to paragraph (2) of subdivision (b) by notifying the consumer credit reporting agency, by telephone or in writing, through the notification system maintained by the consumer credit reporting agency pursuant to subdivision (e), that the consumer does not consent to any use of consumer credit reports relating to the consumer in connection with any transaction that is not initiated by the consumer.

(2) An election of a consumer under paragraph (1) shall be effective with respect to a consumer credit reporting agency, and any affiliate of the consumer credit reporting agency, on the date on which the consumer notifies the consumer credit reporting agency.

(3) An election of a consumer under paragraph (1) shall terminate and be of no force or effect following notice from the consumer to the consumer credit reporting agency, through the system established pursuant to subdivision (e), that the election is no longer effective.

(e) Each consumer credit reporting agency that furnishes a prequalifying report pursuant to subdivision (b) in connection with a credit transaction not initiated by the consumer shall establish and maintain a notification system, including a toll-free telephone number, that permits any consumer, with appropriate identification and for which the consumer credit reporting agency has a file, to notify the consumer credit reporting agency of the consumer's election to have the consumer's name removed from any list of names and addresses provided by the consumer credit reporting agency, and by any affiliated consumer credit reporting agency, pursuant to paragraph (2) of subdivision (b). Compliance with the requirements of this subdivision by a consumer credit reporting agency shall constitute compliance with those requirements by any affiliate of that consumer credit reporting agency.

(f) Each consumer credit reporting agency that compiles and maintains files on consumers on a nationwide basis shall establish and maintain a notification system under paragraph (1) of subdivision (e) jointly with its affiliated consumer credit reporting agencies.

SEC. 41. Section 1785.11.2 of the Civil Code is amended to read:

1785.11.2. (a) A consumer may elect to place a security freeze on his or her credit report by making a request in writing by certified mail to a consumer credit reporting agency. "Security freeze" means a notice placed in a consumer's credit report, at the request of the consumer and subject to certain exceptions, that prohibits the consumer credit reporting agency from releasing the consumer's credit report or any information from it without the express authorization of the consumer. When a security freeze is in place, information from a consumer's credit report shall not be released to a third party without prior express authorization from the consumer. This subdivision does not prevent a

consumer credit reporting agency from advising a third party that a security freeze is in effect with respect to the consumer's credit report.

(b) A consumer credit reporting agency shall place a security freeze on a consumer's credit report no later than five business days after receiving a written request from the consumer.

(c) The consumer credit reporting agency shall send a written confirmation of the security freeze to the consumer within 10 business days and shall provide the consumer with a unique personal identification number or password to be used by the consumer when providing authorization for the release of his or her credit for a specific party or period of time.

(d) If the consumer wishes to allow his or her credit report to be accessed for a specific party or period of time while a freeze is in place, he or she shall contact the consumer credit reporting agency, request that the freeze be temporarily lifted, and provide the following:

(1) Proper identification, as defined in subdivision (c) of Section 1785.15.

(2) The unique personal identification number or password provided by the credit reporting agency pursuant to subdivision (c).

(3) The proper information regarding the third party who is to receive the credit report or the time period for which the report shall be available to users of the credit report.

(e) A consumer credit reporting agency that receives a request from a consumer to temporarily lift a freeze on a credit report pursuant to subdivision (d), shall comply with the request no later than three business days after receiving the request.

(f) A consumer credit reporting agency may develop procedures involving the use of telephone, fax, the Internet, or other electronic media to receive and process a request from a consumer to temporarily lift a freeze on a credit report pursuant to subdivision (d) in an expedited manner.

(g) A consumer credit reporting agency shall remove or temporarily lift a freeze placed on a consumer's credit report only in either of the following cases:

(1) Upon consumer request, pursuant to subdivision (d) or (j).

(2) If the consumer's credit report was frozen due to a material misrepresentation of fact by the consumer. If a consumer credit reporting agency intends to remove a freeze upon a consumer's credit report pursuant to this paragraph, the consumer credit reporting agency shall notify the consumer in writing prior to removing the freeze on the consumer's credit report.

(h) If a third party requests access to a consumer credit report on which a security freeze is in effect, and this request is in connection with an application for credit or any other use, and the consumer does not

allow his or her credit report to be accessed for that specific party or period of time, the third party may treat the application as incomplete.

(i) If a consumer requests a security freeze, the consumer credit reporting agency shall disclose the process of placing and temporarily lifting a freeze, and the process for allowing access to information from the consumer's credit report for a specific party or period of time while the freeze is in place.

(j) A security freeze shall remain in place until the consumer requests that the security freeze be removed. A consumer credit reporting agency shall remove a security freeze within three business days of receiving a request for removal from the consumer, who provides both of the following:

(1) Proper identification, as defined in subdivision (c) of Section 1785.15.

(2) The unique personal identification number or password provided by the credit reporting agency pursuant to subdivision (c).

(k) A consumer credit reporting agency shall require proper identification, as defined in subdivision (c) of Section 1785.15, of the person making a request to place or remove a security freeze.

(*l*) This section does not apply to the use of a consumer credit report by the following:

(1) A person or entity, or a subsidiary, affiliate, or agent of that person or entity, or an assignee of a financial obligation owing by the consumer to that person or entity, or a prospective assignee of a financial obligation owing by the consumer to that person or entity in conjunction with the proposed purchase of the financial obligation, with which the consumer has or had prior to assignment an account or contract, including a demand deposit account, or to whom the consumer issued a negotiable instrument, for the purposes of reviewing the account or collecting the financial obligation owing for the account, contract, or negotiable instrument. For purposes of this paragraph, ''reviewing the account'' includes activities related to account maintenance, monitoring, credit line increases, and account upgrades and enhancements.

(2) A subsidiary, affiliate, agent, assignee, or prospective assignee of a person to whom access has been granted under subdivision (d) for purposes of facilitating the extension of credit or other permissible use.

(3) Any state or local agency, law enforcement agency, trial court, or private collection agency acting pursuant to a court order, warrant, or subpoena.

(4) A child support agency acting pursuant to Chapter 2 of Division 17 of the Family Code or Title IV-D of the Social Security Act (42 U.S.C. et seq.).

(5) The State Department of Health Services or its agents or assigns acting to investigate Medi-Cal fraud.

(6) The Franchise Tax Board or its agents or assigns acting to investigate or collect delinquent taxes or unpaid court orders or to fulfill any of its other statutory responsibilities.

(7) The use of credit information for the purposes of prescreening as provided for by the federal Fair Credit Reporting Act.

(m) Nothing in this act shall prevent a consumer credit reporting agency from charging a reasonable fee to a consumer who elects to freeze, remove the freeze, or temporarily lift the freeze regarding access to a consumer credit report, except that a consumer credit reporting agency may not charge a fee to a victim of identity theft who has submitted a valid police report or valid Department of Motor Vehicles investigative report that alleges a violation of Section 530.5 of the Penal Code.

SEC. 42. Section 1798.85 of the Civil Code is amended to read:

1798.85. (a) A person or entity, not including a state or local agency, shall not do any of the following:

(1) Publicly post or publicly display in any manner an individual's social security number. ''Publicly post'' or ''publicly display'' means to intentionally communicate or otherwise make available to the general public.

(2) Print an individual's social security number on any card required for the individual to access products or services provided by the person or entity.

(3) Require an individual to transmit his or her social security number over the Internet, unless the connection is secure or the social security number is encrypted.

(4) Require an individual to use his or her social security number to access an Internet Web site, unless a password or unique personal identification number or other authentication device is also required to access the Web site.

(5) Print an individual's social security number on any materials that are mailed to the individual, unless state or federal law requires the social security number to be on the document to be mailed. Notwithstanding this provision, applications and forms sent by mail may include social security numbers.

(b) Except as provided in subdivision (c), subdivision (a) applies only to the use of social security numbers on or after July 1, 2002.

(c) Except as provided in subdivision (f), a person or entity, not including a state or local agency, that has used, prior to July 1, 2002, an individual's social security number in a manner inconsistent with subdivision (a), may continue using that individual's social security number in that manner on or after July 1, 2002, if all of the following conditions are met:

(1) The use of the social security number is continuous. If the use is stopped for any reason, subdivision (a) shall apply.

(2) The individual is provided an annual disclosure, commencing in the year 2002, that informs the individual that he or she has the right to stop the use of his or her social security number in a manner prohibited by subdivision (a).

(3) A written request by an individual to stop the use of his or her social security number in a manner prohibited by subdivision (a) shall be implemented within 30 days of the receipt of the request. There shall be no fee or charge for implementing the request.

(4) A person or entity, not including a state or local agency, shall not deny services to an individual because the individual makes a written request pursuant to this subdivision.

(d) This section does not prevent the collection, use, or release of a social security number as required by state or federal law or the use of a social security number for internal verification or administrative purposes.

(e) This section does not apply to documents that are recorded or required to be open to the public pursuant to Chapter 3.5 (commencing with Section 6250), Chapter 14 (commencing with Section 7150), or Chapter 14.5 (commencing with Section 7220) of Division 7 of Title 1 of, or Chapter 9 (commencing with Section 54950) of Part 1 of Division 2 of Title 5 of, the Government Code. This section does not apply to records that are required by statute, case law, or California Rule of Court, to be made available to the public by entities provided for in Article VI of the California Constitution.

(f) (1) In the case of a health care service plan, a provider of health care, an insurer or a pharmacy benefits manager, or a contractor as defined in Section 56.05, this section shall become operative in the following manner:

(A) On or before January 1, 2003, the entities listed in paragraph (1) of subdivision (f) shall comply with paragraphs (1), (3), (4), and (5) of subdivision (a) as these requirements pertain to individual policyholders.

(B) On or before January 1, 2004, the entities listed in paragraph (1) of subdivision (f) shall comply with paragraphs (1) to (5), inclusive, of subdivision (a) as these requirements pertain to new individual policyholders and new employer groups issued on or after January 1, 2004.

(C) On or before July 1, 2004, the entities listed in paragraph (1) of subdivision (f) shall comply with paragraphs (1) to (5), inclusive, of subdivision (a) for all policyholders and for all enrollees of the Healthy Families and Medi-Cal programs, except that individual and employer

group policyholders in existence prior to January 1, 2004, shall comply upon their renewal date, but no later than July 1, 2005.

(2) A health care service plan, a provider of health care, an insurer or a pharmacy benefits manager, or a contractor shall make reasonable efforts to cooperate, through systems testing and other means, to ensure that the requirements of this article are implemented on or before the dates specified in this section.

(3) Notwithstanding paragraph (2), the Director of the Department of Managed Health Care, pursuant to the authority granted under Section 1346 of the Health and Safety Code, or the Insurance Commissioner, pursuant to the authority granted under Section 12921 of the Insurance Code, and upon a determination of good cause, may grant extensions not to exceed six months for compliance by health care service plans and insurers with the requirements of this section when requested by the health care service plan or insurer. Any extension granted shall apply to the health care service plan or insurer's affected providers, pharmacy benefits manager, and contractors.

(g) If a federal law takes effect requiring the United States Department of Health and Human Services to establish a national unique patient health identifier program, a provider of health care, a health care service plan, a licensed health care professional, or a contractor, as those terms are defined in Section 56.05, that complies with the federal law shall be deemed in compliance with this section.

SEC. 43. Section 1936 of the Civil Code is amended to read:

1936. (a) For the purpose of this section, the following definitions shall apply:

(1) ''Rental company'' means any person or entity in the business of renting passenger vehicles to the public.

(2) ''Renter'' means any person in any manner obligated under a contract for the lease or hire of a passenger vehicle from a rental company for a period of less than 30 days.

(3) ''Authorized driver'' means (A) the renter, (B) the renter's spouse if that person is a licensed driver and satisfies the rental company's minimum age requirement, (C) the renter's employer or coworker if they are engaged in business activity with the renter, are licensed drivers, and satisfy the rental company's minimum age requirement, and (D) any person expressly listed by the rental company on the renter's contract as an authorized driver.

(A) ''Customer facility charge'' means a fee required by an airport to be collected by a rental company from a renter for any of the following purposes:

(i) The fee shall be used to finance, design, and construct consolidated airport car rental facilities.

(ii) The fee shall be used to finance, design, construct, and provide common use transportation systems that move passengers between airport terminals and those consolidated car rental facilities.

(B) The aggregate amount to be collected shall not exceed the reasonable costs, as determined by an independent audit paid for by the airport, to finance, design, and construct those facilities. Copies of the audit shall be provided to the Assembly and Senate Committees on Judiciary and Committees on Transportation. In the case of a transportation system, the audit shall also consider the reasonable costs of providing the transit system or busing network. At any airport, the fees designated as a Customer Facility Charge may not be used to pay for terminal expansion, gate expansion, runway expansion, changes in hours of operation, or changes in the number of flights arriving or departing from the airport.

(C) The authorization given pursuant to this section for an airport to impose a customer facility charge shall become inoperative when the bonds used for financing are paid.

(4) ''Damage waiver'' means a rental company's agreement not to hold a renter liable for all or any portion of any damage or loss related to the rented vehicle, any loss of use of the rented vehicle, or any storage, impound, towing, or administrative charges.

(5) ''Estimated time for replacement'' means the number of hours of labor, or fraction thereof, needed to replace damaged vehicle parts as set forth in collision damage estimating guides generally used in the vehicle repair business and commonly known as ''crash books.''

(6) ''Estimated time for repair'' means a good faith estimate of the reasonable number of hours of labor, or fraction thereof, needed to repair damaged vehicle parts.

(7) ''Passenger vehicle'' means a passenger vehicle as defined in Section 465 of the Vehicle Code.

(b) Except as limited by subdivision (c), a rental company and a renter may agree that the renter will be responsible for no more than all of the following:

(1) Physical or mechanical damage to the rented vehicle up to its fair market value, as determined in the customary market for the sale of that vehicle, resulting from collision regardless of the cause of the damage.

(2) Loss due to theft of the rented vehicle up to its fair market value, as determined in the customary market for the sale of that vehicle, provided that the rental company establishes by clear and convincing evidence that the renter or the authorized driver failed to exercise ordinary care while in possession of the vehicle. In addition, the renter shall be presumed to have no liability for any loss due to theft if (A) an authorized driver has possession of the ignition key furnished by the rental company or an authorized driver establishes that the ignition key

furnished by the rental company was not in the vehicle at the time of the theft, and (B) an authorized driver files an official report of the theft with the police or other law enforcement agency within 24 hours of learning of the theft and reasonably cooperates with the rental company and the police or other law enforcement agency in providing information concerning the theft. The presumption set forth in this paragraph is a presumption affecting the burden of proof which the rental company may rebut by establishing that an authorized driver committed, or aided and abetted the commission of, the theft.

(3) Physical damage to the rented vehicle up to its fair market value, as determined in the customary market for the sale of that vehicle, resulting from vandalism occurring after, or in connection with, the theft of the rented vehicle; however, the renter shall have no liability for any damage due to vandalism if the renter would have no liability for theft pursuant to paragraph (2).

(4) Physical damage to the rented vehicle up to a total of five hundred dollars ($500) resulting from vandalism unrelated to the theft of the rented vehicle.

(5) Actual charges for towing, storage, and impound fees paid by the rental company if the renter is liable for damage or loss.

(6) An administrative charge which shall include the cost of appraisal and all other costs and expenses incident to the damage, loss, repair, or replacement of the rented vehicle.

(c) The total amount of the renter's liability to the rental company resulting from damage to the rented vehicle shall not exceed the sum of the following:

(1) The estimated cost of parts which the rental company would have to pay to replace damaged vehicle parts. All discounts and price reductions or adjustments that are or will be received by the rental company shall be subtracted from the estimate to the extent not already incorporated in the estimate or otherwise promptly credited or refunded to the renter.

(2) The estimated cost of labor to replace damaged vehicle parts which shall not exceed the product of (A) the rate for labor usually paid by the rental company to replace vehicle parts of the type that were damaged and (B) the estimated time for replacement. All discounts and price reductions or adjustments that are or will be received by the rental company shall be subtracted from the estimate to the extent not already incorporated in the estimate or otherwise promptly credited or refunded to the renter.

(3) (A) The estimated cost of labor to repair damaged vehicle parts which shall not exceed the lesser of the following:

(i) The product of the rate for labor usually paid by the rental company to repair vehicle parts of the type that were damaged and the estimated time for repair.

(ii) The sum of the estimated labor and parts costs determined under paragraphs (1) and (2) to replace the same vehicle parts.

(B) All discounts and price reductions or adjustments that are or will be received by the rental company shall be subtracted from the estimate to the extent not already incorporated in the estimate or otherwise promptly credited or refunded to the renter.

(4) For the purpose of converting the estimated time for repair into the same units of time in which the rental rate is expressed, a day shall be deemed to consist of eight hours.

(5) Actual charges for towing, storage, and impound fees paid by the rental company.

(6) The administrative charge described in paragraph (6) of subdivision (b) shall not exceed (A) fifty dollars ($50) if the total estimated cost for parts and labor is more than one hundred dollars ($100) up to and including five hundred dollars ($500), (B) one hundred dollars ($100) if the total estimated cost for parts and labor exceeds five hundred dollars ($500) up to and including one thousand five hundred dollars ($1,500), and (C) one hundred fifty dollars ($150) if the total estimated cost for parts and labor exceeds one thousand five hundred dollars ($1,500). No administrative charge shall be imposed if the total estimated cost of parts and labor is one hundred dollars ($100) or less.

(d) (1) The total amount of an authorized driver's liability to the rental company, if any, for damage occurring during the authorized driver's operation of the rented vehicle shall not exceed the amount of the renter's liability under subdivision (c).

(2) A rental company shall not recover from the renter or other authorized driver an amount exceeding the renter's liability under subdivision (c).

(3) A claim against a renter resulting from damage or loss, excluding loss of use, to a rental vehicle shall be reasonably and rationally related to the actual loss incurred. A rental company shall mitigate damages where possible and may not assert or collect any claim for physical damage which exceeds the actual costs of the repairs performed or the estimated cost of repairs, if the rental company chooses not to repair the vehicle, including all discounts and price reductions. However, if the vehicle is a total loss vehicle, the claim shall not exceed the total loss vehicle value established in accordance with procedures that are customarily used by insurance companies when paying claims on total loss vehicles, less the proceeds from salvaging the vehicle, if those proceeds are retained by the rental company.

(4) If insurance coverage exists under the renter's applicable personal or business insurance policy and the coverage is confirmed during regular business hours, the renter may require that the rental company submit any claims to the renter's applicable personal or business insurance carrier. The rental company shall not make any written or oral representations that it will not present claims or negotiate with the renter's insurance carrier. For purposes of this paragraph, confirmation of coverage includes telephone confirmation from insurance company representatives during regular business hours. Upon request of the renter and after confirmation of coverage, the amount of claim shall be resolved between the insurance carrier and the rental company. The renter shall remain responsible for payment to the rental car company for any loss sustained that the renter's applicable personal or business insurance policy does not cover.

(5) A rental company shall not recover from the renter or other authorized driver for any item described in subdivision (b) to the extent the rental company obtains recovery from any other person.

(6) This section applies only to the maximum liability of a renter or other authorized driver to the rental company resulting from damage to the rented vehicle and not to the liability of any other person.

(e) (1) Except as provided in subdivision (f), every damage waiver shall provide or, if not expressly stated in writing, shall be deemed to provide that the renter has no liability for any damage, loss, loss of use, or any cost or expense incident thereto.

(2) Except as provided in subdivision (f), every limitation, exception, or exclusion to any damage waiver is void and unenforceable.

(f) A rental company may provide in the rental contract that a damage waiver does not apply under any of the following circumstances:

(1) Damage or loss results from an authorized driver's (A) intentional, willful, wanton, or reckless conduct, (B) operation of the vehicle under the influence of drugs or alcohol in violation of Section 23152 of the Vehicle Code, (C) towing or pushing anything, or (D) operation of the vehicle on an unpaved road if the damage or loss is a direct result of the road or driving conditions.

(2) Damage or loss occurs while the vehicle is (A) used for commercial hire, (B) used in connection with conduct that could be properly charged as a felony, (C) involved in a speed test or contest or in driver training activity, (D) operated by a person other than an authorized driver, or (E) operated outside of the United States.

(3) Any authorized driver who has (A) provided fraudulent information to the rental company, or (B) provided false information and the rental company would not have rented the vehicle if it had instead received true information.

(g) (1) A rental company which offers or provides a damage waiver for any consideration in addition to the rental rate shall clearly and conspicuously disclose the following information in the rental contract or holder in which the contract is placed and, also, in signs posted at the place, such as the counter, where the renter signs the rental contract: (A) the nature of the renter's liability, e.g., liability for all collision damage regardless of cause, (B) the extent of the renter's liability, e.g., liability for damage or loss up to a specified amount, (C) the renter's personal insurance policy or the credit card used to pay for the car rental transaction may provide coverage for all or a portion of the renter's potential liability, (D) the renter should consult with his or her insurer to determine the scope of insurance coverage, including the amount of the deductible, if any, for which the renter is obligated, (E) the renter may purchase an optional damage waiver to cover all liability, subject to whatever exceptions the rental company expressly lists that are permitted under subdivision (f), and (F) the range of charges for the damage waiver.

(2) In addition to the requirements of paragraph (1), a rental company that offers or provides damage waiver shall, on that part of the contract where the renter indicates his or her acceptance or declination of the damage waiver, indicate that the purchase of the damage waiver is optional.

(3) The following is an example, for purposes of illustration and not limitation, of a notice fulfilling the requirements of paragraph (1) for a rental company that imposes liability on the renter for collision damage to the full value of the vehicle:

NOTICE ABOUT YOUR FINANCIAL RESPONSIBILITY AND OPTIONAL DAMAGE WAIVER

You are responsible for all collision damage to the rented vehicle even if someone else caused it or the cause is unknown. You are responsible for the cost of repair up to the value of the vehicle, and towing, storage, and impound fees.

Your own insurance, or the issuer of the credit card you use to pay for the car rental transaction, may cover all or part of your financial responsibility for the rented vehicle. You should check with your insurance company, or credit car issuer, to find out about your coverage and the amount of the deductible, if any, for which you may be liable.

Further, if you use a credit card that provides coverage for your potential liability, you should check with the issuer to determine if you must first exhaust the coverage limits of your own insurance before the credit card coverage applies.

The rental company will not hold you responsible if you buy a damage waiver. But a damage waiver will not protect you if (list exceptions).

(A) When the above notice is printed in the contract or contractholder, the following shall be printed immediately following the notice:

"The cost of an optional damage waiver is $____ for every (day or week)."

(B) When the above notice appears on a sign, the following shall appear immediately adjacent to the notice:

"The cost of an optional damage waiver is $____ to $____ for every (day or week), depending upon the vehicle rented."

(h) Notwithstanding any other provision of law, a rental company may sell a damage waiver subject to the following rate limitations for each full or partial 24-hour rental day for the damage waiver.

(1) For rental vehicles that the rental company designates as an "economy car," "subcompact car," "compact car," or any other term having similar meaning when offered for rental, or any other vehicle having a manufacturer's suggested retail price of nineteen thousand dollars ($19,000) or less, the rate may not exceed nine dollars ($9).

(2) For rental vehicles that have a manufacturer's suggested retail price from nineteen thousand one dollars ($19,001) to thirty-four thousand nine hundred ninety-nine dollars ($34,999), inclusive, and that is also either a vehicle of the next year's model year or not older than the previous year's model year, the rate may not exceed fifteen dollars ($15). For those rental vehicles older than the previous year's model year, the rate may not exceed nine dollars ($9).

(i) On or after January 1, 2003, the manufacturer's suggested retail prices described in subdivision (h) shall be adjusted annually to reflect changes from the previous year in the Consumer Price Index. For the purposes of this section, "Consumer Price Index" means the United States Consumer Price Index for All Urban Consumers, for all items.

(j) A rental company which disseminates in this state an advertisement containing a rental rate shall include in that advertisement a clearly readable statement of the charge for damage waiver and a statement that damage waiver is optional.

(k) (1) A rental company shall not require the purchase of a damage waiver, optional insurance, or any other optional good or service.

(2) A rental company shall not engage in any unfair, deceptive, or coercive conduct to induce a renter to purchase damage waiver, optional insurance, or any other optional good or service, including conduct such

as, but not limited to, refusing to honor the renter's reservation, limiting the availability of vehicles, requiring a deposit, or debiting or blocking the renter's credit card account for a sum equivalent to a deposit if the renter declines to purchase damage waiver, optional insurance, or any other optional good or service.

(*l*) (1) In the absence of express permission granted by the renter subsequent to damage to, or loss of, the vehicle, a rental company shall not seek to recover any portion of any claim arising out of damage to, or loss of, the rented vehicle by processing a credit card charge or causing any debit or block to be placed on the renter's credit card account.

(2) A rental company shall not engage in any unfair, deceptive, or coercive tactics in attempting to recover or in recovering on any claim arising out of damage to, or loss of, the rented vehicle.

(m) (1) A customer facility charge may be collected by a rental company under the following circumstances:

(A) Collection of the fee by the rental company is required by an airport operated by a city, a county, a city and county, a joint powers authority, or a special district.

(B) The fee is calculated on a per-contract basis.

(C) The fee is a user fee, not a tax imposed upon real property or an incidence of property ownership under Article XIII D of the California Constitution.

(D) Except as otherwise provided in subparagraph (E), the fee shall be ten dollars ($10) per contract.

(E) If the fee imposed by the airport is for both a consolidated rental car facility and a common use transportation system, the fee collected from customers of on-airport rental car companies shall be ten dollars ($10), but the fee imposed on customers of off-airport rental car companies who are transported on the common use transportation system is proportionate to the costs of the common use transportation system only. The fee is uniformly applied to each class of on-airport or off-airport customers, provided the airport requires off-airport customers to use the common use transportation system.

(F) Revenues collected from the fee do not exceed the reasonable costs of financing, designing, constructing, or operating the facility or services and may not be used for any other purpose.

(G) The fee is separately identified on the rental agreement.

(H) This paragraph does not apply to airports whose fees are governed by Section 1936.5 of the Civil Code, Section 50474.1 of the Government Code, or Section 57.5 of the San Diego Unified Port District Act.

(2) Notwithstanding any other provision of law, including, but not limited to, Part 1 (commencing with Section 6001) to Part 1.7 (commencing with Section 7280), inclusive, of Division 2 of the Revenue and Taxation Code, the fees collected pursuant to this section,

or any other law whereby a local agency operating an airport requires a rental car company to collect a facility financing fee from its customers, shall not be subject to sales, use, or transaction taxes.

(n) (1) A rental company shall only advertise, quote, and charge a rental rate that includes the entire amount except taxes, a customer facility charge, if any, and a mileage charge, if any, which a renter must pay to hire or lease the vehicle for the period of time to which the rental rate applies. A rental company shall not charge in addition to the rental rate, taxes, a customer facility charge, if any, and a mileage charge, if any, any fee which must be paid by the renter as a condition of hiring or leasing the vehicle, such as, but not limited to, required fuel or airport surcharges other than customer facility charges, nor any fee for transporting the renter to the location where the rented vehicle will be delivered to the renter.

(2) In addition to the rental rate, taxes, customer facility charges, if any, and mileage charges, if any, a rental company may charge for an item or service provided in connection with a particular rental transaction if the renter could have avoided incurring the charge by choosing not to obtain or utilize the optional item or service. Items and services for which the rental company may impose an additional charge, include, but are not limited to, optional insurance and accessories requested by the renter, service charges incident to the renter's optional return of the vehicle to a location other than the location where the vehicle was hired or leased, and charges for refueling the vehicle at the conclusion of the rental transaction in the event the renter did not return the vehicle with as much fuel as was in the fuel tank at the beginning of the rental. A rental company also may impose an additional charge based on reasonable age criteria established by the rental company.

(3) A rental company shall not charge any fee for authorized drivers in addition to the rental charge for an individual renter.

(4) If a rental company states a rental rate in print advertisement or in a telephonic, in-person, or computer-transmitted quotation, the rental company shall clearly disclose in that advertisement or quotation the terms of any mileage conditions relating to the advertised or quoted rental rate, including, but not limited to, to the extent applicable, the amount of mileage and gas charges, the number of miles for which no charges will be imposed, and a description of geographic driving limitations within the United States and Canada.

(5) (A) When a rental rate is stated in an advertisement, quotation, or reservation in connection with a car rental at an airport where a customer facility charge is imposed, the rental company shall clearly disclose the existence and amount of the customer facility charge. For the purposes of this subparagraph, advertisements include radio, television, other electronic media, and print advertisements. For

purposes of this subparagraph, quotations and reservations include those that are telephonic, in-person, and computer-transmitted. If the rate advertisement is intended to include transactions at more than one airport imposing a customer facility charge, a range of fees may be stated in the advertisement. However, all rate advertisements that include car rentals at airport destinations shall clearly and conspicuously include a toll-free telephone number whereby a customer can be told the specific amount of the customer facility charge to which the customer will be obligated.

(B) If any person or entity other than a rental car company, including a passenger carrier or a seller of travel services, advertises or quotes a rate for a car rental at an airport where a customer facility charge is imposed, that person or entity shall, provided they are provided with information about the existence and amount of the fee, to the extent not specifically prohibited by federal law, clearly disclose the existence and amount of the fee in any telephonic, in-person, or computer-transmitted quotation at the time of making an initial quotation of a rental rate and at the time of making a reservation of a rental car. If a rental car company provides the person or entity with rate and customer facility charge information, the rental car company shall not be responsible for the failure of that person or entity to comply with this subparagraph when quoting or confirming a rate to a third person or entity.

(6) If a rental company delivers a vehicle to a renter at a location other than the location where the rental company normally carries on its business, the rental company shall not charge the renter any amount for the rental for the period before the delivery of the vehicle. If a rental company picks up a rented vehicle from a renter at a location other than the location where the rental company normally carries on its business, the rental company shall not charge the renter any amount for the rental for the period after the renter notifies the rental company to pick up the vehicle.

(o) A renter may bring an action against a rental company for the recovery of damages and appropriate equitable relief for a violation of this section. The prevailing party shall be entitled to recover reasonable attorney's fees and costs.

(p) A rental company that brings an action against a renter for loss due to theft of the vehicle shall bring the action in the county in which the renter resides or if the renter is not a resident of this state in the jurisdiction in which the renter resides.

(q) Any waiver of any of the provisions of this section shall be void and unenforceable as contrary to public policy.

(r) This section shall become operative on January 1, 2002.

SEC. 44. Section 1940.7.5 of the Civil Code is amended to read:

1940.7.5. (a) For purposes of this section, the following definitions shall apply:

(1) ''Illegal controlled substance'' means a drug, substance, or immediate precursor listed in any schedule contained in Section 11054, 11055, 11056, 11057, or 11058 of the Health and Safety Code, or an emission or waste material resulting from the unlawful manufacture or attempt to manufacture an illegal controlled substance. An ''illegal controlled substance'' does not include, for purposes of this section, marijuana.

(2) ''Release'' means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing of an illegal controlled substance in a structure or into the environment.

(b) (1) The owner of a residential dwelling unit who knows, as provided in paragraph (2), that any release of an illegal controlled substance has come to be located on or beneath that dwelling unit shall give written notice to the prospective tenant prior to the execution of a rental agreement by providing to a prospective tenant a copy of any notice received from law enforcement or any other entity, such as the Department of Toxic Substances Control, the county health department, the local environmental health officer, or a designee, advising the owner of that release on the property.

(2) For purposes of this subdivision, the owner's knowledge of the condition is established by the receipt of a notice specified in paragraph (1) or by actual knowledge of the condition from a source independent of the notice.

(3) If the owner delivers the disclosure information required by paragraph (1), the delivery shall be deemed legally adequate for purposes of informing the prospective tenant of that condition, and the owner is not required to provide any additional disclosure of that information.

(4) Failure of the owner to provide written notice to a prospective tenant when required by this subdivision shall subject the owner to actual damages and any other remedies provided by law. In addition, if the owner has actual knowledge of the presence of any release of an illegal controlled substance and knowingly and willfully fails to provide written notice to the renter, as required by this subdivision, the owner is liable for a civil penalty not to exceed five thousand dollars ($5,000) for each separate violation, in addition to any other damages provided by law.

(c) This section shall remain in effect only until January 1, 2004, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2004, deletes or extends that date.

SEC. 45. Section 3110.5 of the Civil Code is amended to read:

3110.5. (a) (1) This section shall apply only to an owner who contracts for a work of improvement for construction, alteration, addition to, or repair upon, property, whether the contracting owner is the owner of a fee simple absolute interest in the property or the owner of any lesser interest in the property. For purposes of this section, a lessee of real property shall be considered to be the owner of a fee simple absolute interest in that real property if and only if: (A) the initial term of the lease is at least 35 years and (B) the lease covers one or more lawful parcels under the Subdivision Map Act (Division 2 (commencing with Section 66410) of Title 7 of the Government Code) and any applicable local ordinances adopted pursuant thereto, in their entirety, including, but not limited to, parcels approved pursuant to certificate of compliance proceedings. For purposes of this section, the owner of a fee simple absolute interest shall not be deemed to be the owner of less than a fee simple absolute interest by reason of any mortgages, deeds of trust, ground leases, or other liens or encumbrances or rights to occupancy that may encumber the fee simple absolute interest. If the owner contracting for the work of improvement is an owner of an interest in the property which is less than a fee simple absolute interest, this section does not require the owner of the fee simple absolute interest who does not contract for the work of improvement to provide any security pursuant to this section or to comply with any of the other obligations of an owner under this section. If the owner contracting for the work of improvement is an owner of the fee simple absolute interest in the property, this section does not require the owner of an interest in the property which is less than a fee simple absolute interest who does not contract for the work of improvement to provide any security pursuant to this section or to comply with any of the other obligations of an owner under this section.

(2) An owner contracting for a work of improvement is subject to this section only if one of the following conditions is satisfied:

(A) The owner contracting for the work of improvement is the owner of a fee simple absolute interest in the property upon which the work of improvement is to be made, and the value of the contract for the work of improvement is more than five million dollars ($5,000,000).

(B) The owner contracting for the work of improvement is the owner of an interest which is less than a fee simple absolute interest, including a leasehold interest, in the property upon which the work of improvement is to be made, and the value of the contract for the work of improvement is more than one million dollars ($1,000,000).

(b) If an owner of property, whether an owner of a fee simple absolute interest or any lesser interest therein, contracts for any work of improvement for construction, alteration, addition to, or repair upon, the property, and the contracting owner is subject to the requirements of this section, as determined by subdivision (a), the contracting owner shall

supply to the original contractor, if a lending institution is providing a construction loan, a copy certified by the county recorder of the recorded construction mortgage or deed of trust that shall disclose the amount of the construction loan. In addition, if the contracting owner is not the majority owner of the original contractor, the contracting owner shall provide security for the contracting owner's payment obligations under the construction contract. The security shall be used only when the contracting owner defaults on his or her contractual obligations to the original contractor. The security for the contracting owner's payment obligations under the construction contract shall be provided by one of the following means:

(1) A payment bond, as defined in Section 3096, in the amount of either (A) not less than 25 percent of the total amount of any construction contract that is subject to this section where the construction contract provides that the work of improvement is scheduled to be substantially completed within six months following the commencement thereof, or (B) not less than 15 percent of the total amount of any other construction contract that is subject to this section, which payment bond shall be payable upon default by the contracting owner of any undisputed amount under the contract that has been due and payable for more than 30 days. The payment bond shall be from a California admitted surety which is either listed in the Department of the Treasury's Listing of Approved Sureties (Department Circular 570) or that has an A.M. Best rating of A or better and has an underwriting limitation, pursuant to Section 12090 of the Insurance Code, greater than the value of the contract amount of the bond.

(2) An irrevocable letter of credit from a financial institution, as defined in Section 5107 of the Financial Code, inuring to the benefit of the original contractor in the amount of either (A) not less than 25 percent of the total amount of any construction contract that is subject to this section where the construction contract provides that the work of improvement is scheduled to be substantially completed within six months following the commencement thereof, or (B) not less than 15 percent of the total amount of any other construction contract that is subject to this section. The maturity date of the letter of credit and other terms of the letter of credit shall be determined by agreement between the contracting owner, the original contractor, and the issuer of the letter of credit provided that the contracting owner shall be required to maintain the letter of credit in effect until the contracting owner has satisfied all of its payment obligations to the original contractor.

(3) (A) An escrow account, designated as a "construction security escrow account," maintained with an escrow agent licensed under the Escrow Law, as set forth in Division 6 (commencing with Section 17000) of the Financial Code, or with any person exempt from the

Escrow Law pursuant to paragraph (1) or (3) of subdivision (a) of Section 17006 of the Financial Code, which construction security escrow account shall be located in California and in which the contracting owner shall deposit funds in the amount provided in subparagraph (B); provided that the original contractor shall not be obligated to accept a construction security escrow account as security unless the contracting owner establishes to the reasonable satisfaction of the original contractor (which may be established by a written opinion of legal counsel for the contracting owner), that the contracting owner has granted the original contractor a perfected, first priority security interest in the construction security escrow account and all funds deposited by the contracting owner therein and the proceeds thereof. The funds on deposit in the construction security escrow account shall be the sole property of the contracting owner, subject to the security interest in favor of the original contractor. The escrowholder shall be instructed by the contracting owner and the original contractor to hold the funds on deposit in the construction security escrow account for the purpose of perfecting the original contractor's security interest therein and to disburse those funds only upon the joint authorization of the contracting owner and the original contractor, or in accordance with an order of any court which is binding on both the owner and the original contractor. This section does not require any construction lender to agree to deposit proceeds of a construction loan in a construction security escrow account.

(B) Prior to commencement of the work under the construction contract, the contracting owner shall make an initial deposit to the construction security escrow account in the amount of either (i) not less than 25 percent of the total amount of any construction contract which is subject to this section where the construction contract provides that the work of improvement is scheduled to be substantially completed within six months following the commencement thereof, or (ii) not less than 15 percent of the total amount of any other construction contract which is subject to this section. In addition, if the construction contract provides for a so-called retainage or retention to be withheld from periodic payments to the original contractor, the contracting owner shall deposit all amounts withheld as retainage or retention in the construction security escrow account at the same time the contracting owner makes the corresponding payment to the original contractor from which the retainage or retention is withheld provided, however, that in no event shall the amount required to be maintained on deposit in the construction security escrow account exceed the total amount of future payments remaining to be due the original contractor under its construction contract (as the same may be adjusted by agreement between the contracting owner and the original contractor). If the amount of funds on

deposit in the construction security escrow account equals or exceeds the total amount of future payments remaining to be due the original contractor, the contracting owner and the original contractor shall authorize the disbursement to the original contractor of funds on deposit in the construction security escrow account to pay progress payments then due the original contractor under its construction contract (in whole or in part), but in no event shall either party be obligated to authorize the disbursement of any funds that would cause the amount remaining on deposit in the construction security escrow account following that disbursement to be less than the total amount of future payments remaining to be due the original contractor after application of any funds disbursed to the original contractor. The contracting owner and the original contractor shall authorize the disbursement to the contracting owner of any funds remaining on deposit in the construction security escrow account after the original contractor has been paid all amounts due under its construction contract. The contracting owner and the original contractor shall authorize the disbursement of funds on deposit in the construction security escrow account in accordance with the order of any court which is binding on both of them. The contracting owner and the original contractor may agree in the construction contract upon additional conditions for the disbursement of funds on deposit in the construction security escrow account provided that the conditions shall not cause the amount remaining on deposit in the construction security escrow account to be less than the amount required pursuant to this subparagraph.

(c) For the purposes of subdivision (b), if the price under the construction contract is not a fixed price, the amount of security to be provided shall be determined with reference to the guaranteed maximum price, if there is one, or if there is no guaranteed maximum price, the amount of security shall be determined with reference to the contracting owner's and original contractor's good faith estimate as to the total cost anticipated to be incurred under the construction contract. If any contracting owner that is required to provide security under this section with respect to a construction contract fails to provide that security or fails to maintain that security as required, the original contractor may make written demand on the contracting owner to do so, and if the contracting owner fails to provide and maintain that security within 10 days after the original contractor makes written demand on the owner, the original contractor may suspend work until the required security is provided and maintained in accordance with this section.

(d) This section does not affect provisions in this code providing for mechanics' liens, stop notices, bond remedies, or prompt payment rights of a subcontractor, including the original contractor's payment

responsibilities as set forth in Section 7108.5 of the Business and Professions Code and Section 10262 of the Public Contract Code.

(e) This section does not apply to the construction of single-family residences, including single-family residences located within a subdivision, and any associated fixed works that require the services of a general engineering contractor, as defined in Section 7056 of the Business and Professions Code, any public works projects, or housing developments eligible for a density bonus pursuant to Section 65915 of the Government Code. As used in this section, the term ''single-family residence'' means a real property improvement used or intended to be used as a dwelling unit for one family.

(f) This section does not apply to either of the following:

(1) Any contract where the contracting owner is either a qualified publicly traded company or a wholly owned subsidiary of a qualified publicly traded company, provided that the obligations of the subsidiary under the construction contract are guaranteed by the parent which is a qualified publicly traded company. As used in this section, the term ''qualified publicly traded company'' means any company having a class of equity securities listed for trading on the New York Stock Exchange, the American Stock Exchange or the NASDAQ stock market and the nonsubordinated debt securities thereof which are rated as ''investment grade'' by either Fitch ICBA, Inc., Moody's Investor Services, Inc., Standard & Poor's Ratings Services or a similar statistical rating organization which is nationally recognized for rating the creditworthiness of publicly traded companies. If at any time prior to final payment of all sums due under the construction contract the nonsubordinated debt securities of the qualified publicly traded company are downgraded to below ''investment grade'' by one of the referenced rating agencies, the contracting owner of the property will no longer be exempt from the provisions of this section.

(2) Any contract where the contracting owner is either a qualified private company or a wholly owned subsidiary of a qualified private company, provided that the obligations of the subsidiary under the construction contract are guaranteed by the parent which is a qualified private company. As used in this section, the term ''qualified private company'' means any company that has no equity securities listed for trading on the New York Stock Exchange, the American Stock Exchange or the NASDAQ stock market, and that has a net worth determined in accordance with generally accepted accounting principles in excess of fifty million dollars ($50,000,000). If at any time prior to final payment of all sums due under the construction contract the net worth of the qualified private company is reduced below the level referenced in this section, the owner of the property will no longer be exempt from the provisions of this section.

(g) It is against public policy to waive the provisions of this section in any contract for any private work of improvement to which this section applies.

SEC. 46. Section 116.950 of the Code of Civil Procedure is amended to read:

116.950. (a) This section shall become operative only if the Department of Consumer Affairs determines that sufficient private or public funds are available in addition to the funds available in the department's current budget to cover the costs of implementing this section.

(b) There shall be established an advisory committee, constituted as set forth in this section, to study small claims practice and procedure, with particular attention given to the improvement of procedures for the enforcement of judgments.

(c) The members of the advisory committee shall serve without compensation, but shall be reimbursed for expenses actually and necessarily incurred by them in the performance of their duties.

(d) The advisory committee shall be composed as follows:

(1) The Attorney General or a representative.

(2) Two consumer representatives from consumer groups or agencies, appointed by the Secretary of the State and Consumer Services Agency.

(3) One representative appointed by the Speaker of the Assembly and one representative appointed by the President pro Tempore of the Senate.

(4) Two representatives appointed by the Board of Governors of the State Bar.

(5) Two representatives of the business community, appointed by the Secretary of Technology, Trade, and Commerce.

(6) Six judicial officers who have extensive experience presiding in small claims court, appointed by the Judicial Council. Judicial officers appointed under this subdivision may include judicial officers of the superior court, judges of the appellate courts, retired judicial officers, and temporary judges.

(7) One representative appointed by the Governor.

(8) Two clerks of the court appointed by the Judicial Council.

(e) Staff assistance to the advisory committee shall be provided by the Department of Consumer Affairs, with the assistance of the Judicial Council, as needed.

SEC. 47. Section 488.455 of the Code of Civil Procedure is amended to read:

488.455. (a) Subject to Section 488.465, to attach a deposit account, the levying officer shall personally serve a copy of the writ of attachment and a notice of attachment on the financial institution with which the deposit account is maintained. The attachment lien reaches

only amounts in the deposit account at the time of service on the financial institution, including any item in the deposit account that is in the process of being collected, unless the item is returned unpaid to the financial institution.

(b) At the time of levy or promptly thereafter, the levying officer shall serve a copy of the writ of attachment and a notice of attachment on any third person in whose name the deposit account stands.

(c) During the time the attachment lien is in effect, the financial institution shall not honor a check or other order for the payment of money drawn against, and shall not pay a withdrawal from, the deposit account that would reduce the deposit account to an amount that is less than the amount attached. For the purposes of this subdivision, in determining the amount of the deposit account, the financial institution shall not include the amount of items deposited to the credit of the deposit account that are in the process of being collected.

(d) During the time the attachment lien is in effect, the financial institution is not liable to any person for any of the following:

(1) Performance of the duties of a garnishee under the attachment.

(2) Nonpayment of a check or other order for the payment of money drawn or presented against the deposit account if the nonpayment is pursuant to the requirements of subdivision (c).

(3) Refusal to pay a withdrawal from the deposit account if the refusal is pursuant to the requirements of subdivision (c).

(e) When the amount attached pursuant to this section is paid to the levying officer, the attachment lien on the attached deposit account terminates.

(f) For the purposes of this section, neither of the following is a third person in whose name the deposit account stands:

(1) A person who is only a person named as the beneficiary of a Totten trust account.

(2) A person who is only a payee designated in a pay-on-death provision in an account pursuant to Section 18318.5 of the Financial Code or Section 5140 of the Probate Code, or other similar provision.

(g) When a deposit account has been attached, as an alternative to paying the amount of the deposit account that is attached to the levying officer as required by Section 488.600, the financial institution may continue to hold the deposit account until the deposit account is levied upon after judgment in the action or is earlier released, the deposit account to be held in one of the following manners:

(1) If the entire deposit account is attached, the financial institution may hold the deposit account on the terms applicable before the attachment, subject to the requirements of subdivision (c).

(2) If less than the entire deposit account is attached:

(A) With the consent of the defendant, and any third person in whose name the deposit account stands, the financial institution may hold in the deposit account on the same terms an amount larger than the attached amount as necessary to avoid a penalty or a reduction of the rate of interest.

(B) If the defendant, and any third person in whose name the deposit account stands, do not consent as provided in subparagraph (A), the financial institution may hold the attached amount on the same terms affecting the deposit account before the attachment, subject to the requirements of subdivision (c).

(3) The financial institution may hold the attached deposit account in any other manner agreed upon by the plaintiff, the defendant, and any third person in whose name the deposit account stands.

(h) Subdivision (g) does not prevent a financial institution that is holding an attached deposit account as provided in subdivision (g) from paying the attached amount to the levying officer before the time the financial institution otherwise is required to pay the amount under subdivision (g).

SEC. 48. Section 700.140 of the Code of Civil Procedure is amended to read:

700.140. (a) Subject to Section 700.160, to levy upon a deposit account, the levying officer shall personally serve a copy of the writ of execution and a notice of levy on the financial institution with which the deposit account is maintained. The execution lien reaches only amounts in the deposit account at the time of service on the financial institution, including any item in the deposit account that is in the process of being collected, unless the item is returned unpaid to the financial institution.

(b) At the time of levy or promptly thereafter, the levying officer shall serve a copy of the writ of execution and a notice of levy on any third person in whose name the deposit account stands. Service shall be made personally or by mail.

(c) During the time the execution lien is in effect, the financial institution shall not honor a check or other order for the payment of money drawn against, and shall not pay a withdrawal from, the deposit account that would reduce the deposit account to an amount that is less than the amount levied upon. For the purposes of this subdivision, in determining the amount of the deposit account, the financial institution shall not include the amount of items deposited to the credit of the deposit account that are in the process of being collected.

(d) During the time the execution lien is in effect, the financial institution is not liable to any person for any of the following:

(1) Performance of the duties of a garnishee under the levy.

(2) Nonpayment of a check or other order for the payment of money drawn or presented against the deposit account if the nonpayment is pursuant to the requirements of subdivision (c).

(3) Refusal to pay a withdrawal from the deposit account if the refusal is pursuant to the requirements of subdivision (c).

(e) When the amount levied upon pursuant to this section is paid to the levying officer, the execution lien on the deposit account levied upon terminates.

(f) For the purposes of this section, neither of the following is a third person in whose name the deposit account stands:

(1) A person who is only a person named as the beneficiary of a Totten trust account.

(2) A person who is only a payee designated in a pay-on-death provision in an account pursuant to Section 18318.5 of the Financial Code or Section 5140 of the Probate Code, or other similar provision.

SEC. 49. Section 912 of the Code of Civil Procedure is amended to read:

912. Upon final determination of an appeal by the reviewing court, the clerk of the court shall remit to the trial court a certified copy of the judgment or order of the reviewing court and of its opinion, if any. The clerk of the trial court shall file the certified copy of the judgment and opinion of the reviewing court, shall attach that copy to the judgment roll if the appeal was from a judgment, and shall enter a note of the judgment of the reviewing court stating whether the judgment or order appealed from has been affirmed, reversed or modified, in the margin of the original entry of the judgment or order, and also in the register of actions.

SEC. 49.5. Section 1162 of the Code of Civil Procedure is amended to read:

1162. The notices required by Sections 1161 and 1161a may be served, either:

1. By delivering a copy to the tenant personally; or,

2. If he or she is absent from his or her place of residence, and from his or her usual place of business, by leaving a copy with some person of suitable age and discretion at either place, and sending a copy through the mail addressed to the tenant at his or her place of residence; or,

3. If such place of residence and business can not be ascertained, or a person of suitable age or discretion there can not be found, then by affixing a copy in a conspicuous place on the property, and also delivering a copy to a person there residing, if such person can be found; and also sending a copy through the mail addressed to the tenant at the place where the property is situated. Service upon a subtenant may be made in the same manner.

SEC. 50. Section 1174.3 of the Code of Civil Procedure is amended to read:

1174.3. (a) Unless a prejudgment claim of right to possession has been served upon occupants in accordance with Section 415.46, any occupant not named in the judgment for possession who occupied the premises on the date of the filing of the action may object to enforcement of the judgment against that occupant by filing a claim of right to possession as prescribed in this section. A claim of right to possession may be filed at any time after service or posting of the writ of possession pursuant to subdivision (a) or (b) of Section 715.020, up to and including the time at which the levying officer returns to effect the eviction of those named in the judgment of possession. Filing the claim of right to possession shall constitute a general appearance for which a fee shall be collected as provided in Section 72056 of the Government Code. Section 68511.3 of the Government Code applies to the claim of right to possession. An occupant or tenant who is named in the action shall not be required to file a claim of right to possession to protect that occupant's right to possession of the premises.

(b) The court issuing the writ of possession of real property shall set a date or dates when the court will hold a hearing to determine the validity of objections to enforcement of the judgment specified in subdivision (a). An occupant of the real property for which the writ is issued may make an objection to eviction to the levying officer at the office of the levying officer or at the premises at the time of the eviction.

If a claim of right to possession is completed and presented to the sheriff, marshal, or other levying officer, the officer shall forthwith (1) stop the eviction of occupants at the premises, and (2) provide a receipt or copy of the completed claim of right of possession to the claimant indicating the date and time the completed form was received, and (3) deliver the original completed claim of right to possession to the court issuing the writ of possession of real property.

(c) A claim of right to possession is effected by any of the following:

(1) Presenting a completed claim form in person with identification to the sheriff, marshal, or other levying officer as prescribed in this section, and delivering to the court within two court days after its presentation, an amount equal to 15 days' rent together with the appropriate fee or form for proceeding in forma pauperis. Upon receipt of a claim of right to possession, the sheriff, marshal, or other levying officer shall indicate thereon the date and time of its receipt and forthwith deliver the original to the issuing court and a receipt or copy of the claim to the claimant and notify the plaintiff of that fact. Immediately upon receipt of an amount equal to 15 days' rent and the appropriate fee or form for proceeding in forma pauperis, the court shall file the claim of right to possession and serve an endorsed copy with the notice of the hearing date on the plaintiff and the claimant by first-class mail. The court issuing the writ of possession shall set and hold a hearing on the

claim not less than five nor more than 15 days after the claim is filed with the court.

(2) Presenting a completed claim form in person with identification to the sheriff, marshal, or other levying officer as prescribed in this section, and delivering to the court within two court days after its presentation, the appropriate fee or form for proceeding in forma pauperis without delivering the amount equivalent to 15 days' rent. In this case, the court shall immediately set a hearing on the claim to be held on the fifth day after the filing is completed. The court shall notify the claimant of the hearing date at the time the claimant completes the filing by delivering to the court the appropriate fee or form for proceeding in forma pauperis, and shall notify the plaintiff of the hearing date by first-class mail. Upon receipt of a claim of right to possession, the sheriff, marshal, or other levying officer shall indicate thereon the date and time of its receipt and forthwith deliver the original to the issuing court and a receipt or copy of the claim to the claimant and notify the plaintiff of that fact.

(d) At the hearing, the court shall determine whether there is a valid claim of possession by the claimant who filed the claim, and the court shall consider all evidence produced at the hearing, including, but not limited to, the information set forth in the claim. The court may determine the claim to be valid or invalid based upon the evidence presented at the hearing. The court shall determine the claim to be invalid if the court determines that the claimant is an invitee, licensee, guest, or trespasser. If the court determines the claim is invalid, the court shall order the return to the claimant of the amount of the 15 days' rent paid by the claimant, if that amount was paid pursuant to paragraphs (1) or (3) of subdivision (c), less a pro rata amount for each day that enforcement of the judgment was delayed by reason of making the claim of right to possession, which pro rata amount shall be paid to the landlord. If the court determines the claim is valid, the amount equal to 15 days' rent paid by the claimant shall be returned immediately to the claimant.

(e) If, upon hearing, the court determines that the claim is valid, then the court shall order further proceedings as follows:

(1) If the unlawful detainer is based upon a curable breach, and the claimant was not previously served with a proper notice, if any notice is required, then the required notice may at the plaintiff's discretion be served on the claimant at the hearing or thereafter. If the claimant does not cure the breach within the required time, then a supplemental complaint may be filed and served on the claimant as defendant if the plaintiff proceeds against the claimant in the same action. For the purposes of this section only, service of the required notice, if any notice is required, and of the supplemental complaint may be made by

first-class mail addressed to the claimant at the subject premises or upon his or her attorney of record and, in either case, Section 1013 shall otherwise apply. Further proceedings on the merits of the claimant's continued right to possession after service of the Summons and Supplemental Complaint as prescribed by this subdivision shall be conducted pursuant to this chapter.

(2) In all other cases, the court shall deem the unlawful detainer Summons and Complaint to be amended on their faces to include the claimant as defendant, service of the Summons and Complaint, as thus amended, may at the plaintiff's discretion be made at the hearing or thereafter, and the claimant thus named and served as a defendant in the action shall answer or otherwise respond within five days thereafter.

(f) If a claim is made without delivery to the court of the appropriate filing fee or a form for proceeding in forma pauperis, as prescribed in this section, the claim shall be immediately deemed denied and the court shall so order. Upon the denial of the claim, the court shall immediately deliver an endorsed copy of the order to the levying officer and shall serve an endorsed copy of the order on the plaintiff and claimant by first-class mail.

(g) If the claim of right to possession is denied pursuant to subdivision (f), or if the claimant fails to appear at the hearing or, upon hearing, if the court determines that there are no valid claims, or if the claimant does not prevail at a trial on the merits of the unlawful detainer action, the court shall order the levying officer to proceed with enforcement of the original writ of possession of real property as deemed amended to include the claimant, which shall be effected within a reasonable time not to exceed five days. Upon receipt of the court's order, the levying officer shall enforce the writ of possession of real property against any occupant or occupants.

(h) The claim of right to possession shall be made on the following form:

CLAIMANT OR CLAIMANT'S ATTORNEY (Name and Address): TELEPHONE NO. ATTORNEY FOR (Name):	FOR COURT USE ONLY
NAME OF COURT: STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
PLAINTIFF: DEFENDANT:	
CLAIM OF RIGHT TO POSSESSION AND NOTICE OF HEARING	
	CASE NUMBER:

(For levying officer use only)
Completed form was received on

Date: _____ Time: _____

By: _____

Complete this form only if ALL of these statements are true:

1. You are NOT named in the accompanying form called Writ of Possession.
2. You occupied the premises on or before the date the unlawful detainer (eviction) action was filed. (The date is in the accompanying Writ of Possession.)
3. You still occupy the premises.

I DECLARE THE FOLLOWING UNDER PENALTY OF PERJURY:

1. My name is (specify):
2. I reside at (street address, unit no., city and ZIP Code):
3. The address of "the premises" subject to this claim is (address):
4. On (insert date): [ ], the landlord or the landlord's authorized agent filed a complaint to recover possession of the premises. (This date is in the accompanying Writ of Possession.)
5. I occupied the premises on the date the complaint was filed (the date in item 4). I have continued to occupy the premises ever since.
6. I was at least 18 years of age on the date the complaint was filed (the date in item 4).
7. I claim a right to possession of the premises because I occupied the premises on the date the complaint was filed (the date in item 4).

8. I was not named in the Writ of Possession.
9. I understand that if I make this claim of possession, a court hearing will be held to decide whether my claim will be granted.
10. (Filing fee) To obtain a court hearing on my claim, I understand that after I present this form to the levying officer I must go to the court and pay a filing fee of $ or file with the court "Application for Waiver of Court Fees and Costs." I understand that if I don't pay the filing fee or file the form for waiver of court fees within 2 court days, the court will immediately deny my claim.
11. (Immediate court hearing unless you deposit 15 days' rent) To obtain a court hearing on my claim, I understand I must also present a copy of this completed complaint form or a receipt from the levying officer. I also understand the date of my hearing will be set immediately if I do not deliver to the court an amount equal to 15 days' rent.

I am filing my claim in the following manner (check the box that shows how you are filing your claim. Note that you must deliver to the court a copy of the claim form or a levying officer's receipt):

a. ☐ I presented this claim form to the sheriff, marshal, or other levying officer, and within two court days I shall deliver to the court the following: (1) a copy of this completed claim form or a receipt, (2) the court filing fee or form for proceeding in forma pauperis, and (3) an amount equal to 15 days' rent; or

b. ☐ I presented this claim form to the sheriff, marshal, or other levying officer, and within two court days I shall deliver to the court (1) a copy of this completed claim form or a receipt, and (2) the court filing fee or form for proceeding in forma pauperis.

IMPORTANT: Do not take a copy of this claim form to the court unless you have first given the form to the sheriff, marshal, or other levying officer.

(To be completed by the court.)

Date of Hearing: Time: Dept. or Div.: Room:

Address of court:

NOTICE: If you fail to appear at this hearing you will be evicted without further hearing.

12. Rental agreement. I have (check all that apply to you):
    a. ☐ an oral rental agreement with the landlord.
    b. ☐ a written rental agreement with the landlord.
    c. ☐ an oral rental agreement with a person other than the landlord.
    d. ☐ a written rental agreement with a person other than the landlord.
    e. ☐ other (explain):

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

WARNING: Perjury is a felony punishable by imprisonment in the state prison.

Date:

. . . . . ➧ _____

(TYPE OR PRINT NAME) (SIGNATURE OF CLAIMANT)

NOTICE: If your claim to possession is found to be valid, the unlawful detainer action against you will be determined at trial. At trial, you may be found liable for rent, costs, and, in some cases, treble damages.

NOTICE TO OCCUPANTS

YOU MUST ACT AT ONCE IF ALL THE FOLLOWING ARE TRUE:

(1) You are not named, in the accompanying form called Writ of Possession;

(2) You occupied the premises on or before the date the unlawful detainer (eviction) action was filed; and

(3) You still occupy the premises.

You can complete and SUBMIT THIS CLAIM FORM

(1) Before the date of eviction at the sheriff's or marshal's office located at: (address)

(2) OR at the premises at the time of the eviction. (Give this form to the officer who comes to evict you.)

If you do not complete and submit this form (and pay a filing fee or file the form for proceeding in forma pauperis if you cannot pay the fee), YOU WILL BE EVICTED along with the parties named in the writ.

After this form is properly filed, A HEARING WILL BE HELD to decide your claim. If you do not appear at the hearing, you will be evicted without further hearing.

CLAIM OF RIGHT TO POSSESSION
AND NOTICE OF HEARING

SEC. 51. Section 1206 of the Code of Civil Procedure is amended to read:

1206. (a) Upon the levy under a writ of attachment or execution not founded upon a claim for labor, any miner, mechanic, salesman, servant, clerk, laborer or other person who has performed work or rendered personal services for the defendant within 90 days prior to the levy may file a verified statement of the claim with the officer executing the writ, file a copy with the court that issued the writ, and give copies, containing his or her address, to the plaintiff and the defendant, or any attorney, clerk or agent representing them, or mail copies to them by registered mail at their last known address, return of which by the post office undelivered shall be deemed a sufficient service if no better address is available, and that claim, not exceeding nine hundred dollars ($900), unless disputed, shall be paid by the officer, immediately upon the expiration of the time for dispute of the claim as prescribed in Section 1207, from the proceeds of the levy remaining in the officer's hands at the time of the filing of the statement or collectible by the officer on the basis of the writ.

(b) The court issuing the writ shall make a notation in the register of actions of every preferred labor claim of which it receives a copy and shall endorse on any writ of execution or abstract of judgment issued subsequently in the case that it is issued subject to the rights of a preferred labor claimant or claimants and giving the names and amounts of all preferred labor claims of which it has notice. In levying under any writ of execution the officer making the levy shall include in the amount due under the execution all preferred labor claims that have been filed in the action and of which the officer has notice, except any claims that may have been finally disallowed by the court under this procedure and of which disallowance the officer has actual notice. The amount due on preferred labor claims that have not been finally disallowed by the court shall be considered a part of the sum due under any writ of attachment or execution in augmentation of that amount and any person, firm, association, or corporation on whom a writ of attachment or execution is levied shall immediately pay to the levying officer the amount of the preferred labor claims, out of any money belonging to the defendant in the action, before paying the principal sum called for in the writ.

(c) If any claim is disputed within the time, and in the manner prescribed in Section 1207, and a copy of the dispute is mailed by registered mail to the claimant or the claimant's attorney at the address given in the statement of claim and the registry receipt is attached to the original of the dispute when it is filed with the levying officer, or is handed to the claimant or the claimant's attorney, the claimant, or the claimant's assignee, must within 10 days after the copy is deposited in the mail or is handed to the claimant or the claimant's attorney, petition the court having jurisdiction of the action on which the writ is based, for

a hearing before it to determine the claim for priority, or the claim to priority is barred. If more than one attachment or execution is involved, the petition shall be filed in the court having jurisdiction over the senior attachment or execution. The hearing shall be held within 20 days from the filing of the petition, unless the court continues it for good cause. Ten days' notice of the hearing shall be given by the petitioner to the plaintiff, the defendant, and all parties claiming an interest in the property, or their attorneys. The notice may be informal and need specify only the name of the court, the names of the principal parties to the senior attachment or execution, and the name of the wage claimant or claimants on whose behalf it is filed but shall specify that the hearing is for the purpose of determining the claim for priority. The plaintiff, the defendant, or any other party claiming an interest may contest the amount or validity of the claim in spite of any confession of judgment or failure to appear or to contest the claim on the part of any other person.

(d) There shall be no cost for filing or hearing the petition. The hearing on the petition shall be informal but all parties testifying shall be sworn. Any claimant may appear on the claimant's own behalf at the hearing and may call and examine witnesses to substantiate his or her claim. An appeal may be taken from a judgment in a proceeding under this section in the manner provided for appeals from judgments of the court where the proceeding occurred, in an action of the same jurisdictional classification.

(e) The officer shall keep, until the determination of the claim for priority, any amount of the proceeds of the writ necessary to satisfy the claim. If the claim for priority is allowed, the officer shall pay the amount due, including the claimant's cost of suit, from those proceeds, immediately after the order allowing the claim becomes final.

SEC. 52. Section 1299.3 of the Code of Civil Procedure is amended to read:

1299.3. As used in this title:

(a) ''Employee'' means any firefighter or law enforcement officer represented by an employee organization, as defined in subdivision (b).

(b) ''Employee organization'' means any organization recognized by the employer for the purpose of representing firefighters or law enforcement officers in matters relating to wages, hours, and other terms and conditions of employment within the scope of arbitration.

(c) ''Employer'' means any local agency employing employees, as defined in subdivision (a), or any entity, except the State of California, acting as an agent of any local agency, either directly or indirectly.

(d) ''Firefighter'' means any person who is employed to perform firefighting, fire prevention, fire training, hazardous materials response, emergency medical services, fire or arson investigation, or any related

duties, without respect to the rank, job title, or job assignment of that person.

(e) ''Law enforcement officer'' means any person who is a peace officer, as defined in Section 830.1 of, subdivisions (b) and (d) of Section 830.31 of, subdivisions (a), (b), and (c) of Section 830.32 of, subdivisions (a), (b), and (d) of Section 830.33 of, subdivisions (a) and (b) of Section 830.35 of, subdivision (a) of Section 830.5 of, and subdivision (a) of Section 830.55 of, the Penal Code, without respect to the rank, job title, or job assignment of that person.

(f) ''Local agency'' means any governmental subdivision, district, public and quasi-public corporation, joint powers agency, public agency or public service corporation, town, city, county, city and county, or municipal corporation, whether incorporated or not or whether chartered or not.

(g) ''Scope of arbitration'' means economic issues, including salaries, wages and overtime pay, health and pension benefits, vacation and other leave, reimbursements, incentives, differentials, and all other forms of remuneration. The scope of arbitration shall not include any issue that is protected by what is commonly referred to as the ''management rights'' clause contained in Section 3504 of the Government Code. Notwithstanding the foregoing, any employer that is not exempt under Section 1299.9 may supersede this subdivision by adoption of an ordinance that establishes a broader definition of ''scope of arbitration.''

SEC. 53. Section 25607 of the Corporations Code is amended to read:

25607. (a) Neither the commissioner nor any of the commissioner's assistants, clerks, or deputies shall be interested as a director, officer, shareholder, member (other than a member of an organization formed for religious purposes), partner, agent, or employee of any person who, during the period of the official's or employee's association with the Department of Corporations, (1) was licensed or applied for license as a broker-dealer or investment adviser under this division, or (2) applied for or secured the qualification of the sale of securities under this division.

(b) Nothing contained in subdivision (a) shall prohibit the holding or purchasing of any securities by any assistant, clerk, or deputy in accordance with rules as the commissioner shall adopt for the purpose of protecting the public interest and avoiding conflicts of interest.

(c) Nothing contained in subdivision (a) shall prohibit the holding or purchasing of any securities by the commissioner if any of the following criteria is met:

(1) The securities held or purchased by the commissioner are exempt from the qualification requirements of Sections 25110, 25120, and

25130 by virtue of Section 25100, provided that the holding or purchasing of those securities is in accordance with rules adopted for the purpose of protecting the public interest and avoiding conflicts of interest.

(2) The securities held or purchased by the commissioner are not subject to Sections 25110, 25120, and 25130 by virtue of Section 25100.1, provided that the holding or purchasing of those securities is in accordance with rules adopted for the purpose of protecting the public interest and avoiding conflicts of interest.

(3) The holding or purchasing of any securities by the commissioner meets each of the following requirements:

(A) The securities are held or purchased through a management account or trust administered by a bank or trust company authorized to do business in this state, and the bank or trust company has sole investment discretion regarding the holding, purchase, and sale of securities.

(B) The commissioner did not, directly or indirectly, advise, counsel, command, or suggest the holding, purchase, or sale of any security or furnish any information relating to the security to the bank or trust company.

(C) The account or trust does not at any time have more than 10 percent of its total assets invested in the securities of any one issuer or hold more than 5 percent of the outstanding shares or units of any class of securities of any one issuer.

(D) The commissioner shall report to the Attorney General not less often than quarterly all holdings, purchases, and sales of securities by him or her as authorized in paragraph (3), which reports shall be retained by the Attorney General as public documents.

SEC. 54. Section 31011 of the Corporations Code is amended to read:

31011. ''Franchise fee'' means any fee or charge that a franchisee or subfranchisor is required to pay or agrees to pay for the right to enter into a business under a franchise agreement, including, but not limited to, any payment for goods and services.

However, the following shall not be considered the payment of a franchise fee:

(a) The purchase or agreement to purchase goods at a bona fide wholesale price if no obligation is imposed upon the purchaser to purchase or pay for a quantity of the goods in excess of that which a reasonable businessperson normally would purchase by way of a starting inventory or supply or to maintain a going inventory or supply.

(b) The payment of a reasonable service charge to the issuer of a credit card by an establishment accepting or honoring that credit card.

(c) Amounts paid to a trading stamp company under Chapter 3 (commencing with Section 17750) of Part 3 of Division 7 of the Business and Professions Code by a person issuing trading stamps in connection with the retail sale of merchandise or service.

SEC. 55. Section 8277.6 of the Education Code is amended to read:

8277.6. (a) For purposes of this section ''department'' means the Department of Housing and Community Development.

(b) The department shall administer the Child Care and Development Facilities Loan Guaranty Fund and the Child Care and Development Facilities Direct Loan Fund. The department may administer the funds directly, through interagency agreements with other state agencies, through contracts with public or private entities, or through any combination thereof. If the department determines that a public or private entity is capable of making child care and development facilities loans or loan guarantees, the department may delegate the authority to review and approve those loans or guarantees to the public or private entity. The department is authorized to enter into an interagency agreement with the Trade and Commerce Agency to carry out the purposes of this section and Section 8277.5 by utilizing the services of small business financial development corporations established pursuant to Chapter 1 (commencing with Section 14000) of Part 5 of Division 3 of the Corporations Code. Toward this end, the department is authorized to transfer funds from the Child Care and Development Facilities Direct Loan Fund to the California Economic Development Grant and Loan Fund established by Section 15327 of the Government Code and to transfer funds from the Child Care and Development Facilities Loan Guaranty Fund to the Small Business Expansion Fund established by Section 14030 of the Corporations Code. Those funds shall be deposited into a Child Care Direct Loan Fund Account and a Child Care Loan Guaranty Fund Account hereby established in the respective funds. Notwithstanding anything to the contrary in Chapter 1 (commencing with Section 15310) of Part 6.7 of Division 3 of Title 2 of the Government Code and Chapter 1 (commencing with Section 14000) of Part 5 of Division 3 of the Corporations Code, the funds in these accounts shall be administered in compliance with the requirements of this section and Section 8277.5.

(c) Eligible applicants for the loan guaranty program and the direct loan program shall include, but not be limited to, sole proprietorships, partnerships, proprietary and nonprofit corporations, and local public agencies that are responsible for contracting with or providing licensed child care and development services. Eligible facilities shall include licensed full-day and part-day child care and development facilities and licensed large family day care homes as described in Section 1597.465

of the Health and Safety Code, and licensed small family day care homes as described in Section 1597.44 of the Health and Safety Code.

(d) Loan guarantees and direct loans for family child care homes shall not be made for the purpose of purchasing a home or any real property.

(e) The State Department of Education shall provide input regarding program priorities that shall be considered in the funding of applications by the department. These priorities shall include, but are not limited to, the following:

(1) Geographic priorities based on the extent of need for child care and development supply-building efforts in different parts of the state.

(A) Not less than 30 percent of the loan guarantee and direct loan obligations shall benefit providers located in rural areas, as defined in subparagraph (B). If the amount of qualified applications from rural providers is insufficient to satisfy this requirement, the excess capacity reserved for rural providers may be made available to other qualified applications according to the policies and procedures of the department. The remaining 70 percent of funds shall be available to rural or urban areas and other priorities in accordance with this subdivision.

(B) For purposes of subdivision (a), rural communities are defined by any county with fewer than 400 residents per square mile.

(2) Age priorities based on the extent of need for child care and development supply-building efforts for children of different age groups.

(3) Income priorities shall include families transitioning to work or other lower income families. For purposes of this section, ''lower income'' shall have the same meaning as ''income eligible'' as set forth in Section 8263.1.

(4) Program priorities based on the extent of facilities needs among specific kinds of providers, including those that contract to administer state and federally funded child care and development programs administered by the State Department of Education, providers who have lost classrooms due to class size reduction or other state or local initiatives, or providers that need to expand to meet the needs of a child care initiative for recipients of aid under Chapter 3 (commencing with Section 11200) of Part 3 of Division 9 of the Welfare and Institutions Code, or any successor program.

(f) The program priorities shall reflect input from representatives of diverse sectors of the child care and development field, financial institutions, local planning councils, the Child Development Programs Advisory Committee, and the State Department of Social Services for purposes of identifying communities with high percentages of recipients of aid under Chapter 3 (commencing with Section 11200) of Part 3 of Division 9 of the Welfare and Institutions Code, or any successor program, who need child care to meet work requirements. As part of its

annual report to the Legislature, required pursuant to Section 50408 of the Health and Safety Code, the department shall assess and report, after consultation with the State Department of Education, on the performance, effectiveness, and fiscal standing of the Child Care and Development Facilities Loan Guaranty Fund and the Child Care and Development Facilities Direct Loan Fund. The report shall include information on the number of defaults, the types of facilities in default, and a review of the adequacy of the set-aside for rural areas specified in paragraph (1) of subdivision (e).

(g) The department shall adopt regulations and establish priorities, forms, policies and procedures for implementing and managing the Child Care and Development Facilities Loan Guaranty Fund and the Child Care and Development Facilities Direct Loan Fund and making the loan guarantees and direct loans authorized hereunder consistent with priorities provided by the State Department of Education. To the extent feasible, the department shall use applicant fees and points to cover its administrative costs. The department may utilize an amount of money from the Child Care and Development Facilities Loan Guaranty Fund and the Child Care and Development Facilities Direct Loan Fund, as appropriate, for reasonable administrative costs in any given fiscal year. Unless an appropriation for administrative costs is made in the annual Budget Act that exceeds the following limits, administrative expenditures shall not exceed 3 percent of the amount appropriated to each fund in the Budget Act of 1997.

(h) (1) The department shall adopt regulations to efficiently and effectively implement the microenterprise loan program described in this subdivision, including, but not limited to, the following:

(A) Making loans available from the Child Care and Development Facilities Direct Loan Fund to local microenterprise loan funds and other lenders who may relend the funds in appropriate amounts to eligible small family day care home providers described in Section 1597.44 of the Health and Safety Code, large family day care home providers described in Section 1597.465 of the Health and Safety Code, and licensed child care and development facilities that serve up to 35 children.

(B) Authorizing a specified amount of guarantees of small loans by local microenterprise loan funds and other lenders serving eligible small family day care home providers described in Section 1597.44 of the Health and Safety Code, large family day care home providers described in Section 1597.465 of the Health and Safety Code, and licensed child care and development facilities that serve up to 35 children.

(2) Notwithstanding anything to the contrary in this section or Section 8277.5, a loan made pursuant to this subdivision shall not be made for less than five thousand dollars ($5,000) or for more than fifty

thousand dollars ($50,000) and shall not be subject to the 75-percent investment restriction contained in paragraph (2) of subdivision (e) of Section 8277.5.

(i) The department may adopt regulations for the purposes of this section as emergency regulations in accordance with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code. For the purposes of the Administrative Procedure Act, including Section 11349.6 of the Government Code, the adoption of the regulations shall be deemed to be an emergency and necessary for the immediate preservation of the public peace, health and safety, or general welfare, notwithstanding subdivision (e) of Section 11346.1 of the Government Code. Notwithstanding subdivision (e) of Section 11346.1, any regulation adopted pursuant to this section shall not remain in effect more than 180 days unless the department complies with all provisions of Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, as required by subdivision (e) of Section 11346.1 of the Government Code.

SEC. 56. Section 8278.3 of the Education Code is amended to read:

8278.3. (a) (1) The Child Care Facilities Revolving Fund is hereby established in the State Treasury to provide funding for the renovation, repair, or improvement of an existing building to make the building suitable for licensure for child care and development services and for the purchase of new relocatable child care facilities for lease to school districts and contracting agencies that provide child care and development services, pursuant to this chapter. The Superintendent of Public Instruction may transfer state funds appropriated for child care facilities into this fund for allocation to school districts and contracting agencies, as specified, for the purchase, transportation, and installation of facilities for replacement and expansion of capacity. School districts and contracting agencies using facilities made available by the use of these funds shall be charged a leasing fee, either at a fair market value for those facilities or at an amount sufficient to amortize the cost of purchase and relocation, whichever is lower, over a 10-year period. Upon full repayment of the purchase and relocation costs, title shall transfer from the State of California to the school district or contracting agency. The Superintendent of Public Instruction shall deposit all revenue derived from the lease payments into the Child Care Facilities Revolving Fund.

(2) Notwithstanding Section 13340 of the Government Code, all moneys in the fund, including moneys deposited from lease payments, shall be continuously appropriated, without regard to fiscal year, to the Superintendent of Public Instruction for expenditure pursuant to this article.

(b) On or before August 1, 1998, and on or before August 1 of each fiscal year thereafter, the Superintendent of Public Instruction shall submit to the Office of the Secretary for Education, the Department of Finance, and the Legislative Analyst's Office a report detailing the number of funding requests received and their purpose, the types of agencies which received this facilities funding, the increased capacity that these facilities generated, a description of how the facilities are being used, and a projection of the lease payments collected and the funds available for future use.

SEC. 57. Section 17250.30 of the Education Code is amended to read:

17250.30. (a) Any design-build entity that is selected to design and build a project pursuant to this chapter shall possess or obtain sufficient bonding to cover the contract amount for nondesign services, and errors and omissions insurance coverage sufficient to cover all design and architectural services provided in the contract. This chapter does not prohibit a general or engineering contractor from being designated the lead entity on a design-build entity for the purposes of purchasing necessary bonding to cover the activities of the design-build entity.

(b) Any payment or performance bond written for the purposes of this chapter shall use a bond form developed by the Department of General Services pursuant to subdivision (i) of Section 14661 of the Government Code. The purpose of this subdivision is to promote uniformity of bond forms to be used on school district design-build projects throughout the state.

(c) (1) All subcontracts that were not listed by the design-build entity in accordance with Section 17250.25 shall be awarded by the design-build entity.

(2) The design-build entity shall do all of the following:

(A) Provide public notice of the availability of work to be subcontracted.

(B) Provide a fixed date and time on which the subcontracted work will be awarded.

(3) Subcontractors bidding on contracts pursuant to this subdivision shall be afforded the protections contained in Chapter 4 (commencing with Section 4100) of Part 1 of Division 2 of the Public Contract Code.

(4) In a contract between the design-build entity and a subcontractor, and in a contract between a subcontractor and any subcontractor thereunder, the percentage of the retention proceeds withheld may not exceed the percentage specified in the contract between the school district and the design-build entity. If the design-build entity provides written notice to any subcontractor who is not a member of the design-build entity, prior to or at the time the bid is requested, that a bond may be required and the subcontractor subsequently is unable or refuses

to furnish a bond to the design-build entity, then the design-build entity may withhold retention proceeds in excess of the percentage specified in the contract between the school district and the design-build entity from any payment made by the design-build entity to the subcontractor.

(5) In accordance with the provisions of applicable state law, the design-build entity may be permitted to substitute securities in lieu of the withholding from progress payments. Substitutions shall be made in accordance with Section 22300 of the Public Contract Code.

(d) The school district shall establish and enforce a labor compliance program containing the requirements outlined in Section 1771.5 of the Labor Code or shall contract with a third party to operate a labor compliance program containing the requirements outlined in Section 1771.5 of the Labor Code. This requirement shall not apply to projects where the school district or the design-build entity has entered into a collective bargaining agreement that binds all of the contractors performing work on the project.

SEC. 58. Section 19325.1 of the Education Code is amended to read:

19325.1. (a) The State Librarian may operate a telephonic reading system, fund the operation of telephonic reading systems operated by qualifying entities, or both.

(b) As used in this section, the following terms have the following meanings, unless otherwise indicated:

(1)"Telephonic reading system" means a system operated by the State Librarian or a qualifying entity, whereby a caller can hear the reading of material such as newspapers, magazines, newsletters, broadcast media schedules, transit route and schedule information, and other reference or time-sensitive materials, as determined by the operator of the system.

(2) "Qualifying entity" means any agency, instrumentality, or political subdivision of the state or any nonprofit organization whose primary mission is to provide services to people who are blind or visually impaired.

(c) Qualifying entities that were eligible, as of January 1, 2001, to receive funds from the State Librarian relating to the operation of a telephonic reading system may continue to receive funding from the State Librarian.

(d) The State Librarian, in cooperation with qualifying entities, may expand the type and scope of materials available on telephonic reading systems in order to meet the local, regional, or foreign language needs of print-disabled residents of this state. The State Librarian may also expand the scope of services and availability of telephonic reading services by current methods and technologies or by methods and technologies that may be developed. The State Librarian may inform current and potential patrons of the availability of telephonic reading

service through appropriate means, including, but not limited to, direct mailings, direct telephonic contact, and public service announcements.

(e) The State Librarian may enter into contracts or other agreements that he or she determines to be appropriate to provide telephonic reading services pursuant to this section.

SEC. 59. Section 24209.3 of the Education Code is amended to read:

24209.3. (a) Notwithstanding subdivision (a) of Section 24209 and subdivision (d) of Section 24204, and exclusive of any amounts payable during the prior retirement for service pursuant to Section 22714 or 22715:

(1) A member who retired, other than pursuant to Section 24210, 24211, 24212, or 24213, and who reinstates and performs creditable service, as defined in Section 22119.5, after the most recent reinstatement, in an amount equal to two or more years of credited service, shall, upon retirement for service on or after the effective date of this section, receive a service retirement allowance equal to the sum of the following:

(A) An amount calculated pursuant to this chapter based on credited service performed prior to the most recent reinstatement, using the member's age at the subsequent service retirement, from which age shall be deducted the total time during which the member was retired for service, and final compensation.

(B) An amount calculated pursuant to this chapter based on credited service performed subsequent to the most recent reinstatement, using the member's age at the subsequent service retirement, and final compensation.

(2) A member who retired pursuant to Section 24210 and who reinstates and performs creditable service, as defined in Section 22119.5, after the most recent reinstatement, in an amount equal to two or more years of credited service, shall, upon retirement for service on or after the effective date of this section, receive a service retirement allowance equal to the sum of the following:

(A) An amount calculated pursuant to this chapter based on service credit accrued prior to the effective date of the disability retirement, using the member's age at the subsequent service retirement, from which age shall be deducted the total time during which the member was retired for service, and indexed final compensation to the effective date of the initial service retirement.

(B) An amount calculated pursuant to this chapter based on the service credit accrued after termination of the disability retirement, using the member's age at the subsequent service retirement, from which age shall be deducted the total time during which the member was retired for service, and final compensation.

(C) An amount calculated pursuant to this chapter based on credited service performed subsequent to the most recent reinstatement, using the member's age at the subsequent service retirement, and final compensation.

(3) A member who retired pursuant to Section 24211 and who reinstates and performs creditable service, as defined in Section 22119.5, after the most recent reinstatement, in an amount equal to two or more years of credited service, shall, upon retirement for service on or after the effective date of this section, receive a service retirement allowance equal to the sum of the following:

(A) The greater of (i) the disability allowance the member was receiving immediately prior to termination of that allowance, excluding the children's portion, or (ii) an amount calculated pursuant to this chapter based on service credit accrued prior to the effective date of the disability retirement, using the member's age at the subsequent service retirement, from which age shall be deducted the total time during which the member was retired for service, and final compensation using compensation earnable or projected final compensation or a combination of both.

(B) An amount equal to either of the following:

(i) For a member who was receiving a benefit pursuant to subdivision (a) of Section 24211, the member's credited service at the time of the retirement pursuant to Section 24211, excluding service credited pursuant to Section 22717 or 22717.5 or Chapter 14 (commencing with Section 22800) or Chapter 14.2 (commencing with Section 22820).

(ii) For a member who was receiving a benefit pursuant to subdivision (b) of Section 24211, the member's projected service, excluding service credited pursuant to Section 22717 or 22717.5 or Chapter 14 (commencing with Section 22800) or Chapter 14.2 (commencing with Section 22820).

(C) An amount calculated pursuant to this chapter based on credited service performed subsequent to the most recent reinstatement, using the member's age at the subsequent service retirement, and final compensation using compensation earnable or projected final compensation or a combination of both.

(D) An amount based on any service credited pursuant to Chapter 14 (commencing with Section 22800 or Chapter 14.2 (commencing with Section 22820) or, for credited service performed during the most recent reinstatement, Section 22714, 22715, 22717, or 22717.5, using the member's age at the subsequent service retirement, from which age shall be deducted the total time during which the member was retired for service, and final compensation using compensation earnable, or projected final compensation, or a combination of both.

(4) A member who retired pursuant to Section 24212 or 24213 and who reinstates and performs creditable service, as defined in Section 22119.5, after the most recent reinstatement, in an amount equal to two or more years of credited service, shall, upon retirement for service on or after the effective date of this section, receive a service retirement allowance equal to the sum of the following:

(A) An amount calculated pursuant to this chapter based on the member's projected service credit, excluding service credited pursuant to Section 22717, 22717.5, or Chapter 14 (commencing with Section 22800) or Chapter 14.2 (commencing with Section 22820), using the member's age at the subsequent service retirement, from which age shall be deducted the total time during which the member was retired for service, and final compensation using compensation earnable or projected final compensation or a combination of both.

(B) An amount calculated pursuant to this chapter based on credited service performed subsequent to the most recent reinstatement, using the member's age at the subsequent service retirement, and final compensation, using compensation earnable or projected final compensation or a combination of both.

(C) An amount based on any service credited pursuant to Chapter 14 (commencing with Section 22800) or Chapter 14.2 (commencing with Section 22820) or, for credited service performed during the most recent reinstatement, Section 22714, 22715, 22717, or 22717.5, using the member's age at the subsequent service retirement, from which age shall be deducted the total time during which the member was retired for service, and final compensation using compensation earnable, or projected final compensation, or a combination of both.

(b) If the total amount of credited service, other than that accrued pursuant to Sections 22714, 22715, 22717, 22717.5, and 22826, is equal to or greater than the number of years required to be eligible for an increased allowance pursuant to this chapter or Section 22134.5, the amounts identified in this section shall be calculated pursuant to the section authorizing the increased benefit.

(c) For members receiving an allowance pursuant to Section 24410.5 or 24410.6, the amount payable pursuant to this section shall not be less than the amount payable to the member as of the effective date of reinstatement.

(d) The amount payable pursuant to this section shall not be less than the amount that would be payable to the member pursuant to Section 24209.

(e) For purposes of determining an allowance increase pursuant to Sections 24415 and 24417, the calendar year of retirement shall be the year of the subsequent retirement if the final compensation used to

calculate the allowance pursuant to this section is higher than the final compensation used to calculate the allowance for the prior retirement.

(f) The allowance paid pursuant to this section to a member receiving a lump-sum payment pursuant to Section 24237 shall be actuarially reduced to reflect that lump-sum payment.

SEC. 60. Section 44303 of the Education Code is amended to read:

44303. (a) From funds appropriated for that purpose, the Commission on Teacher Credentialing shall allocate funds to the Los Angeles Unified School District for purposes of implementing a pilot program as set forth in this section.

(b) From funds allocated to it for purposes of this section, the Los Angeles Unified School District may develop a 30-day training program for the teachers it hires on an emergency basis who will be assigned to schools that have 20 percent or more teachers on emergency permits. The training shall be delivered before a teacher hired on an emergency basis begins teaching. A teacher participating in this training shall spend half of the training period observing experienced fully credentialed teachers in a classroom of the same grade level as the teacher being trained.

(c) To be eligible to receive funds pursuant to this section, the Los Angeles Unified School District shall demonstrate to the satisfaction of the commission that there currently exists a shortage of fully and appropriately credentialed teachers in the district and that the program developed by the district will train the teachers it hires on an emergency basis to become effective classroom teachers.

(d) For purposes of this section, ''experienced fully credentialed teacher'' means a teacher who holds a clear credential for the subject matter and grade level to which the teacher is assigned and has three years of teaching experience.

(e) The Commission on Teacher Credentialing shall implement this section only to the extent that funds are specifically appropriated for the purposes of this section in the annual Budget Act or any other measure.

(f) This section shall remain in effect only until January 1, 2007, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2007, deletes or extends that date.

SEC. 61. Section 44468 of the Education Code is amended to read:

44468. (a) An internship program, established pursuant to Article 7.5 (commencing with Section 44325) of Chapter 2 or this article, that is accredited by the commission shall provide interns who meet entrance criteria and are accepted to a multiple subject teaching credential program or a single subject teaching credential program the opportunity to choose an early program completion option, culminating in a five-year preliminary teaching credential. The early completion option shall be made available to interns who meet the following requirements:

(1) Pass a written assessment that assesses knowledge of teaching foundations, is adopted for this purpose by the commission, and includes all of the following:

(A) Human development as it relates to teaching and learning aligned with the state content and performance standards for pupils adopted pursuant to subdivision (a) of Section 60605.

(B) Techniques to address learning differences including working with pupils with special needs.

(C) Techniques to address working with English learners to provide access to the curriculum.

(D) Reading instruction as set forth in paragraph (4) of subdivision (b) of Section 44259.

(E) The assessment of pupil progress based upon the state content and performance standards for pupils adopted pursuant to subdivision (a) of Section 60605 and planning intervention based on the assessment.

(F) Classroom management techniques.

(G) Methods of teaching the subject fields.

(2) Pass the teaching performance assessment as set forth in Section 44320.2.

(A) An intern participating in the early completion option may take the teaching performance assessment only one time as part of the early completion option. An intern who takes the teaching performance assessment but is not successful may complete his or her internship program. Scores on this assessment shall be used by the internship programs in providing the individualized professional development plan for interns that emphasizes preparation in areas where additional growth is warranted and waiving preparation in areas where the candidate has demonstrated competence. The intern must retake and pass the teaching performance assessment at the end of the internship in order to be considered for recommendation by the internship program to the commission.

(B) Pending implementation of the teaching performance assessment, an internship program shall provide for early recommendation of an intern for a preliminary multiple subject teaching credential or single subject teaching credential based upon demonstrated competence of the field experience component of the internship program.

(3) Pass the reading instruction competence assessment described in Section 44283, unless the written assessment adopted by the commission pursuant to paragraph (1) is validated as covering content equivalent to the reading assessment.

(4) Meet the requirements for teacher fitness as set forth in Sections 44339, 44340, and 44341.

(b) An intern who chooses the early completion option must first pass the assessment required pursuant to paragraph (1) of subdivision (a) in order to qualify to take the teaching performance assessment required pursuant to paragraph (2) of subdivision (a). Individuals who have passed the written assessment may receive individualized support within the cohort group of like individuals in preparations for the teaching performance assessment.

(c) An intern who challenges the teacher preparation coursework by taking the assessment described in paragraph (1) of subdivision (a) but is not successful in passing the assessment may complete his or her full internship program. Scores on this assessment shall be used by the internship program in providing the individualized professional development plan for interns that emphasizes preparation in areas where additional growth is warranted and waiving preparation areas where the intern has demonstrated competence.

(d) An intern who passes the assessments described in subdivision (a) and is recommended by the internship program to the commission is eligible for a five-year preliminary multiple subject teaching credential or single subject teaching credential.

(e) The commission shall issue a professional clear multiple or single subject teaching credential to an applicant whose employing public school district documents, in a manner prescribed by the commission, that he or she has fulfilled the following requirements:

(1) Holds a preliminary five-year teaching credential issued by the commission.

(2) Completes one of the following in accordance with the determination of the employing public school district based upon the experience and individual needs of the applicant:

(A) A program of beginning teacher support and assessment established pursuant to Article 4.5 (commencing with Section 44279.1) of Chapter 2 of Part 24, including the California formative assessment and support system for teachers.

(B) An alternative program of beginning teacher induction that the commission determines, in conjunction with the Superintendent of Public Instruction, meets state standards for teacher induction and includes the California formative assessment and support system for teachers or an alternative assessment deemed to meet the standards.

(3) As an alternative to the requirements in paragraph (2), an applicant may choose to complete the California formative assessment and support system for teachers or the equivalent at a faster pace as determined by the Beginning Teacher Support and Assessment System program.

SEC. 62. Section 47634.2 of the Education Code is amended to read:

47634.2. (a) (1) Notwithstanding any other provision of law, the amount of funding to be allocated to a charter school on the basis of average daily attendance that is generated by pupils engaged in nonclassroom-based instruction, as defined by paragraph (2) of subdivision (d) of Section 47612.5, including funding provided on the basis of average daily attendance pursuant to Sections 47613.1, 47633, 47634, and 47664, shall be adjusted by the State Board of Education. The State Board of Education shall adopt regulations setting forth criteria for the determination of funding for nonclassroom-based instruction, at a minimum the regulation shall specify that the nonclassroom-based instruction is conducted for the instructional benefit of the pupil and substantially dedicated to that function. In developing these criteria and determining the amount of funding to be allocated to a charter school pursuant to this section, the State Board of Education shall consider, among other factors it deems appropriate, the amount of the charter school's total budget expended on certificated employee salaries and benefits and on schoolsites, as defined in paragraph (3) of subdivision (d) of Section 47612.5, and the teacher-to-pupil ratio in the school.

(2) For the 2001–02 fiscal year only, the amount of funding determined by the State Board of Education pursuant to this section shall not be less than 90 percent of the unadjusted amount to which a charter school would otherwise be entitled on the basis of average daily attendance.

(3) For the 2002-03 fiscal year, the amount of funding determined by the State Board of Education pursuant to this section shall not be more than 80 percent of the unadjusted amount to which a charter school would otherwise be entitled, unless the State Board of Education determines that a greater or lesser amount is appropriate based on the criteria specified in paragraph (1) of subdivision (a).

(4) For the 2003–04 fiscal year and each fiscal year thereafter, the amount of funding determined by the State Board of Education pursuant to this section shall not be more than 70 percent of the unadjusted amount to which a charter school would otherwise be entitled, unless the State Board of Education determines that a greater or lesser amount is appropriate based on the criteria specified in paragraph (1) of subdivision (a).

(5) This section does not authorize the board to adjust the amount of funding a charter school receives on the basis of average daily attendance generated through classroom-based instruction, as defined for purposes of calculating average daily attendance for classroom-based instruction apportionments by paragraph (1) of subdivision (d) of Section 47612.5.

(b) (1) The State Board of Education shall appoint an advisory committee to recommend criteria to the board in accordance with this

section if it has not done so by the effective date of the act adding this section. The advisory committee shall include, but is not limited to, representatives from school district superintendents, charter schools, teachers, parents, members of the governing boards of school districts, county superintendents of schools, and the Superintendent of Public Instruction.

(2) If a charter school submits a substantially complete request for a determination for funding by February 13, 2002, and the State Board of Education does not act on that request by March 19, 2002, full funding is automatically granted for the 2001–02 fiscal year, but the charter school shall reapply for a determination for funding for the 2002–03 fiscal year.

(3) The determination for funding shall be on a percentage basis and the superintendent shall implement the determination for funding by reducing the charter school's reported average daily attendance by the determination for funding percentage specified by the State Board of Education.

(4) If the State Board of Education denies request for a determination for funding or provides a reduction as authorized by subdivision (a), the board shall, in writing, give the reasons for its denial or reduction and, if appropriate, may describe how any deficiencies or problems may be addressed.

(c) Each charter school offering nonclassroom-based instruction shall, in each report provided to the Superintendent of Public Instruction for apportionment purposes, identify the portion of its average daily attendance that is generated through nonclassroom-based instruction as defined in paragraph (2) of subdivision (d) of Section 47612.5.

(d) Notwithstanding any other provision of law, charter schools shall be subject, with regard to subdivisions (c) and (d) of Section 47612.5 and this section, to audits conducted pursuant to Section 41020.

SEC. 63. Section 48431.6 of the Education Code is amended to read:

48431.6. (a) The governing board of each district maintaining high schools and accepting funds made available for purposes of this section shall establish and maintain a program which ensures that each pupil, upon reaching the age of 16 or prior to the end of the 10th grade, whichever occurs first, has received a systematic review of his or her academic progress and counseling regarding the educational options available to the pupil during the final two years of high school. The program shall be adopted at a public meeting of the governing board and shall include, but not be limited to, all of the following:

(1) Provision for individualized review of the pupil's academic and deportment records.

(2) Provision for a meeting with the pupil and where feasible, with the pupil's parent or guardian, to explain the pupil's record, the educational options available to the pupil, the coursework and academic progress needed for satisfactory completion of high school, and the effect of that coursework and academic progress upon the pupil's options for postsecondary education and employment. Educational options shall include, but not be limited to, regional occupational centers and programs, continuation schools, academic programs, and any other alternatives available to pupils of the district.

(3) Provision for services of teachers, counselors, and others designated by the governing board to provide the individualized review and assistance to pupils pursuant to paragraphs (1) and (2). To the maximum extent feasible, regional occupational center or program counselors shall actively participate in, and the local business community shall be involved in, career guidance activities.

(b) The program shall give first priority to identifying pupils who are not earning credits at a rate which will enable them to graduate with the rest of their class, and to providing these pupils with counseling services funded pursuant to Section 48431.7.

SEC. 64. Section 49431 of the Education Code is amended to read:

49431. (a) At elementary and middle schools, and in those schools participating in the pilot program created pursuant to Section 49433.7, the sale of all foods on school grounds shall be approved for compliance with the nutrition standards in the section by the person or persons responsible for implementing these provisions as designated by the school district.

(b) (1) At elementary schools, the only food that may be sold to pupils during breakfast and lunch periods is food that is sold as a full meal. This paragraph does not prohibit the sale of fruit, nonfried vegetables, legumes, beverages, dairy products, or grain products, as individual food items if they meet the requirements set forth in this subdivision.

(2) An individual food item sold to a pupil during morning or afternoon breaks at elementary schools shall meet all of the following standards:

(A) Not more than 35 percent of its total calories shall be from fat. This subparagraph does not apply to the sale of nuts or seeds.

(B) Not more than 10 percent of its total calories shall be from saturated fat.

(C) Not more than 35 percent of its total weight shall be composed of sugar. This subparagraph does not apply to the sale of fruits or vegetables.

(3) Regardless of the time of day, water, milk, 100-percent fruit juices, or fruit-based drinks that are composed of no less than 50-percent

fruit juice and that have no added sweeteners are the only beverages that may be sold to pupils at an elementary school.

(c) In middle schools, from one-half hour before the start of the schoolday until after the end of the last lunch period, no carbonated beverage shall be sold to pupils.

(d) At middle schools, vending machines that contain beverage items that do not meet the requirements in this section shall remain locked or be rendered inoperable until after the end of the last lunch period.

(e) An elementary school may permit the sale of food items that do not comply with subdivisions (a) to (f), inclusive, of this section as part of a school fundraising event in any of the following circumstances:

(1) By pupils of the school if the sale of those items takes place off of school premises.

(2) By pupils of the school if the sale of those items takes place at least one-half hour after the end of the schoolday.

(f) Notwithstanding Article 3 (commencing with Section 33050) of Chapter 1 of Part 20, this section shall not be waived pursuant to that article.

(g) Although a middle school is required to comply with those provisions of this section applicable to middle schools, it may, in addition, elect to apply for participation in the pilot program pursuant to Section 49433.7.

(h) This section shall become operative on January 1, 2004. School districts shall be required to comply with this section only if funds are appropriated in the Budget Act of 2003 for the purposes of providing support and technical assistance to school districts as set forth in Section 49433.5, for the purposes of providing grants to participating school districts as set forth in subdivision (c) of Section 49433, and for the purposes of increasing meal reimbursements as set forth in Section 49430.5. The State Department of Education shall file a written statement with the Secretary of the Senate and the Chief Clerk of the Assembly within 30 days after enactment of the Budget Act of 2003 stating whether funds have been appropriated as set forth in this subdivision and in Section 49430.5.

SEC. 65. Section 49433.9 of the Education Code is amended to read:

49433.9. A school district participating in the pilot program shall comply with all of the following requirements:

(a) (1) No beverage other than any of the following shall be sold to pupils from one-half hour before the start of the schoolday until one-half hour after the end of the schoolday:

(A) Fruit-based drinks that are composed of no less than 50-percent fruit juice and that have no added sweeteners.

(B) Drinking water.

(C) Milk, including, but not limited to, chocolate milk, soy milk, rice milk, and other similar dairy or nondairy milk.

(D) Electrolyte replacement beverages that do not contain more than 42 grams of added sweetener per 20 ounce serving.

(2) No carbonated beverage shall be sold to pupils from one-half hour before the start of the schoolday until one-half hour after the end of the schoolday.

(3) (A) Except as set forth in subparagraph (B), no beverage that exceeds 12 ounces per serving shall be sold to pupils from one-half hour before the start of the schoolday until one-half hour after the end of the schoolday.

(B) The 12-ounce maximum serving requirement does not apply to any of the following:

(i) Drinking water.

(ii) Milk, including, but not limited to, chocolate milk, soy milk, rice milk, and other similar dairy or nondairy milk.

(iii) An electrolyte replacement beverage. An electrolyte replacement beverage shall not exceed 20 ounces per serving.

(4) For the purposes of this subdivision and paragraph (3) of subdivision (b) of Section 49431, ''added sweetener'' means any additive that enhances the sweetness of the beverage, including, but not limited to, added sugar, but does not include the natural sugar or sugars that are contained within the fruit juice which is a component of the beverage.

(b) No food item shall be sold to pupils from one-half hour before the start of the schoolday until one-half hour after the end of the schoolday unless it does not exceed 12 ounces per serving and it meets all of the standards set forth in subparagraphs (A) to (C) of paragraph (2) of Section 49431.

(c) Entree items and side dish serving sizes shall be no larger than the portions of those foods served as part of the federal school meal program.

(d) Fruit and nonfried vegetables shall be offered for sale at any location where food is sold.

SEC. 66. Section 51727 of the Education Code is amended to read:

51727. (a) The Superintendent of Public Instruction shall accept applications and may not award more than five grants. Applications shall be due February 1, 2002. The Superintendent of Public Instruction shall complete the review of applications pursuant to subdivision (c) of Section 51726 and make awards pursuant to subdivision (d) of Section 51726 no later than March 31, 2002. The proposed high-tech high school for which a school district or charter school receives funding shall be operational by September 30, 2002. If the Superintendent of Public Instruction does not receive five applications that merit funding pursuant

to subdivision (c) of Section 51726, some or all grants may be delayed until receiving the approval of the State Board of Education.

(b) The Superintendent of Public Instruction, with the approval of the State Board of Education, may, upon a showing of good cause and if necessary, extend any of the following dates:

(1) The deadline for application submission.

(2) The date the grant award is to be made.

(3) The date by which a high-tech high school is to be operational.

(c) If a grant recipient fails to make the high-tech high school operational by the specified date, the Superintendent of Public Instruction, with the approval of the State Board of Education may rescind the grant award and award the grant funds to another eligible grant recipient as determined by the Superintendent of Public Instruction, with the approval of the State Board of Education.

(d) If the grant funds awarded pursuant to this article are not used towards the establishment and implementation of a new high-tech high school, the Superintendent of Public Instruction shall withhold an amount equal to the funds the school district or charter school received pursuant to this article from the next monthly principal apportionment payment. The Superintendent of Public Instruction shall conduct compliance visits as required to ensure that the funds are used appropriately.

SEC. 67. Section 56404 of the Education Code is amended to read:

56404. To be eligible to receive funding to establish Family Empowerment Centers on Disability pursuant to this chapter, applicants shall meet the following organizational requirements:

(a) Be a nonprofit charitable organization organized under the Internal Revenue Code pursuant to paragraph (3) of subdivision (c) of Section 501 of Title 26 of the United States Code.

(b) Be staffed primarily by parents, guardians, and family members of children and young adults with disabilities and by adults with disabilities.

(c) Have as a majority of board members of each center, parents, guardians, and family members of children and young adults with disabilities who have experience with local or regional disability systems and educational resources. Additional members shall include, but not be limited to, persons with disabilities and representatives of community agencies serving adults with disabilities, and other community agencies.

(d) Demonstrate the capacity to provide services in accordance with the family support guidelines developed by the Early Start Family Resource Centers pursuant to Section 95004 of the Government Code and administered by the State Department of Developmental Services,

and Parent Training Information Centers established pursuant to Sections 1482 and 1483 of Title 20 of the United States Code.

SEC. 68. Section 64001 of the Education Code is amended to read:

64001. (a) Notwithstanding any other provision of law, school districts shall not be required to submit to the State Department of Education, as part of the consolidated application, school plans for categorical programs subject to this part. School districts shall assure, in the consolidated application, that the Single Plan for Pupil Achievement established pursuant to subdivision (d) has been prepared in accordance with law, that schoolsite councils have developed and approved a plan, to be known as the Single Plan for Pupil Achievement for schools participating in programs funded through the consolidated application process, and any other school program they choose to include, and that school plans were developed with the review, certification, and advice of any applicable school advisory committees. The Single Plan for Pupil Achievement may also be referred to as the Single Plan for Student Achievement. The consolidated application shall also include certifications by appropriate district advisory committees that the application was developed with review and advice of those committees.

For any consolidated application that does not include the necessary certifications or assurances, the State Department of Education shall initiate an investigation to determine whether the consolidated application and Single Plan for Pupil Achievement were developed in accordance with law and with the involvement of applicable advisory committees and schoolsite councils.

(b) Onsite school and district compliance reviews of categorical programs shall continue, and school plans shall be required and reviewed as part of these onsite visits and compliance reviews. The Superintendent of Public Instruction shall establish the process and frequency for conducting reviews of district achievement and compliance with state and federal categorical program requirements. In addition, the Superintendent of Public Instruction shall establish the content of these instruments, including any criteria for differentiating these reviews based on the achievement of pupils, as demonstrated by the Academic Performance Index developed pursuant to Section 52052, and evidence of district compliance with state and federal law. The State Board of Education shall review the content of these instruments for consistency with State Board of Education policy.

(c) A school district shall submit school plans whenever the State Department of Education requires the plans in order to effectively administer any categorical program subject to this part. The State Department of Education may require submission of the school plan for

any school that is the specific subject of a complaint involving any categorical program or service subject to this part.

The State Department of Education may require a school district to submit other data or information as may be necessary for the department to effectively administer any categorical program subject to this part.

(d) Notwithstanding any other provision of law, as a condition of receiving state funding for a categorical program pursuant to Section 64000, and in lieu of the information submission requirements that were previously required by this section prior to the amendments that added this subdivision and subdivisions (e) to (i), inclusive, school districts shall ensure that each school in a district that operates any categorical programs subject to this part consolidates any plans that are required by those programs into a single plan. Schools may consolidate any plans that are required by federal programs subject to this part into this plan, unless otherwise prohibited by federal law. That plan shall be known as the Single Plan for Pupil Achievement or may be referred to as the Single Plan for Student Achievement.

(e) Plans developed pursuant to subdivision (d) of Section 52054, and Section 6314 and following of Title 20 of the United States Code, shall satisfy this requirement.

(f) Notwithstanding any other provision of law, the content of a Single Plan for Pupil Achievement shall be aligned with school goals for improving pupil achievement. School goals shall be based upon an analysis of verifiable state data, including the Academic Performance Index developed pursuant to Section 52052 and the English Language Development test developed pursuant to Section 60810, and may include any data voluntarily developed by districts to measure pupil achievement. The Single Plan for Pupil Achievement shall, at a minimum, address how funds provided to the school through any of the sources identified in Section 64000 will be used to improve the academic performance of all pupils to the level of the performance goals, as established by the Academic Performance Index developed pursuant to Section 52052. The plan shall also identify the schools' means of evaluating progress toward accomplishing those goals and how state and federal law governing these programs will be implemented.

(g) The plan required by this section shall be reviewed annually and updated, including proposed expenditure of funds allocated to the school through the consolidated application, by the schoolsite council, or, if the school does not have a schoolsite council, by schoolwide advisory groups or school support groups that conform to the requirements of Section 52012. The plans shall be reviewed and approved by the governing board of the local education agency at a regularly scheduled meeting whenever there are material changes that affect the academic programs for students covered by programs identified in Section 64000.

(h) The school plan and subsequent revisions shall be reviewed and approved by the governing board of the school district. School district governing boards shall certify that, to the extent allowable under federal law, plans developed for purposes of this section are consistent with district local improvement plans that are required as a condition of receiving federal funding.

(i) Nothing in this act may be construed to prevent a school district, at its discretion, from conducting an independent review pursuant to subdivision (c) of Section 64001 as that section read on January 1, 2001.

SEC. 69. Section 89005.5 of the Education Code is amended to read:

89005.5. (a) (1) All of the following names are the property of the state:

(A) "California State University."

(B) The names of all educational institutions in the state with names containing the words "California State University."

(C) All of the following names:

(i) "California Polytechnic State University, San Luis Obispo."

(ii) "California State Polytechnic University, Pomona."

(iii) "California Maritime Academy."

(iv) "Humboldt State University."

(v) "Sonoma State University."

(vi) "San Francisco State University."

(vii) "San Jose State University."

(viii) "San Diego State University."

(D) Abbreviations of names listed in subparagraphs (A), (B), and (C), including, but not necessarily limited to, all of the following:

(i) "Cal State."

(ii) "Cal Maritime."

(iii) "Humboldt State."

(iv) "Sonoma State."

(v) "San Francisco State."

(vi) "San Jose State."

(vii) "San Diego State."

(viii) "Cal Poly."

(ix) "CSU."

(2) No person shall, without the permission of the Trustees of the California State University, use this name, or any abbreviation of it or any name of which these words are a part, in any of the following ways:

(A) To designate any business, social, political, religious, or other organization, including, but not limited to, any corporation, firm, partnership, association, group, activity, or enterprise.

(B) To imply, indicate, or otherwise suggest that any product, service, or organization is connected or affiliated with, or is endorsed, favored,

or supported by, or is opposed by the Trustees of the California State University or any educational institution administered by the trustees. The permission of the trustees is required before any name listed in this subdivision may be used for any commercial purpose.

(C) To display, advertise, or announce this name publicly at, or in connection with, any meeting, assembly, or demonstration, or any propaganda, advertising, or promotional activity of any kind which has for its purpose or any part of its purpose the support, endorsement, advancement, opposition, or defeat of any strike, lockout, or boycott or of any political, religious, sociological, or economic movement, activity, or program.

(b) However, nothing in this section shall interfere with any person who makes, or restrict the right of any person to make, a true and accurate statement of his or her present or former relationship or connection with, his or her employment by, or his or her enrollment in, the California State University in the course of stating his or her experience or qualifications for any academic, governmental, business, or professional credit or enrollment, or in connection with any academic, governmental, professional, or other employment whatsoever.

(c) Every person violating this section is guilty of a misdemeanor.

SEC. 70. Section 92665.1 of the Education Code is amended and renumbered to read:

92655.1. The Legislature requests the Regents of the University of California, to the extent possible, to use existing resources to establish dental, medical, and optometric health professions outreach and exposure programs for elementary, high school, and undergraduate students, including community college students.

SEC. 71. Section 94945 of the Education Code is amended to read:

94945. (a) The bureau shall assess each institution, except for an institution that receives all of its students' total charges, as defined in subdivision (k) of Section 94852, from third-party payers. A third-party payer, for the purposes of this section, means an employer, government program, or other payer that pays a student's total charges directly to the institution when no separate agreement for the repayment of that payment exists between the third-party payer and the student. A student who receives third-party payer benefits for his or her institutional charges is not eligible for benefits from the Student Tuition Recovery Fund.

(1) The amount assessed each institution shall be calculated only for those students who are California residents and who are eligible to be reimbursed from the fund. It shall be based on the actual amount charged each of these students for total tuition cost, regardless of the portion that is prepaid. The amount of the assessment on an institution shall be determined in accordance with paragraphs (2) and (3). Each institution

shall collect the amount assessed by the bureau in the form of a Student Tuition Recovery Fund fee from its new students, and remit these fees to the bureau during the quarter immediately following the quarter in which the fees were collected from the students. An institution may not charge a fee of any kind for the collection of the Student Tuition Recovery Fund fee. An institution may refuse to enroll a student who has not paid, or made provisions to pay, the appropriate Student Tuition Recovery Fund fee.

(2) The amount collected from a new student by an institution shall be calculated on the basis of the course tuition paid over the current calendar year. For purposes of annualized payment, a new student enrolled in a course of instruction that is longer than one calendar year in duration shall pay fees for the Student Tuition Recovery Fund based on the amount of tuition collected during the current calendar year.

(3) The assessment made pursuant to this section shall be made in accordance with both of the following:

(A) Each new student shall pay a Student Tuition Recovery Fund assessment for the period of January 1, 2002, to December 31, 2002, inclusive, at the rate of three dollars ($3) per thousand dollars of tuition paid, rounded to the nearest thousand dollars.

(B) Commencing January 1, 2003, Student Tuition Recovery Fund fees shall be collected from new students at the rate of two dollars and fifty cents ($2.50) per thousand dollars of tuition paid, rounded to the nearest thousand dollars.

(4) The bureau may levy additional reasonable special assessments on an institution under this section only if these assessments are required to ensure that sufficient funds are available to satisfy the anticipated costs of paying student claims pursuant to Section 94944.

(5) (A) The bureau may not levy a special assessment unless the balance in any account in the Student Tuition Recovery Fund falls below two hundred fifty thousand dollars ($250,000), as certified by the Secretary of the State and Consumer Services Agency.

(B) A special assessment is a surcharge, collected by each institution from newly enrolled students, of up to 100 percent of that institution's regular assessment for four consecutive quarters. The affected student shall pay the surcharge simultaneously with his or her regular quarterly payment to the Student Tuition Recovery Fund.

(C) The bureau shall provide at least 90 days' notice of an impending special assessment to each affected institution. This notice shall also be posted on the bureau's Internet Web site.

(D) The bureau may apply any special assessment payments that it receives from an institution as a credit toward that institution's current or future obligations to the Student Tuition Recovery Fund.

(6) The assessments shall be paid into the Student Tuition Recovery Fund and credited to the appropriate account in the fund, and the deposits shall be allocated, except as otherwise provided for in this chapter, solely for the payment of valid claims to students. Unless additional reasonable assessments are required, no assessments for the degree-granting postsecondary educational institution account shall be levied during any fiscal year if, as of June 30 of the prior fiscal year, the balance in that account of the fund exceeds one million five hundred thousand dollars ($1,500,000). Unless additional reasonable assessments are required, no assessments for the vocational educational institution account shall be levied during any fiscal year if, as of June 30 of the prior fiscal year, the balance in that account exceeds four million five hundred thousand dollars ($4,500,000). However, regardless of the balance in the fund, assessments shall be made on any newly approved institution. Notwithstanding Section 13340 of the Government Code, the moneys so deposited in the fund are continuously appropriated to the bureau for the purpose of paying claims to students pursuant to Section 94944.

(b) The bureau may deduct from the fund the reasonable costs of administration of the tuition recovery program authorized by Section 94944 and this section. The maximum amount of administrative costs that may be deducted from the fund, in a fiscal year, shall not exceed one hundred thousand dollars ($100,000) from the degree-granting postsecondary educational institution account and three hundred thousand dollars ($300,000) from the vocational educational institution account, plus the interest earned on money in the fund that is credited to the fund. Prior to the bureau's expenditure of any amount in excess of one hundred thousand dollars ($100,000) from the fund for administration of the tuition recovery program, the bureau shall develop a plan itemizing that expenditure. The plan shall be subject to the approval of the Department of Finance. Institutions, except for schools of cosmetology licensed pursuant to Article 8 (commencing with Section 7362) of Chapter 10 of Division 3 of the Business and Professions Code and institutions that offer vocational or job training programs, that meet the student tuition indemnification requirements of a California state agency, that secure a policy of surety or insurance from an admitted insurer protecting their students against loss of paid tuition, or that demonstrate to the bureau that an acceptable alternative method of protecting their students against loss of prepaid tuition has been established, shall be exempted from this section.

(c) Reasonable costs in addition to those permitted under subdivision (b) may be deducted from the fund for any of the following purposes:

(1) To make and maintain copies of student records from institutions that close.

(2) To reimburse the bureau or a third party serving as the custodian of records.

(d) In the event of a closure by any approved institution under this chapter, any assessments that have been made against those institutions, but have not been paid into the fund, shall be recovered. Any payments from the fund made to students on behalf of any institution shall be recovered from that institution.

(e) In addition to civil remedies, the bureau may order an institution to pay previously unpaid assessments or to reimburse the bureau for any payments made from the fund in connection with the institution. Before any order is made pursuant to this section, the bureau shall provide written notice to the institution and notice of the institution's right to request a hearing within 30 days of the service of the notice. If a hearing is not requested within 30 days of the service of the notice, the bureau may order payment. If a hearing is requested, Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code shall apply, and the bureau shall have all powers prescribed in that chapter. Within 30 days after the effective date of the issuance of the order, the bureau may enforce the order in the same manner as if it were a money judgment pursuant to Title 9 (commencing with Section 680.010) of Part 2 of the Code of Civil Procedure.

(f) In addition to any other action that the bureau may take under this chapter, the bureau may suspend or revoke an institution's approval to operate because of the institution's failure to pay assessments when due or failure to pay reimbursement for any payments made from the fund within 30 days of the bureau's demand for payment.

(g) The moneys deposited in the fund shall be exempt from execution and shall not be the subject of litigation or liability on the part of creditors of those institutions or students.

SEC. 72. Section 99226 of the Education Code is amended to read:

99226. (a) This article shall apply to the University of California only during periods for which the Legislature has appropriated funds therefor in the annual Budget Act and the Regents of the University of California have accepted the funds.

(b) This article shall not apply to the University of California unless and until the Regents of the University of California act, by resolution, to make it applicable.

(c) The Regents of the University of California are requested to jointly develop with the Trustees of California State University and the independent colleges and universities, the institutes described in this article, to be administered by the University of California, in partnership with the California State University and with private, independent universities in California.

(d) Each participant who satisfactorily completes an institute authorized by this article shall receive a stipend commensurate with the duration of the institute, of not less than one thousand dollars ($1,000) nor more than two thousand dollars ($2,000), as determined by the University of California. However, in making this determination, the University of California may not exceed the amount provided in the Budget Act for stipends for each of the institutes authorized by this article and must serve at each institute the number of participants specified pursuant to this section.

(e) Commencing July 2001, and each fiscal year thereafter, the number of participants receiving instruction through each of these institutes shall be designated in the annual Budget Act.

(f) These institutes shall be developed in accordance with all of the criteria specified in each section, as described therein.

(g) Notwithstanding any other provision of law, on a case-by-case basis, and subject to the concurrence of the State Board of Education that priorities for service to high-need schools are met, the University of California and the programs authorized pursuant to Sections 99220 through 99226, inclusive, may serve prekindergarten teachers, kindergarten teachers, and teachers of grades 1 to 12, inclusive, in participating school districts with programs in reading or mathematics when the average of the reading or mathematics portions of the achievement test authorized pursuant to Section 60640 is at or below the priority level for service in schools otherwise served by the California Professional Development Institutes.

SEC. 73. Section 1405 of the Elections Code is amended to read:

1405. (a) Except as provided below, the election for a county, municipal, or district initiative that qualifies pursuant to Section 9116, 9214, or 9310 shall be held not less than 88 nor more than 103 days after the date of the order of election.

(1) When it is legally possible to hold a special election on an initiative measure that has qualified pursuant to Section 9116, 9214, or 9310 within 180 days prior to a regular or special election occurring wholly or partially within the same territory, the election on the initiative measure may be held on the same date as, and be consolidated with, that regular or special election.

(2) When it is legally possible to hold a special election on an initiative measure that has qualified pursuant to Section 9116, 9214, or 9310 during the period between a regularly scheduled statewide direct primary election and a regularly scheduled statewide general election in the same year, the election on the initiative measure may be held on the same date as, and be consolidated with, the statewide general election.

(3) To avoid holding more than one special election within any 180-day period, the date for holding the special election on an initiative

measure that has qualified pursuant to Section 9116, 9214, or 9310, may be fixed later than 103 days but at as early a date as practicable after the expiration of 180 days from the last special election.

(4) Not more than one special election for an initiative measure that qualifies pursuant to Section 9116, 9214, or 9310 may be held by a jurisdiction during any period of 180 days.

(b) The election for a county initiative that qualifies pursuant to Section 9118 shall be held at the next statewide election occurring not less than 88 days after the date of the order of election. The election for a municipal or district initiative that qualifies pursuant to Section 9215 or 9311 shall be held at the jurisdiction's next regular election occurring not less than 88 days after the date of the order of election.

SEC. 74. Section 2185 of the Elections Code is amended to read:

2185. Upon written demand of the chair or vice chair of a party state central committee or of the chair of a party county central committee, the county elections official shall furnish to each committee, without charge therefor, the index of registration for the primary and general elections or for any special election at which a partisan office is to be filled. The index of registration shall be furnished to the committee demanding the index not less than 25 days prior to the day of the primary, general, or special election for which they are provided. Upon written demand, the county elections official shall also furnish to the committee the index of registration of voters who registered after the 54th day before the election, which shall be compiled and prepared by Assembly districts. The county elections official shall furnish either two printed copies or, if available, one copy in an electronic form of the indexes specified in this section.

SEC. 75. Section 3017 of the Elections Code is amended to read:

3017. (a) All absentee ballots cast under this division shall be voted on or before the day of the election. After marking the ballot, the absent voter shall either: (1) return the ballot by mail or in person to the elections official from whom it came or (2) return the ballot in person to any member of a precinct board at any polling place within the jurisdiction. However, an absent voter who, because of illness or other physical disability, is unable to return the ballot, may designate his or her spouse, child, parent, grandparent, grandchild, brother, sister, or a person residing in the same household as the absent voter to return the ballot to the elections official from whom it came or to the precinct board at any polling place within the jurisdiction. The ballot must, however, be received by either the elections official from whom it came or the precinct board before the close of the polls on election day.

(b) The elections official shall establish procedures to insure the secrecy of any ballot returned to a precinct polling place.

(c) The provisions of this section are mandatory, not directory, and no ballot shall be counted if it is not delivered in compliance with this section.

(d) Notwithstanding subdivision (a), no absent voter's ballot shall be returned by any paid or volunteer worker of any general purpose committee, controlled committee, independent expenditure committee, political party, candidate's campaign committee, or any other group or organization at whose behest the individual designated to return the ballot is performing a service. However, this subdivision shall not apply to a candidate or a candidate's spouse.

SEC. 76. Section 3201 of the Elections Code is amended to read:

3201. Any voter may apply for permanent absent voter status. Application for permanent absent voter status shall be made in accordance with Section 3001. The voter shall complete an application, which shall be available from the county elections official, and which shall contain all of the following:

(a) The applicant's name at length.

(b) The applicant's residence address.

(c) The address where ballot is to be mailed, if different from the place of residence.

(d) The signature of the applicant.

SEC. 77. Section 13102 of the Elections Code is amended to read:

13102. (a) All voting shall be by ballot. There shall be provided, at each polling place, at each election at which public officers are to be voted for, but one form of ballot for all candidates for public office, except that, for partisan primary elections, one form of ballot shall be provided for each qualified political party as well as one form of nonpartisan ballot, in accordance with subdivision (b).

(b) At partisan primary elections, each voter not registered as intending to affiliate with any one of the political parties participating in the election shall be furnished only a nonpartisan ballot, unless he or she requests a ballot of a political party and that political party, by party rule duly noticed to the Secretary of State, authorizes a person who has declined to state a party affiliation to vote the ballot of that political party. The nonpartisan ballot shall contain only the names of all candidates for nonpartisan offices and measures to be voted for at the primary election. Each voter registered as intending to affiliate with a political party participating in the election shall be furnished only a ballot of the political party with which he or she is registered and the nonpartisan ballot, both of which shall be printed together as one ballot in the form prescribed by Section 13207.

(c) A political party may adopt a party rule in accordance with subdivision (b) that authorizes a person who has declined to state a party affiliation to vote the ballot of that political party at the next ensuing

partisan primary election. The political party shall notify the party chair immediately upon adoption of that party rule. The party chair shall provide written notice of the adoption of that rule to the Secretary of State not later than the 135th day prior to the partisan primary election at which the vote is authorized.

SEC. 78. A heading is added to Chapter 2 (commencing with Section 21100) of Division 21 of the Elections Code, to read:

CHAPTER 2. SENATE DISTRICTS

SEC. 79. Section 8814.5 of the Family Code is amended to read:

8814.5. (a) After a consent to the adoption is signed by the birth parent or parents pursuant to Section 8801.3 or 8814, the birth parent or parents signing the consent shall have 30 days to take one of the following actions:

(1) Sign and deliver to the department or delegated county adoption agency a written statement revoking the consent and requesting the child to be returned to the birth parent or parents. After revoking consent, in cases where the birth parent or parents have not regained custody, or the birth parent or parents have failed to make efforts to exercise their rights under subdivision (b) of Section 8815, a written notarized statement reinstating the original consent may be signed and delivered to the department or delegated county adoption agency, in which case the revocation of consent shall be void and a new 30-day period shall commence. After revoking consent, in cases in which the birth parent or parents have regained custody, upon the delivery of a written notarized statement reinstating the original consent to the department or delegated county adoption agency, the revocation of consent shall be void and a new 30-day period shall commence. The birth mother shall be informed of the operational timelines associated with this section at the time of signing of the statement reinstating the original consent.

(2) (A) Sign a waiver of the right to revoke consent on a form prescribed by the department in the presence of a representative of the department or delegated county adoption agency. If neither a representative of the department nor a representative of a delegated county adoption agency is reasonably available, the waiver of the right to revoke consent may be signed in the presence of a judicial officer of a court of record if the birth parent is represented by independent legal counsel. "Reasonably available" means that a representative from either the department or the delegated county adoption agency is available to accept the signing of the waiver within 10 days and is within 100 miles of the location of the birth mother.

(B) An adoption service provider may assist the birth parent or parents in any activity where the primary purpose of that activity is to

facilitate the signing of the waiver with the department, a delegated county agency, or a judicial officer. The adoption service provider or another person designated by the birth parent or parents may also be present at any interview conducted pursuant to this section to provide support to the birth parent or parents.

(C) The waiver of the right to revoke consent may not be signed until an interview has been completed by the department or delegated county adoption agency unless the waiver of the right to revoke consent is signed in the presence of a judicial officer of a court of record as specified in this section, in which case the interview and the witnessing of the signing of the waiver shall be conducted by the judicial officer. Within 10 working days of a request made after the department, the delegated county adoption agency, or the court has received a copy of the petition for the adoption and the names and addresses of the persons to be interviewed, the department, the delegated county adoption agency, or the court shall interview, at the department or agency office or the court, any birth parent requesting to be interviewed. However, the interview, and the witnessing of the signing of a waiver of the right to revoke consent of a birth parent residing outside of California or located outside of California for an extended period of time unrelated to the adoption may be conducted in the state where the birth parent is located, by any of the following:

(i) A representative of a public adoption agency in that state.

(ii) A judicial officer in that state where the birth parent is represented by independent legal counsel.

(iii) An adoption service provider.

(3) Allow the consent to become a permanent consent on the 31st day after signing.

(b) The consent may not be revoked after a waiver of the right to revoke consent has been signed or after 30 days, beginning on the date the consent was signed or as provided in paragraph (1) of subdivision (a), whichever occurs first.

SEC. 80. Section 21200.1 of the Financial Code is amended to read:

21200.1. A loan setup fee not to exceed three dollars ($3) may be charged for each loan up to and including fifty dollars ($50). A loan setup fee of five dollars ($5) may be charged for loans in excess of fifty dollars ($50). Loan setup fees are in addition to any other allowed charges.

SEC. 81. Section 1103 of the Food and Agricultural Code is amended to read:

1103. For the purposes of this part, the following definitions apply:

(a) ''Agency'' means the California Technology, Trade, and Commerce Agency.

(b) ''Air district'' means an air pollution control district or an air quality management district established or continued in existence

pursuant to Part 3 (commencing with Section 40000) of the Health and Safety Code.

(c) ''Facility'' means any California site that meets both of the following criteria:

(1) As of July 1, 2000, converted and continues to convert qualified agricultural biomass to energy, or that operated prior to July 1, 2000, converting qualified agricultural biomass to energy, was closed for a period of time but maintained all applicable air quality permits during that closure, and is ready to reopen on or before June 30, 2001, and, in both cases, the conversion results in lower oxides of nitrogen (NO_x) emissions than would otherwise be produced if burned in the open field during the ozone season, as determined by the air district in which the site operates.

(2) Does not produce electricity for sale to a public utility pursuant to a contract with that public utility, or, if the site does produce electricity for sale to a public utility pursuant to a contract with that public utility, the site does not qualify for fixed energy prices established prior to June 30, 2000, under the terms of that contract at the time the application for the grant is made.

(d) ''Grant'' means an award of funds by the agency to an air district that shall, in turn, grant incentive payments to a facility after deducting the air district's administrative fee as provided in Section 1104.

(e) ''Incentive payment'' means a payment by an air district to facilities for qualified agricultural biomass to be received and converted into energy after July 1, 2000. This payment shall be in the amount of ten dollars ($10) for each ton of qualified agricultural biomass received for conversion to energy.

(f) ''Qualified agricultural biomass'' means agricultural residues that historically have been open-field burned in the jurisdiction of the air district from which the agricultural residues are derived, as determined by the air district, excluding urban and forest wood products, that include either of the following:

(1) Field and seed crop residues, including, but not limited to, straws from rice and wheat.

(2) Fruit and nut crop residues, including, but not limited to, orchard and vineyard pruning and removals.

SEC. 82. Section 6047.7 of the Food and Agricultural Code is amended to read:

6047.7. (a) During the first marketing season, beginning July 1, 2001, and ending June 30, 2002, the annual assessment shall be three dollars ($3) for each one thousand dollars ($1,000) assessed pursuant to Section 6047.9 for all grapes subject to assessment under this article. The department shall notify each processor of the established assessment

as soon as practicable. For each marketing season thereafter, the following shall apply:

(1) An annual assessment shall be recommended by the board and submitted to the department for approval in an amount not to exceed three dollars ($3) for each one thousand dollars ($1,000) assessed pursuant to Section 6047.9 for all grapes subject to assessment under this article.

(2) The department shall notify each processor of the established assessment rate by July 15, or as soon thereafter as possible.

(b) In no event shall there be an assessment on the following:

(1) Material other than grapes, and defects, or other weight adjustments deducted from the gross weight ticket.

(2) Any raisin-distilling material.

(3) Grapes for which an assessment has been withheld, paid, or is already owed.

SEC. 83. Section 8769 of the Food and Agricultural Code is amended to read:

8769. (a) The board, annually after the organization of the district, shall assess any assessor's parcel of real property with 10 or more olive, stone, or pome fruit trees on it and enter as a separate item, on an annual assessment roll for each assessor's parcel of real property included in the district, the number of all olive, stone, or pome fruit trees that are growing on it.

(b) For the purpose of this part, the board shall assess all olive, stone, or pome fruit acreage at a uniform value per tree. The assessment shall be upon a tree basis and the number of trees shall be determined conclusively by the board counting the trees on each assessor's parcel. The board, in counting the olive, stone, or pome fruit trees, shall not, however, count any more than 100 trees on any one acre of land.

(c) Upon completing the tree count within the district each year, the board shall separately compute and certify, to the board of supervisors, the total number of all the olive, stone, or pome fruit trees in the district on each parcel.

SEC. 84. Section 8770 of the Food and Agricultural Code is amended to read:

8770. Whenever new acreage within the district is planted with olive, stone, or pome fruit trees so as to qualify as olive, stone, or pome fruit acreage, the trees are subject to assessment as provided in this part.

SEC. 85. Section 20437 of the Food and Agricultural Code is amended to read:

20437. Any animal, hide, carcass, or portion of a carcass shall not be held pursuant to Section 20435 for more than 30 consecutive days, unless the notice of seizure is renewed by the inspector or peace officer.

SEC. 86. Section 21052 of the Food and Agricultural Code is amended to read:

21052. It is unlawful for any person who owns or has custody of cattle to move, slaughter, release, sell, or receive at a registered feedlot that cattle without the inspection that is required by Section 21051.

For the purposes of this section, a common carrier which transports cattle does not have custody of the cattle.

SEC. 87. Section 75090.5 of the Food and Agricultural Code is amended to read:

75090.5. (a) The commission may petition the secretary to adopt and administer any activity authorized by the California Marketing Act of 1937, Chapter 1 (commencing with Section 58601) of Part 2 of Division 21, relating to the commodity covered by the commission. Adoption and administration of the activity by the commission shall be in accordance with the act.

(b) As determined by the secretary, the governing body of the commission may serve as the advisory board to the secretary with respect to any activity recommended and approved pursuant to this section.

SEC. 88. Section 1091.3 of the Government Code is amended to read:

1091.3. Section 1090 shall not apply to any contract or grant made by a county children and families commission created pursuant to the California Children and Families Act of 1998 (Division 108 (commencing with Section 130100) of the Health and Safety Code), except where both of the following conditions are met:

(a) The contract or grant directly relates to services to be provided by any member of a county children and families commission or the entity the member represents or financially benefits the member or the entity he or she represents.

(b) The member fails to recuse himself or herself from making, participating in making, or in any way attempting to use his or her official position to influence a decision on the grant or grants.

SEC. 89. Section 9353.5 of the Government Code is amended to read:

9353.5. Each member of this system shall file with the board any information affecting his or her status as a member as the board may require.

SEC. 89.1. Section 9353.6 of the Government Code is amended to read:

9353.6. The Chief Clerk of the Assembly shall give the board immediate written notice of the change in status of any legislative statutory officer elected by the Assembly or Member of the Assembly resulting from induction into office, resignation, expulsion, death, or

any other circumstances terminating his or her office as Member of the Assembly, or as a legislative statutory officer, and the Secretary of the Senate shall give the board immediate written notice of any change in status of any Member of the Senate or legislative statutory officer elected by the Senate. The Secretary of State shall give the board immediate written notice of any change in status of any elective state officer who is eligible to membership in the system.

SEC. 89.2. Section 9353.7 of the Government Code is amended to read:

9353.7. If it is impracticable for the board to determine from the records the length of service, compensation, or age of any member of this system, or if any member refuses or fails to give the board a statement of his or her state service, compensation, or age, the board may estimate the length of service, compensation, or age.

SEC. 89.3. Section 9355 of the Government Code is amended to read:

9355. Any Member of the Senate or Assembly may file with the board at any time during incumbency in that office, a written election to become a member of this system. Upon the filing of the election he or she becomes a member of this system on the first day of the month following the filing of the election.

SEC. 89.4. Section 9355.1 of the Government Code is amended to read:

9355.1. A person ceases to be a member of this system:

(a) Upon retirement pursuant to this chapter.

(b) Upon death.

(c) Except as provided in Section 9355.2 or while absent on military service, on the 31st day after he or she ceases to be a legislator.

(d) Upon resignation from membership in this system.

SEC. 89.5. Section 9355.16 of the Government Code is amended to read:

9355.16. Any member of this system who is charged, by indictment, with the commission of any felony involving the accepting or giving, or offering to accept or give, any bribe, the embezzlement of public money, extortion, theft of public funds, perjury, or conspiracy to commit any of these crimes, arising directly out of his or her official duties, and who is a fugitive from justice, shall be suspended from membership in this system while the charge is pending and until final disposition of the charge. At any time during the period of suspension of membership, the person so suspended shall be entitled to withdraw his or her accumulated contributions from the system, and any withdrawal shall constitute an election to terminate membership in the system.

This section applies only to persons who are charged with the commission after the effective date of this section of a felony described

in this section by an indictment filed after the effective date of this section.

SEC. 89.6. Section 9355.2 of the Government Code is amended to read:

9355.2. Notwithstanding any other provision of this chapter, if the service of a member is discontinued by any means other than death or retirement pursuant to this chapter, he or she shall have the right to elect not later than 90 days after the date upon which notice of that right is mailed by this system by registered mail to the member's latest address on file in the office of this system, and without right of revocation, whether to allow his or her accumulated contributions to remain in the fund. Failure to make that election shall be deemed an irrevocable election to resign from this system and withdraw his or her accumulated contributions. A member whose membership continues under this section is subject to the same age requirements as apply to other members for retirement, and upon qualification for retirement by age, he or she shall, upon his or her application therefor to the board, be retired, and receive a retirement allowance based upon the service with which he or she is credited, in the same manner as other members of this system.

SEC. 89.7. Section 9355.4 of the Government Code is amended to read:

9355.4. Every elective officer of the state whose office is provided for by the California Constitution, except judges, may become a member of this system. Except for judges, every elective officer in office at the time this section becomes effective may, within 90 days after the effective date, file with the board a written election to become a member of this system. Except for judges, every elective officer elected after the effective date of this section may file an election within 90 days after the commencement of the first term of office for which he or she is elected. Upon the filing of the election he or she becomes a member of this system on the first day of the month following the filing of the election.

SEC. 89.8. Section 9355.45 of the Government Code is amended to read:

9355.45. Every legislative statutory officer may become a member of this system. Every such officer in office at the time this section becomes effective may, within 90 days after the effective date, file with the board a written election to become a member of this system. Every such officer, elected after the effective date of this section, may file an election within 90 days after the commencement of the first term of office for which he or she is elected after attaining status as a legislative statutory officer. Upon the filing of the election he or she becomes a member of this system on the first day of the month following the filing of the election.

SEC. 89.9. Section 9355.5 of the Government Code is amended to read:

9355.5. Membership in this system is exclusive of membership in any other retirement system for state officers and employees. Upon becoming a member of this system, a member ceases to be a member of any other retirement system for state officers and employees of which he or she has been a member. The member is entitled to credit for service rendered prior to membership in this system pursuant to Section 9356.1, but is not entitled to that credit and credit for the same service in any other system.

SEC. 90. Section 9355.7 of the Government Code is amended to read:

9355.7. Any member who, while serving a term of office as a Member of the Senate or Assembly, is elected or appointed to another public office and resigns his or her office as Member of the Senate or Assembly shall be credited with a period of service equal to the remainder of his or her term as Member of the Senate or Assembly if he or she makes contributions therefor to the Legislators' Retirement Fund. Those contributions shall be in an amount equal to that which he or she would have made if he or she had served as a Member of the Senate or Assembly during the remainder of his or her term and had received the salary that he or she was receiving on the effective date of such resignation.

SEC. 90.1. Section 9355.8 of the Government Code is amended to read:

9355.8. For purposes of Section 9355.7, "public office" includes, but is not limited to, positions within the federal government that require appointment by the President of the United States or his or her delegate or a member of the President's Cabinet or his or her delegate, if the person so appointed is thereafter again elected as a Member of the Senate or Assembly.

This section shall have retroactive application, as well as prospective application, but this section shall not deprive a member of credit for any service credited to him or her on the effective date of this section.

SEC. 90.2. Section 9356 of the Government Code is amended to read:

9356. Each member of this system shall receive credit for service for time during which he or she holds office as a legislator after becoming a member of this system.

A member may also receive credit for time during which he or she held office as a legislator prior to becoming a member, provided he or she makes contributions therefor to the Legislators' Retirement Fund, as provided in Section 9357.2.

SEC. 90.3. Section 9356.1 of the Government Code is amended to read:

9356.1. Each member who rendered service prior to the date this chapter becomes operative shall receive credit therefor if he or she makes contributions therefor to the Legislators' Retirement Fund, as provided in Section 9357.2. No member shall receive credit for any service for which he or she has not contributed as required by this chapter.

SEC. 90.4. Section 9356.15 of the Government Code is amended to read:

9356.15. Any person who is a member of the system pursuant to Section 9355.45 may also receive credit for state service prior to the date he or she became a member, whether that service was rendered before or after the operative date of this section, provided that he or she makes the contributions required by Section 9357.2, but at the rate of $6^1/_2$ percent. If he or she elects to make a contribution with respect to service credited under the Public Employees' Retirement System, he or she shall receive a refund of his or her accumulated contributions in that system with respect to all of his or her state service.

The contribution rate for a person who first commences service in any of the offices listed in Section 9350.55 or who becomes a member of this system on or after January 1, 1982, shall be 8 percent.

SEC. 90.5. Section 9356.2 of the Government Code is amended to read:

9356.2. Each member shall receive credit for service while absent on military service, provided he or she is a member at the time the absence commences or, in the case of military service prior to the effective date of this section, provided he or she was a legislator at the time the absence commenced. Contributions required for credit under this section shall be computed only upon compensation paid, if any, for the period of the absence on military service.

SEC. 90.6. Section 9356.3 of the Government Code is amended to read:

9356.3. This section applies to any member heretofore or hereafter elected to fill an unexpired term of office as Member of the Legislature, and who is a Member of the Legislature on the effective date of this section as amended at the 1961 General Session or who becomes a Member of the Legislature after that date.

(a) If the member is elected as a Member of the Legislature at a special election held prior to June 15 of any calendar year, the period of service of the member during the remainder of that calendar year shall constitute one calendar year of service for the purpose of computing service under this act if he or she makes contributions therefor to the Legislators' Retirement Fund. Those contributions shall be in an amount equal to that

which he or she would have made if he or she had served as a legislator during the period of the calendar year prior to his or her election.

(b) If the time of service of a member elected to fill an unexpired term of office as Member of the Legislature amounts to more than one-half of the full term for that office, he or she shall receive credit for service for the full term of office if he or she makes contributions therefor to the Legislators' Retirement Fund. Those contributions shall be in an amount equal to that which he or she would have made if he or she had served as a legislator during the remainder of the term.

SEC. 90.7. Section 9356.5 of the Government Code is amended to read:

9356.5. Any member whose service is discontinued but whose membership is continued under Section 9355.2 and who becomes a member of the Judges' Retirement System or is entitled to benefits under the Judges' Retirement Law, may elect to transfer all or part of the service for which he or she is credited under this system to the Judges' Retirement System pursuant to Section 75030.5. The election may be made at any time prior to retirement by written notice to the board of administration. The member shall designate in the notice the dates of the service that he or she elects to transfer. Upon receipt of the notice by the board of administration, the member's accumulated contributions on account of the period of service transferred, and the interest thereon, shall be transferred to the Judges' Retirement Fund.

If the member elects to transfer all of the service for which he or she is credited in this system, his or her membership in this system is terminated. If he or she elects to transfer less than all of the service for which the member is credited in this system, his or her membership is continued under Section 9355.2 and the service with which he or she is credited in this system is reduced by the amount so transferred.

Any member whose service is discontinued but whose membership is continued under Section 9355.2 who is entitled to receive credit under this system by making an election to do so and making a contribution to this system for the service, but who has not made the election, may, after becoming a member of the Judges' Retirement System, elect to receive credit for all or part of that service in the Judges' Retirement System pursuant to Section 75030.5. Upon making the election, the member may not thereafter elect to be credited in this system with the service so transferred.

This section does not apply to any person who, on or after January 1, 1986, first becomes or continues as a legislator, as defined in Section 9351.3, in a term of office that commences on or after January 1, 1986.

SEC. 90.8. Section 9357 of the Government Code is amended to read:

9357. For each year of service rendered after the date this chapter becomes operative, each legislator who is a member of this system shall contribute 4 percent of his or her compensation as a legislator unless he or she is subject to other contribution provisions of this chapter. Those contributions shall be paid as provided in Section 9357.1.

SEC. 90.9. Section 9357.05 of the Government Code is amended to read:

9357.05. Each person who is a member of the system pursuant to Section 9355.45 shall contribute $6^1/_2$ percent of his or her compensation for each year of service rendered as a member of the system. Those contributions shall be paid as provided in Section 9357.15.

SEC. 91. Section 9357.1 of the Government Code is amended to read:

9357.1. Immediately upon receipt of the written election of a legislator to become a member of this system, the board of administration shall certify to the State Controller the name of that member. The Controller shall deduct from each warrant drawn in payment of compensation to the member the amount of contribution at the rate prescribed by the provisions of this chapter with respect to his or her service as a member of this system, and shall remit that amount to the board of administration, to be deposited in the Legislators' Retirement Fund.

SEC. 91.1. Section 9357.2 of the Government Code is amended to read:

9357.2. Any member who rendered service prior to the date he or she became a member may elect, at any time prior to retirement, to contribute to the Legislators' Retirement Fund for each year or fraction thereof for which he or she desires to receive credit for service, a percentage of the compensation received by him or her in respect to that service at the rate prescribed by the provisions of this chapter with respect to his or her service as a member of this system.

Those contributions may be paid by lump sum payment or by installment payments over a period not in excess of the length of time for which the member has elected to receive credit for the prior service, at times and in a manner fixed by the board. No member shall receive credit for any service for which he or she has not contributed as required by this chapter.

SEC. 91.2. Section 9357.4 of the Government Code is amended to read:

9357.4. A member may redeposit in the Legislators' Retirement Fund, in one sum or in not to exceed 12 monthly or 24 semimonthly payments, an amount equal to any accumulated contributions that have been repaid to him or her pursuant to Section 9357.3, subject to minimum payments fixed by the board, and if he or she makes a

redeposit, he or she shall receive credit for all service with which he or she was credited at the time of the repayment.

SEC. 91.3. Section 9357.45 of the Government Code is amended to read:

9357.45. Notwithstanding any other provisions of this chapter, a person who was a member and entitled to be credited with 10 or more years of service as a Member of the Senate or Assembly and who withdrew his or her accumulated contributions prior to October 1, 1961, and after discontinuance of service, may, at any time before December 31, 1965, redeposit in the fund in one sum an amount equal to the accumulated contributions withdrawn plus the interest that would have been credited to those accumulated contributions had they not been withdrawn, using the rate of interest in effect at the time of redeposit.

Upon the redeposit the person shall become a member with the rights provided under this chapter to a member who elected under Section 9355.2 to allow his or her contributions to remain in the fund.

SEC. 91.4. Section 9357.46 of the Government Code is amended to read:

9357.46. Any person who was a member and who withdrew his or her accumulated contributions after discontinuance of service may, at any time while he or she is in employment in which he or she is a member of the Public Employees' Retirement System or the State Teachers' Retirement System, redeposit into the fund in one sum an amount equal to the accumulated contributions withdrawn plus the interest that would have been credited to those accumulated contributions had they not been withdrawn, using the rate of interest in effect at the time of redeposit.

Upon the redeposit, the person shall become a member with the rights provided a member who elected under Section 9355.2 to allow his or her contributions to remain in the fund.

SEC. 91.5. Section 9357.5 of the Government Code is amended to read:

9357.5. Upon reentering this system after a termination of his or her membership, if a member does not elect to make, or having so elected, does not make, a redeposit, he or she reenters as a new member, without credit for any service.

SEC. 91.6. Section 9359.15 of the Government Code is amended to read:

9359.15. Notwithstanding any other provision of this chapter, no retirement allowance or optional settlement in lieu thereof under this chapter shall be paid to or in respect to any person for time during which he or she holds office as a legislator. If a retired legislator reenters this system after his or her retirement, his or her retirement allowance or optional settlement in lieu thereof shall be discontinued, and his or her individual account shall be credited with the amount of his or her

accumulated contributions at the time of his or her retirement, and he or she shall be entitled to receive credit for service prior to his or her retirement in the same manner as if he or she had never been retired.

SEC. 91.7. Section 9359.16 of the Government Code is amended to read:

9359.16. Notwithstanding the provisions of Section 9359, a member of this system, other than a legislative statutory officer, who is under age 60 and who is credited with 15 or more, but less than 20 years of service shall be retired upon his or her written application therefor to the Board of Administration, and thereafter shall receive for life the retirement allowance provided by this section. The allowance shall be equal to the retirement allowance that he or she would receive for that service upon retirement at age 60 reduced by 2 percent for each year by which the member's age at the time of retirement is below age 60.

SEC. 91.8. Section 9359.17 of the Government Code is amended to read:

9359.17. Notwithstanding the provisions of Section 9359, a legislative statutory officer who has attained the age of 55 shall be retired upon his or her written application therefor to the Board of Administration, and shall thereafter receive for life the retirement allowance provided by Section 9359.10.

SEC. 91.9. Section 9359.4 of the Government Code is amended to read:

9359.4. A member may at any time designate a beneficiary to receive those benefits as may be payable to his or her beneficiary or estate under this chapter, by a writing filed with the board. To be eligible to be so designated a person shall have an insurable interest in the life of the member.

SEC. 92. Section 9359.85 of the Government Code is amended to read:

9359.85. Upon the death of any person, after retirement and while receiving a retirement allowance from this system, there shall be paid to his or her estate or to those beneficiaries as he or she shall nominate the sum of six hundred dollars ($600).

SEC. 92.1. Section 9359.95 of the Government Code is amended to read:

9359.95. In addition to any other benefits provided for in this chapter, upon the death, on or after January 1, 1959, and before retirement, of any member who, at the time of his or her death was a legislator, there shall be paid to his or her beneficiary, if he or she has designated one, and if not, to his or her estate, an amount equal to the annual compensation payable to him or her during the 12 months immediately preceding his or her death.

SEC. 92.2. Section 9360.3 of the Government Code is amended to read:

9360.3. Application to the board for retirement of a member for disability may be made by the member or any person in his or her behalf. Upon receipt of the application and determination of the board that the applicant is incapacitated for the performance of duty, the board shall retire the member for disability. The application shall be made only during one or more of the three following periods:

(a) While the person is a member of this system.

(b) During any time as he or she has allowed his or her accumulated contributions to remain in the system pursuant to Section 9355.2.

(c) If the person has not allowed his or her accumulated contributions to remain in the system pursuant to Section 9355.2 and if he or she was physically or mentally incapacitated to perform his or her duties on the date of discontinuance of his or her service as a legislator and the incapacity continued to the time of application, while he or she is physically or mentally incapacitated.

SEC. 92.3. Section 9360.4 of the Government Code is amended to read:

9360.4. The board may require any recipient of a disability allowance under the minimum age for voluntary retirement to undergo medical examination. The examination shall be made by a physician or surgeon, appointed by the board, at the place of residence of the recipient or other place mutually agreed upon. Upon the basis of the examination, the board shall determine whether the physical or mental disability still exists. If the board determines that the recipient is not so incapacitated, his or her disability allowance shall be canceled forthwith.

SEC. 92.4. Section 9360.5 of the Government Code is amended to read:

9360.5. If any recipient of a disability retirement allowance under the minimum age for voluntary retirement refuses to submit to medical examination, the retirement allowance shall be discontinued until he or she agrees to submit to the examination. If the refusal continues for one year, disability retirement allowance shall be discontinued.

SEC. 92.5. Section 9360.6 of the Government Code is amended to read:

9360.6. The disability allowance for other than legislative statutory officers is the same as the retirement allowance that would be payable to the member had he or she retired under this chapter for reasons other than disability, and shall be paid regardless of the age of the member at the time of his or her retirement for disability. The disability retirement allowance for legislative statutory officers is the same as the retirement allowance provided in Section 9359.10, and shall be paid regardless of the age of the member at the time of his or her retirement for disability.

SEC. 92.6. Section 9360.7 of the Government Code is amended to read:

9360.7. (a) Any Member of the Senate or Assembly who, after the effective date of this section, retires for service or disability shall receive the retirement allowance provided by this chapter unmodified by any optional settlement elected pursuant to Article 7 (commencing with Section 9361) of this chapter.

(b) The surviving spouse of a member described in subdivision (a) who dies after retirement may elect to receive an allowance under this section. Any surviving spouse making that election shall receive an allowance equal to one-half of the retirement allowance, unmodified by any optional settlement that would be payable to the member were he or she living and retired under this chapter.

(c) The surviving spouse of a member who is a Member of the Senate or Assembly and who dies before retirement but after becoming eligible for retirement may elect to receive an allowance under this section. Any surviving spouse making that election shall receive an allowance equal to one-half of the amount of the retirement allowance, unmodified by any optional settlement, that would be payable to the member were he or she living and retired under this chapter. If there is no surviving spouse, or if the spouse dies or remarries, then the allowance payable under this paragraph shall be payable to the children of the member under the same conditions and qualifications as provided for the allowances of children under Article 8 (commencing with Section 9371) of this chapter.

(d) The election provided for in this section shall be made by a writing filed with the board within 60 days after the death of the member.

(e) The allowance to a surviving spouse provided by this section is payable commencing upon the death of the member and continuing until the death or remarriage of the surviving spouse. If pursuant to this section, an allowance is paid to a surviving spouse, no payment shall be made pursuant to Section 9359.8 or pursuant to Article 7 (commencing with Section 9361) of this chapter.

(f) The provisions of this section apply to the surviving spouse of any Member of the Senate or Assembly who was credited with 20 or more years of service at the time of his or her retirement and regardless of the date of retirement.

SEC. 92.7. Section 9360.11 of the Government Code is amended to read:

9360.11. Notwithstanding any other provisions of this chapter, any member who would have been eligible to retire under Section 9359.01 had it not been repealed because he or she did not return to office or who would have been eligible to retire under that section had it not been repealed and had he or she chosen not to run or not been returned to office

following the reapportionment of his or her district is deemed eligible for retirement for purposes of Sections 9360.7 and 9361.1 at any time thereafter.

SEC. 92.8. Section 9361.1 of the Government Code is amended to read:

9361.1. (a) The election, revocation, or change of election set forth in Section 9361 may be made at any time before the effective date of retirement or after the effective date and prior to the making of the first payment on account of any retirement allowance.

(b) If at any time before the making of the first payment on account of the member's retirement allowance, his or her spouse dies, or his or her marriage is terminated by a final judgment of divorce or annulment, the election of the member is automatically void, and the member may make a new election.

(c) A member who has elected an optional settlement providing for the payment of a benefit to his or her spouse may at any time before the making of the first payment on account of his or her retirement allowance substitute a different optional settlement.

(d) The election, revocation, or change of election shall be made by a writing filed with the board.

(e) If a member who is eligible for retirement has elected one of the optional settlements specified in this article, the surviving spouse of that member shall receive the same benefits as the surviving spouse would have received if the date of his or her death had also been the date of his or her retirement and if retirement had preceded death. If in that event benefits are paid to a surviving spouse, no payment shall be made pursuant to Section 9359.8. If a member dies without having elected an optional settlement and there is a surviving spouse, he or she shall be deemed for the purposes of this paragraph to have elected Optional Settlement No. 2. In either case, the benefits payable to the surviving spouse shall be in the same amount as if the member had elected to receive credit for service rendered prior to the date he or she became a member of this system and had paid the full amount of the contributions in respect to that service.

(f) Any election filed under this section prior to the effective date of the amendments to this section enacted by the Legislature at the 1957 Regular Session shall continue to be effective in accordance with the terms of this section as it read prior to those amendments and may thereafter be revoked or changed or become void only in accordance with this section as it read prior to such amendment.

SEC. 92.9. Section 9361.2 of the Government Code is amended to read:

9361.2. Optional Settlement 1 consists of the right to have a retirement allowance paid him or her until his or her death and if he or

she dies before he or she receives the amount of his or her accumulated contributions at retirement, to have the balance at death paid to his or her beneficiary or estate.

SEC. 93. Section 9361.3 of the Government Code is amended to read:

9361.3. Optional Settlement 2 consists of the right to have a retirement allowance paid him or her until his or her death and thereafter to his or her beneficiary for life.

SEC. 93.1. Section 9361.4 of the Government Code is amended to read:

9361.4. Optional Settlement 3 consists of the right to have a retirement allowance paid him or her until his or her death, and thereafter to have one-half of his or her retirement allowance paid to his or her beneficiary for life.

SEC. 93.2. Section 9371 of the Government Code is amended to read:

9371. (a) This article applies to members who elect to be subject to its provisions and does not apply to any member while his or her services are included in the federal social security system.

(b) An election pursuant to this section shall be in writing and shall be effective only when received in the office of the board. The board may, on the request of any member who elects to be subject to this article, cancel the election if it finds that the election was made because of the member's mistake or misunderstandings and that the member has acted diligently in making the request. The cancellation is effective as of the first day of the month following the board's action canceling the election.

SEC. 93.3. Section 9374 of the Government Code is amended to read:

9374. Upon the death of a member before retirement (a) the surviving wife or surviving husband of the member, who has the care of unmarried children, including stepchildren, of the member who are under 18 years of age, or are incapacitated because of disability which began before and has continued without interruption after attainment of that age, or if there is no such spouse, then (b) the guardian of surviving unmarried children, including stepchildren, of the member who are under 18 years of age or so incapacitated, if any, or (c) the surviving wife or surviving husband of the member, who does not qualify under (a), if any, or if no such children under (b) or such spouse under (c), then (d) each surviving parent of the member, shall be paid the following applicable survivor allowance, under the conditions stated and from contributions of the state:

(1) A widow or a widower who was married to the member prior to the occurrence of the injury or onset of the illness that resulted in death,

and has the care of unmarried children, including stepchildren, of the deceased member under 18 years of age or so incapacitated, shall be paid three hundred sixty dollars ($360) if there is one such child, or four hundred thirty dollars ($430) per month if there are two or more such children. If there also are such 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 one hundred eighty dollars ($180) per month, shall be divided equally among all of those children and payments made to the spouse and other children, as the case may be.

(2) If there is no such surviving spouse, or if such surviving spouse dies or remarries, and if there are unmarried children, including stepchildren, of the deceased member under 18 years of age, or if there are such children not in the care of such spouse, such children shall be paid an allowance as follows:

(a) If there is only one such child, such child shall be paid one hundred eighty dollars ($180) per month;

(b) If there are two such children, such children shall be paid three hundred sixty dollars ($360) per month divided equally between them; and

(c) If there are three or more such children, such children shall be paid four hundred thirty dollars ($430) per month divided equally among them.

(3) A widow or widower who has attained or attains the age of 62 years, and, with respect to both widow and widower, who was married to such member prior to the occurrence of the injury or onset of the illness that resulted in death, and has not remarried subsequent to the member's death, shall be paid one hundred eighty dollars ($180) per month. No allowance shall be paid under this subdivision, while the surviving spouse is receiving an allowance under subdivision (1) of this section, or while an allowance is being paid under subdivision (2)(c) of this section. The allowance paid under this subdivision shall be seventy dollars ($70) per month while an allowance is being paid under subdivision (2)(b) of this section.

(4) If there is no surviving spouse, or surviving children who qualify for a survivor allowance, or if such surviving spouse dies or remarries, or if such children reach age 18 or die or marry prior thereto, each of the member's dependent mother and father who has attained or attains the age of 62 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 one hundred eighty dollars ($180) per month.

''Stepchildren,'' for purposes of this section, shall include only stepchildren of the member living with him or her in a regular parent-child relationship at the time of his or her death.

SEC. 93.4. Section 9375 of the Government Code is amended to read:

9375. For the purposes of Section 9374, a person shall be considered to be under the age of 18 if he or she is under the age of 22 and a full-time student.

SEC. 93.5. Section 9378 of the Government Code is amended to read:

9378. A person who in any month is an eligible survivor of more than one member, shall receive only one allowance under this article, which shall be the largest of the monthly allowances to which he or she would otherwise be entitled.

SEC. 93.6. Section 9509 of the Government Code is amended to read:

9509. As soon as an enrolled bill is delivered to the Governor, it shall be endorsed as follows: "This bill was received by the Governor this ____ day of ____, 20__." The endorsement shall be signed by the private secretary of the Governor or by any other person designated by the Governor whose designation has been reported to the Speaker of the Assembly and the President pro Tempore of the Senate.

SEC. 93.7. Section 11126 of the Government Code is amended to read:

11126. (a) (1) 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, evaluation of performance, 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.

(2) 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, and that 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.

(3) 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.

(4) Following the public hearing or closed session, the body may deliberate on the decision to be reached in a closed session.

(b) For the purposes of this section, "employee" does 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 includes a person exempt from civil service pursuant to subdivision (e) of Section 4 of Article VII of the California Constitution.

(c) Nothing in this article shall be construed to do any of the following:

(1) Prevent state bodies that administer the licensing of persons engaging in businesses or professions from holding closed sessions to prepare, approve, grade, or administer examinations.

(2) Prevent an advisory body of a state body that administers the licensing of persons engaged in businesses or professions from conducting a closed session to discuss matters that 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.

(3) 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) or similar provisions of law.

(4) 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.

(5) Prevent any closed session to consider the conferring of honorary degrees, or gifts, donations, and bequests that the donor or proposed donor has requested in writing to be kept confidential.

(6) 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.

(7) (A) 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.

(B) 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 that the negotiations may concern and the person or persons with whom its negotiator may negotiate.

(C) For purposes of this paragraph, the negotiator may be a member of the state body.

(D) For purposes of this paragraph, "lease" includes renewal or renegotiation of a lease.

(E) Nothing in this paragraph shall preclude a state body from holding a closed session for discussions regarding eminent domain proceedings pursuant to subdivision (e).

(8) 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.

(9) 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.

(10) Prevent the Franchise Tax Board from holding closed sessions for the purpose of discussion of confidential tax returns or information 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.

(11) Require the Franchise Tax Board to notice or disclose any confidential tax information considered in closed sessions, or documents executed in connection therewith, the public disclosure of which is prohibited pursuant to Article 2 (commencing with Section 19542) of Chapter 7 of Part 10.2 of the Revenue and Taxation Code.

(12) Prevent the Board of Corrections from holding closed sessions when considering reports of crime conditions under Section 6027 of the Penal Code.

(13) Prevent the State Air Resources Board from holding closed sessions when considering the proprietary specifications and performance data of manufacturers.

(14) Prevent the State Board of Education or the Superintendent of Public Instruction, or any committee advising the board or the superintendent, from holding closed sessions on those portions of its review of assessment instruments pursuant to Chapter 5 (commencing with Section 60600) of, or pursuant to Chapter 8 (commencing with Section 60850) 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.

(15) Prevent the California Integrated Waste Management Board or its auxiliary committees from holding closed sessions for the purpose of discussing confidential tax returns, discussing trade secrets or

confidential or proprietary information in its possession, or discussing other data, the public disclosure of which is prohibited by law.

(16) 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 paragraph, a state body shall also be exempt from the provisions of paragraph (7) relating to the identification of real properties prior to the closed session.

(17) 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), Chapter 10.3 (commencing with Section 3512), Chapter 10.5 (commencing with Section 3525), or Chapter 10.7 (commencing with Section 3540) 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.

(d) (1) 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.

(2) 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 any person or entity under the jurisdiction of the commission.

(e) (1) 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.

(2) 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:

(A) 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.

(B) (i) 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.

(ii) Based on existing facts and circumstances, the state body is meeting only to decide whether a closed session is authorized pursuant to clause (i).

(C) (i) Based on existing facts and circumstances, the state body has decided to initiate or is deciding whether to initiate litigation.

(ii) 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 subparagraph (A) or (B), 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.

(iii) 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.

(iv) 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.

(f) In addition to subdivisions (a), (b), and (c), nothing in this article shall be construed to do any of the following:

(1) 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.

(2) Prevent the examining committee established by the State Board of Forestry and Fire Protection, 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.

(3) Prevent an administrative committee established by the California Board of Accountancy pursuant to Section 5020 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 California 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.

(4) Prevent a state body, as defined in subdivision (b) of Section 11121, 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.

(5) Prevent a state body, as defined in subdivision (d) of Section 11121, 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 subdivision (a) or (b) of Section 11121.

(6) Prevent a state body, as defined in subdivision (c) of Section 11121, from conducting a closed session to consider any matter that properly could be considered in a closed session by the state body it advises.

(7) Prevent the State Board of Equalization from holding closed sessions for either of the following:

(A) When considering matters pertaining to the appointment or removal of the Executive Secretary of the State Board of Equalization.

(B) For the purpose of hearing confidential taxpayer appeals or data, the public disclosure of which is prohibited by law.

(8) Require the State Board of Equalization to disclose any action taken in closed session or documents executed in connection with that action, the public disclosure of which is prohibited by law pursuant to Sections 15619 and 15641 of this code and Sections 833, 7056, 8255, 9255, 11655, 30455, 32455, 38705, 38706, 43651, 45982, 46751, 50159, 55381, and 60609 of the Revenue and Taxation Code.

(9) Prevent the California Earthquake Prediction Evaluation Council, or other body appointed to advise the Director of the Office of Emergency Services or the Governor concerning matters relating to volcanic or earthquake predictions, from holding closed sessions when considering the evaluation of possible predictions.

(g) This article does not prevent either of the following:

(1) 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.

(2) The Commission on Teacher Credentialing from holding closed sessions when considering matters relating to the recruitment, appointment, or removal of its executive director.

SEC. 93.8. Section 11550 of the Government Code is amended to read:

11550. Effective January 1, 1988, an annual salary of ninety-one thousand fifty-four dollars ($91,054) shall be paid to each of the following:

(a) Director of Finance.
(b) Secretary of Business, Transportation and Housing Agency.
(c) Secretary of Resources Agency.
(d) Secretary of Health and Welfare Agency.
(e) Secretary of State and Consumer Services Agency.
(f) Director of Industrial Relations.
(g) Commissioner of the California Highway Patrol.
(h) Secretary of Youth and Adult Correctional Agency.
(i) Secretary of Food and Agriculture.
(j) Secretary of Technology, Trade, and Commerce.
(k) Secretary of Veterans Affairs.

The annual compensation provided by this section shall be increased in any fiscal year in which a general salary increase is provided for state employees. The amount of the increase provided by this section shall be comparable to, but shall not exceed, the percentage of the general salary increases provided for state employees during that fiscal year.

SEC. 93.9. Section 12800 of the Government Code is amended to read:

12800. There are in the state government the following agencies: State and Consumer Services; Business, Transportation and Housing; California Environmental Protection; California Health and Human Services; Resources; Technology, Trade, and Commerce; and Youth and Adult Correctional.

Whenever the term ''Agriculture and Services Agency'' appears in any law, it means the ''State and Consumer Services Agency,'' and whenever the term ''Secretary of Agriculture and Services Agency'' appears in any law, it means the ''Secretary of State and Consumer Services Agency.''

Whenever the term ''Business and Transportation Agency'' appears in any law, it means the ''Business, Transportation and Housing Agency,'' and whenever the term ''Secretary of the Business and Transportation Agency'' appears in any law, it means the ''Secretary of the Business, Transportation and Housing Agency.''

Whenever the term ''Health and Welfare Agency'' appears in any law, it means the ''California Health and Human Services Agency,'' and whenever the term ''Secretary of the Health and Welfare Agency''

appears in any law, it means the "Secretary of the California Health and Human Services Agency."

SEC. 94. Section 12940 of the Government Code is amended to read:

12940. It shall be an unlawful employment practice, unless based upon a bona fide occupational qualification, or, except where based upon applicable security regulations established by the United States or the State of California:

(a) For an employer, because of the race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, or sexual orientation of any person, to refuse to hire or employ the person or to refuse to select the person for a training program leading to employment, or to bar or to discharge the person from employment or from a training program leading to employment, or to discriminate against the person in compensation or in terms, conditions, or privileges of employment.

(1) This part does not prohibit an employer from refusing to hire or discharging an employee with a physical or mental disability, or subject an employer to any legal liability resulting from the refusal to employ or the discharge of an employee with a physical or mental disability, where the employee, because of his or her physical or mental disability, is unable to perform his or her essential duties even with reasonable accommodations, or cannot perform those duties in a manner that would not endanger his or her health or safety or the health or safety of others even with reasonable accommodations.

(2) This part does not prohibit an employer from refusing to hire or discharging an employee who, because of the employee's medical condition, is unable to perform his or her essential duties even with reasonable accommodations, or cannot perform those duties in a manner that would not endanger the employee's health or safety or the health or safety of others even with reasonable accommodations. Nothing in this part shall subject an employer to any legal liability resulting from the refusal to employ or the discharge of an employee who, because of the employee's medical condition, is unable to perform his or her essential duties, or cannot perform those duties in a manner that would not endanger the employee's health or safety or the health or safety of others even with reasonable accommodations.

(3) Nothing in this part relating to discrimination on account of marital status shall do either of the following:

(A) Affect the right of an employer to reasonably regulate, for reasons of supervision, safety, security, or morale, the working of spouses in the same department, division, or facility, consistent with the rules and regulations adopted by the commission.

(B) Prohibit bona fide health plans from providing additional or greater benefits to employees with dependents than to those employees without or with fewer dependents.

(4) Nothing in this part relating to discrimination on account of sex shall affect the right of an employer to use veteran status as a factor in employee selection or to give special consideration to Vietnam era veterans.

(b) For a labor organization, because of the race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, or sexual orientation of any person, to exclude, expel, or restrict from its membership the person, or to provide only second-class or segregated membership or to discriminate against any person because of the race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, or sexual orientation of the person in the election of officers of the labor organization or in the selection of the labor organization's staff or to discriminate in any way against any of its members or against any employer or against any person employed by an employer.

(c) For any person to discriminate against any person in the selection or training of that person in any apprenticeship training program or any other training program leading to employment because of the race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, or sexual orientation of the person discriminated against.

(d) For any employer or employment agency to print or circulate or cause to be printed or circulated any publication, or to make any non-job-related inquiry of an employee or applicant, either verbal or through use of an application form, that expresses, directly or indirectly, any limitation, specification, or discrimination as to race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, or sexual orientation, or any intent to make any limitation, specification, or discrimination.

(e) (1) Except as provided in paragraph (2) or (3), for any employer or employment agency to require any medical or psychological examination of an applicant, to make any medical or psychological inquiry of an applicant, to make any inquiry whether an applicant has a mental disability or physical disability or medical condition, or to make any inquiry regarding the nature or severity of a physical disability, mental disability, or medical condition.

(2) Notwithstanding paragraph (1), an employer or employment agency may inquire into the ability of an applicant to perform job-related functions and may respond to an applicant's request for reasonable accommodation.

(3) Notwithstanding paragraph (1), an employer or employment agency may require a medical or psychological examination or make a medical or psychological inquiry of a job applicant after an employment offer has been made but prior to the commencement of employment duties, provided that the examination or inquiry is job-related and consistent with business necessity and that all entering employees in the same job classification are subject to the same examination or inquiry.

(f) (1) Except as provided in paragraph (2), for any employer or employment agency to require any medical or psychological examination of an employee, to make any medical or psychological inquiry of an employee, to make any inquiry whether an employee has a mental disability, physical disability, or medical condition, or to make any inquiry regarding the nature or severity of a physical disability, mental disability, or medical condition.

(2) Notwithstanding paragraph (1), an employer or employment agency may require any examinations or inquiries that it can show to be job-related and consistent with business necessity. An employer or employment agency may conduct voluntary medical examinations, including voluntary medical histories, which are part of an employee health program available to employees at that worksite.

(g) For any employer, labor organization, or employment agency to harass, discharge, expel, or otherwise discriminate against any person because the person has made a report pursuant to Section 11161.8 of the Penal Code that prohibits retaliation against hospital employees who report suspected patient abuse by health facilities or community care facilities.

(h) For any employer, labor organization, employment agency, or person to discharge, expel, or otherwise discriminate against any person because the person has opposed any practices forbidden under this part or because the person has filed a complaint, testified, or assisted in any proceeding under this part.

(i) For any person to aid, abet, incite, compel, or coerce the doing of any of the acts forbidden under this part, or to attempt to do so.

(j) (1) For an employer, labor organization, employment agency, apprenticeship training program or any training program leading to employment, or any other person, because of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, age, or sexual orientation, to harass an employee, an applicant, or a person providing services pursuant to a contract. Harassment of an employee, an applicant, or a person providing services pursuant to a contract by an employee other than an agent or supervisor shall be unlawful if the entity, or its agents or supervisors, knows or should have known of this conduct and fails to take immediate and appropriate corrective action. An entity shall take all

reasonable steps to prevent harassment from occurring. Loss of tangible job benefits shall not be necessary in order to establish harassment.

(2) The provisions of this subdivision are declaratory of existing law, except for the new duties imposed on employers with regard to harassment.

(3) An employee of an entity subject to this subdivision is personally liable for any harassment prohibited by this section that is perpetrated by the employee, regardless of whether the employer or covered entity knows or should have known of the conduct and fails to take immediate and appropriate corrective action.

(4) (A) For purposes of this subdivision only, ''employer'' means any person regularly employing one or more persons or regularly receiving the services of one or more persons providing services pursuant to a contract, or any person acting as an agent of an employer, directly or indirectly, the state, or any political or civil subdivision of the state, and cities. The definition of ''employer'' in subdivision (d) of Section 12926 applies to all provisions of this section other than this subdivision.

(B) Notwithstanding subparagraph (A), for purposes of this subdivision, ''employer'' does not include a religious association or corporation not organized for private profit, except as provided in Section 12926.2.

(C) For purposes of this subdivision, ''harassment'' because of sex includes sexual harassment, gender harassment, and harassment based on pregnancy, childbirth, or related medical conditions.

(5) For purposes of this subdivision, ''a person providing services pursuant to a contract'' means a person who meets all of the following criteria:

(A) The person has the right to control the performance of the contract for services and discretion as to the manner of performance.

(B) The person is customarily engaged in an independently established business.

(C) The person has control over the time and place the work is performed, supplies the tools and instruments used in the work, and performs work that requires a particular skill not ordinarily used in the course of the employer's work.

(k) For an employer, labor organization, employment agency, apprenticeship training program, or any training program leading to employment, to fail to take all reasonable steps necessary to prevent discrimination and harassment from occurring.

(*l*) For an employer or other entity covered by this part to refuse to hire or employ a person or to refuse to select a person for a training program leading to employment or to bar or to discharge a person from employment or from a training program leading to employment, or to

discriminate against a person in compensation or in terms, conditions, or privileges of employment because of a conflict between the person's religious belief or observance and any employment requirement, unless the employer or other entity covered by this part demonstrates that it has explored any available reasonable alternative means of accommodating the religious belief or observance, including the possibilities of excusing the person from those duties that conflict with his or her religious belief or observance or permitting those duties to be performed at another time or by another person, but is unable to reasonably accommodate the religious belief or observance without undue hardship on the conduct of the business of the employer or other entity covered by this part. Religious belief or observance, as used in this section, includes, but is not limited to, observance of a Sabbath or other religious holy day or days, and reasonable time necessary for travel prior and subsequent to a religious observance.

(m) For an employer or other entity covered by this part to fail to make reasonable accommodation for the known physical or mental disability of an applicant or employee. Nothing in this subdivision or in paragraph (1) or (2) of subdivision (a) shall be construed to require an accommodation that is demonstrated by the employer or other covered entity to produce undue hardship to its operation.

(n) For an employer or other entity covered by this part to fail to engage in a timely, good faith, interactive process with the employee or applicant to determine effective reasonable accommodations, if any, in response to a request for reasonable accommodation by an employee or applicant with a known physical or mental disability or known medical condition.

(o) For an employer or other entity covered by this part, to subject, directly or indirectly, any employee, applicant, or other person to a test for the presence of a genetic characteristic.

SEC. 94.5. Section 12965 of the Government Code is amended to read:

12965. (a) (1) In the case of failure to eliminate an unlawful practice under this part through conference, conciliation, or persuasion, or in advance thereof if circumstances warrant, the director in his or her discretion may cause to be issued in the name of the department a written accusation. The accusation shall contain the name of the person, employer, labor organization, or employment agency accused, which shall be known as the respondent, shall set forth the nature of the charges, shall be served upon the respondent together with a copy of the verified complaint, as amended, and shall require the respondent to answer the charges at a hearing.

(2) For any complaint treated by the director as a group or class complaint for purposes of investigation, conciliation, and accusation

pursuant to Section 12961, an accusation shall be issued, if at all, within two years after the filing of the complaint. For any complaint alleging a violation of Section 51.7 of the Civil Code, an accusation shall be issued, if at all, within two years after the filing of the complaint. For all other complaints, an accusation shall be issued, if at all, within one year after the filing of a complaint. If the director determines, pursuant to Section 12961, that a complaint investigated as a group or class complaint under Section 12961 is to be treated as a group or class complaint for purposes of conciliation and accusation as well, that determination shall be made and shall be communicated in writing within one year after the filing of the complaint to each person, employer, labor organization, employment agency, or public entity alleged in the complaint to have committed an unlawful practice.

(b) (1) If an accusation is not issued within 150 days after the filing of a complaint, or if the department earlier determines that no accusation will issue, the department shall promptly notify, in writing, the person claiming to be aggrieved that the department shall issue, on his or her request, the right-to-sue notice. This notice shall indicate that the person claiming to be aggrieved may bring a civil action under this part against the person, employer, labor organization, or employment agency named in the verified complaint within one year from the date of that notice. If the person claiming to be aggrieved does not request a right-to-sue notice, the department shall issue the notice upon completion of its investigation, and not later than one year after the filing of the complaint.

(2) A city, county, or district attorney in a location having an enforcement unit established on or before March 1, 1991, pursuant to a local ordinance enacted for the purpose of prosecuting HIV/AIDS discrimination claims, acting on behalf of any person claiming to be aggrieved due to HIV/AIDS discrimination, may also bring a civil action under this part against the person, employer, labor organization, or employment agency named in the notice. The superior courts of the State of California shall have jurisdiction of those actions, and the aggrieved person may file in any of these courts. Those actions may be brought in any county in the state in which the unlawful practice is alleged to have been committed, in the county in which the records relevant to the practice are maintained and administered, or in the county in which the aggrieved person would have worked or would have had access to the public accommodation but for the alleged unlawful practice, but if the defendant is not found within any of these counties, an action may be brought within the county of the defendant's residence or principal office.

(3) A copy of any complaint filed pursuant to this part shall be served on the principal offices of the department and of the commission. The remedy for failure to send a copy of a complaint is an order to do so.

(4) Actions may not be filed as class actions or may not be maintained as class actions by the person or persons claiming to be aggrieved where those persons have filed a civil class action in the federal courts alleging a comparable claim of employment discrimination against the same defendant or defendants.

(5) In actions brought under this section, the court, in its discretion, may award to the prevailing party reasonable attorney's fees and costs, including expert witness fees, except where the action is filed by a public agency or a public official, acting in an official capacity.

(c) (1) If an accusation includes a prayer either for damages for emotional injuries as a component of actual damages, or for administrative fines, or for both, or if an accusation is amended for the purpose of adding a prayer either for damages for emotional injuries as a component of actual damages, or for administrative fines, or both, the respondent may, within 30 days after service of the accusation or amended accusation, elect to transfer the proceedings to a court in lieu of a hearing pursuant to subdivision (a) by serving a written notice to that effect on the department, the commission, and the person claiming to be aggrieved. The commission shall prescribe the form and manner of giving written notice.

(2) No later than 30 days after the completion of service of the notice of election pursuant to paragraph (1), the department shall dismiss the accusation and shall, either itself or, at its election, through the Attorney General, file in the appropriate court an action in its own name on behalf of the person claiming to be aggrieved as the real party in interest. In this action, the person claiming to be aggrieved shall be the real party in interest and shall have the right to participate as a party and be represented by his or her own counsel. Complaints filed pursuant to this section shall be filed in the appropriate superior court in any county in which unlawful practices are alleged to have been committed, in the county in which records relevant to the alleged unlawful practices are maintained and administered, or in the county in which the person claiming to be aggrieved would have worked or would have had access to public accommodation, but for the alleged unlawful practices. If the defendant is not found in any of these counties, the action may be brought within the county of the defendant's residence or principal office. Those actions shall be assigned to the court's delay reduction program, or otherwise given priority for disposition by the court in which the action is filed.

(3) A court may grant as relief in any action filed pursuant to this subdivision any relief a court is empowered to grant in a civil action brought pursuant to subdivision (b), in addition to any other relief that, in the judgment of the court, will effectuate the purpose of this part. This relief may include a requirement that the employer conduct training for

all employees, supervisors, and management on the requirements of this part, the rights and remedies of those who allege a violation of this part, and the employer's internal grievance procedures.

(4) The department may amend an accusation to pray for either damages for emotional injury or for administrative fines, or both, provided that the amendment is made within 30 days of the issuance of the original accusation.

SEC. 95. Section 13964 of the Government Code, as amended by Section 7 of Chapter 712 of the Statutes of 2001, 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 that 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. In the case of a minor, the board shall consider the minor's age, physical condition, and psychological state as well as any compelling health and safety concerns in determining whether the minor's application should be denied pursuant to this section.

(c) No victim shall be eligible for assistance under this article under either of the following circumstances:

(1) The board finds that the victim knowingly and willingly participated in the commission of the crime. This paragraph shall not apply if the injury occurred as a direct result of a crime committed in violation of subdivision (d) of Section 261.5 of the Penal Code.

(2) The board finds that the victim failed to cooperate reasonably with a law enforcement agency in the apprehension and conviction of a criminal committing the crime. In the case of a minor, the board shall consider the minor's age, physical condition, and psychological state as well as any compelling health and safety concerns in determining whether the minor is eligible for assistance pursuant to this section.

(d) No derivative victim shall be eligible for assistance under this article under either 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 reasonably with a law enforcement agency in the apprehension and conviction of a criminal committing the crime.

(e) Notwithstanding paragraph (2) of subdivision (c) and paragraph (2) of subdivision (d), for claims based on domestic violence, the board shall adopt guidelines that allow the board to consider and approve

applications for assistance based on domestic violence, taking into account the victim's age, physical condition, psychological state, and any compelling health or safety reasons, including, but not limited to, a reasonable fear of retaliation or harm that would jeopardize the well-being of the victim or the victim's family, in evaluating a victim's cooperation with law enforcement, and giving due consideration to the degree of cooperation of which the victim is capable in light of the presence of any of these factors.

For the purposes of this section, the application of a derivative victim of domestic violence under the age of 18 years shall not be deemed ineligible on the basis of ineligibility of the victim under subdivision (b).

(f) 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).

(g) 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.

(h) 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.

(i) This section shall remain in effect only until January 1, 2004, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2004, deletes or extends that date.

SEC. 96. Section 13965 of the Government Code, as amended by Section 10.5 of Chapter 712 of the Statutes of 2001, is amended to read:

13965. (a) If the application for assistance is approved, the board shall determine what type of state assistance will best aid the victim or derivative victim. The board may take any or all of the following actions:

(1) Reimburse the following persons for the expense of their outpatient mental health counseling when that mental health counseling is necessary as a direct result of the crime:

(A) A victim in an amount not to exceed ten thousand dollars ($10,000).

(B) A derivative victim who is the surviving parent, sibling, child, spouse, or fiancé of a victim of a crime which directly resulted in the

death of the victim in an amount not to exceed ten thousand dollars ($10,000).

(C) A derivative victim, as defined in subparagraph (A), (B), (C), or (D) of paragraph (2) of subdivision (a) of Section 13960, who is the primary caretaker of a minor victim of sexual or physical abuse whose claim is not denied or reduced pursuant to subdivision (b) or (d) of Section 13964 in a total amount not to exceed ten thousand dollars ($10,000) for not more than two derivative victims described in this subparagraph.

(D) A derivative victim not eligible for reimbursement pursuant to subparagraph (B) or (C) in an amount not to exceed three thousand dollars ($3,000), provided that mental health counseling of a derivative victim under subparagraph (E) of paragraph (2) of subdivision (a) of Section 13960 shall be reimbursed only if that counseling is necessary for the treatment of the victim.

(E) A victim of a crime committed in violation of subdivision (d) of Section 261.5 of the Penal Code in an amount not to exceed three thousand dollars ($3,000) for mental health counseling expenses only. A derivative victim of a crime committed in violation of subdivision (d) of Section 261.5 of the Penal Code shall not be eligible for reimbursement of mental health counseling expenses.

The board may authorize a direct cash payment to a provider of psychological or psychiatric treatment or mental health counseling services, including peer counseling services provided by a rape crisis center as defined by Section 13837 of the Penal Code or to either the victim or the derivative victim, equal to the pecuniary loss attributable to medical or medical-related expenses, including counseling, directly resulting from the injury. Reimbursement on the initial claim for any psychological, psychiatric, or mental health counseling services, including peer counseling services provided by a rape crisis center, shall, if the application has been approved, be paid by the board within 90 days of the date of receipt of the claim for payment, with subsequent payments to be made to the provider within one month of the receipt of a claim for payment. However, the board may not authorize without good cause a direct cash payment to a licensed health care provider or rape crisis center over the objection of the applicant.

When a public agency, including a court or district attorney or a police, county child protective services, or other state or local governmental agency, refers a victim of crime to a private nonprofit agency for treatment for that victim, the private nonprofit agency shall be reimbursed for those services at the level of the normal and customary fee charged by the private nonprofit agency to clients with adequate means of payment for its services, except that this reimbursement shall not exceed the maximum reimbursement rates set by the board and may

be made only to the extent that the victim otherwise qualifies for services under the victims of crime program and that other reimbursement or direct subsidies are not available to serve the victim.

Payments authorized pursuant to this paragraph for peer counseling services provided by a rape crisis center shall not exceed fifteen dollars ($15) for each hour of services provided. Those services shall be limited to individual, in-person counseling on a face-to-face basis for a period not to exceed 10 weeks plus one series of facilitated support group counseling sessions.

(2) Authorize a cash payment to the victim or derivative victim equal to the pecuniary loss resulting from loss of wages pursuant to Section 13965.1.

(3) Authorize a cash payment to a derivative victim for loss of support pursuant to Section 13965.1.

(4) (A) Authorize a cash payment or reimbursement not to exceed two thousand dollars ($2,000) to a victim of sexual assault or domestic violence for expenses incurred in relocating, if the expenses are determined by law enforcement to be necessary for the personal safety of the victim or by a mental health treatment provider to be necessary for the emotional well-being of the victim. These expenses may include, but need not be limited to, all of the following:

(i) Deposits for utilities and telephone service.

(ii) Deposits for rental housing, not to exceed the first and last months' rent and a security deposit or two thousand dollars ($2,000), whichever is less.

(iii) Temporary lodging and food expenses, not to exceed one thousand dollars ($1,000).

(iv) Clothing and other personal items, not to exceed five hundred dollars ($500).

(B) The board shall develop procedures to ensure that the victim is using the cash payment only for the purposes of this paragraph. The procedures may include, but need not be limited to, requiring copies of receipts, lease agreements, or other documents as requested, or developing a method for direct payment to the landlord or vendor.

(C) When a relocation payment or reimbursement is provided to a victim of sexual assault or domestic violence, the victim shall agree to not inform the offender, if the identity of the offender is known to the victim, of the location of the victim's new residence and to not allow the offender, if the identity of the offender is known to the victim, on the premises at any time, or shall agree to seek a restraining order against the offender, if the identity of the offender is known to the victim.

(D) The board may authorize a cash payment or reimbursement pursuant to this paragraph to victims of crimes other than domestic violence if the expenses are determined by law enforcement to be

necessary for the personal safety of the victim or by a mental health treatment provider to be necessary for the emotional well-being of the victim.

(E) The cash payment or reimbursement made under this paragraph shall only be awarded once to any victim, except that the board may, under compelling circumstances, award a second cash payment or reimbursement to the same victim if both of the following conditions are met:

(i) The crime or series of crimes occurs more than three years from the date of the crime giving rise to the initial relocation cash payment or reimbursement.

(ii) The crime does not involve the same perpetrator.

(5) Authorize cash payments to or on behalf of the victim for job retraining or similar employment-oriented rehabilitative services.

(6) (A) In the case of a victim of a crime that occurred in the victim's residence, authorize reimbursement for the expense for installing or increasing residential security, not to exceed one thousand dollars ($1,000). Installing or increasing residential security may include, but need not be limited to, both of the following:

(i) Home security device or system.

(ii) Replacing or increasing the number of locks.

(B) Reimbursement under this paragraph shall be made upon verification by law enforcement to be necessary for the personal safety of the victim or by a mental health treatment provider to be necessary for the emotional well-being of the victim.

(C) The board shall develop procedures to ensure that the victim is using the reimbursement only for the purposes of this paragraph. The procedures may include, but need not be limited to, requiring copies of receipts, invoices, estimates, or other documents, or developing a method for direct payment to the vendor.

(7) (A) In the case of a victim who is permanently disabled as a direct result of the crime, whether the disability is partial or total, authorize a reimbursement for the expense of renovating or retrofitting his or her residence or a vehicle, or both, to make the residence, the vehicle, or both, accessible or the vehicle operational by the victim. Reimbursement shall be made upon verification that the expense is medically necessary.

(B) The board shall develop procedures to ensure that reimbursement is made only for the purposes of this paragraph. The procedures may include, but need not be limited to, requiring copies of receipts, invoices, estimates, or other documents, or developing a method for direct payment to the vendor.

(8) Obtain an independent examination and report from any provider of psychological or psychiatric treatment or mental health counseling services, if it believes there is a reasonable basis for requesting an

additional evaluation. In cases where the crime involves sexual assault, the provider shall have expertise in the needs of sexual assault victims. In cases where the crime involves child abuse or molestation, the provider shall have expertise in the needs of victims of child abuse or molestation, as appropriate. When a reevaluation is obtained, payments shall not be discontinued prior to completion of the reevaluation.

(9) When a victim dies as a direct result of a crime, the board may reimburse any individual who voluntarily, and without anticipation of personal gain, pays or assumes the obligation to pay, the medical or burial expenses incurred as a direct result of the crime for the medical or burial expenses incurred in an amount not to exceed the rates or limitations established by the board.

(10) The total award to or on behalf of the victim or a derivative victim shall not exceed thirty-five thousand dollars ($35,000), and may be increased only in accordance with this section.

(11) If the victim requests that the board give priority to reimbursement of loss of wages, the board shall not pay medical expenses or mental health counseling expenses except upon the request of the victim or after determining that payment of these expenses will not decrease the funds available to the victim for payment of loss of wages.

(12) The board may authorize a direct cash payment to a provider of services that are reimbursable pursuant to this article. However, the board may not, without good cause, authorize a direct cash payment to a provider over the objection of the victim or applicant.

(13) When a victim dies as a result of a crime and the crime occurs in a residence, the board may reimburse any individual who voluntarily, and without anticipation of personal gain, pays or assumes the obligation to pay the reasonable costs to clean the scene of the crime in an amount not to exceed one thousand dollars ($1,000). Services reimbursed pursuant to this subdivision shall be performed by persons registered with the State Department of Health Services as trauma scene waste practitioners in accordance with Chapter 9.5 (commencing with Section 118321) of Part 14 of Division 104 of the Health and Safety Code.

(b) Assistance granted pursuant to this article shall not disqualify an otherwise eligible victim or derivative victim from participation in any other public assistance program.

(c) Cash payments made pursuant to this article may be on a one-time or periodic basis. If periodic, the board may increase, reduce, or terminate the amount of assistance according to the victim's or derivative victim's need, subject to the maximum limits provided in this section.

(d) The board shall pay attorney's fees representing the reasonable value of legal services rendered to the applicant, in an amount equal to 10 percent of the amount of the award, or five hundred dollars ($500),

whichever is less for each victim and each derivative victim. An attorney receiving fees from another source may waive the right to receive fees under this section. Payments under this section shall be in addition to any amount authorized or ordered under subdivision (d) of Section 13969.1.

(e) No attorney shall charge, demand, receive, or collect any amount for services rendered in connection with any proceedings under this article except as awarded under this article.

(f) The maximum cash payments authorized in paragraph (10) of subdivision (a) shall be increased to seventy thousand dollars ($70,000) if federal funds for those increases are available.

(g) Notwithstanding subdivisions (a) and (f), a victim injured between January 1, 1985, and December 31, 1985, shall be entitled to receive a maximum cash payment of forty-six thousand dollars ($46,000) if federal funds for these increases are available, but only for costs in excess of limitations provided for in subdivision (a) which are attributable to medical or medical-related expenses, except for psychological or psychiatric treatment, or mental health counseling services.

(h) Notwithstanding any conflicting provision of this chapter, the board may make additional payments for purposes described in paragraph (1) of subdivision (a) to any victim who filed an application with the board on or after December 1, 1982, who was a victim of a crime involving sexual assault, and who is a minor at the time the additional payments pursuant to this subdivision are made. The payments authorized by this subdivision shall not exceed the limits imposed by subdivisions (a) and (j).

(i) Reimbursement for any medical or medical-related services shall, if the victim's application has been approved, be paid by the board within an average of 90 days from receipt of the claim for payment. Payments to a medical or mental health provider under this subdivision or paragraph (1) of subdivision (a) shall not be discontinued prior to completion of any reevaluation. Whether or not a reevaluation is obtained, if the board determines that payments to a provider shall be discontinued, the board shall notify the provider of their discontinuance within 30 days of its determination.

(j) (1) The board may establish maximum rates and service limitations for reimbursement of medical and medical-related expenses, including counseling expenses, for which restitution is requested pursuant to this section. For mental health counseling services, rates shall not exceed the statewide average. The adoption, amendment, and repeal of these maximum rates shall not be subject to the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1). An informational copy of the maximum rates shall be filed with the Secretary of State upon adoption by the board. A provider who accepts

payment from the program for a service shall accept the program's rates as payment in full and shall not accept any payment on account of the service from any other source if the total of payments accepted would exceed the maximum rate set by the board for that service.

(2) To assure service limitations that are uniform and appropriate to the levels of treatment required by the victim or derivative victim, the board may review all claims for these services as necessary to ensure their medical necessity. The board may further require additional documentation, information, or medical review of cases of continuing treatment which are projected to exceed five thousand dollars ($5,000) to determine the need to continue treatment in excess of that amount. The board may accept or reject claims for the amount in excess of five thousand dollars ($5,000) by applying the same standards applicable to processing the initial claim or may approve a continuing treatment regimen for a specific interval or subject to periodic review as appropriate. All information requested of the treating therapist shall be provided at no cost to the applicant, the board, or to local victim centers, pursuant to subdivision (b) of Section 13962. Requests for additional information shall be made in a timely manner so as not to interfere with necessary treatment.

(k) The authority provided by this section shall not be construed to in any way diminish, enhance, or otherwise affect any authority that the board may have under current law except as explicitly provided in this section.

(*l*) The board, in its discretion, may make payments directly to providers prior to verification.

(m) Notwithstanding paragraph (1) of subdivision (a), the board may reimburse a victim or derivative victim for mental health counseling in excess of that authorized by that paragraph if the claim is based on dire or exceptional circumstances that require more extensive treatment, as approved by the board.

(n) Notwithstanding paragraph (1) of subdivision (a), if, as of December 31, 1993, a person has incurred mental health counseling expenses pursuant to this article in excess of one-half of the amount specified in that subdivision, the board may award, in addition to amounts awarded for previously incurred expenses, an amount equal to not more than one-half of the applicable maximum amount specified in that paragraph or any additional amounts as the board determines is necessary.

(o) The total award to or on behalf of a victim of a crime committed in violation of subdivision (d) of Section 261.5 of the Penal Code shall not exceed three thousand dollars ($3,000) for mental health counseling expenses only.

(p) This section shall remain in effect only until January 1, 2004, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2004, deletes or extends that date.

SEC. 97. Section 13965 of the Government Code, as amended by Section 11.5 of Chapter 712 of the Statutes of 2001, is amended to read:

13965. (a) If the application for assistance is approved, the board shall determine what type of state assistance will best aid the victim or derivative victim. The board may take any or all of the following actions:

(1) Reimburse the following persons for the expense of their outpatient mental health counseling when that mental health counseling is necessary as a direct result of the crime:

(A) A victim in an amount not to exceed ten thousand dollars ($10,000).

(B) A derivative victim who is the surviving parent, sibling, child, spouse, or fiancé of a victim of a crime which directly resulted in the death of the victim in an amount not to exceed ten thousand dollars ($10,000).

(C) A derivative victim who is the primary caretaker of a minor victim of sexual or physical abuse whose claim is not denied or reduced pursuant to subdivision (b) or (d) of Section 13964 in a total amount not to exceed ten thousand dollars ($10,000) for not more than two derivative victims described in this subparagraph.

(D) A derivative victim not eligible for reimbursement pursuant to subparagraph (B) or (C) in an amount not to exceed three thousand dollars ($3,000).

The board may authorize a direct cash payment to a provider of psychological or psychiatric treatment or mental health counseling services, including peer counseling services provided by a rape crisis center as defined by Section 13837 of the Penal Code or to either the victim or the derivative victim, equal to the pecuniary loss attributable to medical or medical-related expenses, including counseling, directly resulting from the injury. Reimbursement on the initial claim for any psychological, psychiatric, or mental health counseling services, including peer counseling services provided by a rape crisis center, shall, if the application has been approved, be paid by the board within 90 days of the date of receipt of the claim for payment, with subsequent payments to be made to the provider within one month of the receipt of a claim for payment. However, the board may not authorize without good cause a direct cash payment to a licensed health care provider or rape crisis center over the objection of the applicant.

When a public agency, including a court or district attorney or a police, county child protective services, or other state or local governmental agency, refers a victim of crime to a private nonprofit agency for treatment for that victim, the private nonprofit agency shall be

reimbursed for those services at the level of the normal and customary fee charged by the private nonprofit agency to clients with adequate means of payment for its services, except that this reimbursement shall not exceed the maximum reimbursement rates set by the board and may be made only to the extent that the victim otherwise qualifies for services under the victims of crime program and that other reimbursement or direct subsidies are not available to serve the victim.

Payments authorized pursuant to this paragraph for peer counseling services provided by a rape counseling center shall not exceed fifteen dollars ($15) for each hour of services provided. Those services shall be limited to individual, in-person counseling on a face-to-face basis for a period not to exceed 10 weeks plus one series of facilitated support group counseling sessions.

(2) Authorize a cash payment to the victim or derivative victim equal to the pecuniary loss resulting from loss of wages pursuant to Section 13965.1.

(3) Authorize a cash payment to a derivative victim for loss of support pursuant to Section 13965.1.

(4) (A) Authorize a cash payment or reimbursement not to exceed two thousand dollars ($2,000) to a victim of sexual assault or domestic violence for expenses incurred in relocating, if the expenses are determined by law enforcement to be necessary for the personal safety of the victim or by a mental health treatment provider to be necessary for the emotional well-being of the victim. These expenses may include, but need not be limited to, all of the following:

(i) Deposits for utilities and telephone service.

(ii) Deposits for rental housing, not to exceed the first and last months' rent and a security deposit or two thousand dollars ($2,000), whichever is less.

(iii) Temporary lodging and food expenses, not to exceed one thousand dollars ($1,000).

(iv) Clothing and other personal items, not to exceed five hundred dollars ($500).

(B) The board shall develop procedures to ensure that the victim is using the cash payment only for the purposes of this paragraph. The procedures may include, but need not be limited to, requiring copies of receipts, lease agreements, or other documents as requested, or developing a method of direct payment to the landlord or vendor.

(C) When a relocation payment or reimbursement is provided to a victim of sexual assault or domestic violence, the victim shall agree to not inform the offender, if the identity of the offender is known to the victim, of the location of the victim's new residence and to not allow the offender, if the identity of the offender is known to the victim, on the

premises at any time, or shall agree to seek a restraining order against the offender, if the identity of the offender is known to the victim.

(D) The board may authorize a cash payment or reimbursement pursuant to this paragraph to victims of crimes other than domestic violence if the expenses are determined by law enforcement to be necessary for the personal safety of the victim or by a mental health treatment provider to be necessary for the emotional well-being of the victim.

(E) The cash payment or reimbursement made under this paragraph shall only be awarded once to any victim, except that the board may, under compelling circumstances, award a second cash payment or reimbursement to the same victim if both of the following conditions are met:

(i) The crime or series of crimes occurs more than three years from the date of the crime giving rise to the initial relocation cash payment or reimbursement.

(ii) The crime does not involve the same perpetrator.

(5) Authorize cash payments to or on behalf of the victim for job retraining or similar employment-oriented rehabilitative services.

(6) (A) In the case of a victim of a crime that occurred in the victim's residence, authorize reimbursement for the expense for installing or increasing residential security, not to exceed one thousand dollars ($1,000). Installing or increasing residential security may include, but need not be limited to, both of the following:

(i) Home security device or system.

(ii) Replacing or increasing the number of locks.

(B) Reimbursement under this paragraph shall be made upon verification by law enforcement to be necessary for the personal safety of the victim or by a mental health treatment provider to be necessary for the emotional well-being of the victim.

(C) The board shall develop procedures to ensure that the victim is using the reimbursement only for the purposes of this paragraph. The procedures may include, but need not be limited to, requiring copies of receipts, invoices, estimates, or other documents, or developing a method for direct payment to the vendor.

(7) (A) In the case of a victim who is permanently disabled as a direct result of the crime, whether the disability is partial or total, authorize reimbursement for the expense of renovating or retrofitting his or her residence or a vehicle, or both, to make the residence, the vehicle, or both, accessible or the vehicle operational by the victim. Reimbursement shall be made upon verification that the expense is medically necessary.

(B) The board shall develop procedures to ensure that reimbursement is made only for the purposes of this paragraph. The procedures may include, but need not be limited to, requiring copies of receipts, invoices,

estimates, or other documents, or developing a method for direct payment to the vendor.

(8) Obtain an independent examination and report from any provider of psychological or psychiatric treatment or mental health counseling services, if it believes there is a reasonable basis for requesting an additional evaluation. In cases where the crime involves sexual assault, the provider shall have expertise in the needs of sexual assault victims. In cases where the crime involves child abuse or molestation, the provider shall have expertise in the needs of victims of child abuse or molestation, as appropriate. When a reevaluation is obtained, payments shall not be discontinued prior to completion of the reevaluation.

(9) When a victim dies as a direct result of a crime, the board may reimburse any individual who voluntarily, and without anticipation of personal gain, pays or assumes the obligation to pay, the medical or burial expenses incurred as a direct result of the crime for the medical or burial expenses incurred in an amount not to exceed the rates or limitations established by the board.

(10) The total award to or on behalf of the victim or a derivative victim shall not exceed thirty-five thousand dollars ($35,000), and may be increased only in accordance with this section.

(11) If the victim requests that the board give priority to reimbursement of loss of wages, the board shall not pay medical expenses or mental health counseling expenses except upon the request of the victim or after determining that payment of these expenses will not decrease the funds available to the victim for payment of loss of wages.

(12) The board may authorize a direct cash payment to a provider of services that are reimbursable pursuant to this article. However, the board may not, without good cause, authorize a direct cash payment to a provider over the objection of the victim or applicant.

(13) When a victim dies as a result of a crime and the crime occurs in a residence, the board may reimburse any individual who voluntarily, and without anticipation of personal gain, pays or assumes the obligation to pay the reasonable costs to clean the scene of the crime in an amount not to exceed one thousand dollars ($1,000). Services reimbursed pursuant to this subdivision shall be performed by persons registered with the State Department of Health Services as trauma scene waste practitioners in accordance with Chapter 9.5 (commencing with Section 118321) of Part 14 of Division 104 of the Health and Safety Code.

(b) Assistance granted pursuant to this article shall not disqualify an otherwise eligible victim or derivative victim from participation in any other public assistance program.

(c) Cash payments made pursuant to this article may be on a one-time or periodic basis. If periodic, the board may increase, reduce, or terminate the amount of assistance according to the victim's or

derivative victim's need, subject to the maximum limits provided in this section.

(d) The board shall pay attorney's fees representing the reasonable value of legal services rendered to the applicant, in an amount equal to 10 percent of the amount of the award, or five hundred dollars ($500), whichever is less for each victim and each derivative victim. An attorney receiving fees from another source may waive the right to receive fees under this section. Payments under this section shall be in addition to any amount authorized or ordered under subdivision (d) of Section 13969.1.

(e) No attorney shall charge, demand, receive, or collect any amount for services rendered in connection with any proceedings under this article except as awarded under this article.

(f) The maximum cash payments authorized in paragraph (10) of subdivision (a) shall be increased to seventy thousand dollars ($70,000) if federal funds for those increases are available.

(g) Notwithstanding subdivisions (a) and (f), a victim injured between January 1, 1985, and December 31, 1985, shall be entitled to receive a maximum cash payment of forty-six thousand dollars ($46,000) if federal funds for these increases are available, but only for costs in excess of limitations provided for in subdivision (a) which are attributable to medical or medical-related expenses, except for psychological or psychiatric treatment, or mental health counseling services.

(h) Notwithstanding any conflicting provision of this chapter, the board may make additional payments for purposes described in paragraph (1) of subdivision (a) to any victim who filed an application with the board on or after December 1, 1982, who was a victim of a crime involving sexual assault, and who is a minor at the time the additional payments pursuant to this subdivision are made. The payments authorized by this subdivision shall not exceed the limits imposed by subdivisions (a) and (j).

(i) Reimbursement for any medical or medical-related services shall, if the victim's application has been approved, be paid by the board within an average of 90 days from receipt of the claim for payment. Payments to a medical or mental health provider under this subdivision or paragraph (1) of subdivision (a) shall not be discontinued prior to completion of any reevaluation. Whether or not a reevaluation is obtained, if the board determines that payments to a provider shall be discontinued, the board shall notify the provider of their discontinuance within 30 days of its determination.

(j) (1) The board may establish maximum rates and service limitations for reimbursement of medical and medical-related expenses, including counseling expenses, for which restitution is requested pursuant to this section. For mental health counseling services, rates

shall not exceed the statewide average. The adoption, amendment, and repeal of these maximum rates shall not be subject to the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1). An informational copy of the maximum rates shall be filed with the Secretary of State upon adoption by the board. A provider who accepts payment from the program for a service shall accept the program's rates as payment in full and shall not accept any payment on account of the service from any other source if the total of payments accepted would exceed the maximum rate set by the board for that service.

(2) To assure service limitations that are uniform and appropriate to the levels of treatment required by the victim or derivative victim, the board may review all claims for these services as necessary to ensure their medical necessity. The board may further require additional documentation, information, or medical review of cases of continuing treatment which are projected to exceed five thousand dollars ($5,000) to determine the need to continue treatment in excess of that amount. The board may accept or reject claims for the amount in excess of five thousand dollars ($5,000) by applying the same standards applicable to processing the initial claim or may approve a continuing treatment regimen for a specific interval or subject to periodic review as appropriate. All information requested of the treating therapist shall be provided at no cost to the applicant, the board, or to local victim centers, pursuant to subdivision (b) of Section 13962. Requests for additional information shall be made in a timely manner so as not to interfere with necessary treatment.

(k) The authority provided by this section shall not be construed to in any way diminish, enhance, or otherwise affect any authority that the board may have under current law except as explicitly provided in this section.

(*l*) The board, in its discretion, may make payments directly to providers prior to verification.

(m) Notwithstanding paragraph (1) of subdivision (a), the board may reimburse a victim or derivative victim for mental health counseling in excess of that authorized by that paragraph if the claim is based on dire or exceptional circumstances that require more extensive treatment, as approved by the board.

(n) Notwithstanding paragraph (1) of subdivision (a), if, as of December 31, 1993, a person has incurred mental health counseling expenses pursuant to this article in excess of one-half of the amount specified in that subdivision, the board may award, in addition to amounts awarded for previously incurred expenses, an amount equal to not more than one-half of the applicable maximum amount specified in that paragraph or any additional amounts as the board determines is necessary.

(o) This section shall become operative on January 1, 2004.

SEC. 98. Section 14672.99 of the Government Code is amended to read:

14672.99. (a) Notwithstanding Section 14670, the Director of General Services, with the consent of the Department of the Youth Authority, shall lease a five-acre portion of the Ione Youth Facility as designated by the Department of the Youth Authority, for a term not to exceed 30 years and at the rate of one dollar ($1) per year, to the County of Amador on behalf of the Mother Lode Juvenile Facility Authority for use as a regional juvenile detention facility.

(b) The lease shall provide that the property shall be leased ''as is'' and that the state shall have no liability for repairs, rehabilitation, or other improvements. It shall provide that the lessee county or the authority shall complete the detention facility not later than three years after the effective date of the lease, and that the facility shall be operated by the authority pursuant to the terms of the lease.

(c) The lease described in this section shall be exempt from the requirements of Division 13 (commencing with Section 21000) of the Public Resources Code.

(d) The Department of General Services shall be reimbursed for its costs related to the lease, including, but not limited to, any survey costs, title transfer fees, and department staff time.

(e) For purposes of this section, ''Mother Lode Juvenile Facility Authority'' means the joint powers authority comprising the Counties of Amador, Calaveras, and Tuolumne.

(f) The Legislature finds and declares that the lease of a portion of the Ione Youth Facility to the County of Amador on behalf of the Mother Lode Juvenile Facility Authority for use as a juvenile detention facility pursuant to this section is for a statewide public purpose.

SEC. 99. Section 14684 of the Government Code is amended to read:

14684. (a) The department, in consultation with the State Energy Resources Conservation and Development Commission, shall ensure that solar energy equipment is installed, no later than January 1, 2007, on all state buildings and state parking facilities, where feasible. The department shall establish a schedule designating when solar energy equipment will be installed on each building and facility, with priority given to buildings and facilities where installation is most feasible, both for state building and facility use and consumption and local publicly owned electric utility use, where feasible.

(b) Solar energy equipment shall be installed where feasible as part of the construction of all state buildings and state parking facilities that commences after December 31, 2002.

(c) For purposes of this section, it is feasible to install solar energy equipment if adequate space on a building is available, and if the solar energy equipment is cost-effective.

(d) No part of this section shall be construed to exempt the state from any applicable fee or requirement imposed by the Public Utilities Commission.

(e) The department may adopt regulations for the purposes of this section as emergency regulations in accordance with Chapter 3.5 (commencing with Section 11340) of Part 1. For purposes of Chapter 3.5 (commencing with Section 11340) of Part 1, including, but not limited to, Section 11349.6, 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, safety, and general welfare. Notwithstanding the 120-day limit specified in subdivision (e) of Section 11346.1, the regulations shall be repealed 180 days after their effective date, unless the department complies with Chapter 3.5 (commencing with Section 11340) of Part 1 as provided in subdivision (e) of Section 11346.1.

(f) For purposes of this section, the following terms have the following meanings:

(1) ''Cost-effective'' means that the present value of the savings generated over the life of the solar energy system, including consideration of the value of the energy produced during peak and off-peak demand periods and the value of a reliable energy supply not subject to price volatility, shall exceed the present value cost of the solar energy equipment by not less than 10 percent. The present value cost of the solar energy equipment does not include the cost of unrelated building components. The department, in making the present value assessment, shall obtain interest rates, discount rates, and consumer price index figures from the Treasurer, and shall take into consideration air emission reduction benefits.

(2) ''Local publicly owned electric utility'' means a local publicly owned electric utility as defined in Section 9604 of the Public Utilities Code.

(3) ''Solar energy equipment'' means equipment whose primary purpose is to provide for the collection, conversion, storage, or control of solar energy for electricity generation.

SEC. 100. Section 19574 of the Government Code is amended to read:

19574. (a) The appointing power, or its authorized representative, may take adverse action against an employee for one or more of the causes for discipline specified in this article. Adverse action is valid only if a written notice is served on the employee prior to the effective date of the action, as defined by board rule. The notice shall be served upon

the employee either personally or by mail and shall include: (1) a statement of the nature of the adverse action; (2) the effective date of the action; (3) a statement of the reasons therefor in ordinary language; (4) a statement advising the employee of the right to answer the notice orally or in writing; and (5) a statement advising the employee of the time within which an appeal must be filed. The notice shall be filed with the board not later than 15 calendar days after the effective date of the adverse action.

(b) Effective January 1, 1996, this subdivision shall apply only to state employees in State Bargaining Unit 5. This section shall not apply to discipline as defined by Section 19576.1.

(c) This subdivision shall apply only to state employees in State Bargaining Unit 8. This section shall not apply to minor discipline, as defined by Section 19576.5 or a memorandum of understanding.

(d) This subdivision shall apply only to state employees in State Bargaining Units 8, 12, and 13. 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 the memorandum of understanding require the expenditure of funds, the provisions may not become effective unless approved by the Legislature in the annual Budget Act.

SEC. 101. Section 20423.5 of the Government Code is amended to read:

20423.5. ''Local safety member'' also includes any park ranger employed by a contracting agency who is a peace officer as defined in subdivision (b) of Section 830.31 of the Penal Code and whose primary responsibility is maintaining the peace and whose duties include law enforcement, emergency medical care first response, or fire suppression and prevention.

This section shall not apply to any contracting agency nor to the employees of a contracting agency until the agency elects to be subject to this section by amendment to its contract with the board pursuant to Section 20474, or by express provision within its contract with the board.

SEC. 102. Section 20429 of the Government Code is amended to read:

20429. ''Local police officer'' also includes any officer or employee of a contracting agency other than a city or a county who is a peace officer as defined in the Penal Code and whose principal duties consist of active law enforcement but excluding clerical personnel or those whose principal duties are that of communication officer, identification officer, machinist, mechanic, security officer or are otherwise not clearly within the scope of active law enforcement, even though the person is subject

to occasional call, or is occasionally called upon to perform duties within the scope of active law enforcement.

The provisions of this section shall apply to any contracting agency that is not a city or county with respect to any of its employees who were local police officers within the meaning of Section 20425 prior to its amendment by Chapter 625 of the Statutes of 1975 and in employment on January 1, 1976.

The provisions of this section shall not otherwise apply to the employees of any contracting agency nor to any contracting agency until the contracting agency elects to be subject to the provisions of this section by amendment to its contract with the board made as provided in Section 20474 or by express provision in its contract with the board.

SEC. 103. Section 20683.2 of the Government Code is amended to read:

20683.2. (a) Notwithstanding any provisions of Section 20683 to the contrary, the normal rate of contribution for state safety members subject to Section 21369.1 in State Bargaining Units 7 and 8 shall be the rate specified in this section.

(b) (1) Subject to the provisions of subdivision (e), from August 31, 2001, to June 30, 2002, inclusive, the normal rate of contribution shall be 3.5 percent of the compensation in excess of three hundred seventeen dollars ($317) per month paid that member for service rendered.

(2) Subject to the provisions of subdivision (e), from July 1, 2002, to June 30, 2003, inclusive, the normal rate of contribution shall be 1 percent of the compensation in excess of three hundred seventeen dollars ($317) per month paid that member for service rendered.

(c) This section does not apply to members employed by the California State University or the University of California.

(d) If the membership of State Bargaining Unit 7 or 8 does not ratify its respective memorandum of understanding on or before December 15, 2001, the normal contribution rate for the members of that specific state bargaining unit shall be restored to the level in effect on August 30, 2001, as set forth in Section 20683, beginning with the December 2001 pay period for the compensation paid that member for service.

(e) This subdivision shall apply to state employees in State Bargaining Units 7 and 8. 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 may not become effective unless approved by the Legislature in the annual Budget Act.

(f) This section shall become inoperative on July 1, 2003, and, as of January 1, 2004, is repealed, unless a later enacted statute, that becomes

operative on or before January 1, 2004, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 104. Section 20816 of the Government Code is amended to read:

20816. (a) Notwithstanding any other provision of this part, all assets of an employer shall be used in the determination of the employer contribution rate for the membership comprising the basis of the computation. Assets held shall be recognized over the same funding period used to amortize unfunded accrued actuarial obligations whether in excess of the accrued actuarial obligation or not, using the entry age normal funding method.

(b) On and after January 1, 1999, contracting agencies for which the actuarial value of assets exceeds the present value of benefits as of the most recently completed valuation, as determined by the chief actuary, may request that the board transfer employer assets to member-accumulated contribution accounts to satisfy all member contributions required by this part. That transfer shall be over a 12-month period provided the actuarial value of assets exceeds the present value of benefits. In determining the present value of benefits and the actuarial value of assets for purposes of this part, liabilities and assets attributed to the 1959 survivor allowance shall not be included.

(c) On and after January 1, 2002, any contracting agency for which the actuarial value of assets exceeds the present value of benefits as of the most recently completed valuation, as determined by the chief actuary, may request that the board transfer from the contracting agency's employer account excess assets, as determined by the board subject to the requirements and limitations of Section 420 of the Internal Revenue Code (26 U.S.C. Sec. 420), to a retiree health account established by the board, in its discretion, in the contracting agency's employer account pursuant to Section 401(h) of the Internal Revenue Code (26 U.S.C. Sec. 401(h)) for the purpose of providing health benefits to the contracting agency's retirees and their covered dependents. The board may, in its discretion, transfer excess assets from the contracting agency's employer account to that contracting agency's retiree health account within that agency's employer account, provided the transfer meets the conditions of a qualified transfer pursuant to Section 420 of the Internal Revenue Code (26 U.S.C. Sec. 420). The transferred assets shall be used solely for the payment of current retiree health liabilities. A qualified transfer may be made only once each year. The board may adopt regulations necessary to implement this subdivision. Notwithstanding any other provision of law, the regulations may provide for the nonforfeiture of accrued pension benefits of participants and beneficiaries of a plan from which excess assets are transferred to the extent necessary for the transfer to meet the conditions

of a qualified transfer pursuant to Section 420 of the Internal Revenue Code (26 U.S.C. Sec. 420), and may include any other provision necessary under Section 420 of the Internal Revenue Code (26 U.S.C. Sec. 420) or Section 401(h) of the Internal Revenue Code (26 U.S.C. Sec. 401(h)) to accomplish the purposes of this subdivision.

(d) For the purpose of this section, ''employer'' means any contracting agency, the state, or a school employer.

(e) The actuarial report in the annual financial report shall also express the effect upon employer contribution rates of this section and of the recognition of net unrealized gains and losses.

SEC. 105. Section 21327 of the Government Code is amended to read:

21327. In addition to the increase in allowance authorized and granted pursuant to provisions of Section 21313, and notwithstanding the limitation on those increases imposed by this article, effective January 1, 1980, or the date this section becomes applicable to the contracting agency, the monthly allowance paid with respect to a state or local member, other than a school member, who retired or died prior to January 1, 1975, shall be increased by the percentage set forth opposite the year of retirement or death in the following schedule:

Period during which retirement or death occurred	Percentage
12 months ending December 31, 1967	1.51
12 months ending December 31, 1968	1.26
12 months ending December 31, 1969	1.86
12 months ending December 31, 1970	2.55
6 months ending June 30, 1971	1.91
6 months ending December 31, 1971	7.05
12 months ending December 31, 1972	6.76
12 months ending December 31, 1973	4.45
6 months ending June 30, 1974	0.47
6 months ending December 31, 1974	1.31

The percentage shall be applied to the allowance payable on January 1, 1980, or the date this section becomes applicable to the contracting agency, and the allowance as so increased shall be paid for time on and after the date and until the first day of April immediately following the date of application. The base allowance shall be the allowance as increased under this section. The base year for annual adjustments of allowances increased by this section shall be the calendar year preceding the year of increase if the increase date is after April 1st of any calendar

year, and the second calendar year preceding the year of increase if the increase date is on or before April 1st of any calendar year.

This section shall not apply to any contracting agency unless the agency elected to be subject to the provisions of this section in its contract with the board on or before December 31, 2001.

SEC. 106. Section 21354.3 of the Government Code is amended to read:

21354.3. (a) The combined current and prior service pensions for a local 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 local miscellaneous member with which the member is entitled to be credited at retirement:

Age at Retirement	Fraction
50	1.0000
50 1/4	1.0125
50 1/2	1.0250
50 3/4	1.0375
51	1.0500
51 1/4	1.0625
51 1/2	1.0750
51 3/4	1.0875
52	1.1000
52 1/4	1.1125
52 1/2	1.1250
52 3/4	1.1375
53	1.1500
53 1/4	1.1625
53 1/2	1.1750
53 3/4	1.1875
54	1.2000
54 1/4	1.2125
54 1/2	1.2250
54 3/4	1.2375

55	1.2500
55 1/4	1.2625
55 1/2	1.2750
55 3/4	1.2875
56	1.3000
56 1/4	1.3125
56 1/2	1.3250
56 3/4	1.3375
57	1.3500
57 1/4	1.3625
57 1/2	1.3750
57 3/4	1.3875
58	1.4000
58 1/4	1.4125
58 1/2	1.4250
58 3/4	1.4375
59	1.4500
59 1/4	1.4625
59 1/2	1.4750
59 3/4	1.4875
60 and over	1.5000

(b) The fraction specified in the above table shall be reduced by one-third as applied to that part of final compensation that does not exceed four hundred dollars ($400) per month for all services 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 that enters into a contract after July 1, 1971, and who elects not to be subject to this subdivision 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.

(c) This section shall supersede Sections 21353 and 21354 with respect to any local miscellaneous member who is employed by a contracting agency on or after the date this section becomes applicable to the contracting agency.

(d) This section shall not apply to a contracting agency nor its employees until the contracting agency elects to make all local miscellaneous members subject to it by amendment to its contract made in the manner prescribed for approval of contracts or in the case of a new contract, by express provision of the contract. The operative date of this section with respect to a local miscellaneous member shall be the

effective date of the amendment to his or her employer's contract electing to be subject to this section.

SEC. 107. Section 21354.4 of the Government Code is amended to read:

21354.4. (a) The combined current and prior service pensions for a local 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 local miscellaneous member with which the member is entitled to be credited at retirement:

Age at Retirement	Fraction
50	1.0000
50 1/4	1.0125
50 1/2	1.0250
50 3/4	1.0375
51	1.0500
51 1/4	1.0625
51 1/2	1.0750
51 3/4	1.0875
52	1.1000
52 1/4	1.1125
52 1/2	1.1250
52 3/4	1.1375
53	1.1500
53 1/4	1.1625
53 1/2	1.1750
53 3/4	1.1875
54	1.2000
54 1/4	1.2125
54 1/2	1.2250
54 3/4	1.2375
55 and over	1.2500

(b) The fraction specified in the above table shall be reduced by one-third as applied to that part of final compensation that 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 that enters into a contract after July 1, 1971, and who elects not to be subject to this subdivision 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.

(c) This section shall supersede Sections 21353 and 21354 with respect to any local miscellaneous member who is employed by a contracting agency on or after the date this section becomes applicable to the contracting agency.

(d) This section shall not apply to a contracting agency nor its employees until the contracting agency elects to make all local miscellaneous members subject to it by amendment to its contract made in the manner prescribed for approval of contracts or in the case of a new contract, by express provision of the contract. The operative date of this section with respect to a local miscellaneous member shall be the effective date of the amendment to his or her employer's contract electing to be subject to this section.

SEC. 108. Section 21354.5 of the Government Code is amended to read:

21354.5. (a) The combined current and prior service pensions for a local 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 a local miscellaneous member, with which the member is entitled to be credited at retirement:

Age at Retirement	Fraction
50	1.0000
50 1/4	1.0175
50 1/2	1.0350
50 3/4	1.0525
51	1.0700
51 1/4	1.0875

51 1/2	1.1050
51 3/4	1.1225
52	1.1400
52 1/4	1.1575
52 1/2	1.1750
52 3/4	1.1925
53	1.2100
53 1/4	1.2275
53 1/2	1.2450
53 3/4	1.2625
54	1.2800
54 1/4	1.2975
54 1/2	1.3150
54 3/4	1.3325
55 and over	1.3500

(b) The fractions specified in the above table shall be reduced by one-third as applied to that part of final compensation that 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 that enters into a contract after July 1, 1971, and elects not to be subject to this subdivision 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.

(c) This section shall supersede Sections 21353 and 21354 with respect to any miscellaneous member who is employed by a contracting agency on or after the date this section becomes applicable to the contracting agency.

(d) This section shall not apply to a contracting agency nor its employees until the contracting agency elects to make all local miscellaneous members subject to it by amendment to its contract made in the manner prescribed for approval of contracts or in the case of a new contract, by express provision of the contract. The operative date of this section with respect to a local miscellaneous member shall be the effective date of the amendment to his or her employer's contract electing to be subject to this section.

SEC. 109. Section 21363 of the Government Code is amended to read:

21363. (a) The combined current and prior service pensions for state peace officer/firefighter members subject to this section with respect to state peace officer/firefighter service and the combined current

and prior service pensions for local safety members with respect to local safety service rendered to a contracting agency that is subject to this section 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 state peace officer/firefighter or local safety member at the date of his or her retirement to equal the fraction of one-fiftieth of his or her final compensation set forth opposite his or her age at retirement taken to the preceding completed quarter year, in the following table, multiplied by the number of years of state peace officer/firefighter service or local safety service subject to this section with which he or she is credited at retirement:

Age at Retirement	Fraction
50	1.0000
50 1/4	1.0125
50 1/2	1.0250
50 3/4	1.0375
51	1.0500
51 1/4	1.0625
51 1/2	1.0750
51 3/4	1.0875
52	1.1000
52 1/4	1.1125
52 1/2	1.1250
52 3/4	1.1375
53	1.1500
53 1/4	1.1625
53 1/2	1.1750
53 3/4	1.1875
54	1.2000
54 1/4	1.2125
54 1/2	1.2250
54 3/4	1.2375
55 and over	1.2500

(b) (1) In no event shall the current service pension and the combined current and prior service pensions under this section for all service to all employers exceed an amount that, when added to the service retirement annuity related to that service, equals 75 percent of final compensation.

(2) For state members, with respect to service for all state employers under this section, the benefit shall not exceed:

(A) Eighty percent of final compensation for state members who retire on or after January 1, 1995.

(B) Eighty-five percent of final compensation for state peace officer/firefighter members in State Bargaining Units 6 and 8 who retire on or after January 1, 1999, and prior to January 1, 2000.

(C) Ninety percent of final compensation for state peace officer/firefighter members who retire on or after January 1, 2000.

(3) For local safety members who retire on or after January 1, 2000, the benefit shall not exceed 85 percent of final compensation. If the pension relates to service to more than one employer, or this section and Section 21369, and would otherwise exceed that maximum, the pension payable with respect to each section or employer shall be reduced in the same proportion as the allowance bears to the total allowance computed as though there were no limit, so that the total of the pensions shall equal the maximum. Where a state or local member retiring on or after January 1, 1995, has service under this section with both state and local agency employers, the higher maximum shall apply and the additional benefit, if any, shall be funded by increasing the member's pension payable with respect to the employer for whom the member performed the service subject to the higher maximum.

(c) The Legislature reserves, with respect to any member subject to this section, the right to provide for the adjustment of industrial disability retirement allowances because of earnings of a retired person and modification of the conditions and qualifications required for retirement for disability as it may find appropriate because of the earlier age of service retirement made possible by the benefits under this section.

(d) This section may be applied to related supervisory classes or confidential positions for the respective bargaining units specified in this section.

(e) (1) This section shall be operative with respect to state peace officer/firefighter members in Corrections Bargaining Unit No. 6, Protective Services and Public Safety Bargaining Unit No. 7, or Firefighters Bargaining Unit No. 8, in accordance with a memorandum of understanding reached between the state and the exclusive bargaining agent in the respective unit pursuant to Chapter 10.3 (commencing with Section 3512) of Division 4 of Title 1.

(2) This section also shall be operative with respect to the state peace officer/firefighter members employed by a California State University police department who are in Public Safety Unit No. 8 in accordance with a memorandum of understanding reached between the Trustees of the California State University and the recognized employee

organization pursuant to Chapter 12 (commencing with Section 3560) of Division 4 of Title 1.

(3) This section shall also be operative with respect to a ''state peace officer/firefighter member'' defined in subdivision (a) of Section 20396 if authorized by, and in accordance with, a memorandum of understanding reached between the Trustees of the California State University and the recognized employee organization pursuant to Chapter 12 (commencing with Section 3560) of Division 4 of Title 1.

(4) Nothing in this section or in any other provision of law affected by Chapter 1320 of the Statutes of 1984 or Chapter 234 of the Statutes of 1986 shall be construed as authorizing any future negotiation with respect to whether or not any bargaining unit specified in this section whose memorandum of understanding was previously approved by the Legislature pursuant to law and this section, shall continue to remain within the state peace officer/firefighter membership category.

(5) The operative date of this section with respect to members in each of the bargaining units specified in this section shall be as provided for in the memorandum of understanding.

(6) With the exception of state peace officer/firefighter members for service rendered for the California State University or the legislative or judicial branch of government, this section shall apply to state peace officer/firefighter members who are not employed by the state on or after January 1, 2000.

(f) This section shall be known as, and may be cited as, the State Peace Officers' and Fire Fighters' Retirement Act.

(g) The Legislature reserves the right to subsequently modify or amend this part in order to completely effectuate the intent and purposes of this section and the right to not provide any new comparable advantages if disadvantages to employees result from any modification or amendment.

(h) This section shall not apply to a contracting agency nor its employees until, first, it is agreed to in a written memorandum of understanding entered into by an employer and representatives of employees and, second, the contracting agency elects to be subject to it by amendment to its contract made in the manner prescribed for approval of contracts or in the case of a new contract, by express provision of the contract. The operative date of this section with respect to a local safety member shall be the effective date of the amendment to his or her employer's contract electing to be subject to this section. However, this section shall not apply to any local safety member in the employ of an employer not subject to this section on January 1, 2000.

SEC. 110. Section 21423 of the Government Code is amended to read:

21423. The disability retirement pension, other than an industrial disability retirement pension, for a member, other than a member who is subject to Section 21424 or 21427, shall be such an amount as with that portion of his or her annuity provided by his or her accumulated normal contributions, shall make his or her disability retirement allowance equal to one of the following:

(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 or her final compensation multiplied by the number of years of service that would be creditable to him or her if his or her service were to continue until attainment by him or her of the age of 60 years, but in that case the retirement allowance shall not exceed one-third of final compensation.

This subdivision 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.

(c) If qualified for service retirement, the member shall receive his or her service retirement allowance if that allowance is greater than the disability retirement allowance provided by this section.

SEC. 111. Section 21661 of the Government Code is amended to read:

21661. (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 Managed Health Care pursuant to 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' Retirement System, and their spouses, their parents, their siblings, 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, their siblings, and their spouses' parents.

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

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

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

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

(8) Members of the California Assembly and Senate and their spouses, their parents, their siblings, and their spouses' 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, their siblings, 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), inclusive, 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), inclusive, 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. As used in this section, ''sibling'' shall mean a sibling who is at least 18 years of age.

(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. 112. Section 30071 of the Government Code is amended to read:

30071. If any funds made available pursuant to Section 30061 or 30070, or pursuant to Item 8100-102-0001, 9210-106-0001, or 9210-108-0001 of Section 2.00 of the Budget Act of 2001 (Chapter 106 of the Statutes of 2001), or an appropriation for the same purpose in a subsequent Budget Act, are used to fund the surveillance or monitoring of persons, the use of those funds shall comply with both of the following requirements:

(a) The funds may only be used by law enforcement personnel or employees of governmental agencies or other entities, either public or private, for video surveillance or monitoring when there is an articulable suspicion that the persons who are the target of the surveillance or monitoring are engaging or have engaged in illegal conduct.

(b) The funds may not be used for any video surveillance or monitoring of the general population.

SEC. 113. Section 31461.45 of the Government Code is amended to read:

31461.45. (a) This section applies only to a county of the first class, as defined by Section 28020.

(b) ''Compensation earnable'' in a county of the first class shall include only those items of remuneration specifically included as a result of the court-approved settlement in (1) the consolidated cases of Los Angeles County Professional Peace Officers' Association, et al. v. Board of Retirement, Los Angeles County Employees' Retirement Association (Los Angeles County Superior Court, Case No. BS 051355) and Milton Cohen v. Board of Retirement, Los Angeles County Employees' Retirement Association (Los Angeles County Superior Court, Case No. BS 051774), (2) the case of Los Angeles County Fire Department Association of Chiefs, et al. v. Board of Retirement, Los

Angeles County Employees' Retirement Association, County of Los Angeles (Los Angeles County Superior Court, Case No. BS 057432), and (3) the case of Cecil Bugh v. Board of Retirement, Los Angeles County Employees' Retirement System (Los Angeles County Superior Court, Case No. BS 055611), all of which were included in Coordination Proceeding Special Title (Rule 1550(b)), Retirement Cases, Judicial Council Coordination Proceeding No. 4049, even if a final judicial determination in that coordinated case, or any subsequent case, should conclude that any additional item of remuneration must be included in that definition with respect to any other county. Those items of remuneration in addition to base salary and the pensionable portion, if any, of cafeteria plan contributions, are set forth in Resolution No. 01-001, adopted by the board of retirement on or before the effective date of this section and shall include only the following:

Earnings Code No.	Title
099	Patrol Station Retention Bonus
358	Temporary Promotion Bonus
359	Lifeguard Paramedic, Catalina
503	Uniform Allowance
504	Night Shift Differential
505	Coroner's Inquest Reporter
507	Cogeneration or Hydroelectric Ops and Mtce
508	Henninger Flats Watchman
509	Freezer Work
510	Department Head Merit
511	Board of Supervisors Performance Lump Sum
512	Fire Suppression Transportation Truck Driver
514	Backhoe Operator
516	Explosives Work
517	Evening Shift Differential
518	Power Equipment Repair, Snow Conditions
519	Engineering Employees, Hazard Pay
520	Home Care Compensation
522	Custodian Acting as Watchman
523	DPD Deputy Director Recruitment Incentive
525	Contracting and Productivity Improvement Incentive for Managers
528	WEBCOM Press Operator
529	Power Equipment Operator, Fire Suppression
530	RN Extra Weekends Worked

531	Standby
532	Additional Responsibilities or Exceptional Performance
533	Power Sweeper Operator in Emergency Conditions
534	Power Plant Relief Engineer
535	Clinic Physician, First Hour and One-Half
536	Consulting Specialist, MD, & Mental Health Consultant, MD, First and Fifth Hours
538	RN Assigned as Acting or Relief Charge Nurse
539	RN Weekend Differential
540	Relief Nurse Holiday Differential (Hourly Item)
541	Relief Nurse Weekend Differential (Hourly Item)
544	Appraisers Laundry and Dry Cleaning Allowance
545	Heavy Duty Tow Truck Driver
546	Slurry Seal Truck Driver
547	Lifeguard Paramedic–Shift
548	Lifeguard Paramedic–Hourly
550	Incentive Awards for Medi-Cal Reimbursements, Health Services
551	Group Incentive Award, Treasurer Tax Collector
553	Pioneer Excavation, Tunnel Operations, Fire Suppression and Snow Removal—Construction Inspection and Surveying Groups
554	Pioneer Excavation, Tunnel Operations, Fire Suppression and Snow Removal
555	Scaffold or Swing Stage, 30 Feet Above Grade
556	High Scale and Rigging Operations, General
557	Evening Shift, Med Tech
558	Night Shift, Med Tech
565	Paramedic Recertification Bonus
567	Deputy Sheriff Reserve Annual Compensation
570	Home Care Program Standby
571	CSW Licensure Supervision
572	MOU Lump Sum Bonus
601	Lifeguard Paramedic, Relief
602	Supervising Transportation Deputy Performing Dispatcher Duties
603	Automotive Service Excellence Certificates
604	RN Mobile Intensive Care Certification
605	Custodian Floor Waxing Bonus
606	Fire Equipment Mechanic Assigned Field Repair Duties

607	SDPO Assigned Acting Director In A Camp
608	Bilingual Bonus
609	RN Assigned to Emergency Room
610	Antelope Valley Firefighting Crew
611	Tree Trimmer Supervisor, Power Operations
612	Shooting Bonus, Expert
613	Shooting Bonus, Distinguished Expert
614	Shooting Bonus, Marksman
615	Shooting Bonus, Sharpshooter
616	Antelope Valley Quarters, On Fire Call
617	Clinic Nurse Assigned to Probation Camp
618	Transportation Bus Driver, Sheriff
619	Lifeguard Paramedic
620	San Gabriel Dam Operator
621	Nurse Retention Incentive
622	Advanced Appraiser Certification
623	Probation Transcriber Typist Production Incentive
624	Bilingual Additional Bonus Children's Social Workers
625	Agriculture Inspectors Assigned to Standardization
626	Firefighter Paramedic not Assigned to a Paramedic Post
628	Bilingual Bonus for Other Than Monthly Employees
629	Mortuary Attendant at LAC/USC MC
630	Safety Police Educational/Longevity Incentive
632	Mental Health Workers Assigned to Sheriff's Detention Facilities
634	Supervising Detention Services Officer of the Day
635	Transportation Deputy Bus Driver, Probation
636	Sheriff's Station Commander Expenses
637	Professional Development Expenses
638	Probation Telecom Equipment Bonus
639	Intern Housing Allowance LAC/USC Med. Center
640	Children's Services ERCP Retention
641	Shooting Bonus, Expert-Reserve
642	Shooting Bonus, Distinguished Expert-Reserve
643	Shooting Bonus, Marksman-Reserve
644	Shooting Bonus, Sharpshooter-Reserve
645	Welder Certification Bonus
782	FLSA Premium Pay for Regularly Scheduled Work Assignment
903	Non-Elective Leave Buyback

910	Sick Buyback
911	Vacation Buyback
912	Holiday Buyback
913	Sick Pre-71 Buyback
914	Sick Buyback–Probation 56 Hour
915	Vacation Buyback-56 Hour
930	Special Paid Leave Buyback
931	Appraisers Leave Buyback
932	Intern/Resident Leave Buyback
None	Emp Suggest
None	Park, Nontaxable
None	Park, Taxable
None	Prior Salary
None	Transportation Allowance
None	Traffic Mitigation

Any additional item of remuneration may subsequently be included in ''compensation earnable'' pursuant to a memorandum of understanding between a county of the first class and any of its recognized employee organizations or a resolution adopted by its board of supervisors.

(c) No item of remuneration included in ''compensation earnable'' as a result of the court-approved settlement and as set forth in the resolution described above in subdivision (b) may be removed therefrom as a result of any subsequent judicial determination, except that a county of the first class and a recognized employee organization may agree only through a memorandum of understanding to exclude the item of remuneration from ''compensation earnable'' or the board of supervisors may adopt a resolution excluding the item of remuneration from ''compensation earnable'' with respect to nonrepresented employees.

(d) This section shall not be operative in the county until the board of supervisors, by resolution adopted by a majority vote, makes the provisions of this section applicable in the county.

SEC. 114. Section 31491.1 of the Government Code is amended to read:

31491.1. (a) Notwithstanding Section 31491, any retired member receiving a retirement pension may present evidence in the form required by the board of the retired member's actual primary insurance amount. For the purposes of this section, the actual primary insurance amount shall be the amount being paid under the federal system. Following receipt of that evidence, the board shall adjust the retired member's pension to equal the amount of the pension to which he or she would have

been entitled on that date had the estimated primary insurance amount equaled the actual insurance amount.

(b) The adjustment calculated in subdivision (a) shall be applied to the retired member's pension beginning in the month upon which the retired member presents evidence required by the board.

(c) This section shall not be operative in any county until the board of supervisors, by resolution adopted by majority vote, makes this section applicable.

SEC. 115. Section 31491.2 of the Government Code is amended to read:

31491.2. (a) Notwithstanding Section 31491, any retired member receiving a retirement pension may present evidence in the form required by the board of the retired member's federal estimated primary insurance amount provided that the retired member is not receiving a federal primary insurance amount. For the purposes of this section, the federal estimated primary insurance amount shall be the amount payable under the federal system as of the retired member's normal federal retirement age. Should the federal estimated primary insurance amount equal zero, the retired member shall not have his or her pension benefit reduced for an estimated primary insurance amount as required in subdivision (e) of Section 31491.

(b) Following receipt of that evidence, the board shall adjust the retired member's pension to equal the amount of the pension to which he or she would have been entitled on that date had the estimated primary insurance amount calculated in Section 31491 equaled zero.

(c) The adjustment calculated in subdivision (a) shall be applied to the retired member's pension beginning in the month upon which the retired member presents evidence required by the board.

(d) Notwithstanding subdivision (a), upon attaining federal retirement age, the retired member shall submit any evidence as may be required by the board of the retired members' federal estimated or actual primary insurance amount. Following receipt of that evidence, the board shall adjust the retired member's pension in accordance with subdivision (j) of Section 31491.

(e) This section shall not be operative in any county until the board of supervisors, by resolution adopted by majority vote, makes this section applicable.

SEC. 116. Section 31676.17 of the Government Code is amended to read:

31676.17. This section may be made applicable in any county on the first day of the month after the board of supervisors of the county adopts, by majority vote, a resolution providing that this section shall become applicable in the county. Notwithstanding any other provisions of this chapter, the current service pension or the current service pension

combined with the prior service pension is an additional pension for members purchased by the contributions of the county or district sufficient, when added to the service retirement annuity, 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 service or years of current and prior service with which the member is entitled to be credited at retirement, but in no event shall the total retirement allowance exceed the member's final compensation:

Age at Retirement	Fraction
50	1.0000
50 1/4	1.0125
50 1/2	1.0250
50 3/4	1.0375
51	1.0500
51 1/4	1.0625
51 1/2	1.0750
51 3/4	1.0875
52	1.1000
52 1/4	1.1125
52 1/2	1.1250
52 3/4	1.1375
53	1.1500
53 1/4	1.1625
53 1/2	1.1750
53 3/4	1.1875
54	1.2000
54 1/4	1.2125
54 1/2	1.2250
54 3/4	1.2375
55	1.2500
55 1/4	1.2625
55 1/2	1.2750
55 3/4	1.2875
56	1.3000
56 1/4	1.3125
56 1/2	1.3250

56 3/4	1.3375
57	1.3500
57 1/4	1.3625
57 1/2	1.3750
57 3/4	1.3875
58	1.4000
58 1/4	1.4125
58 1/2	1.4250
58 3/4	1.4375
59	1.4500
59 1/4	1.4625
59 1/2	1.4750
59 3/4	1.4875
60 and over	1.5000

In any county operating under this section, any limitations in any provisions of this chapter upon the amount of compensation used for computing rates of contributions shall be disregarded.

Wherever in this chapter reference is made to survivorship benefits and rights under Section 31676.1, the same shall apply to this section.

This section shall apply to members employed by the county on or after the date this section becomes operative in the county.

SEC. 117. Section 31676.19 of the Government Code is amended to read:

31676.19. This section may be made applicable in any county on the first day of the month after the board of supervisors of the county adopts, by majority vote, a resolution providing that this section shall become applicable in the county. Notwithstanding any other provisions of this chapter, the current service pension or the current service pension combined with the prior service pension is an additional pension for members purchased by the contributions of the county or district sufficient, when added to the service retirement annuity, 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 service or years of current and prior service with which the member is entitled to be credited at retirement, but in no event shall the total retirement allowance exceed the member's final compensation:

Age at Retirement	Fraction
50	1.0000
50 1/4	1.0175
50 1/2	1.0350
50 3/4	1.0525
51	1.0700
51 1/4	1.0875
51 1/2	1.1050
51 3/4	1.1225
52	1.1400
52 1/4	1.1575
52 1/2	1.1750
52 3/4	1.1925
53	1.2100
53 1/4	1.2275
53 1/2	1.2450
53 3/4	1.2625
54	1.2800
54 1/4	1.2975
54 1/2	1.3150
54 3/4	1.3325
55 and over	1.3500

In any county operating under this section, any limitations in any provisions of this chapter upon the amount of compensation used for computing rates of contributions shall be disregarded.

Wherever in this chapter reference is made to survivorship benefits and rights under Section 31676.1, the same shall apply to this section.

This section shall apply to members employed by the county on or after the date this section becomes operative in the county.

SEC. 118. Section 31966 of the Government Code is amended to read:

31966. The board shall invest and reinvest the funds of the system, and may from time to time sell any securities held by it and invest and reinvest the proceeds therefrom and all unappropriated income of the funds. All funds received by it not required for current disbursements shall be invested only in:

(a) Securities that are legal for savings bank investments or any bonds which, pursuant to the statutes or laws providing for the issuance of those bonds are entitled to the same force or value or use as bonds issued by

any municipality, or any bonds issued pursuant to those acts, statutes or laws of this state wherein the law specifically states by reference or otherwise that the bonds shall be legal investments for either savings banks, insurance companies, all trust funds, state school funds and any funds that may be invested in bonds of cities, counties, cities and counties, school districts, or municipalities in the state, or any bonds that have been investigated and approved by a commission or board now or hereafter authorized by law to conduct that investigation and give that approval and by authority of which those bonds are declared to be legal investments for insurers.

(b) Obligations issued pursuant to Title IV of the National Housing Act, approved June 27, 1934.

(c) Shares, share accounts, or investment certificates of any savings and loan association that has the protection provided by Title IV of the National Housing Act, approved June 27, 1934, to the extent of that insurance protection.

(d) Deposits at interest in any state or national bank doing business with the county pursuant to the law authorizing and controlling the deposit of public funds in banks.

(e) Shares, share accounts, or certificates of funds of a credit union that has the protection provided by the National Credit Union Share Insurance Fund or other private insurance or guaranty of share accounts that is acceptable to the Commissioner of Financial Institutions.

SEC. 119. Section 32271 of the Government Code is amended to read:

32271. The board shall invest and reinvest the funds of the system, and may from time to time sell and invest and reinvest the proceeds of any securities held by it and invest and reinvest all unappropriated income of the funds. All funds received by it not required for current disbursements shall be invested only in:

(a) Securities that are legal for savings bank investments or any bonds which, pursuant to the statutes or laws providing for the issuance of those bonds are entitled to the same force or value or use as bonds issued by any municipality, or any bonds issued pursuant to those acts, statutes or laws of this state wherein that law specifically states by reference or otherwise that the bonds shall be legal investments for either savings banks, insurance companies, all trust funds, state school funds and any funds that may be invested in bonds of cities, counties, cities and counties, school districts, or municipalities in the state, or any bonds that have been investigated and approved by a commission or board now or hereafter authorized by law to conduct that investigation and give that approval and by authority of which those bonds are declared to be legal investments for insurers.

(b) Deposits at interest in any state or national bank doing business with the county pursuant to law authorizing and controlling the deposit of public funds in banks.

(c) Shares, share accounts, or certificates of funds of a credit union that has the protection provided by the National Credit Union Share Insurance Fund or other private insurance or guaranty of share accounts that is acceptable to the Commissioner of Financial Institutions.

SEC. 120. Section 53601 of the Government Code is amended to read:

53601. This section shall apply to a local agency that is a city, a district, or other local agency that does not pool money in deposits or investments with other local agencies, other than local agencies that have the same governing body. However, Section 53635 shall apply to all local agencies that pool money in deposits or investments with other local agencies that have separate governing bodies. The legislative body of a local agency having money in a sinking fund or money in its treasury not required for the immediate needs of the local agency may invest any portion of the money that it deems wise or expedient in those investments set forth below. A local agency purchasing or obtaining any securities prescribed in this section, in a negotiable, bearer, registered, or nonregistered format, shall require delivery of the securities to the local agency, including those purchased for the agency by financial advisers, consultants, or managers using the agency's funds, by book entry, physical delivery, or by third-party custodial agreement. The transfer of securities to the counterparty bank's customer book entry account may be used for book entry delivery.

For purposes of this section, "counterparty" means the other party to the transaction. A counterparty bank's trust department or separate safekeeping department may be used for the physical delivery of the security if the security is held in the name of the local agency. Where this section specifies a percentage limitation for a particular category of investment, that percentage is applicable only at the date of purchase. Where this section does not specify a limitation on the term or remaining maturity at the time of the investment, no investment shall be made in any security, other than a security underlying a repurchase or reverse repurchase agreement or securities lending agreement authorized by this section, that at the time of the investment has a term remaining to maturity in excess of five years, unless the legislative body has granted express authority to make that investment either specifically or as a part of an investment program approved by the legislative body no less than three months prior to the investment:

(a) Bonds issued by the local agency, including bonds payable solely out of the revenues from a revenue-producing property owned,

controlled, or operated by the local agency or by a department, board, agency, or authority of the local agency.

(b) United States Treasury notes, bonds, bills, or certificates of indebtedness, or those for which the faith and credit of the United States are pledged for the payment of principal and interest.

(c) Registered state warrants or treasury notes or bonds of this state, including bonds payable solely out of the revenues from a revenue-producing property owned, controlled, or operated by the state or by a department, board, agency, or authority of the state.

(d) Bonds, notes, warrants, or other evidences of indebtedness of any local agency within this state, including bonds payable solely out of the revenues from a revenue-producing property owned, controlled, or operated by the local agency, or by a department, board, agency, or authority of the local agency.

(e) Federal agency or United States government-sponsored enterprise obligations, participations, or other instruments, including those issued by or fully guaranteed as to principal and interest by federal agencies or United States government-sponsored enterprises.

(f) Bankers acceptances otherwise known as bills of exchange or time drafts that are drawn on and accepted by a commercial bank. Purchases of bankers acceptances may not exceed 180 days maturity or 40 percent of the agency's money that may be invested pursuant to this section. However, no more than 30 percent of the agency's money may be invested in the bankers acceptances of any one commercial bank pursuant to this section.

This subdivision does not preclude a municipal utility district from investing any money in its treasury in any manner authorized by the Municipal Utility District Act (Division 6 (commencing with Section 11501) of the Public Utilities Code).

(g) Commercial paper of ''prime'' quality of the highest ranking or of the highest letter and number rating as provided for by Moody's Investors Service, Inc. (Moody's), Standard and Poor's (S&P), or Fitch Financial Services, Inc. (Fitch). The corporation that issues the commercial paper shall be organized and operating within the United States, shall have total assets in excess of five hundred million dollars ($500,000,000), and shall issue debt, other than commercial paper, if any, that is rated ''A'' or higher by Moody's, S&P, or Fitch. Eligible commercial paper shall have a maximum maturity of 270 days or less. Local agencies, other than counties or a city and county, may invest no more than 25 percent of their money in eligible commercial paper. Local agencies, other than counties or a city and county, may purchase no more than 10 percent of the outstanding commercial paper of any single corporate issue. Counties or a city and county may invest in commercial

paper pursuant to the concentration limits in subdivision (a) of Section 53635.

(h) Negotiable certificates of deposit issued by a nationally or state-chartered bank, a savings association or a federal association (as defined by Section 5102 of the Financial Code), a state or federal credit union, or by a state-licensed branch of a foreign bank. Purchases of negotiable certificates of deposit may not exceed 30 percent of the agency's money which may be invested pursuant to this section. For purposes of this section, negotiable certificates of deposit do not come within Article 2 (commencing with Section 53630), except that the amount so invested shall be subject to the limitations of Section 53638. The legislative body of a local agency and the treasurer or other official of the local agency having legal custody of the money are prohibited from investing local agency funds, or funds in the custody of the local agency, in negotiable certificates of deposit issued by a state or federal credit union if a member of the legislative body of the local agency, or any person with investment decision making authority in the administrative office manager's office, budget office, auditor-controller's office, or treasurer's office of the local agency also serves on the board of directors, or any committee appointed by the board of directors, or the credit committee or the supervisory committee of the state or federal credit union issuing the negotiable certificates of deposit.

(i) (1) Investments in repurchase agreements or reverse repurchase agreements or securities lending agreements of any securities authorized by this section, as long as the agreements are subject to this subdivision, including the delivery requirements specified in this section.

(2) Investments in repurchase agreements may be made, on any investment authorized in this section, when the term of the agreement does not exceed one year. The market value of securities that underlay a repurchase agreement shall be valued at 102 percent or greater of the funds borrowed against those securities and the value shall be adjusted no less than quarterly. Since the market value of the underlying securities is subject to daily market fluctuations, the investments in repurchase agreements shall be in compliance if the value of the underlying securities is brought back up to 102 percent no later than the next business day.

(3) Reverse repurchase agreements or securities lending agreements may be utilized only when all of the following conditions are met:

(A) The security to be sold on reverse repurchase agreement or securities lending agreement has been owned and fully paid for by the local agency for a minimum of 30 days prior to sale.

(B) The total of all reverse repurchase agreements and securities lending agreements on investments owned by the local agency does not exceed 20 percent of the base value of the portfolio.

(C) The agreement does not exceed a term of 92 days, unless the agreement includes a written codicil guaranteeing a minimum earning or spread for the entire period between the sale of a security using a reverse repurchase agreement or securities lending agreement and the final maturity date of the same security.

(D) Funds obtained or funds within the pool of an equivalent amount to that obtained from selling a security to a counterparty by way of a reverse repurchase agreement or securities lending agreement, shall not be used to purchase another security with a maturity longer than 92 days from the initial settlement date of the reverse repurchase agreement or securities lending agreement, unless the reverse repurchase agreement or securities lending agreement includes a written codicil guaranteeing a minimum earning or spread for the entire period between the sale of a security using a reverse repurchase agreement or securities lending agreement and the final maturity date of the same security.

(4) (A) Investments in reverse repurchase agreements, securities lending agreements, or similar investments in which the local agency sells securities prior to purchase with a simultaneous agreement to repurchase the security, may only be made upon prior approval of the governing body of the local agency and shall only be made with primary dealers of the Federal Reserve Bank of New York or with a nationally or state-chartered bank that has or has had a significant banking relationship with a local agency.

(B) For purposes of this chapter, ''significant banking relationship'' means any of the following activities of a bank:

(i) Involvement in the creation, sale, purchase, or retirement of a local agency's bonds, warrants, notes, or other evidence of indebtedness.

(ii) Financing of a local agency's activities.

(iii) Acceptance of a local agency's securities or funds as deposits.

(5) (A) ''Repurchase agreement'' means a purchase of securities by the local agency pursuant to an agreement by which the counterparty seller will repurchase the securities on or before a specified date and for a specified amount and the counterparty will deliver the underlying securities to the local agency by book entry, physical delivery, or by third-party custodial agreement. The transfer of underlying securities to the counterparty bank's customer book-entry account may be used for book-entry delivery.

(B) ''Securities,'' for purpose of repurchase under this subdivision, means securities of the same issuer, description, issue date, and maturity.

(C) ''Reverse repurchase agreement'' means a sale of securities by the local agency pursuant to an agreement by which the local agency will

repurchase the securities on or before a specified date and includes other comparable agreements.

(D) ''Securities lending agreement'' means an agreement under which a local agency agrees to transfer securities to a borrower who, in turn, agrees to provide collateral to the local agency. During the term of the agreement, both the securities and the collateral are held by a third party. At the conclusion of the agreement, the securities are transferred back to the local agency in return for the collateral.

(E) For purposes of this section, the base value of the local agency's pool portfolio shall be that dollar amount obtained by totaling all cash balances placed in the pool by all pool participants, excluding any amounts obtained through selling securities by way of reverse repurchase agreements, securities lending agreements, or other similar borrowing methods.

(F) For purposes of this section, the spread is the difference between the cost of funds obtained using the reverse repurchase agreement and the earnings obtained on the reinvestment of the funds.

(j) Medium-term notes, defined as all corporate and depository institution debt securities with a maximum remaining maturity of five years or less, issued by corporations organized and operating within the United States or by depository institutions licensed by the United States or any state and operating within the United States. Notes eligible for investment under this subdivision shall be rated ''A'' or better by a nationally recognized rating service. Purchases of medium-term notes shall not include other instruments authorized by this section and may not exceed 30 percent of the agency's surplus money which may be invested pursuant to this section.

(k) (1) Shares of beneficial interest issued by diversified management companies that invest in the securities and obligations as authorized by subdivisions (a) to (j), inclusive, or subdivision (m) or (n) and that comply with the investment restrictions of this article and Article 2 (commencing with Section 53630). However, notwithstanding these restrictions, a counterparty to a reverse repurchase agreement or securities lending agreement is not required to be a primary dealer of the Federal Reserve Bank of New York if the company's board of directors finds that the counterparty presents a minimal risk of default, and the value of the securities underlying a repurchase agreement or securities lending agreement may be 100 percent of the sales price if the securities are marked to market daily.

(2) Shares of beneficial interest issued by diversified management companies that are money market funds registered with the Securities and Exchange Commission under the Investment Company Act of 1940 (15 U.S.C. Sec. 80a-1 et seq.).

(3) If investment is in shares issued pursuant to paragraph (1), the company shall have met either of the following criteria:

(A) Attained the highest ranking or the highest letter and numerical rating provided by not less than two nationally recognized statistical rating organizations.

(B) Retained an investment adviser registered or exempt from registration with the Securities and Exchange Commission with not less than five years' experience investing in the securities and obligations authorized by subdivisions (a) to (j), inclusive, or subdivision (m) or (n) and with assets under management in excess of five hundred million dollars ($500,000,000).

(4) If investment is in shares issued pursuant to paragraph (2), the company shall have met either of the following criteria:

(A) Attained the highest ranking or the highest letter and numerical rating provided by not less than two nationally recognized statistical rating organizations.

(B) Retained an investment adviser registered or exempt from registration with the Securities and Exchange Commission with not less than five years' experience managing money market mutual funds with assets under management in excess of five hundred million dollars ($500,000,000).

(5) The purchase price of shares of beneficial interest purchased pursuant to this subdivision shall not include any commission that the companies may charge and shall not exceed 20 percent of the agency's surplus money that may be invested pursuant to this section. However, no more than 10 percent of the agency's surplus funds may be invested in shares of beneficial interest of any one mutual fund pursuant to paragraph (1).

(*l*) Moneys held by a trustee or fiscal agent and pledged to the payment or security of bonds or other indebtedness, or obligations under a lease, installment sale, or other agreement of a local agency, or certificates of participation in those bonds, indebtedness, or lease installment sale, or other agreements, may be invested in accordance with the statutory provisions governing the issuance of those bonds, indebtedness, or lease installment sale, or other agreement, or to the extent not inconsistent therewith or if there are no specific statutory provisions, in accordance with the ordinance, resolution, indenture, or agreement of the local agency providing for the issuance.

(m) Notes, bonds, or other obligations that are at all times secured by a valid first priority security interest in securities of the types listed by Section 53651 as eligible securities for the purpose of securing local agency deposits having a market value at least equal to that required by Section 53652 for the purpose of securing local agency deposits. The securities serving as collateral shall be placed by delivery or book entry

into the custody of a trust company or the trust department of a bank which is not affiliated with the issuer of the secured obligation, and the security interest shall be perfected in accordance with the requirements of the Uniform Commercial Code or federal regulations applicable to the types of securities in which the security interest is granted.

(n) Any mortgage passthrough security, collateralized mortgage obligation, mortgage-backed or other pay-through bond, equipment lease-backed certificate, consumer receivable passthrough certificate, or consumer receivable-backed bond of a maximum of five years maturity. Securities eligible for investment under this subdivision shall be issued by an issuer having an ''A'' or higher rating for the issuer's debt as provided by a nationally recognized rating service and rated in a rating category of ''AA'' or its equivalent or better by a nationally recognized rating service. Purchase of securities authorized by this subdivision may not exceed 20 percent of the agency's surplus money that may be invested pursuant to this section.

SEC. 121. Section 56334 of the Government Code is amended to read:

56334. The term of office of each member shall be four years and until the appointment and qualification of his or her successor. Upon enlargement of the commission by two members, as provided in Section 56332, the new members first appointed to represent independent special districts shall classify themselves by lot so that the expiration date of the term of office of one new member coincides with the existing member who holds the office represented by the original two-year term on the commission and the term of office of the other new member coincides with the existing member who holds the office represented by the original four-year term on the commission. The body which originally appointed a member whose term has expired shall appoint his or her successor for a full term of four years. Any member may be removed at any time and without cause by the body appointing that member. The expiration date of the term of office of each member shall be the first Monday in May in the year in which the term of the member expires, unless procedures adopted by the commission specify an alternate date to apply uniformly to all members. However, the length of a term of office shall not be extended more than once. Any vacancy in the membership of the commission shall be filled for the unexpired term by appointment by the body which originally appointed the member whose office has become vacant.

The chairperson of the commission shall be selected by the members of the commission.

Commission members and alternates shall be reimbursed for the actual amount of their reasonable and necessary expenses incurred in attending meetings and in performing the duties of their office. The

commission may authorize payment of a per diem to commission members and alternates for each day while they are in attendance at meetings of the commission.

SEC. 122. A heading is added as Article 2.11 (commencing with Section 65892.13) of Chapter 4 of Division 1 of Title 7 of the Government Code, to read:

Article 2.11. Wind Energy

SEC. 123. Section 65892.13 of the Government Code is amended to read:

65892.13. (a) The Legislature finds and declares all of the following:

(1) California has a shortage of reliable electricity supply, which has led the Governor to proclaim a state of emergency and to issue numerous executive orders to lessen, and mitigate the effects of, the shortage. The executive orders, among other things, expedite and shorten the processing of applications for existing and new powerplants, establish an emergency siting process for peaking and renewable powerplants, and relax existing air pollutant emission requirements in order to allow power generation facilities to continue generating much needed electricity.

(2) Wind energy is an abundant, renewable, and nonpolluting energy resource. When converted to electricity, it reduces our dependence on nonrenewable energy resources and reduces air and water pollution that result from conventional sources. Distributed small wind energy systems also enhance the reliability and power quality of the power grid, reduce peak power demands, increase in-state electricity generation, diversify the state's energy supply portfolio, and make the electricity supply market more competitive by promoting consumer choice.

(3) In 2000, the Legislature and Governor recognized the need to promote all feasible adoption of clean, renewable, and distributed energy sources by enacting the Reliable Electric Service Investments Act (Article 15 (commencing with Section 399) of Chapter 2.3 of Part 1 of Division 1 of the Public Utilities Code). As set forth in Section 399.6 of the Public Utilities Code, the stated objectives of the act include to "increase, in the near term, the quantity of California's electricity generated by in-state renewable energy resources, while protecting system reliability, fostering resource diversity, and obtaining the greatest environmental benefits for California residents."

(4) Small wind energy systems, designed for onsite home, farm, and small commercial use, are recognized by the Legislature and the State Energy Resources Conservation and Development Commission as an excellent technology to help achieve the goals of increased in-state

electricity generation, reduced demand on the state electric grid, increased consumer energy independence, and nonpolluting electricity generation. In June 2001, the commission adopted a Renewable Investment Plan that includes one hundred one million two hundred fifty thousand dollars ($101,250,000) over the next five years, in the form of a 50 percent buydown incentive for the purchasers of ''emerging renewable technologies,'' including small wind energy systems.

(5) In light of the state's electricity supply shortage and its existing program to encourage the adoption of small wind energy systems, it is the intent of the Legislature that any ordinances regulating small wind energy systems adopted by local agencies have the effect of providing for the installation and use of small wind energy systems and that provisions in these ordinances relating to matters including, but not limited to, parcel size, tower height, noise, notice, and setback requirements do not unreasonably restrict the ability of homeowners, farms, and small businesses to install small wind energy systems in zones in which they are authorized by local ordinance. It is the policy of the state to promote and encourage the use of small wind energy systems and to limit obstacles to their use.

(b) The implementation of consistent statewide standards to achieve the timely and cost-effective installation of small wind energy systems is not a municipal affair, as that term is used in Section 5 of Article XI of the California Constitution, but is instead a matter of statewide concern. It is the intent of the Legislature that this section apply to all local agencies, including, but not limited to, charter cities, charter counties, and charter cities and counties.

(c) The following definitions govern this section:

(1) ''Small wind energy system'' means a wind energy conversion system consisting of a wind turbine, a tower, and associated control or conversion electronics, which has a rated capacity that does not exceed the allowable rated capacity under the Emerging Renewables Fund of the Renewables Investment Plan administered by the California Energy Commission and which will be used primarily to reduce onsite consumption of utility power.

(2) ''Tower height'' means the height above grade of the fixed portion of the tower, excluding the wind turbine.

(d) Any local agency may, by ordinance, provide for the installation of small wind energy systems in the jurisdiction outside an ''urbanized area,'' as defined in paragraph (2) of subdivision (b) of Section 21080.7 of the Public Resources Code pursuant to this section. The local agency may establish a process for the issuance of a conditional use permit for small wind energy systems.

(1) The ordinance may impose conditions on the installation of small wind energy systems that include, but are not limited to, notice, tower

height, setback, view protection, aesthetics, aviation, and design safety requirements. However, the ordinance shall not require conditions on notice, tower height, setbacks, noise level, turbine approval, tower drawings, and engineering analysis, or line drawings that are more restrictive than the following:

(A) Notice of an application for installation of a small wind energy system shall be provided to property owners within 300 feet of the property on which the system is to be located.

(B) Tower heights of not more than 65 feet shall be allowed on parcels between one and five acres and tower heights of not more than 80 feet shall be allowed on parcels of five acres or more, provided that the application includes evidence that the proposed height does not exceed the height recommended by the manufacturer or distributor of the system.

(C) Setbacks for the system tower shall be no farther from the property line than the height of the system, provided that it also complies with any applicable fire setback requirements pursuant to Section 4290 of the Public Resources Code.

(D) Decibel levels for the system shall not exceed the lesser of 60 decibels (dBA), or any existing maximum noise levels applied pursuant to the noise element of a general plan for the applicable zoning classification in a jurisdiction, as measured at the closest neighboring inhabited dwelling, except during short-term events such as utility outages and severe wind storms.

(E) The system's turbine must have been approved by the California Energy Commission as qualifying under the Emerging Renewables Fund of the commission's Renewables Investment Plan or certified by a national program recognized and approved by the Energy Commission.

(F) The application shall include standard drawings and an engineering analysis of the system's tower, showing compliance with the Uniform Building Code or the California Building Standards Code and certification by a professional mechanical, structural, or civil engineer licensed by this state. However, a wet stamp shall not be required, provided that the application demonstrates that the system is designed to meet the most stringent wind requirements (Uniform Building Code wind exposure D), the requirements for the worst seismic class (Seismic 4), and the weakest soil class, with a soil strength of not more than 1,000 pounds per square foot, or other relevant conditions normally required by a local agency.

(G) The system shall comply with all applicable Federal Aviation Administration requirements, including Subpart B (commencing with Section 77.11) of Part 77 of Title 14 of the Code of Federal Regulations regarding installations close to airports, and the State Aeronautics Act

(Part 1 (commencing with Section 21001) of Division 9 of the Public Utilities Code).

(H) The application shall include a line drawing of the electrical components of the system in sufficient detail to allow for a determination that the manner of installation conforms to the National Electric Code.

(2) The ordinance may require the applicant to provide information demonstrating that the system will be used primarily to reduce onsite consumption of electricity. The ordinance may also require the application to include evidence, unless the applicant does not plan to connect the system to the electricity grid, that the electric utility service provider that serves the proposed site has been informed of the applicant's intent to install an interconnected customer-owned electricity generator.

(3) A small wind energy system shall not be allowed where otherwise prohibited by any of the following:

(A) A local coastal program and any implementing regulations adopted pursuant to the California Coastal Act (Division 20 (commencing with Section 30000) of the Public Resources Code).

(B) The California Coastal Commission, pursuant to the California Coastal Act (Division 20 (commencing with Section 30000) of the Public Resources Code).

(C) The regional plan and any implementing regulations adopted by the Tahoe Regional Planning Agency pursuant to the Tahoe Regional Planning Compact (Title 7.4 (commencing with Section 66800) of the Government Code).

(D) The San Francisco Bay Plan and any implementing regulations adopted by the San Francisco Bay Conservation and Development Commission pursuant to the McAteer-Petris Act (Title 7.2 (commencing with Section 66600) of the Government Code).

(E) A comprehensive land use plan and any implementing regulations adopted by an airport land use commission pursuant to Article 3.5 (commencing with Section 21670) of Chapter 4 of Division 9 of Part 1 of the Public Utilities Code.

(F) The Alquist-Priolo Earthquake Fault Zoning Act (Chapter 7.5 (commencing with Section 2621) of Division 2 of the Public Resources Code).

(G) A local agency to protect the scenic appearance of the scenic highway corridor designated pursuant to Article 2.5 (commencing with Section 260) of Chapter 2 of Division 1 of the Streets and Highways Code.

(H) The terms of a conservation easement entered into pursuant to Chapter 4 (commencing with Section 815) of Division 2 of Part 2 of the Civil Code.

(I) The terms of an open-space easement entered into pursuant to the Open-space Easement Act of 1974 (Chapter 6.6 (commencing with Section 51070) of Division 1 of Title 5 of the Government Code).

(J) The terms of an agricultural conservation easement entered into pursuant to the California Farmland Conservancy Program Act (Division 10.2 (commencing with Section 10200) of the Public Resources Code).

(K) The terms of a contract entered into pursuant to the Williamson Act (Chapter 7 (commencing with Section 51200) of Division 1 of Title 5 of the Government Code).

(L) The listing of the proposed site in the National Register of Historic Places or the California Register of Historical Resources pursuant to Section 5024.1 of the Public Resources Code.

(4) In the event a small wind energy system is proposed to be sited in an agricultural area that may have aircraft operating at low altitudes, the local agency shall take reasonable steps, concurrent with other notices issued pursuant to this subdivision, to notify pest control aircraft pilots registered to operate in the county pursuant to Section 11921 of the Food and Agricultural Code.

(5) Notwithstanding the requirements of paragraph (1), a local agency may, if it deems it necessary due to circumstances specific to the proposed installation, provide notice by placing a display advertisement of at least one-eighth page in at least one newspaper of general circulation within the local agency in which the installation is proposed.

(6) Nothing in this section shall be construed to alter or affect existing law regarding the authority of local agencies to review an application.

(e) Notwithstanding subdivision (f), any local agency that has not adopted an ordinance in accordance with subdivision (d) by July 1, 2002, may adopt the ordinance at a later date, but any applications that are submitted between July 1, 2002, and the adopted date of the ordinance must be approved pursuant to subdivision (f).

(f) Any local agency which has not adopted an ordinance pursuant to subdivision (d) on or before July 1, 2002, shall approve applications for small wind energy systems by right if all of the following conditions are met:

(1) The size of the parcel where the system is located is at least one acre and is outside an ‘‘urbanized area,’’ as defined in paragraph (2) of subdivision (b) of Section 21080.7 of the Public Resources Code.

(2) The tower height on parcels that are less than five acres does not exceed 80 feet.

(3) No part of the system, including guy wire anchors, extends closer than 30 feet to the property boundary, provided that it also complies with any applicable fire setback requirements pursuant to Section 4290 of the Public Resources Code.

(4) The system does not exceed 60 decibels (dBA), as measured at the closest neighboring inhabited dwelling, except during short-term events such as utility outages and severe windstorms.

(5) The system's turbine has been approved by the State Energy Resources Conservation and Development Commission as qualifying under the Emerging Renewables Fund of the commission's Renewables Investment Plan or certified by a national program recognized and approved by the Energy Commission.

(6) The application includes standard drawings and an engineering analysis of the tower, showing compliance with the Uniform Building Code or the California Building Standards Code and certification by a licensed professional engineer. A wet stamp is not required if the application demonstrates that the system is designed to meet the most stringent wind requirements (Uniform Building Code wind exposure D), the requirements for the worst seismic class (Seismic 4), and the weakest soil class, with a soil strength of not more than 1,000 pounds per square foot, or other relevant conditions normally required by a local agency.

(7) The system complies with all applicable Federal Aviation Administration requirements, including any necessary approvals for installations close to airports, and the requirements of the State Aeronautics Act (Part 1 (commencing with Section 21001) of Division 9 of the Public Utilities Code).

(8) The application includes a line drawing of the electrical components of the system in sufficient detail to allow for a determination that the manner of installation conforms to the National Electric Code.

(9) Unless the applicant does not plan to connect the system to the electricity grid, the application includes evidence, that the electric utility service provider that serves the proposed site has been informed of the applicant's intent to install an interconnected customer-owned electricity generator.

(10) A small wind energy system shall not be allowed where otherwise prohibited by any of the following:

(A) A local coastal program and any implementing regulations adopted pursuant to the California Coastal Act (Division 20 (commencing with Section 30000) of the Public Resources Code).

(B) The California Coastal Commission, pursuant to the California Coastal Act (Division 20 (commencing with Section 30000) of the Public Resources Code).

(C) The regional plan and any implementing regulations adopted by the Tahoe Regional Planning Agency pursuant to the Tahoe Regional Planning Compact (Title 7.4 (commencing with Section 66800) of the Government Code).

(D) The San Francisco Bay Plan and any implementing regulations adopted by the San Francisco Bay Conservation and Development

Commission pursuant to the McAteer-Petris Act (Title 7.2 (commencing with Section 66600) of the Government Code).

(E) A comprehensive land use plan and any implementing regulations adopted by an airport land use commission pursuant to Article 3.5 (commencing with Section 21670) of Chapter 4 of Division 9 of Part 1 of the Public Utilities Code.

(F) The Alquist-Priolo Earthquake Fault Zoning Act (Chapter 7.5 (commencing with Section 2621) of Division 2 of the Public Resources Code).

(G) A local agency to protect the scenic appearance of the scenic highway corridor designated pursuant to Article 2.5 (commencing with Section 260) of Chapter 2 of Division 1 of the Streets and Highways Code.

(H) The terms of a conservation easement entered into pursuant to Chapter 4 (commencing with Section 815) of Division 2 of Part 2 of the Civil Code.

(I) The terms of an open-space easement entered into pursuant to the Open-space Easement Act of 1974 (Chapter 6.6 (commencing with Section 51070) of Division 1 of Title 5 of the Government Code).

(J) The terms of an agricultural conservation easement entered into pursuant to the California Farmland Conservancy Program Act (Division 10.2 (commencing with Section 10200) of the Public Resources Code).

(K) The terms of a contract entered into pursuant to the Williamson Act (Chapter 7 (commencing with Section 51200) of Division 1 of Title 5 of the Government Code).

(L) On a site listed in the National Register of Historic Places or the California Register of Historical Resources pursuant to Section 5024.1 of the Public Resources Code.

(11) In the event that a proposed site for a small wind energy system is in an agricultural area that may have aircraft operating at low altitudes, the local agency shall take reasonable steps, concurrent with other notices issued pursuant to this subdivision, to notify pest control aircraft pilots registered to operate in the county pursuant to Section 11921 of the Food and Agricultural Code.

(12) No other local ordinance, policy, or regulation shall be the basis for a local agency to deny the siting and operation of a small wind energy system under this subdivision.

(13) No changes in the general plan shall be required to implement this subdivision. Any local agency, when amending its zoning ordinance or general plan to incorporate the policies, procedures, or other provisions applicable to the approval of small wind energy systems, must do so in a manner consistent with the requirements of this

subdivision and the Permit Streamlining Act (Chapter 4.5 (commencing with Section 65920)).

(g) This section does not limit the authority of local agencies to adopt less restrictive requirements for the siting and operation of small wind energy systems.

(h) A local agency shall review an application for a small wind energy system as expeditiously as possible pursuant to the timelines established in the Permit Streamlining Act (Chapter 4.5 (commencing with Section 65920)).

(i) Fees charged by a local agency to review an application for a small wind energy system shall be determined in accordance with Chapter 5 (commencing with Section 66000).

(j) Any requirement of notice to property owners imposed pursuant to subdivision (d) shall ensure that responses to the notice are filed in a timely manner.

(k) This section shall become inoperative on July 1, 2005, and as of January 1, 2006, is repealed, unless a later enacted statute, that becomes effective on or before January 1, 2006, deletes or extends that date.

SEC. 124. Section 67940 of the Government Code is amended to read:

67940. (a) The Santa Cruz County Regional Transportation Commission is hereby created, as a local area transportation planning agency, and not as part of the executive branch of state government, to provide regional transportation planning and development for the area of Santa Cruz County. The commission may be known by any other name it chooses and is the legal successor to the Santa Cruz County Regional Transportation Commission, established pursuant to Section 29535, for all purposes, including those set forth in Section 67941.

(b) The governing body shall be composed of all five members of the Santa Cruz County Board of Supervisors, one member for each of the cities in the county, appointed by each city, and three members appointed by the Santa Cruz Metropolitan Transit District.

(c) The appointing authority, for each regular member it appoints, and the board of supervisors for each of its members, may appoint an alternate member to serve in the place of the regular member when the regular member is absent or disqualified from participating in a meeting of the governing body.

SEC. 125. Section 68110 of the Government Code is amended to read:

68110. Every judge of a court of this state shall, in open court during the presentation of causes before him or her, wear a judicial robe, which the judge shall furnish at his or her own expense. The Judicial Council shall, by rule, prescribe the style of such robes.

SEC. 126. Section 71639.1 of the Government Code is amended to read:

71639.1. (a) Each trial court shall adopt a procedure to be used as a preliminary step before petitioning the superior court for relief pursuant to subdivision (c) or (d). The procedure may be mediation, arbitration, or a procedure before an administrative tribunal, such as the procedure established pursuant to Sections 71653 and 71654 for review of the decision of the hearing officer in evidentiary due process hearings. The establishment of the procedure shall be subject to the obligation to meet and confer in good faith. However, nothing in this section shall prohibit a party from seeking provisional relief, such as a stay, in any case in which provisional relief would otherwise be appropriate.

(b) In a trial court with 10 or more judges, if the trial court and a recognized employee organization reach an impasse regarding development of a procedure required pursuant to subdivision (a), the trial court shall adopt either nonbinding arbitration or a proceeding before the administrative tribunal, such as the procedure established pursuant to Sections 71653 and 71654, for review of the decision of the hearing officer in evidentiary due process hearings.

(c) Notwithstanding Sections 1085 and 1103 of the Code of Civil Procedure requiring the issuance of a writ to an inferior tribunal, and except as required pursuant to Section 5 of Article VI of the California Constitution, any agreements reached pursuant to negotiations held pursuant to this article are binding on the parties and may be enforced by petitioning the superior court for relief pursuant to Section 1085 or 1103 of the Code of Civil Procedure.

(d) Notwithstanding Sections 1085 and 1103 of the Code of Civil Procedure requiring the issuance of a writ to an inferior tribunal, if a trial court, a trial court employee, or an employee organization believes there has been a violation of this article, that party may petition the superior court for relief.

(e) The Judicial Council shall adopt rules of court to implement this hearing and appeal process. The rules of court shall provide a mechanism for the establishment of a panel of court of appeal justices who shall be qualified to hear these matters, as specified in the rules of court, from which a single justice shall be assigned to hear the matter in the superior court. The rules of court shall provide that these matters shall be heard in the superior court and the court of appeal on an expedited basis, and to the extent permitted by law or rule of court, shall provide that any justice assigned to hear the matter in the superior court shall not be from the court of appeal district in which the action is filed, and shall provide that appeals in these matters shall be heard in the court of appeal district where the matter was filed.

(f) A complete alternative to the procedure outlined in subdivisions (c), (d), and (e) may be provided for by mutual agreement between a trial court and representatives of recognized employee organizations.

(g) A court decision interpreting or applying this article shall not be binding in cases or proceedings arising under Chapter 10 (commencing with Section 3500) of Division 4 of Title 1.

SEC. 127. Section 75028.5 of the Government Code is amended to read:

75028.5. After a judge has withdrawn his or her accumulated contributions upon discontinuance of his or her service, that service shall not count in the event he or she later becomes a judge again, until he or she pays into the Judges' Retirement Fund the amount of accumulated contributions withdrawn by him or her, plus interest thereon at the rate of interest then being required to be paid by members of the Public Employees' Retirement System under Section 20654 from the date of withdrawal to the date of his or her payment.

SEC. 127.1. Section 75029 of the Government Code is amended to read:

75029. For any judge who, prior to becoming a judge, served as a ''judge of an excluded court'' as defined below, there shall be included in the computation of the number of years of service as a judge the number of years he or she served as a ''judge of an excluded court'' if prior to the effective date of his or her retirement he or she has paid into the Judges' Retirement Fund a sum equal to the amount that would have been deducted from his or her salary and paid into that fund had he or she been a judge, during the time he or she was a ''judge of an excluded court,'' computed by applying to the rate of salary that he or she actually received during his or her first year of service as a judge the rate of deduction applicable to judges' salaries during that year.

As used in this section ''judge of an excluded court'' means a judge of a justice court or a judge, justice of the peace, or recorder of a court provided for by law prior to January 1, 1952.

A judge shall not, under this section, receive credit for that portion, if any, of his or her service as a judge of an excluded court, if other provisions of this chapter provide for the inclusion of that service in the computation of his or her years of service as a judge.

SEC. 127.2. Section 75030.9 of the Government Code, as amended by Chapter 115 of the Statutes of 1986, is amended to read:

75030.9. A Member of the Senate or Assembly whose contributions as a judge remain on deposit in the fund under Section 75033, shall, during the term of office for which he or she was elected:

(a) Have a right under Section 75030.5 to elect by written election filed with the Judges' Retirement System at any time prior to his or her retirement, to make contributions pursuant to Section 75030.5 and to

receive credit in this system as service rendered for all or any part of his or her service as an elected state constitutional officer, or as a public legal officer, as defined in Section 75030.5, either before or after his or her service as a judge, excluding any period of time for which he or she is receiving or is entitled to receive a retirement allowance from any other public retirement system. This subdivision does not apply to any person who, on or after January 1, 1986, first becomes or continues as an elected state constitutional officer, as defined by Section 75030.5, in a term which commences on or after January 1, 1986.

(b) Be retired as a judge under Section 75025 upon attaining, as provided in this section, the age and service requirements specified in that section.

For the purposes of this section, ''service as an elected state constitutional officer'' includes all or any portion of the term of office for which he or she was duly elected as an elected state constitutional officer as specified by law at the time of his or her election.

SEC. 127.3. Section 75031 of the Government Code is amended to read:

75031. In computing the number of years a person has been a judge for the purposes of retirement under Sections 75025 or 75060, there shall be included any time as he or she was absent from his or her position as judge by reason of service with the armed forces of the United States during a war involving the United States as a belligerent or in any other national emergency, and for six months thereafter.

This section shall be retroactively applied to extend its benefits to all judges who served in the military service in time of war, including the period September 16, 1940, to December 7, 1941, and who return or have returned to their positions upon the termination of their military service or within six months thereafter. The provisions of this section apply to any person who resigned judicial office to enter military service in time of national emergency declared by the President prior to the authorization by law of military leave, if he or she returned to judicial office within 90 days after his or her separation from military service.

SEC. 127.4. Section 75033 of the Government Code is amended to read:

75033. Notwithstanding any other provision of this chapter, if the service of a judge, who has been elected or appointed as such, is discontinued by any means other than death, resignation, recall, impeachment, or retirement pursuant to this chapter, he or she shall have the right to elect in writing filed with the Judges' Retirement System within 90 days thereafter, and without right of revocation, whether to allow his or her accumulated contributions to remain in the fund. A judge who after the effective date of the 1972 amendments to this section leaves his or her office to accept any lucrative office under the United

States within the purview of Section 7 of Article VII of the California Constitution shall not be eligible for deferred retirement under this section. Failure to make the election shall be deemed an irrevocable election to withdraw his or her accumulated contributions. A judge who so elects to allow his or her accumulated contributions to remain in the fund shall, upon his or her application therefor to the Judges' Retirement System be retired, and after attaining age 65 receive a retirement allowance based upon the judicial service with which he or she is credited, in the same manner as other judges, except that his or her retirement allowance is an annual amount equal to 5 percent of the compensation payable, at the time payments of the allowance fall due, to the judge holding the office that the retired judge last held prior to the discontinuance of his or her service as judge, multiplied by the number of years and fractions of years of service with which the retired judge is entitled to be credited at the time of such discontinuance of his or her service, not to exceed eight years.

This section does not apply to any person who becomes a judge after January 1, 1974.

The amendments to this section during 1977 are also applicable to persons who elected to allow their accumulated contributions to remain in the fund prior to January 1, 1978.

SEC. 127.5. Section 75060.1 of the Government Code is amended to read:

75060.1. Notwithstanding any provision of law to the contrary, every judge retired for disability before or after the effective date of this section shall receive a retirement allowance in an amount that he or she would have received had he or she retired after the effective date of this section. This section does not give any retired judge a claim against the state for any increase in retirement allowance or other benefit for time prior to the effective date of this section.

SEC. 127.6. Section 75077 of the Government Code is amended to read:

75077. The surviving spouse of a judge who qualifies, as prescribed in Section 75075, to receive the benefits accorded by this article and who dies during retirement shall receive, until death or remarriage, an allowance equal to one-half of the retirement allowance that would be payable to the judge were he or she living and receiving the benefits accorded by this article.

SEC. 127.7. Section 75083 of the Government Code is amended to read:

75083. Any judge retired pursuant to this chapter who is appointed by the Supreme Court or any court of appeal, or division thereof, to act as a master or referee in any proceeding pending before those courts or before the Commission on Judicial Performance, shall be paid while so

acting, in addition to his or her retirement allowance (taken without reduction on account of any election pursuant to Article 3.5 (commencing with Section 75070)) the difference, if any, between the retirement allowance and the compensation of a judge of the court from which he or she retired.

When appointed to act as referee in a county other than that in which he or she resides, he or she shall also be allowed his or her necessary expenses for travel, board, and lodging incurred in the discharge of that appointment.

The extra compensation and expenses, if any, shall be chargeable to the state.

SEC. 127.8. Section 75095.5 of the Government Code is amended to read:

75095.5. (a) Any election of any judge who became a municipal court judge on May 23, 1980, and died on September 18, 1983, to come within the provisions of this article, which was filed with the Secretary of State on September 22, 1983, shall become effective on the date filed.

(b) The surviving spouse of the person so electing who was previously eligible to come within this article and did not do so, shall pay all of the contributions he or she would have made pursuant to Section 75097 had he or she been covered by this article as soon as eligible therefor.

SEC. 127.9. Section 75104 of the Government Code is amended to read:

75104. (a) Except as otherwise provided in subdivisions (b) and (c), should any judge die, resign, or cease to be a judge prior to his or her retirement, or die after electing to allow his or her accumulated contributions to remain in the fund pursuant to Section 75033 but prior to attaining age 65, the amount of his or her accumulated contribution shall be paid to his or her beneficiary nominated by written designation duly filed with the Judges' Retirement System, or to him or her, as the case may be. If an allowance is paid to a surviving spouse pursuant to this chapter, no payment shall be made pursuant to this section.

(b) A judge who has filed a declaration of candidacy for election or reelection to any judicial office may not withdraw his or her contributions until after the election. If a judge is elected or reelected to a judicial office, he or she may not withdraw his or her contributions until he or she has declined to accept the office or has ceased to hold the office to which he or she has been elected.

(c) A judge who has been appointed, commissioned, or nominated to any judicial office of this state may not withdraw his or her contributions until he or she has declined to serve or terminated his or her service in the latter office.

SEC. 128. Section 75104.4 of the Government Code is amended to read:

75104.4. (a) The surviving spouse of any judge who dies on or after January 1, 1954, but before retirement and after becoming eligible for retirement pursuant to Section 75025 or 75033 or who dies on or after January 1, 1954, while serving as judge and has served as a judge for 30 years, shall receive an allowance equal to one-half of the amount of the unmodified retirement allowance that would be payable to the judge were he or she living and retired under this chapter. The allowance is payable commencing upon the day following the date of the death of the judge and continuing until the death or remarriage of the surviving spouse. If, pursuant to this section, an allowance is paid to the surviving spouse of a judge, no payment shall be made pursuant to Section 75104 or 75104.5.

(b) The Legislature hereby finds and declares that the payment of allowances to the surviving spouse of a judge pursuant to this section, as amended at the 1959 Regular Session of the Legislature, serves a public purpose in that it promotes the public welfare by encouraging experienced jurists to continue their service in the expectation that the Legislature will fairly provide for their surviving spouses under changing circumstances, as the Legislature is now doing for spouses of judges who have heretofore died. Continued service by, and increased efficiency of, judges secure in this knowledge will more than compensate the state for any increased expense for allowances to surviving spouses provided by the amendment enacted at the 1959 session of the Legislature.

SEC. 128.1. Section 75104.5 of the Government Code is amended to read:

75104.5. Upon the death of a judge before retirement there shall be paid to his or her beneficiary, if he or she has designated one, and if not, to his or her estate, in addition to any other benefits provided by this chapter or by Division 4 of the Labor Code, an amount equal to one-twelfth of the annual compensation of that judge during the 12 months immediately preceding his or her death, multiplied by the completed number of years of service as a judge, but not to exceed one-half of the judge's annual compensation. The benefit accorded by this section is not payable if the deceased judge's spouse survives him or her and is entitled to receive an allowance for life pursuant to the provisions of this chapter.

SEC. 128.2. Section 75106 of the Government Code is amended to read:

75106. The State Treasurer is the custodian of the Judges' Retirement Fund. At the end of each month the Judges' Retirement System shall ascertain the written notices of voluntary retirement and the

written certificates of involuntary retirement that have been filed with the Judges' Retirement System and cause warrants to be drawn upon the State Treasury in favor of each retired judge for the amount of the retirement allowance to which he or she is entitled.

SEC. 128.3. Section 71.7 of the Harbors and Navigation Code, as added by Section 2 of Chapter 1231 of the Statutes of 1994, is repealed.

SEC. 128.5. Section 1276.65 of the Health and Safety Code is amended to read:

1276.65. (a) For purposes of this section, the following definitions shall apply:

(1) ''Direct caregiver'' means a registered nurse, as referred to in Section 2732 of the Business and Professions Code, a licensed vocational nurse, as referred to in Section 2864 of the Business and Professions Code, a psychiatric technician, as referred to in Section 4516 of the Business and Professions Code, and a certified nurse assistant, as defined in Section 1337.

(2) ''Skilled nursing facility'' means a skilled nursing facility as defined in subdivision (c) of Section 1250.

(b) A person employed to provide services such as food preparation, housekeeping, laundry, or maintenance services shall not provide nursing care to residents and shall not be counted in determining ratios under this section.

(c) (1) Notwithstanding any other provision of law, the State Department of Health Services shall develop regulations that become effective August 1, 2003, that establish staff-to-patient ratios for direct caregivers working in a skilled nursing facility. These ratios shall include separate licensed nurse staff-to-patient ratios in addition to the ratios established for other direct caregivers.

(2) The department, in developing staff-to-patient ratios for direct caregivers and licensed nurses required by this section, shall convert the existing requirement under Section 1276.5 of this code and Section 14110.7 of the Welfare and Institutions Code for 3.2 nursing hours per patient day of care and shall ensure that no less care is given than is required pursuant to Section 1276.5 of this code and Section 14110.7 of the Welfare and Institutions Code. Further, the department shall develop the ratios in a manner that minimizes additional state costs, maximizes resident access to care, and takes into account the length of the shift worked. In developing the regulations, the department shall develop a procedure for facilities to apply for a waiver that addresses individual patient needs except that in no instance shall the minimum staff-to-patient ratios be less than the 3.2 nursing hours per patient day required under Section 1276.5 of this code and Section 14110.7 of the Welfare and Institutions Code.

(d) The staffing ratios to be developed pursuant to this section shall be minimum standards only. Skilled nursing facilities shall employ and schedule additional staff as needed to ensure quality resident care based on the needs of individual residents and to ensure compliance with all relevant state and federal staffing requirements.

(e) No later than January 1, 2006, and every five years thereafter, the department shall consult with consumers, consumer advocates, recognized collective bargaining agents, and providers to determine the sufficiency of the staffing standards provided in this section and may adopt regulations to increase the minimum staffing ratios to adequate levels.

(f) In a manner pursuant to federal requirements, effective January 1, 2003, every skilled nursing facility shall post information about staffing levels that includes the current number of licensed and unlicensed nursing staff directly responsible for resident care in the facility. This posting shall include staffing requirements developed pursuant to this section.

(g) (1) Notwithstanding any other provision of law, the department shall inspect for compliance with this section during state and federal periodic inspections, including, but not limited to, those inspections required under Section 1422. This inspection requirement shall not limit the department's authority in other circumstances to cite for violations of this section or to inspect for compliance with this section.

(2) A violation of the regulations developed pursuant to this section may constitute a class "B," "A," or "AA" violation pursuant to the standards set forth in Section 1424.

(h) The requirements of this section are in addition to any requirement set forth in Section 1276.5 of this code and Section 14110.7 of the Welfare and Institutions Code.

(i) Initial implementation of the staffing ratio developed pursuant to requirements set forth in this section shall be contingent on an appropriation in the annual Budget Act or another statute.

(j) In implementing this section, the department may contract as necessary, on a bid or nonbid basis, for professional consulting services from nationally recognized higher education and research institutions, or other qualified individuals and entities not associated with a skilled nursing facility, with demonstrated expertise in long-term care. This subdivision establishes an accelerated process for issuing contracts pursuant to this section and contracts entered into pursuant to this section shall be exempt from the requirements of Chapter 1 (commencing with Section 10100) and Chapter 2 (commencing with Section 10290) of Part 2 of Division 2 of the Public Contract Code.

(k) This section shall not apply to facilities defined in Section 1276.9.

SEC. 129. The heading of Chapter 2.5 (commencing with Section 1399.900) of Division 2 of the Health and Safety Code is amended and renumbered to read:

CHAPTER 2.25. DISEASE MANAGEMENT

SEC. 130. Section 11054 of the Health and Safety Code is amended to read:

11054. (a) The controlled substances listed in this section are included in Schedule I.

(b) Opiates. Unless specifically excepted or unless listed in another schedule, any of the following opiates, including their isomers, esters, ethers, salts, and salts of isomers, esters, and ethers whenever the existence of those isomers, esters, ethers, and salts is possible within the specific chemical designation:

(1) Acetylmethadol.
(2) Allylprodine.
(3) Alphacetylmethadol (except levoalphacetylmethadol, also known as levo-alpha- acetylmethadol, levomethadyl acetate, or LAAM).
(4) Alphameprodine.
(5) Alphamethadol.
(6) Benzethidine.
(7) Betacetylmethadol.
(8) Betameprodine.
(9) Betamethadol.
(10) Betaprodine.
(11) Clonitazene.
(12) Dextromoramide.
(13) Diampromide.
(14) Diethylthiambutene.
(15) Difenoxin.
(16) Dimenoxadol.
(17) Dimepheptanol.
(18) Dimethylthiambutene.
(19) Dioxaphetyl butyrate.
(20) Dipipanone.
(21) Ethylmethylthiambutene.
(22) Etonitazene.
(23) Etoxeridine.
(24) Furethidine.
(25) Hydroxypethidine.
(26) Ketobemidone.
(27) Levomoramide.

(28) Levophenacylmorphan.
(29) Morpheridine.
(30) Noracymethadol.
(31) Norlevorphanol.
(32) Normethadone.
(33) Norpipanone.
(34) Phenadoxone.
(35) Phenampromide.
(36) Phenomorphan.
(37) Phenoperidine.
(38) Piritramide.
(39) Proheptazine.
(40) Properidine.
(41) Propiram.
(42) Racemoramide.
(43) Tilidine.
(44) Trimeperidine.
(45) Any substance which contains any quantity of acetylfentanyl (N-[1-phenethyl-4-piperidinyl] acetanilide) or a derivative thereof.
(46) Any substance which contains any quantity of the thiophene analog of acetylfentanyl (N-[1-[2-(2-thienyl)ethyl]-4-piperidinyl] acetanilide) or a derivative thereof.
(47) 1-Methyl-4-Phenyl-4-Propionoxypiperidine (MPPP).
(48) 1-(2-Phenethyl)-4-Phenyl-4-Acetyloxypiperidine (PEPAP).
(c) Opium derivatives. Unless specifically excepted or unless listed in another schedule, any of the following opium derivatives, its salts, isomers, and salts of isomers whenever the existence of those salts, isomers, and salts of isomers is possible within the specific chemical designation:
(1) Acetorphine.
(2) Acetyldihydrocodeine.
(3) Benzylmorphine.
(4) Codeine methylbromide.
(5) Codeine-N-Oxide.
(6) Cyprenorphine.
(7) Desomorphine.
(8) Dihydromorphine.
(9) Drotebanol.
(10) Etorphine (except hydrochloride salt).
(11) Heroin.
(12) Hydromorphinol.
(13) Methyldesorphine.
(14) Methyldihydromorphine.
(15) Morphine methylbromide.

(16) Morphine methylsulfonate.
(17) Morphine-N-Oxide.
(18) Myrophine.
(19) Nicocodeine.
(20) Nicomorphine.
(21) Normorphine.
(22) Pholcodine.
(23) Thebacon.

(d) Hallucinogenic substances. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation, which contains any quantity of the following hallucinogenic substances, or which contains any of its salts, isomers, and salts of isomers whenever the existence of those salts, isomers, and salts of isomers is possible within the specific chemical designation (for purposes of this subdivision only, the term ''isomer'' includes the optical, position, and geometric isomers):

(1) 4-bromo-2,5-dimethoxy-amphetamine—Some trade or other names: 4-bromo-2,5-dimethoxy-alpha-methylphenethylamine; 4-bromo-2,5-DMA.

(2) 2,5-dimethoxyamphetamine—Some trade or other names: 2,5-dimethoxy-alpha-methylphenethylamine; 2,5-DMA.

(3) 4-methoxyamphetamine—Some trade or other names: 4-methoxy-alpha-methylphenethylamine, paramethoxyamphetamine, PMA.

(4) 5-methoxy-3,4-methylenedioxy-amphetamine.

(5) 4-methyl-2,5-dimethoxy-amphetamine—Some trade or other names: 4-methyl-2,5-dimethoxy-alpha-methylphenethylamine; ''DOM''; and ''STP.''

(6) 3,4-methylenedioxy amphetamine.

(7) 3,4,5-trimethoxy amphetamine.

(8) Bufotenine—Some trade or other names: 3-(beta-dimethylaminoethyl)-5-hydroxyindole; 3-(2-dimethylaminoethyl)-5 indolol; N,N-dimethylserolonin, 5-hydroxy-N,N-dimethyltryptamine; mappine.

(9) Diethyltryptamine—Some trade or other names: N,N-Diethyltryptamine; DET.

(10) Dimethyltryptamine—Some trade or other names: DMT.

(11) Ibogaine—Some trade or other names: 7-Ethyl-6,6beta, 7,8,9,10,12,13-octahydro-2-methoxy-6,9-methano-5H-pyrido [1',2':1,2] azepino [5,4-b] indole; Tabernantheiboga.

(12) Lysergic acid diethylamide.

(13) Marijuana.

(14) Mescaline.

(15) Peyote—Meaning all parts of the plant presently classified botanically as Lophophora williamsii Lemaire, whether growing or not, the seeds thereof, any extract from any part of the plant, and every compound, manufacture, salts, derivative, mixture, or preparation of the plant, its seeds or extracts (interprets 21 U.S.C. Sec. 812(c), Schedule 1(c)(12)).

(16) N-ethyl-3-piperidyl benzilate.

(17) N-methyl-3-piperidyl benzilate.

(18) Psilocybin.

(19) Psilocyn.

(20) Tetrahydrocannabinols. Synthetic equivalents of the substances contained in the plant, or in the resinous extractives of Cannabis, sp. and/or synthetic substances, derivatives, and their isomers with similar chemical structure and pharmacological activity such as the following: delta 1 cis or trans tetrahydrocannabinol, and their optical isomers; delta 6 cis or trans tetrahydrocannabinol, and their optical isomers; delta 3,4 cis or trans tetrahydrocannabinol, and its optical isomers.

(Since nomenclature of these substances is not internationally standardized, compounds of these structures, regardless of numerical designation of atomic positions covered).

(21) Ethylamine analog of phencyclidine—Some trade or other names: N-ethyl-1-phenylcyclohexylamine, (1-phenylcyclohexyl) ethylamine, N-(1-phenylcyclohexyl) ethylamine, cyclohexamine, PCE.

(22) Pyrrolidine analog of phencyclidine—Some trade or other names: 1-(1-phenylcyclohexyl)-pyrrolidine, PCP, PHP.

(23) Thiophene analog of phencyclidine—Some trade or other names: 1-[1-(2 thienyl)-cyclohexyl]-piperidine, 2-thienyl analog of phencyclidine, TPCP, TCP.

(e) Depressants. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a depressant effect on the central nervous system, including its salts, isomers, and salts of isomers whenever the existence of those salts, isomers, and salts of isomers is possible within the specific chemical designation:

(1) Mecloqualone.

(2) Methaqualone.

(3) Gamma hydroxybutyric acid (also known by other names such as GHB; gamma hydroxy butyrate; 4-hydroxybutyrate; 4-hydroxybutanoic acid; sodium oxybate; sodium oxybutyrate), including its immediate precursors, isomers, esters, ethers, salts, and salts of isomers, esters, and ethers, including, but not limited to, gammabutyrolactone, for which an application has not been approved

under Section 505 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. Sec. 355).

(f) Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a stimulant effect on the central nervous system, including its isomers:

(1) Cocaine base.

(2) Fenethylline, including its salts.

(3) N-Ethylamphetamine, including its salts.

SEC. 131. Section 11377 of the Health and Safety Code is amended to read:

11377. (a) Except as authorized by law and as otherwise provided in subdivision (b) or Section 11375, or in Article 7 (commencing with Section 4211) of Chapter 9 of Division 2 of the Business and Professions Code, every person who possesses any controlled substance which is (1) classified in Schedule III, IV, or V, and which is not a narcotic drug, (2) specified in subdivision (d) of Section 11054, except paragraphs (13), (14), (15), and (20) of subdivision (d), (3) specified in paragraph (11) of subdivision (c) of Section 11056, (4) specified in paragraph (2) or (3) of subdivision (f) of Section 11054, or (5) specified in subdivision (d), (e), or (f) of Section 11055, unless upon the prescription of a physician, dentist, podiatrist, or veterinarian, licensed to practice in this state, shall be punished by imprisonment in a county jail for a period of not more than one year or in the state prison.

(b) (1) Any person who violates subdivision (a) by unlawfully possessing a controlled substance specified in subdivision (f) of Section 11056, and who has not previously been convicted of a violation involving a controlled substance specified in subdivision (f) of Section 11056, is guilty of a misdemeanor.

(2) Any person who violates subdivision (a) by unlawfully possessing a controlled substance specified in subdivision (g) of Section 11056 is guilty of a misdemeanor.

(c) In addition to any fine assessed under subdivision (b), the judge may assess a fine not to exceed seventy dollars ($70) against any person who violates subdivision (a), with the proceeds of this fine to be used in accordance with Section 1463.23 of the Penal Code. The court shall, however, take into consideration the defendant's ability to pay, and no defendant shall be denied probation because of his or her inability to pay the fine permitted under this subdivision.

SEC. 132. Section 11382 of the Health and Safety Code is amended to read:

11382. Every person who agrees, consents, or in any manner offers to unlawfully sell, furnish, transport, administer, or give any controlled substance which is (1) classified in Schedule III, IV, or V and which is

not a narcotic drug, or (2) specified in subdivision (d) of Section 11054, except paragraphs (13), (14), (15), and (20) of subdivision (d), specified in paragraph (11) of subdivision (c) of Section 11056, or specified in subdivision (d), (e), or (f) of Section 11055, to any person, or offers, arranges, or negotiates to have that controlled substance unlawfully sold, delivered, transported, furnished, administered, or given to any person and then sells, delivers, furnishes, transports, administers, or gives, or offers, or arranges, or negotiates to have sold, delivered, transported, furnished, administered, or given to any person any other liquid, substance, or material in lieu of that controlled substance shall be punished by imprisonment in the county jail for not more than one year, or in the state prison.

SEC. 133. Section 25395.20 of the Health and Safety Code is amended to read:

25395.20. (a) For purposes of this article, the following definitions shall apply:

(1) ''Account'' means the Cleanup Loans and Environmental Assistance to Neighborhoods Account established pursuant to subdivision (b).

(2) (A) ''Brownfield'' means property that meets all of the following conditions:

(i) It is located in an urban area.

(ii) It was previously the site of an economic activity that is no longer in operation at that location.

(iii) It has been vacant or has had no occupant engaged in year-round economically productive activities for a period of not less than the 12 months previous to the date of application for a loan pursuant to this article.

(B) ''Brownfield'' does not include any of the following:

(i) Property listed, or proposed for listing, on the National Priorities List pursuant to the federal act (42 U.S.C. Sec. 9605 (a)(8)(B)).

(ii) Property that is, or was, owned or operated by a department, agency, or instrumentality of the United States.

(iii) Property that will be the site of a contiguous expansion or improvement of an operating industrial or commercial facility, unless the property is a brownfield described in subparagraph (C) of paragraph (6).

(3) ''Cleanup and abatement order'' means an order issued by a regional board pursuant to Section 13304 of the Water Code.

(4) ''Cleanup Loans and Environmental Assistance to Neighborhoods Program'' or ''CLEAN'' means the loan program established by the department pursuant to Section 25395.22, to finance the performance of actions necessary to respond to the release or threatened release of hazardous material on an eligible property.

(5) ''Economic activity'' means a governmental activity, a commercial, agricultural, industrial, or not-for-profit enterprise, or other economic or business concern.

(6) ''Eligible property'' means a site that is any of the following:

(A) A brownfield.

(B) An underutilized property that is any of the following:

(i) A property described in clause (v) of subparagraph (D) of paragraph (16).

(ii) A property located in an enterprise zone established pursuant to the Enterprise Zone Act (Chapter 12.8 (commencing with Section 7070) of Division 7 of Title 1 of the Government Code), in a project area for which a redevelopment plan has been approved pursuant to Article 4 (commencing with Section 33300) of Chapter 4 of Part 1 of Division 24, or in an eligible area, as determined by the Technology, Trade, and Commerce Agency pursuant to paragraph (2) of subdivision (c) of Section 7072 of the Government Code.

(iii) A property, the redevelopment of which will result in any of the following:

(I) An increase in the number of full-time jobs that is at least 100 percent greater than the number of jobs provided by the economic activity located on the property before redevelopment occurred.

(II) An increase in property taxes paid to the local government that is at least 100 percent greater than the property taxes paid by the property owner before redevelopment occurred.

(III) Sales tax revenues to the local government that are sufficient to defray the costs of providing municipal services to the property after the redevelopment occurs.

(IV) Housing for very low, low-, or moderate-income households, as defined in paragraph (2) of subdivision (h) of Section 65589.5 of the Government Code.

(V) The construction of new or expanded school facilities, public day care centers, parks, or community recreational facilities.

(C) A brownfield or an underutilized property described in clause (ii) of subparagraph (B) that will be the site of a contiguous expansion of an operating industrial or commercial facility owned or operated by one of the following:

(i) A small business.

(ii) A nonprofit corporation formed under the Nonprofit Public Benefit Corporation Law (Part 2 (commencing with Section 5110) of Division 2 of Title 1 of the Corporations Code) or the Nonprofit Religious Corporation Law (Part 4 (commencing with Section 9110) of Division 2 of Title 1 of the Corporations Code).

(iii) A small business incubator that is undertaking the expansion with the assistance of a grant authorized by Section 15339.3 of the

Government Code or a loan guarantee provided pursuant to Section 14090 of the Corporations Code.

(7) ''Eligible property'' does not include any of the following:

(A) Property listed or proposed for listing on the National Priorities List pursuant to the federal act (42 U.S.C. Sec. 9605 (a)(8)(B)).

(B) Property that is, or was, owned or operated by a department, agency, or instrumentality of the United States.

(C) Property that will be the site of a contiguous expansion or improvement of an operating industrial or commercial facility, unless the property meets the criteria specified in subparagraph (C) of paragraph (6).

(8) (A) ''Hazardous material'' means a substance or waste that, because of its physical, chemical, or other characteristics, may pose a risk of endangering human health or safety or of degrading the environment. ''Hazardous material'' includes, but is not limited to, all of the following:

(i) A hazardous substance, as defined in Section 25281 or 25316, including the substances specified in Section 25317.

(ii) A hazardous waste, as defined in Section 25117.

(iii) A waste, as defined in Section 101075, or as defined in Section 13050 of the Water Code.

(B) ''Hazardous material'' does not include undisturbed naturally occurring hazardous material unless it will adversely affect the reasonable use of a property after response action is completed.

(9) ''Implementation costs,'' for purposes of the expenditure of any funds pursuant to this article, includes, but is not limited to, the costs of overseeing and reviewing preliminary endangerment assessments and response actions that are financed by a loan issued pursuant to this article, including oversight conducted by a regional board pursuant to Section 25395.28.

(10) ''Investigating site contamination program'' means the loan program established by the department pursuant to Section 25395.21 to conduct a preliminary endangerment assessment of a brownfield or an underutilized urban property.

(11) ''Leaking underground fuel tank'' has the same meaning as ''tank,'' as defined in Section 25299.24.

(12) ''No longer in operation'' means an economic activity that is, or previously was, located on a property that is not conducting operations on the property of the type usually associated with the economic activity.

(13) ''Project'' means any response action, and the planned future development, included in an application for a loan pursuant to Section 25395.22.

(14) ''Property'' means real property, as defined in Section 658 of the Civil Code.

(15) ''Small business'' means an independently owned and operated business, that is not dominant in its field of operation, that, together with affiliates, has 100 or fewer employees, and that has average annual gross receipts of ten million dollars ($10,000,000) or less over the previous three years, or a business that is a manufacturer, as defined in Section 14837 of the Government Code, with 100 or fewer employees.

(16) ''Underutilized property'' means property that meets all of the following conditions:

(A) It is located in an urban area.

(B) An economic activity is conducted on the property.

(C) It is the subject of a proposal for development pursuant to this article.

(D) One of the following applies:

(i) The economic activity on the property is irregular or intermittent in nature and uses the property for productive purposes less than four months in any calendar year.

(ii) The economic activity on the property employs less than 25 percent of the property for productive purposes.

(iii) The structures, infrastructure, and other facilities on the property are antiquated, obsolete, or in such poor repair that they cannot be used for the purposes for which they were originally constructed and require replacement in order to implement the redevelopment proposal.

(iv) The economic activity conducted on the property is a parking facility or an activity that offers a similar marginal economic service and the facility or activity will be replaced when the property is redeveloped.

(v) The property is adjacent to one or more brownfields or underutilized properties that are the subject of a project under this article and its inclusion in the project is necessary in order to ensure that the redevelopment of the brownfield or brownfields or underutilized property or underutilized properties occurs.

(E) An underutilized property does not include any of the following:

(i) Property listed or proposed for listing on the National Priorities List pursuant to the federal act (42 U.S.C. Sec. 9605 (a)(8)(B)).

(ii) Property that is, or was, owned or operated by a department, agency, or instrumentality of the United States.

(iii) Property that will be the site of a contiguous expansion or improvement of an operating industrial or commercial facility, unless the property is an underutilized property described in subparagraph (C) of paragraph (6).

(17) ''Regional board'' means a California regional water quality control board.

(18) ''State board'' means the State Water Resources Control Board.

(19) ''Urban area'' means either of the following:

(A) The central portion of a city or a group of contiguous cities with a population of 50,000 or more, together with adjacent densely populated areas having a population density of at least 1,000 persons per square mile.

(B) An urbanized area as defined in paragraph (2) of subdivision (b) of Section 21080.7 of the Public Resources Code.

(b) The Cleanup Loans and Environmental Assistance to Neighborhoods Account is hereby established in the General Fund to provide low-interest loans to qualified applicants for the purpose of funding preliminary endangerment assessments and response actions at brownfields and underutilized properties located in the state pursuant to this article, and for any other purpose determined by the department to stimulate the redevelopment of brownfields and underutilized properties, if the department determines that the redevelopment will result in the overall improvement of the community in which the property is located and will provide a reasonable economic or social benefit, in accordance with subdivision (c). All of the following moneys shall be deposited in the account:

(1) Funds appropriated by the Legislature for the purposes of this article.

(2) Notwithstanding Section 16475 of the Government Code, any interest earned upon money deposited into the account.

(3) Proceeds from loan repayments.

(4) Proceeds from the sale of property pursuant to this article that is the subject of foreclosure or its equivalent, as defined in subdivision (f) of Section 25548.1, and proceeds from the enforcement of any other security interest.

(c) (1) Except as provided in paragraph (2), notwithstanding Section 13340 of the Government Code, the money in the account is continuously appropriated without regard to fiscal years to the department for the purpose of providing loans pursuant to Sections 25395.21 and 25395.22 and for the purpose of providing subsidies for environmental insurance pursuant to Article 8.7 (commencing with Section 25395.40), the California Financial Assurance and Insurance for Redevelopment Program.

(2) The money in the account may be expended by the department, a regional board, the state board, and the agency for the implementation and administration of this article and for implementation and administration of the California Financial Assurance and Insurance for Redevelopment Program (Article 7 (commencing with Section 25395.40)), only upon appropriation by the Legislature in the annual Budget Act or in another measure.

SEC. 134. Section 26148 of the Health and Safety Code is amended to read:

26148. (a) Residential landlords shall provide written disclosure to prospective tenants of the potential health risks and the health impact that may result from exposure to mold by distributing a consumer-oriented booklet developed and disseminated by the department.

(b) The requirements of this section shall be provided to prospective residential tenants prior to entering the rental or lease agreement.

(c) The requirements of this section shall not apply until the first January 1 or July 1 that occurs at least six months after the department approves the consumer-oriented booklet, as described in subdivision (a).

SEC. 135. Section 32121 of the Health and Safety Code, as amended by Section 1 of Chapter 184 of the Statutes of 2001, is amended to read:

32121. Each local district shall have and may exercise the following powers:

(a) To have and use a corporate seal and alter it at its pleasure.

(b) To sue and be sued in all courts and places and in all actions and proceedings whatever.

(c) To purchase, receive, have, take, hold, lease, use, and enjoy property of every kind and description within and without the limits of the district, and to control, dispose of, convey, and encumber the same and create a leasehold interest in the same for the benefit of the district.

(d) To exercise the right of eminent domain for the purpose of acquiring real or personal property of every kind necessary to the exercise of any of the powers of the district.

(e) To establish one or more trusts for the benefit of the district, to administer any trust declared or created for the benefit of the district, to designate one or more trustees for trusts created by the district, to receive by gift, devise, or bequest, and hold in trust or otherwise, property, including corporate securities of all kinds, situated in this state or elsewhere, and where not otherwise provided, dispose of the same for the benefit of the district.

(f) To employ legal counsel to advise the board of directors in all matters pertaining to the business of the district, to perform the functions in respect to the legal affairs of the district as the board may direct, and to call upon the district attorney of the county in which the greater part of the land in the district is situated for legal advice and assistance in all matters concerning the district, except that if that county has a county counsel, the directors may call upon the county counsel for legal advice and assistance.

(g) To employ any officers and employees, including architects and consultants, the board of directors deems necessary to carry on properly the business of the district.

(h) To prescribe the duties and powers of the health care facility administrator, secretary, and other officers and employees of any health care facilities of the district, to establish offices as may be appropriate and to appoint board members or employees to those offices, and to determine the number of, and appoint, all officers and employees and to fix their compensation. The officers and employees shall hold their offices or positions at the pleasure of the boards of directors.

(i) To do any and all things that an individual might do that are necessary for, and to the advantage of, a health care facility and a nurses' training school, or a child care facility for the benefit of employees of the health care facility or residents of the district.

(j) To establish, maintain, and operate, or provide assistance in the operation of, one or more health facilities or health services, including, but not limited to, outpatient programs, services, and facilities; retirement programs, services, and facilities; chemical dependency programs, services, and facilities; or other health care programs, services, and facilities and activities at any location within or without the district for the benefit of the district and the people served by the district.

''Health care facilities,'' as used in this subdivision, means those facilities defined in subdivision (b) of Section 32000.1 and specifically includes freestanding chemical dependency recovery units. ''Health facilities,'' as used in this subdivision, may also include those facilities defined in subdivision (d) of Section 15432 of the Government Code.

(k) To do any and all other acts and things necessary to carry out this division.

(*l*) To acquire, maintain, and operate ambulances or ambulance services within and without the district.

(m) To establish, maintain, and operate, or provide assistance in the operation of, free clinics, diagnostic and testing centers, health education programs, wellness and prevention programs, rehabilitation, aftercare, and any other health care services provider, groups, and organizations that are necessary for the maintenance of good physical and mental health in the communities served by the district.

(n) To establish and operate in cooperation with its medical staff a coinsurance plan between the hospital district and the members of its attending medical staff.

(o) To establish, maintain, and carry on its activities through one or more corporations, joint ventures, or partnerships for the benefit of the health care district.

(p) (1) To transfer, at fair market value, any part of its assets to one or more corporations to operate and maintain the assets. A transfer pursuant to this paragraph shall be deemed to be at fair market value if an independent consultant, with expertise in methods of appraisal and valuation and in accordance with applicable governmental and industry

standards for appraisal and valuation, determines that fair and reasonable consideration is to be received by the district for the transferred district assets. Before the district transfers, pursuant to this paragraph, 50 percent or more of the district's assets to one or more corporations, in sum or by increment, the elected board shall, by resolution, submit to the voters of the district a measure proposing the transfer. The measure shall be placed on the ballot of a special election held upon the request of the district or the ballot of the next regularly scheduled election occurring at least 88 days after the resolution of the board. If a majority of the voters voting on the measure vote in its favor, the transfer shall be approved. The campaign disclosure requirements applicable to local measures provided under Chapter 4 (commencing with Section 84100) of Title 9 of the Government Code shall apply to this election.

(2) To transfer, for the benefit of the communities served by the district, in the absence of adequate consideration, any part of the assets of the district, including, without limitation, real property, equipment, and other fixed assets, current assets, and cash, relating to the operation of the district's health care facilities to one or more nonprofit corporations to operate and maintain the assets.

(A) A transfer of 50 percent or more of the district's assets, in sum or by increment, pursuant to this paragraph shall be deemed to be for the benefit of the communities served by the district only if all of the following occur:

(i) The transfer agreement and all arrangements necessary thereto are fully discussed in advance of the district board decision to transfer the assets of the district in at least five properly noticed open and public meetings in compliance with Section 32106 and the Ralph M. Brown Act (Chapter 9 (commencing with Section 54950) of Part 1 of Division 2 of Title 5 of the Government Code).

(ii) The transfer agreement provides that the hospital district shall approve all initial board members of the nonprofit corporation and any subsequent board members as may be specified in the transfer agreement.

(iii) The transfer agreement provides that all assets transferred to the nonprofit corporation, and all assets accumulated by the corporation during the term of the transfer agreement arising out of, or from, the operation of the transferred assets, are to be transferred back to the district upon termination of the transfer agreement, including any extension of the transfer agreement.

(iv) The transfer agreement commits the nonprofit corporation to operate and maintain the district's health care facilities and its assets for the benefit of the communities served by the district.

(v) The transfer agreement requires that any funds received from the district at the outset of the agreement or any time thereafter during the

term of the agreement be used only to reduce district indebtedness, to acquire needed equipment for the district health care facilities, to operate, maintain, and make needed capital improvements to the district's health care facilities, to provide supplemental health care services or facilities for the communities served by the district, or to conduct other activities that would further a valid public purpose if undertaken directly by the district.

(B) A transfer of 33 percent or more but less than 50 percent of the district's assets, in sum or by increment, pursuant to this paragraph shall be deemed to be for the benefit of the communities served by the district only if both of the following occur:

(i) The transfer agreement and all arrangements necessary thereto are fully discussed in advance of the district board decision to transfer the assets of the district in at least two properly noticed open and public meetings in compliance with Section 32106 and the Ralph M. Brown Act (Chapter 9 (commencing with Section 54950) of Part 1 of Division 2 of Title 5 of the Government Code).

(ii) The transfer agreement meets all of the requirements of clauses (ii) to (v), inclusive, of subparagraph (A).

(C) A transfer of 10 percent or more but less than 33 percent of the district's assets, in sum or by increment, pursuant to this paragraph shall be deemed to be for the benefit of the communities served by the district only if both of the following occur:

(i) The transfer agreement and all arrangements necessary thereto are fully discussed in advance of the district board decision to transfer the assets of the district in at least two properly noticed open and public meetings in compliance with Section 32106 and the Ralph M. Brown Act (Chapter 9 (commencing with Section 54950) of Part 1 of Division 2 of Title 5 of the Government Code).

(ii) The transfer agreement meets all of the requirements of clauses (iii) to (v), inclusive, of subparagraph (A).

(D) Before the district transfers, pursuant to this paragraph, 50 percent or more of the district's assets to one or more nonprofit corporations, in sum or by increment, the elected board shall, by resolution, submit to the voters of the district a measure proposing the transfer. The measure shall be placed on the ballot of a special election held upon the request of the district or the ballot of the next regularly scheduled election occurring at least 88 days after the resolution of the board. If a majority of the voters voting on the measure vote in its favor, the transfer shall be approved. The campaign disclosure requirements applicable to local measures provided under Chapter 4 (commencing with Section 84100) of Title 9 of the Government Code shall apply to this election.

(E) Notwithstanding the other provisions of this paragraph, a hospital district shall not transfer any portion of its assets to a private nonprofit organization that is owned or controlled by a religious creed, church, or sectarian denomination in the absence of adequate consideration.

(3) If the district board has previously transferred less than 50 percent of the district's assets pursuant to this subdivision, before any additional assets are transferred, the board shall hold a public hearing and shall make a public determination that the additional assets to be transferred will not, in combination with any assets previously transferred, equal 50 percent or more of the total assets of the district.

(4) The amendments to this subdivision made during the 1991–92 Regular Session, and the amendments made to this subdivision and to Section 32126 made during the 1993–94 Regular Session, shall only apply to transfers made on or after the effective dates of the acts amending this subdivision. The amendments to this subdivision made during those sessions shall not apply to any of the following:

(A) A district that has discussed and adopted a board resolution, prior to September 1, 1992, that authorizes the development of a business plan for an integrated delivery system.

(B) A lease agreement, transfer agreement, or both between a district and a nonprofit corporation that were in full force and effect as of September 1, 1992, for as long as that lease agreement, transfer agreement, or both remain in full force and effect.

(5) Notwithstanding paragraph (4), if substantial amendments are proposed to be made to a transfer agreement described in subparagraph (A) or (B) of paragraph (4), the amendments shall be fully discussed in advance of the district board's decision to adopt the amendments in at least two properly noticed open and public meetings in compliance with Section 32106 and the Ralph M. Brown Act (Chapter 9 (commencing with Section 54950) of Part 1 of Division 2 of Title 5 of the Government Code).

(6) Notwithstanding paragraphs (4) and (5), a transfer agreement described in subparagraph (A) or (B) of paragraph (4) that provided for the transfer of less than 50 percent of a district's assets shall be subject to the requirements of this subdivision when subsequent amendments to that transfer agreement would result in the transfer, in sum or by increment, of 50 percent or more of a district's assets to the nonprofit corporation.

(7) For purposes of this subdivision, a ''transfer'' means the transfer of ownership of the assets of a district. A lease of the real property or the tangible personal property of a district shall not be subject to this subdivision except as specified in Section 32121.4 and as required under Section 32126.

(8) Districts that request a special election pursuant to paragraph (1) or (2) shall reimburse counties for the costs of that special election as prescribed pursuant to Section 10520 of the Elections Code.

(9) (A) Nothing in this section, including subdivision (j), shall be construed to permit a local district to obtain or be issued a single consolidated license to operate a separate physical plant as a skilled nursing facility or an intermediate care facility that is not located within the boundaries of the district.

(B) Notwithstanding subparagraph (A), Eastern Plumas Health Care District may obtain and be issued a single consolidated license to operate a separate physical plant as a skilled nursing facility or an intermediate care facility that is located on the campus of the Sierra Valley District Hospital. This subparagraph shall have no application to any other district and is intended only to address the urgent need to preserve skilled nursing or intermediate care services within the rural County of Sierra.

(C) Subparagraph (B) shall only remain operative until the Sierra Valley District Hospital is annexed by the Eastern Plumas Health Care District or January 1, 2008, whichever occurs first. In no event shall Eastern Plumas Health Care District increase the number of licensed beds at the Sierra Valley District Hospital during the operative period of subparagraph (B).

(10) A transfer of any of the assets of a district to one or more nonprofit corporations to operate and maintain the assets shall not be required to meet paragraphs (1) to (9), inclusive, of this subdivision if all of the following conditions apply at the time of the transfer:

(A) The district has entered into a loan that is insured by the State of California under Chapter 1 (commencing with Section 129000) of Part 6 of Division 107.

(B) The district is in default of its loan obligations, as determined by the Office of Statewide Health Planning and Development.

(C) The Office of Statewide Health Planning and Development and the district, in their best judgment, agree that the transfer of some or all of the assets of the district to a nonprofit corporation or corporations is necessary to cure the default, and will obviate the need for foreclosure. This cure of default provision shall be applicable prior to the office foreclosing on district hospital assets. After the office has foreclosed on district hospital assets, or otherwise taken possession in accordance with law, the office may exercise all of its powers to deal with and dispose of hospital property.

(D) The transfer and all arrangements necessary thereto are discussed in advance of the transfer in at least one properly noticed open and public meeting in compliance with Section 32106 and the Ralph M. Brown Act (Chapter 9 (commencing with Section 54950) of Part 1 of Division 2 of Title 5 of the Government Code). The meeting referred to in this

paragraph shall be noticed and held within 90 days of notice in writing to the district by the office of an event of default. If the meeting is not held within this 90-day period, the district shall be deemed to have waived this requirement to have a meeting.

(11) If a transfer under paragraph (10) is a lease, the lease shall provide that the assets shall revert to the district at the conclusion of the leasehold interest. If the transfer is a sale, the proceeds shall be used first to retire the obligation insured by the office, then to retire any other debts of the district. After providing for debts, any remaining funds shall revert to the district.

(q) To contract for bond insurance, letters of credit, remarketing services, and other forms of credit enhancement and liquidity support for its bonds, notes, and other indebtedness and to enter into reimbursement agreements, monitoring agreements, remarketing agreements, and similar ancillary contracts in connection therewith.

(r) To establish, maintain, operate, participate in, or manage capitated health care service plans, health maintenance organizations, preferred provider organizations, and other managed health care systems and programs properly licensed by the Department of Insurance or the Department of Managed Care, at any location within or without the district for the benefit of residents of communities served by the district. However, that activity shall not be deemed to result in, or constitute, the giving or lending of the district's credit, assets, surpluses, cash, or tangible goods to, or in aid of, any person, association, or corporation in violation of Section 6 of Article XVI of the California Constitution.

Nothing in this section shall be construed to authorize activities that corporations and other artificial legal entities are prohibited from conducting by Section 2400 of the Business and Professions Code.

Any agreement to provide health care coverage that is a health care service plan, as defined in subdivision (f) of Section 1345, shall be subject to Chapter 2.2 (commencing with Section 1340) of Division 2, unless exempted pursuant to Section 1343 or 1349.2.

A district shall not provide health care coverage for any employee of an employer operating within the communities served by the district, unless the Legislature specifically authorizes, or has authorized in this section or elsewhere, the coverage.

Nothing in this section shall be construed to authorize any district to contribute its facilities to any joint venture that could result in transfer of the facilities from district ownership.

(s) To provide health care coverage to members of the district's medical staff, employees of the medical staff members, and the dependents of both groups, on a self-pay basis.

(t) This section shall remain in effect only until January 1, 2006, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2006, deletes or extends that date.

SEC. 136. Section 32121 of the Health and Safety Code, as amended by Section 2 of Chapter 184 of the Statutes of 2001, is amended to read:

32121. Each local district shall have and may exercise the following powers:

(a) To have and use a corporate seal and alter it at its pleasure.

(b) To sue and be sued in all courts and places and in all actions and proceedings whatever.

(c) To purchase, receive, have, take, hold, lease, use, and enjoy property of every kind and description within and without the limits of the district, and to control, dispose of, convey, and encumber the same and create a leasehold interest in the same for the benefit of the district.

(d) To exercise the right of eminent domain for the purpose of acquiring real or personal property of every kind necessary to the exercise of any of the powers of the district.

(e) To establish one or more trusts for the benefit of the district, to administer any trust declared or created for the benefit of the district, to designate one or more trustees for trusts created by the district, to receive by gift, devise, or bequest, and hold in trust or otherwise, property, including corporate securities of all kinds, situated in this state or elsewhere, and where not otherwise provided, dispose of the same for the benefit of the district.

(f) To employ legal counsel to advise the board of directors in all matters pertaining to the business of the district, to perform the functions in respect to the legal affairs of the district as the board may direct, and to call upon the district attorney of the county in which the greater part of the land in the district is situated for legal advice and assistance in all matters concerning the district, except that if that county has a county counsel, the directors may call upon the county counsel for legal advice and assistance.

(g) To employ any officers and employees, including architects and consultants, the board of directors deems necessary to carry on properly the business of the district.

(h) To prescribe the duties and powers of the health care facility administrator, secretary, and other officers and employees of any health care facilities of the district, to establish offices as may be appropriate and to appoint board members or employees to those offices, and to determine the number of, and appoint, all officers and employees and to fix their compensation. The officers and employees shall hold their offices or positions at the pleasure of the boards of directors.

(i) To do any and all things that an individual might do that are necessary for, and to the advantage of, a health care facility and a nurses' training school, or a child care facility for the benefit of employees of the health care facility or residents of the district.

(j) To establish, maintain, and operate, or provide assistance in the operation of, one or more health facilities or health services, including, but not limited to, outpatient programs, services, and facilities; retirement programs, services, and facilities; chemical dependency programs, services, and facilities; or other health care programs, services, and facilities and activities at any location within or without the district for the benefit of the district and the people served by the district.

''Health care facilities,'' as used in this subdivision, means those facilities defined in subdivision (b) of Section 32000.1 and specifically includes freestanding chemical dependency recovery units. ''Health facilities,'' as used in this subdivision, may also include those facilities defined in subdivision (d) of Section 15432 of the Government Code.

(k) To do any and all other acts and things necessary to carry out this division.

(*l*) To acquire, maintain, and operate ambulances or ambulance services within and without the district.

(m) To establish, maintain, and operate, or provide assistance in the operation of, free clinics, diagnostic and testing centers, health education programs, wellness and prevention programs, rehabilitation, aftercare, and any other health care services provider, groups, and organizations that are necessary for the maintenance of good physical and mental health in the communities served by the district.

(n) To establish and operate in cooperation with its medical staff a coinsurance plan between the hospital district and the members of its attending medical staff.

(o) To establish, maintain, and carry on its activities through one or more corporations, joint ventures, or partnerships for the benefit of the health care district.

(p) (1) To transfer, at fair market value, any part of its assets to one or more nonprofit corporations to operate and maintain the assets. A transfer pursuant to this paragraph shall be deemed to be at fair market value if an independent consultant, with expertise in methods of appraisal and valuation and in accordance with applicable governmental and industry standards for appraisal and valuation, determines that fair and reasonable consideration is to be received by the district for the transferred district assets. Before the district transfers, pursuant to this paragraph, 50 percent or more of the district's assets to one or more nonprofit corporations, in sum or by increment, the elected board shall, by resolution, submit to the voters of the district a measure proposing the transfer. The measure shall be placed on the ballot of a special election

held upon the request of the district or the ballot of the next regularly scheduled election occurring at least 88 days after the resolution of the board. If a majority of the voters voting on the measure vote in its favor, the transfer shall be approved. The campaign disclosure requirements applicable to local measures provided under Chapter 4 (commencing with Section 84100) of Title 9 of the Government Code shall apply to this election.

(2) To transfer, for the benefit of the communities served by the district, in the absence of adequate consideration, any part of the assets of the district, including, without limitation, real property, equipment, and other fixed assets, current assets, and cash, relating to the operation of the district's health care facilities to one or more nonprofit corporations to operate and maintain the assets.

(A) A transfer of 50 percent or more of the district's assets, in sum or by increment, pursuant to this paragraph shall be deemed to be for the benefit of the communities served by the district only if all of the following occur:

(i) The transfer agreement and all arrangements necessary thereto are fully discussed in advance of the district board decision to transfer the assets of the district in at least five properly noticed open and public meetings in compliance with Section 32106 and the Ralph M. Brown Act (Chapter 9 (commencing with Section 54950) of Part 1 of Division 2 of Title 5 of the Government Code).

(ii) The transfer agreement provides that the hospital district shall approve all initial board members of the nonprofit corporation and any subsequent board members as may be specified in the transfer agreement.

(iii) The transfer agreement provides that all assets transferred to the nonprofit corporation, and all assets accumulated by the corporation during the term of the transfer agreement arising out of, or from, the operation of the transferred assets, are to be transferred back to the district upon termination of the transfer agreement, including any extension of the transfer agreement.

(iv) The transfer agreement commits the nonprofit corporation to operate and maintain the district's health care facilities and its assets for the benefit of the communities served by the district.

(v) The transfer agreement requires that any funds received from the district at the outset of the agreement or any time thereafter during the term of the agreement be used only to reduce district indebtedness, to acquire needed equipment for the district health care facilities, to operate, maintain, and make needed capital improvements to the district's health care facilities, to provide supplemental health care services or facilities for the communities served by the district, or to

conduct other activities that would further a valid public purpose if undertaken directly by the district.

(B) A transfer of 33 percent or more but less than 50 percent of the district's assets, in sum or by increment, pursuant to this paragraph shall be deemed to be for the benefit of the communities served by the district only if both of the following occur:

(i) The transfer agreement and all arrangements necessary thereto are fully discussed in advance of the district board decision to transfer the assets of the district in at least two properly noticed open and public meetings in compliance with Section 32106 and the Ralph M. Brown Act (Chapter 9 (commencing with Section 54950) of Part 1 of Division 2 of Title 5 of the Government Code).

(ii) The transfer agreement meets all of the requirements of clauses (ii) to (v), inclusive, of subparagraph (A).

(C) A transfer of 10 percent or more but less than 33 percent of the district's assets, in sum or by increment, pursuant to this paragraph shall be deemed to be for the benefit of the communities served by the district only if both of the following occur:

(i) The transfer agreement and all arrangements necessary thereto are fully discussed in advance of the district board decision to transfer the assets of the district in at least two properly noticed open and public meetings in compliance with Section 32106 and the Ralph M. Brown Act (Chapter 9 (commencing with Section 54950) of Part 1 of Division 2 of Title 5 of the Government Code).

(ii) The transfer agreement meets all of the requirements of clauses (iii) to (v), inclusive, of subparagraph (A).

(D) Before the district transfers, pursuant to this paragraph, 50 percent or more of the district's assets to one or more nonprofit corporations, in sum or by increment, the elected board shall, by resolution, submit to the voters of the district a measure proposing the transfer. The measure shall be placed on the ballot of a special election held upon the request of the district or the ballot of the next regularly scheduled election occurring at least 88 days after the resolution of the board. If a majority of the voters voting on the measure vote in its favor, the transfer shall be approved. The campaign disclosure requirements applicable to local measures provided under Chapter 4 (commencing with Section 84100) of Title 9 of the Government Code shall apply to this election.

(E) Notwithstanding the other provisions of this paragraph, a hospital district shall not transfer any portion of its assets to a private nonprofit organization that is owned or controlled by a religious creed, church, or sectarian denomination in the absence of adequate consideration.

(3) If the district board has previously transferred less than 50 percent of the district's assets pursuant to this subdivision, before any additional

assets are transferred, the board shall hold a public hearing and shall make a public determination that the additional assets to be transferred will not, in combination with any assets previously transferred, equal 50 percent or more of the total assets of the district.

(4) The amendments to this subdivision made during the 1991–92 Regular Session, and the amendments made to this subdivision and to Section 32126 made during the 1993–94 Regular Session, shall only apply to transfers made on or after the effective dates of the acts amending this subdivision. The amendments to this subdivision made during those sessions shall not apply to any of the following:

(A) A district that has discussed and adopted a board resolution, prior to September 1, 1992, that authorizes the development of a business plan for an integrated delivery system.

(B) A lease agreement, transfer agreement, or both between a district and a nonprofit corporation that were in full force and effect as of September 1, 1992, for as long as that lease agreement, transfer agreement, or both remain in full force and effect.

(5) Notwithstanding paragraph (4), if substantial amendments are proposed to be made to a transfer agreement described in subparagraph (A) or (B) of paragraph (4), the amendments shall be fully discussed in advance of the district board's decision to adopt the amendments in at least two properly noticed open and public meetings in compliance with Section 32106 and the Ralph M. Brown Act (Chapter 9 (commencing with Section 54950) of Part 1 of Division 2 of Title 5 of the Government Code).

(6) Notwithstanding paragraphs (4) and (5), a transfer agreement described in subparagraph (A) or (B) of paragraph (4) that provided for the transfer of less than 50 percent of a district's assets shall be subject to the requirements of this subdivision when subsequent amendments to that transfer agreement would result in the transfer, in sum or by increment, of 50 percent or more of a district's assets to the nonprofit corporation.

(7) For purposes of this subdivision, a ''transfer'' means the transfer of ownership of the assets of a district. A lease of the real property or the tangible personal property of a district shall not be subject to this subdivision except as specified in Section 32121.4 and as required under Section 32126.

(8) Districts that request a special election pursuant to paragraph (1) or (2) shall reimburse counties for the costs of that special election as prescribed pursuant to Section 10520 of the Elections Code.

(9) (A) Nothing in this section, including subdivision (j), shall be construed to permit a local district to obtain or be issued a single consolidated license to operate a separate physical plant as a skilled

nursing facility or an intermediate care facility that is not located within the boundaries of the district.

(B) Notwithstanding subparagraph (A), Eastern Plumas Health Care District may obtain and be issued a single consolidated license to operate a separate physical plant as a skilled nursing facility or an intermediate care facility that is located on the campus of the Sierra Valley District Hospital. This subparagraph shall have no application to any other district and is intended only to address the urgent need to preserve skilled nursing or intermediate care services within the rural County of Sierra.

(C) Subparagraph (B) shall only remain operative until the Sierra Valley District Hospital is annexed by the Eastern Plumas Health Care District or January 1, 2008, whichever occurs first. In no event shall Eastern Plumas Health Care District increase the number of licensed beds at the Sierra Valley District Hospital during the operative period of subparagraph (B).

(10) A transfer of any of the assets of a district to one or more nonprofit corporations to operate and maintain the assets shall not be required to meet paragraphs (1) to (9), inclusive, of this subdivision if all of the following conditions apply at the time of the transfer:

(A) The district has entered into a loan that is insured by the State of California under Chapter 1 (commencing with Section 129000) of Part 6 of Division 107.

(B) The district is in default of its loan obligations, as determined by the Office of Statewide Health Planning and Development.

(C) The Office of Statewide Health Planning and Development and the district, in their best judgment, agree that the transfer of some or all of the assets of the district to a nonprofit corporation or corporations is necessary to cure the default, and will obviate the need for foreclosure. This cure of default provision shall be applicable prior to the office foreclosing on district hospital assets. After the office has foreclosed on district hospital assets, or otherwise taken possession in accordance with law, the office may exercise all of its powers to deal with and dispose of hospital property.

(D) The transfer and all arrangements necessary thereto are discussed in advance of the transfer in at least one properly noticed open and public meeting in compliance with Section 32106 and the Ralph M. Brown Act (Chapter 9 (commencing with Section 54950) of Part 1 of Division 2 of Title 5 of the Government Code). The meeting referred to in this paragraph shall be noticed and held within 90 days of notice in writing to the district by the office of an event of default. If the meeting is not held within this 90-day period, the district shall be deemed to have waived this requirement to have a meeting.

(11) If a transfer under paragraph (10) is a lease, the lease shall provide that the assets shall revert to the district at the conclusion of the

leasehold interest. If the transfer is a sale, the proceeds shall be used first to retire the obligation insured by the office, then to retire any other debts of the district. After providing for debts, any remaining funds shall revert to the district.

(q) To contract for bond insurance, letters of credit, remarketing services, and other forms of credit enhancement and liquidity support for its bonds, notes, and other indebtedness and to enter into reimbursement agreements, monitoring agreements, remarketing agreements, and similar ancillary contracts in connection therewith.

(r) To establish, maintain, operate, participate in, or manage capitated health care service plans, health maintenance organizations, preferred provider organizations, and other managed health care systems and programs properly licensed by the Department of Insurance or the Department of Managed Care, at any location within or without the district for the benefit of residents of communities served by the district. However, that activity shall not be deemed to result in, or constitute, the giving or lending of the district's credit, assets, surpluses, cash, or tangible goods to, or in aid of, any person, association, or corporation in violation of Section 6 of Article XVI of the California Constitution.

Nothing in this section shall be construed to authorize activities that corporations and other artificial legal entities are prohibited from conducting by Section 2400 of the Business and Professions Code.

Any agreement to provide health care coverage that is a health care service plan, as defined in subdivision (f) of Section 1345, shall be subject to Chapter 2.2 (commencing with Section 1340) of Division 2, unless exempted pursuant to Section 1343 or 1349.2.

A district shall not provide health care coverage for any employee of an employer operating within the communities served by the district, unless the Legislature specifically authorizes, or has authorized in this section or elsewhere, the coverage.

Nothing in this section shall be construed to authorize any district to contribute its facilities to any joint venture that could result in transfer of the facilities from district ownership.

(s) To provide health care coverage to members of the district's medical staff, employees of the medical staff members, and the dependents of both groups, on a self-pay basis.

(t) This section shall become operative on January 1, 2006.

(u) This section shall remain in effect only until January 1, 2008, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2008, deletes or extends that date.

SEC. 137. Section 32121 of the Health and Safety Code, as added by Section 3 of Chapter 184 of the Statutes of 2001, is amended to read:

32121. Each local district shall have and may exercise the following powers:

(a) To have and use a corporate seal and alter it at its pleasure.

(b) To sue and be sued in all courts and places and in all actions and proceedings whatever.

(c) To purchase, receive, have, take, hold, lease, use, and enjoy property of every kind and description within and without the limits of the district, and to control, dispose of, convey, and encumber the same and create a leasehold interest in the same for the benefit of the district.

(d) To exercise the right of eminent domain for the purpose of acquiring real or personal property of every kind necessary to the exercise of any of the powers of the district.

(e) To establish one or more trusts for the benefit of the district, to administer any trust declared or created for the benefit of the district, to designate one or more trustees for trusts created by the district, to receive by gift, devise, or bequest, and hold in trust or otherwise, property, including corporate securities of all kinds, situated in this state or elsewhere, and where not otherwise provided, dispose of the same for the benefit of the district.

(f) To employ legal counsel to advise the board of directors in all matters pertaining to the business of the district, to perform the functions in respect to the legal affairs of the district as the board may direct, and to call upon the district attorney of the county in which the greater part of the land in the district is situated for legal advice and assistance in all matters concerning the district, except that if that county has a county counsel, the directors may call upon the county counsel for legal advice and assistance.

(g) To employ any officers and employees, including architects and consultants, the board of directors deems necessary to carry on properly the business of the district.

(h) To prescribe the duties and powers of the health care facility administrator, secretary, and other officers and employees of any health care facilities of the district, to establish offices as may be appropriate and to appoint board members or employees to those offices, and to determine the number of, and appoint, all officers and employees and to fix their compensation. The officers and employees shall hold their offices or positions at the pleasure of the boards of directors.

(i) To do any and all things that an individual might do that are necessary for, and to the advantage of, a health care facility and a nurses' training school, or a child care facility for the benefit of employees of the health care facility or residents of the district.

(j) To establish, maintain, and operate, or provide assistance in the operation of, one or more health facilities or health services, including, but not limited to, outpatient programs, services, and facilities; retirement programs, services, and facilities; chemical dependency programs, services, and facilities; or other health care programs,

services, and facilities and activities at any location within or without the district for the benefit of the district and the people served by the district.

''Health care facilities,'' as used in this subdivision, means those facilities defined in subdivision (b) of Section 32000.1 and specifically includes freestanding chemical dependency recovery units. ''Health facilities,'' as used in this subdivision, may also include those facilities defined in subdivision (d) of Section 15432 of the Government Code.

(k) To do any and all other acts and things necessary to carry out this division.

(*l*) To acquire, maintain, and operate ambulances or ambulance services within and without the district.

(m) To establish, maintain, and operate, or provide assistance in the operation of, free clinics, diagnostic and testing centers, health education programs, wellness and prevention programs, rehabilitation, aftercare, and any other health care services provider, groups, and organizations that are necessary for the maintenance of good physical and mental health in the communities served by the district.

(n) To establish and operate in cooperation with its medical staff a coinsurance plan between the hospital district and the members of its attending medical staff.

(o) To establish, maintain, and carry on its activities through one or more corporations, joint ventures, or partnerships for the benefit of the health care district.

(p) (1) To transfer, at fair market value, any part of its assets to one or more nonprofit corporations to operate and maintain the assets. A transfer pursuant to this paragraph shall be deemed to be at fair market value if an independent consultant, with expertise in methods of appraisal and valuation and in accordance with applicable governmental and industry standards for appraisal and valuation, determines that fair and reasonable consideration is to be received by the district for the transferred district assets. Before the district transfers, pursuant to this paragraph, 50 percent or more of the district's assets to one or more nonprofit corporations, in sum or by increment, the elected board shall, by resolution, submit to the voters of the district a measure proposing the transfer. The measure shall be placed on the ballot of a special election held upon the request of the district or the ballot of the next regularly scheduled election occurring at least 88 days after the resolution of the board. If a majority of the voters voting on the measure vote in its favor, the transfer shall be approved. The campaign disclosure requirements applicable to local measures provided under Chapter 4 (commencing with Section 84100) of Title 9 of the Government Code shall apply to this election.

(2) To transfer, for the benefit of the communities served by the district, in the absence of adequate consideration, any part of the assets

of the district, including, without limitation, real property, equipment, and other fixed assets, current assets, and cash, relating to the operation of the district's health care facilities to one or more nonprofit corporations to operate and maintain the assets.

(A) A transfer of 50 percent or more of the district's assets, in sum or by increment, pursuant to this paragraph shall be deemed to be for the benefit of the communities served by the district only if all of the following occur:

(i) The transfer agreement and all arrangements necessary thereto are fully discussed in advance of the district board decision to transfer the assets of the district in at least five properly noticed open and public meetings in compliance with Section 32106 and the Ralph M. Brown Act (Chapter 9 (commencing with Section 54950) of Part 1 of Division 2 of Title 5 of the Government Code).

(ii) The transfer agreement provides that the hospital district shall approve all initial board members of the nonprofit corporation and any subsequent board members as may be specified in the transfer agreement.

(iii) The transfer agreement provides that all assets transferred to the nonprofit corporation, and all assets accumulated by the corporation during the term of the transfer agreement arising out of, or from, the operation of the transferred assets, are to be transferred back to the district upon termination of the transfer agreement, including any extension of the transfer agreement.

(iv) The transfer agreement commits the nonprofit corporation to operate and maintain the district's health care facilities and its assets for the benefit of the communities served by the district.

(v) The transfer agreement requires that any funds received from the district at the outset of the agreement or any time thereafter during the term of the agreement be used only to reduce district indebtedness, to acquire needed equipment for the district health care facilities, to operate, maintain, and make needed capital improvements to the district's health care facilities, to provide supplemental health care services or facilities for the communities served by the district, or to conduct other activities that would further a valid public purpose if undertaken directly by the district.

(B) A transfer of 33 percent or more but less than 50 percent of the district's assets, in sum or by increment, pursuant to this paragraph shall be deemed to be for the benefit of the communities served by the district only if both of the following occur:

(i) The transfer agreement and all arrangements necessary thereto are fully discussed in advance of the district board decision to transfer the assets of the district in at least two properly noticed open and public meetings in compliance with Section 32106 and the Ralph M. Brown

Act (Chapter 9 (commencing with Section 54950) of Part 1 of Division 2 of Title 5 of the Government Code).

(ii) The transfer agreement meets all of the requirements of clauses (ii) to (v), inclusive, of subparagraph (A).

(C) A transfer of 10 percent or more but less than 33 percent of the district's assets, in sum or by increment, pursuant to this paragraph shall be deemed to be for the benefit of the communities served by the district only if both of the following occur:

(i) The transfer agreement and all arrangements necessary thereto are fully discussed in advance of the district board decision to transfer the assets of the district in at least two properly noticed open and public meetings in compliance with Section 32106 and the Ralph M. Brown Act (Chapter 9 (commencing with Section 54950) of Part 1 of Division 2 of Title 5 of the Government Code).

(ii) The transfer agreement meets all of the requirements of clauses (iii) to (v), inclusive, of subparagraph (A).

(D) Before the district transfers, pursuant to this paragraph, 50 percent or more of the district's assets to one or more nonprofit corporations, in sum or by increment, the elected board shall, by resolution, submit to the voters of the district a measure proposing the transfer. The measure shall be placed on the ballot of a special election held upon the request of the district or the ballot of the next regularly scheduled election occurring at least 88 days after the resolution of the board. If a majority of the voters voting on the measure vote in its favor, the transfer shall be approved. The campaign disclosure requirements applicable to local measures provided under Chapter 4 (commencing with Section 84100) of Title 9 of the Government Code shall apply to this election.

(E) Notwithstanding the other provisions of this paragraph, a hospital district shall not transfer any portion of its assets to a private nonprofit organization that is owned or controlled by a religious creed, church, or sectarian denomination in the absence of adequate consideration.

(3) If the district board has previously transferred less than 50 percent of the district's assets pursuant to this subdivision, before any additional assets are transferred, the board shall hold a public hearing and shall make a public determination that the additional assets to be transferred will not, in combination with any assets previously transferred, equal 50 percent or more of the total assets of the district.

(4) The amendments to this subdivision made during the 1991–92 Regular Session, and the amendments made to this subdivision and to Section 32126 made during the 1993–94 Regular Session, shall only apply to transfers made on or after the effective dates of the acts amending this subdivision. The amendments to this subdivision made during those sessions shall not apply to any of the following:

(A) A district that has discussed and adopted a board resolution prior to September 1, 1992, that authorizes the development of a business plan for an integrated delivery system.

(B) A lease agreement, transfer agreement, or both between a district and a nonprofit corporation that were in full force and effect as of September 1, 1992, for as long as that lease agreement, transfer agreement, or both remain in full force and effect.

(5) Notwithstanding paragraph (4), if substantial amendments are proposed to be made to a transfer agreement described in subparagraph (A) or (B) of paragraph (4), the amendments shall be fully discussed in advance of the district board's decision to adopt the amendments in at least two properly noticed open and public meetings in compliance with Section 32106 and the Ralph M. Brown Act (Chapter 9 (commencing with Section 54950) of Part 1 of Division 2 of Title 5 of the Government Code).

(6) Notwithstanding paragraphs (4) and (5), a transfer agreement described in subparagraph (A) or (B) of paragraph (4) that provided for the transfer of less than 50 percent of a district's assets shall be subject to the requirements of this subdivision when subsequent amendments to that transfer agreement would result in the transfer, in sum or by increment, of 50 percent or more of a district's assets to the nonprofit corporation.

(7) For purposes of this subdivision, a ''transfer'' means the transfer of ownership of the assets of a district. A lease of the real property or the tangible personal property of a district shall not be subject to this subdivision except as specified in Section 32121.4 and as required under Section 32126.

(8) Districts that request a special election pursuant to paragraph (1) or (2) shall reimburse counties for the costs of that special election as prescribed pursuant to Section 10520 of the Elections Code.

(9) Nothing in this section, including subdivision (j), shall be construed to permit a local district to obtain or be issued a single consolidated license to operate a separate physical plant as a skilled nursing facility or an intermediate care facility that is not located within the boundaries of the district.

(10) A transfer of any of the assets of a district to one or more nonprofit corporations to operate and maintain the assets shall not be required to meet paragraphs (1) to (9), inclusive, of this subdivision if all of the following conditions apply at the time of the transfer:

(A) The district has entered into a loan that is insured by the State of California under Chapter 1 (commencing with Section 129000) of Part 6 of Division 107.

(B) The district is in default of its loan obligations, as determined by the Office of Statewide Health Planning and Development.

(C) The Office of Statewide Health Planning and Development and the district, in their best judgment, agree that the transfer of some or all of the assets of the district to a nonprofit corporation or corporations is necessary to cure the default, and will obviate the need for foreclosure. This cure of default provision shall be applicable prior to the office foreclosing on district hospital assets. After the office has foreclosed on district hospital assets, or otherwise taken possession in accordance with law, the office may exercise all of its powers to deal with and dispose of hospital property.

(D) The transfer and all arrangements necessary thereto are discussed in advance of the transfer in at least one properly noticed open and public meeting in compliance with Section 32106 and the Ralph M. Brown Act (Chapter 9 (commencing with Section 54950) of Part 1 of Division 2 of Title 5 of the Government Code). The meeting referred to in this paragraph shall be noticed and held within 90 days of notice in writing to the district by the office of an event of default. If the meeting is not held within this 90-day period, the district shall be deemed to have waived this requirement to have a meeting.

(11) If a transfer under paragraph (10) is a lease, the lease shall provide that the assets shall revert to the district at the conclusion of the leasehold interest. If the transfer is a sale, the proceeds shall be used first to retire the obligation insured by the office, then to retire any other debts of the district. After providing for debts, any remaining funds shall revert to the district.

(q) To contract for bond insurance, letters of credit, remarketing services, and other forms of credit enhancement and liquidity support for its bonds, notes, and other indebtedness and to enter into reimbursement agreements, monitoring agreements, remarketing agreements, and similar ancillary contracts in connection therewith.

(r) To establish, maintain, operate, participate in, or manage capitated health care service plans, health maintenance organizations, preferred provider organizations, and other managed health care systems and programs properly licensed by the Department of Insurance or the Department of Managed Care, at any location within or without the district for the benefit of residents of communities served by the district. However, that activity shall not be deemed to result in, or constitute, the giving or lending of the district's credit, assets, surpluses, cash, or tangible goods to, or in aid of, any person, association, or corporation in violation of Section 6 of Article XVI of the California Constitution.

Nothing in this section shall be construed to authorize activities that corporations and other artificial legal entities are prohibited from conducting by Section 2400 of the Business and Professions Code.

Any agreement to provide health care coverage that is a health care service plan, as defined in subdivision (f) of Section 1345, shall be

subject to Chapter 2.2 (commencing with Section 1340) of Division 2, unless exempted pursuant to Section 1343 or 1349.2.

A district shall not provide health care coverage for any employee of an employer operating within the communities served by the district, unless the Legislature specifically authorizes, or has authorized in this section or elsewhere, the coverage.

Nothing in this section shall be construed to authorize any district to contribute its facilities to any joint venture that could result in transfer of the facilities from district ownership.

(s) To provide health care coverage to members of the district's medical staff, employees of the medical staff members, and the dependents of both groups, on a self-pay basis.

(t) This section shall become operative on January 1, 2008.

SEC. 138. Section 33331.5 of the Health and Safety Code is repealed.

SEC. 139. Section 33334.2 of the Health and Safety Code, as amended by Section 2.2 of Chapter 738 of the Statutes of 2001, is amended to read:

33334.2. (a) Not less than 20 percent of all taxes that are allocated to the agency pursuant to Section 33670 shall be used by the agency for the purposes of increasing, improving, and preserving the community's supply of low- and moderate-income housing available at affordable housing cost, as defined by Sections 33334.22 and 50052.5, to persons and families of low or moderate income, as defined in Section 50093, and very low income households, as defined in Section 50105, that is occupied by these persons and families, unless one of the following findings is made annually by resolution:

(1) (A) That no need exists in the community to improve, increase, or preserve the supply of low- and moderate-income housing, including housing for very low income households, in a manner that would benefit the project area and that this finding is consistent with the housing element of the community's general plan required by Article 10.6 (commencing with Section 65580) of Chapter 3 of Division 1 of Title 7 of the Government Code, including its share of the regional housing needs of very low income households and persons and families of low or moderate income.

(B) This finding shall only be made if the housing element of the community's general plan demonstrates that the community does not have a need to improve, increase, or preserve the supply of low- and moderate-income housing available at affordable housing cost to persons and families of low- or moderate-income and to very low income households. This finding shall only be made if it is consistent with the planning agency's annual report to the legislative body on implementation of the housing element required by subdivision (b) of

Section 65400 of the Government Code. No agency of a charter city shall make this finding unless the planning agency submits the report pursuant to subdivision (b) of Section 65400 of the Government Code. This finding shall not take effect until the agency has complied with subdivision (b) of this section.

(2) (A) That some stated percentage less than 20 percent of the taxes that are allocated to the agency pursuant to Section 33670 is sufficient to meet the housing needs of the community, including its share of the regional housing needs of persons and families of low- or moderate-income and very low income households, and that this finding is consistent with the housing element of the community's general plan required by Article 10.6 (commencing with Section 65580) of Chapter 3 of Division 1 of Title 7 of the Government Code.

(B) This finding shall only be made if the housing element of the community's general plan demonstrates that a percentage of less than 20 percent will be sufficient to meet the community's need to improve, increase, or preserve the supply of low- and moderate-income housing available at affordable housing cost to persons and families of low or moderate income and to very low income households. This finding shall only be made if it is consistent with the planning agency's annual report to the legislative body on implementation of the housing element required by subdivision (b) of Section 65400 of the Government Code. No agency of a charter city shall make this finding unless the planning agency submits the report pursuant to subdivision (b) of Section 65400 of the Government Code. This finding shall not take effect until the agency has complied with subdivision (b).

(C) For purposes of making the findings specified in this paragraph and paragraph (1), the housing element of the general plan of a city or county shall be current, shall have been submitted to the Department of Housing and Community Development within the applicable time period, and shall be in compliance with Article 10.6 (commencing with Section 65580) of Chapter 3 of Division 1 of Title 7 of the Government Code.

(3) (A) That the community is making a substantial effort to meet its existing and projected housing needs, including its share of the regional housing needs, with respect to persons and families of low- and moderate-income, particularly very low income households, as identified in the housing element of the community's general plan required by Article 10.6 (commencing with Section 65580) of Chapter 3 of Division 1 of Title 7 of the Government Code, and that this effort, consisting of direct financial contributions of local funds used to increase and improve the supply of housing affordable to persons and families of low or moderate income and very low income households that is occupied by these persons and families, is equivalent in impact

to the funds otherwise required to be set aside pursuant to this section. In addition to any other local funds, these direct financial contributions may include federal or state grants paid directly to a community and which the community has the discretion of using for the purposes for which moneys in the Low and Moderate Income Housing Fund may be used. The legislative body shall consider the need that can be reasonably foreseen because of displacement of persons and families of low or moderate income or very low income households from within, or adjacent to, the project area, because of increased employment opportunities, or because of any other direct or indirect result of implementation of the redevelopment plan. No finding under this subdivision may be made until the community has provided or ensured the availability of replacement dwelling units as defined in Section 33411.2 and until it has complied with Article 9 (commencing with Section 33410).

(B) In making the determination that other financial contributions are equivalent in impact pursuant to this subdivision, the agency shall include only those financial contributions that are directly related to programs or activities authorized under subdivision (e).

(C) The authority for making the finding specified in this paragraph shall expire on June 30, 1993, except that the expiration shall not be deemed to impair contractual obligations to bondholders or private entities incurred prior to May 1, 1991, and made in reliance on this paragraph. Agencies that make this finding after June 30, 1993, shall show evidence that the agency entered into the specific contractual obligation with the specific intention of making a finding under this paragraph in order to provide sufficient revenues to pay off the indebtedness.

(b) Within 10 days following the making of a finding under either paragraph (1) or (2) of subdivision (a), the agency shall send the department a copy of the finding, including the factual information supporting the finding and other factual information in the housing element that demonstrates that either (1) the community does not need to increase, improve, or preserve the supply of housing for low- and moderate-income households, including very low income households, or (2) a percentage less than 20 percent will be sufficient to meet the community's need to improve, increase, and preserve the supply of housing for low- and moderate-income households, including very low income households. Within 10 days following the making of a finding under paragraph (3) of subdivision (a), the agency shall send the department a copy of the finding, including the factual information supporting the finding that the community is making a substantial effort to meet its existing and projected housing needs. Agencies that make this finding after June 30, 1993, shall also submit evidence to the department

of its contractual obligations with bondholders or private entities incurred prior to May 1, 1991, and made in reliance on this finding.

(c) In any litigation to challenge or attack a finding made under paragraph (1), (2), or (3) of subdivision (a), the burden shall be upon the agency to establish that the finding is supported by substantial evidence in light of the entire record before the agency. If an agency is determined by a court to have knowingly misrepresented any material facts regarding the community's share of its regional housing need for low- and moderate-income housing, including very low income households, or the community's production record in meeting its share of the regional housing need pursuant to the report required by subdivision (b) of Section 65400 of the Government Code, the agency shall be liable for all court costs and plaintiff's attorney's fees, and shall be required to allocate not less than 25 percent of the agency's tax increment revenues to its Low and Moderate Income Housing Fund in each year thereafter.

(d) Nothing in this section shall be construed as relieving any other public entity or entity with the power of eminent domain of any legal obligations for replacement or relocation housing arising out of its activities.

(e) In carrying out the purposes of this section, the agency may exercise any or all of its powers for the construction, rehabilitation, or preservation of affordable housing for very low, low-, and moderate-income persons or families, including the following:

(1) Acquire real property or building sites subject to Section 33334.16.

(2) Improve real property or building sites with onsite or offsite improvements, but only if both (A) the improvements are part of the new construction or rehabilitation of affordable housing units for low- or moderate-income persons that are directly benefited by the improvements, and are a reasonable and fundamental component of the housing units, and (B) the agency requires that the units remain available at affordable housing cost to persons and families of very low, low-, or moderate-income, and are occupied by these persons and families, for the same time period and in the same manner as provided in subdivision (c) and paragraph (2) of subdivision (f) of Section 33334.3.

If the newly constructed or rehabilitated housing units are part of a larger project and the agency improves or pays for onsite or offsite improvements pursuant to the authority in this subdivision, the agency shall pay only a portion of the total cost of the onsite or offsite improvements. The maximum percentage of the total cost of the improvements paid for by the agency shall be determined by dividing the number of housing units that are affordable to low- or moderate-income persons by the total number of housing units, if the project is a housing

project, or by dividing the cost of the affordable housing units by the total cost of the project, if the project is not a housing project.

(3) Donate real property to private or public persons or entities.

(4) Finance insurance premiums pursuant to Section 33136.

(5) Construct buildings or structures.

(6) Acquire buildings or structures.

(7) Rehabilitate buildings or structures.

(8) Provide subsidies to, or for the benefit of, very low income households, as defined by Section 50105, lower income households, as defined by Section 50079.5, or persons and families of low or moderate income, as defined by Section 50093, to the extent those households cannot obtain housing at affordable costs on the open market. Housing units available on the open market are those units developed without direct government subsidies.

(9) Develop plans, pay principal and interest on bonds, loans, advances, or other indebtedness, or pay financing or carrying charges.

(10) Maintain the community's supply of mobilehomes.

(11) Preserve the availability to lower income households of affordable housing units in housing developments that are assisted or subsidized by public entities and that are threatened with imminent conversion to market rates.

(f) The agency may use these funds to meet, in whole or in part, the replacement housing provisions in Section 33413. However, nothing in this section shall be construed as limiting in any way the requirements of that section.

(g) (1) The agency may use these funds inside or outside the project area. The agency may only use these funds outside the project area upon a resolution of the agency and the legislative body that the use will be of benefit to the project. The determination by the agency and the legislative body shall be final and conclusive as to the issue of benefit to the project area. The Legislature finds and declares that the provision of replacement housing pursuant to Section 33413 is always of benefit to a project. Unless the legislative body finds, before the redevelopment plan is adopted, that the provision of low- and moderate-income housing outside the project area will be of benefit to the project, the project area shall include property suitable for low- and moderate-income housing.

(2) (A) The Contra Costa County Redevelopment Agency may use these funds anywhere within the unincorporated territory, or within the incorporated limits of the City of Walnut Creek on sites contiguous to the Pleasant Hill BART Station Area Redevelopment Project area. The agency may only use these funds outside the project area upon a resolution of the agency and board of supervisors determining that the use will be of benefit to the project area. In addition, the agency may use

these funds within the incorporated limits of the City of Walnut Creek only if the agency and the board of supervisors find all of the following:

(i) Both the County of Contra Costa and the City of Walnut Creek have adopted and are implementing complete and current housing elements of their general plans that the department has determined to be in compliance with the requirements of Article 10.6 (commencing with Section 65580) of Chapter 3 of Division 1 of Title 7 of the Government Code.

(ii) The development to be funded shall not result in any residential displacement from the site where the development is to be built.

(iii) The development to be funded shall not be constructed in an area that currently has more than 50 percent of its population comprised of racial minorities or low-income families.

(iv) The development to be funded shall allow construction of affordable housing closer to a rapid transit station than could be constructed in the unincorporated territory outside the Pleasant Hill BART Station Area Redevelopment Project.

(B) If the agency uses these funds within the incorporated limits of the City of Walnut Creek, all of the following requirements shall apply:

(i) The funds shall be used only for the acquisition of land for, and the design and construction of, the development of housing containing units affordable to low- and moderate-income persons.

(ii) If less than all the units in the development are affordable to low- or moderate-income persons, any agency assistance shall not exceed the amount needed to make the housing affordable to low- or moderate-income persons.

(iii) The units in the development that are affordable to low- or moderate-income persons shall remain affordable for a period of at least 55 years.

(iv) The agency and the City of Walnut Creek shall determine, if applicable, whether Article XXXIV of the California Constitution permits the development.

(h) The Legislature finds and declares that expenditures or obligations incurred by the agency pursuant to this section shall constitute an indebtedness of the project.

(i) The requirements of this section shall only apply to taxes allocated to a redevelopment agency for which a final redevelopment plan is adopted on or after January 1, 1977, or for any area that is added to a project by an amendment to a redevelopment plan, and that amendment is adopted on or after the effective date of this section. An agency may, by resolution, elect to make all or part of the requirements of this section applicable to any redevelopment project for which a redevelopment plan was adopted prior to January 1, 1977, subject to any indebtedness incurred prior to the election.

(j) This section shall remain in effect only until January 1, 2005, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2005, deletes or extends that date.

SEC. 140. Section 33334.2 of the Health and Safety Code, as added by Section 2.4 of Chapter 738 of the Statutes of 2001, is amended to read:

33334.2. (a) Not less than 20 percent of all taxes that are allocated to the agency pursuant to Section 33670 shall be used by the agency for the purposes of increasing, improving, and preserving the community's supply of low- and moderate-income housing available at affordable housing cost, as defined by Section 50052.5, to persons and families of low or moderate income, as defined in Section 50093, and very low income households, as defined in Section 50105, that is occupied by these persons and families, unless one of the following findings is made annually by resolution:

(1) (A) That no need exists in the community to improve, increase, or preserve the supply of low- and moderate-income housing, including housing for very low income households, in a manner that would benefit the project area and that this finding is consistent with the housing element of the community's general plan required by Article 10.6 (commencing with Section 65580) of Chapter 3 of Division 1 of Title 7 of the Government Code, including its share of the regional housing needs of very low income households and persons and families of low or moderate income.

(B) This finding shall only be made if the housing element of the community's general plan demonstrates that the community does not have a need to improve, increase, or preserve the supply of low- and moderate-income housing available at affordable housing cost to persons and families of low- or moderate-income and to very low income households. This finding shall only be made if it is consistent with the planning agency's annual report to the legislative body on implementation of the housing element required by subdivision (b) of Section 65400 of the Government Code. No agency of a charter city shall make this finding unless the planning agency submits the report pursuant to subdivision (b) of Section 65400 of the Government Code. This finding shall not take effect until the agency has complied with subdivision (b) of this section.

(2) (A) That some stated percentage less than 20 percent of the taxes that are allocated to the agency pursuant to Section 33670 is sufficient to meet the housing needs of the community, including its share of the regional housing needs of persons and families of low- or moderate-income and very low income households, and that this finding is consistent with the housing element of the community's general plan required by Article 10.6 (commencing with Section 65580) of Chapter 3 of Division 1 of Title 7 of the Government Code.

(B) This finding shall only be made if the housing element of the community's general plan demonstrates that a percentage of less than 20 percent will be sufficient to meet the community's need to improve, increase, or preserve the supply of low- and moderate-income housing available at affordable housing costs to persons and families of low or moderate income and to very low income households. This finding shall only be made if it is consistent with the planning agency's annual report to the legislative body on implementation of the housing element required by subdivision (b) of Section 65400 of the Government Code. No agency of a charter city shall make this finding unless the planning agency submits the report pursuant to subdivision (b) of Section 65400 of the Government Code. This finding shall not take effect until the agency has complied with subdivision (b) of this section.

(C) For purposes of making the findings specified in this paragraph and paragraph (1), the housing element of the general plan of a city or county shall be current, shall have been submitted to the Department of Housing and Community Development within the applicable time period, and shall be in compliance with Article 10.6 (commencing with Section 65580) of Chapter 3 of Division 1 of Title 7 of the Government Code.

(3) (A) That the community is making a substantial effort to meet its existing and projected housing needs, including its share of the regional housing needs, with respect to persons and families of low- and moderate-income, particularly very low income households, as identified in the housing element of the community's general plan required by Article 10.6 (commencing with Section 65580) of Chapter 3 of Division 1 of Title 7 of the Government Code, and that this effort, consisting of direct financial contributions of local funds used to increase and improve the supply of housing affordable to persons and families of low- or moderate-income and very low income households that is occupied by these persons and families, is equivalent in impact to the funds otherwise required to be set aside pursuant to this section. In addition to any other local funds, these direct financial contributions may include federal or state grants paid directly to a community and which the community has the discretion of using for the purposes for which moneys in the Low and Moderate Income Housing Fund may be used. The legislative body shall consider the need that can be reasonably foreseen because of displacement of persons and families of low- or moderate-income or very low income households from within, or adjacent to, the project area, because of increased employment opportunities, or because of any other direct or indirect result of implementation of the redevelopment plan. No finding under this subdivision may be made until the community has provided or ensured the availability of replacement dwelling units as defined in Section

33411.2 and until it has complied with Article 9 (commencing with Section 33410).

(B) In making the determination that other financial contributions are equivalent in impact pursuant to this subdivision, the agency shall include only those financial contributions that are directly related to programs or activities authorized under subdivision (e).

(C) The authority for making the finding specified in this paragraph shall expire on June 30, 1993, except that the expiration shall not be deemed to impair contractual obligations to bondholders or private entities incurred prior to May 1, 1991, and made in reliance on the provisions of this paragraph. Agencies that make this finding after June 30, 1993, shall show evidence that the agency entered into the specific contractual obligation with the specific intention of making a finding under this paragraph in order to provide sufficient revenues to pay off the indebtedness.

(b) Within 10 days following the making of a finding under either paragraph (1) or (2) of subdivision (a), the agency shall send the Department of Housing and Community Development a copy of the finding, including the factual information supporting the finding and other factual information in the housing element that demonstrates that either (1) the community does not need to increase, improve, or preserve the supply of housing for low- and moderate-income households, including very low income households, or (2) a percentage less than 20 percent will be sufficient to meet the community's need to improve, increase, and preserve the supply of housing for low- and moderate-income households, including very low income households. Within 10 days following the making of a finding under paragraph (3) of subdivision (a), the agency shall send the Department of Housing and Community Development a copy of the finding, including the factual information supporting the finding that the community is making a substantial effort to meet its existing and projected housing needs. Agencies that make this finding after June 30, 1993, shall also submit evidence to the department of its contractual obligations with bondholders or private entities incurred prior to May 1, 1991, and made in reliance on this finding.

(c) In any litigation to challenge or attack a finding made under paragraph (1), (2), or (3) of subdivision (a), the burden shall be upon the agency to establish that the finding is supported by substantial evidence in light of the entire record before the agency. If an agency is determined by a court to have knowingly misrepresented any material facts regarding the community's share of its regional housing need for low- and moderate-income housing, including very low income households, or the community's production record in meeting its share of the regional housing need pursuant to the report required by subdivision (b) of

Section 65400 of the Government Code, the agency shall be liable for all court costs and plaintiff's attorney's fees, and shall be required to allocate not less than 25 percent of the agency's tax increment revenues to its Low and Moderate Income Housing Fund in each year thereafter.

(d) Nothing in this section shall be construed as relieving any other public entity or entity with the power of eminent domain of any legal obligations for replacement or relocation housing arising out of its activities.

(e) In carrying out the purposes of this section, the agency may exercise any or all of its powers for the construction, rehabilitation, or preservation of affordable housing for very low, low- and moderate-income persons or families, including the following:

(1) Acquire real property or building sites subject to Section 33334.16.

(2) Improve real property or building sites with onsite or offsite improvements, but only if both (A) the improvements are part of the new construction or rehabilitation of affordable housing units for low- or moderate-income persons that are directly benefited by the improvements, and are a reasonable and fundamental component of the housing units, and (B) the agency requires that the units remain available at affordable housing costs to persons and families of very low, low-, or moderate-income, and are occupied by these persons and families, for the same time period and in the same manner as provided in subdivision (c) and paragraph (2) of subdivision (f) of Section 33334.3.

If the newly constructed or rehabilitated housing units are part of a larger project and the agency improves or pays for onsite or offsite improvements pursuant to the authority in this subdivision, the agency shall pay only a portion of the total cost of the onsite or offsite improvements. The maximum percentage of the total cost of the improvements paid for by the agency shall be determined by dividing the number of housing units that are affordable to low- or moderate-income persons by the total number of housing units, if the project is a housing project, or by dividing the cost of the affordable housing units by the total cost of the project, if the project is not a housing project.

(3) Donate real property to private or public persons or entities.

(4) Finance insurance premiums pursuant to Section 33136.

(5) Construct buildings or structures.

(6) Acquire buildings or structures.

(7) Rehabilitate buildings or structures.

(8) Provide subsidies to, or for the benefit of, very low income households, as defined by Section 50105, lower income households, as defined by Section 50079.5, or persons and families of low- or moderate-income, as defined by Section 50093, to the extent those households cannot obtain housing at affordable costs on the open

market. Housing units available on the open market are those units developed without direct government subsidies.

(9) Develop plans, pay principal and interest on bonds, loans, advances, or other indebtedness, or pay financing or carrying charges.

(10) Maintain the community's supply of mobilehomes.

(11) Preserve the availability to lower income households of affordable housing units in housing developments that are assisted or subsidized by public entities and that are threatened with imminent conversion to market rates.

(f) The agency may use these funds to meet, in whole or in part, the replacement housing provisions in Section 33413. However, nothing in this section shall be construed as limiting in any way the requirements of that section.

(g) (1) The agency may use these funds inside or outside the project area. The agency may only use these funds outside the project area upon a resolution of the agency and the legislative body that the use will be of benefit to the project. The determination by the agency and the legislative body shall be final and conclusive as to the issue of benefit to the project area. The Legislature finds and declares that the provision of replacement housing pursuant to Section 33413 is always of benefit to a project. Unless the legislative body finds, before the redevelopment plan is adopted, that the provision of low- and moderate-income housing outside the project area will be of benefit to the project, the project area shall include property suitable for low- and moderate-income housing.

(2) (A) The Contra Costa County Redevelopment Agency may use these funds anywhere within the unincorporated territory, or within the incorporated limits of the City of Walnut Creek on sites contiguous to the Pleasant Hill BART Station Area Redevelopment Project area. The agency may only use these funds outside the project area upon a resolution of the agency and board of supervisors determining that the use will be of benefit to the project area. In addition, the agency may use these funds within the incorporated limits of the City of Walnut Creek only if the agency and the board of supervisors find all of the following:

(i) Both the County of Contra Costa and the City of Walnut Creek have adopted and are implementing complete and current housing elements of their general plans that the Department of Housing and Community Development has determined to be in compliance with the requirements of Article 10.6 (commencing with Section 65580) of Chapter 3 of Division 1 of Title 7 of the Government Code.

(ii) The development to be funded shall not result in any residential displacement from the site where the development is to be built.

(iii) The development to be funded shall not be constructed in an area that currently has more than 50 percent of its population comprised of racial minorities or low-income families.

(iv) The development to be funded shall allow construction of affordable housing closer to a rapid transit station than could be constructed in the unincorporated territory outside the Pleasant Hill BART Station Area Redevelopment Project.

(B) If the agency uses these funds within the incorporated limits of the City of Walnut Creek, all of the following requirements shall apply:

(i) The funds shall be used only for the acquisition of land for, and the design and construction of, the development of housing containing units affordable to low- and moderate-income persons.

(ii) If less than all the units in the development are affordable to low- or moderate-income persons, any agency assistance shall not exceed the amount needed to make the housing affordable to low- or moderate-income persons.

(iii) The units in the development that are affordable to low- or moderate-income persons shall remain affordable for a period of at least 55 years.

(iv) The agency and the City of Walnut Creek shall determine, if applicable, whether Article XXXIV of the California Constitution permits the development.

(h) The Legislature finds and declares that expenditures or obligations incurred by the agency pursuant to this section shall constitute an indebtedness of the project.

(i) The requirements of this section shall only apply to taxes allocated to a redevelopment agency for which a final redevelopment plan is adopted on or after January 1, 1977, or for any area that is added to a project by an amendment to a redevelopment plan, and that amendment is adopted on or after the effective date of this section. An agency may, by resolution, elect to make all or part of the requirements of this section applicable to any redevelopment project for which a redevelopment plan was adopted prior to January 1, 1977, subject to any indebtedness incurred prior to the election.

(j) This section shall become operative on January 1, 2005.

SEC. 141. Section 33334.22 of the Health and Safety Code is amended to read:

33334.22. (a) The Legislature finds and declares that in order to avoid serious economic hardships and accompanying blight, it is necessary to enact this section, which shall apply only within Santa Cruz County, and which is enacted for the purpose of providing housing assistance to very low, lower, and moderate-income households.

(b) Notwithstanding Section 50052.5, any redevelopment agency within Santa Cruz County may make assistance available from its Low and Moderate Income Housing Fund directly to a home buyer for the purchase of an owner-occupied home, and for purposes of that assistance

and this section, ''affordable housing cost'' shall not exceed the following:

(1) For very low income households, the product of 40 percent times 50 percent of the area median income adjusted for family size appropriate for the unit.

(2) For lower income households whose gross incomes exceed the maximum income for very low income households and do not exceed 70 percent of the area median income adjusted for family size, the product of 40 percent times 70 percent of the area median income adjusted for family size appropriate for the unit. In addition, for any lower income household that has a gross income that equals or exceeds 70 percent of the area median income adjusted for family size, it shall be optional for any state or local funding agency to require that the affordable housing cost not exceed 40 percent of the gross income of the household.

(3) For moderate-income households, affordable housing costs shall not exceed the product of 40 percent times 110 percent of the area median income adjusted for family size appropriate for the unit. In addition, for any moderate-income household that has a gross income that exceeds 110 percent of the area median income adjusted for family size, it shall be optional for any state or local funding agency to require that affordable housing costs not exceed 40 percent of the gross income of the household.

(c) Any agency in Santa Cruz County that provides assistance pursuant to this section shall include in the annual report to the Controller, pursuant to Sections 33080 and 33080.1, all of the following information:

(1) The sales prices of homes purchased with assistance from the agency's Low and Moderate Income Housing Fund for each year from 2000 to 2004, inclusive.

(2) The sales prices of homes purchased and rehabilitated with assistance from the agency's Low and Moderate Income Housing Fund for each year from 2000 to 2004, inclusive.

(3) The incomes, and percentage of income paid for housing costs, of all households that purchased, and that purchased and rehabilitated, homes with assistance from the agency's Low and Moderate Income Housing Fund for each year from 2000 to 2004, inclusive.

(d) Except as provided in subdivision (b), all provisions of Section 50052.5, including any definitions, requirements, standards, and regulations adopted to implement those provisions, shall apply to this section.

(e) This section shall remain in effect only until January 1, 2005, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2005, deletes or extends that date.

SEC. 142. Section 33368 of the Health and Safety Code is amended to read:

33368. The decision of the legislative body shall be final and conclusive, and it shall thereafter be conclusively presumed that the project area is a blighted area as defined by Section 33031 and that all prior proceedings have been duly and regularly taken.

This section shall not apply in any action questioning the validity of any redevelopment plan, or the adoption or approval of a redevelopment plan, or any of the findings or determinations of the agency or the legislative body in connection with a redevelopment plan brought pursuant to Section 33501 within the time limits prescribed by Section 33500.

SEC. 143. Section 33430 of the Health and Safety Code is amended to read:

33430. An agency may, within the survey area or for purposes of redevelopment, sell, lease, for a period not to exceed 99 years, exchange, subdivide, transfer, assign, pledge, encumber by mortgage, deed of trust, or otherwise, or otherwise dispose of any real or personal property or any interest in property.

SEC. 144. Section 41705 of the Health and Safety Code, as amended by Section 1 of Chapter 424 of the Statutes of 2001, is amended to read:

41705. (a) Section 41700 does not apply to odors emanating from any 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, if the odors emanate directly from the compost facility or operations.

(3) Operations that compost green material or animal waste products derived from agricultural operations, and that return similar amounts of the compost produced to that same agricultural operations source, or to an agricultural operations source owned or leased by the owner, parent company, or subsidiary conducting the composting operation. The composting operation may produce an incidental amount of compost not exceeding 2,500 cubic yards of compost, which may be given away or sold annually.

(b) If a district receives a complaint pertaining to an odor emanating from a compost operation exempt from Section 41700 pursuant to paragraph (2) or (3) 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, within 24 hours or by the next working day, refer the complaint to the enforcement agency.

(c) This section shall become inoperative on April 1, 2003, unless the California Integrated Waste Management Board adopts and submits regulations governing the operation of organic composting sites to the Office of Administrative Law pursuant to subdivision (c) of Section 43209.1 of the Public Resources Code on or prior to that date.

SEC. 145. Section 41705 of the Health and Safety Code, as amended by Section 2 of Chapter 424 of the Statutes of 2001, is amended 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 April 1, 2003, unless the California Integrated Waste Management Board adopts and submits regulations governing the operation of organic composting sites to the Office of Administrative Law pursuant to subdivision (c) of Section 43209.1 of the Public Resources Code on or prior to that date.

SEC. 146. Section 42801.1 of the Health and Safety Code is amended to read:

42801.1. For purposes of this chapter, the following terms have the following meanings:

(a) ''Annual emissions results'' means the participant's applicable data on the release of greenhouse gas emissions, both direct and indirect, from one particular year.

(b) ''Baseline'' means a datum against which to measure greenhouse gas emissions performance over time, usually annual emissions in a selected base year. For the purposes of this chapter, the baseline shall start on or after January 1, 1990.

(c) ''Certification'' means the determination of whether a given participant's greenhouse gas emissions inventory (either baseline or annual result) has met a minimum quality standard and complied with an appropriate set of registry-approved procedures and protocols for submitting emissions inventory information. The process for certification of emissions results will be specified within the procedures and protocols approved for industry-specific emissions inventory reporting, and may involve a range of options depending upon the nature of the emissions, complexity of a company's facilities and operations, or both, and the procedures deemed necessary by the registry board to validate a participant's emissions information.

(d) ''De minimis emissions'' means emissions that are below a certain threshold, when summed across all applicable sources of the participating entity. The State Energy Resources Conservation and Development Commission shall recommend to the registry for adoption a threshold emissions level for each type of greenhouse gas emission that shall be considered de minimus.

(e) ''Emissions'' means the release of greenhouse gases into the atmosphere.

(f) (1) ''Emissions inventory'' means an accounting of the amount of greenhouse gases discharged into the atmosphere. It is generally characterized by all of the following factors:

(A) The chemical or physical identity of the pollutants included.

(B) The geographic area covered.

(C) The institutional entities covered.

(D) The time period over which emissions are estimated.

(E) The types of activities that cause emissions.

(2) An emissions inventory shall include sufficient documentation and supporting data to make transparent the underlying assumptions and calculations for all of the reported results.

(g) ''Greenhouse gases'' includes all of the following gases: carbon dioxide, methane, nitrous oxide, hydrofluorocarbons, perfluorocarbons, and sulfur hexafluoride.

(h) ''Material'' means any emission of greenhouse gas that is not de minimis.

SEC. 147. Section 42840 of the Health and Safety Code is amended to read:

42840. (a) Participants shall utilize the following reporting procedures to establish a greenhouse gas emissions baseline. Participants shall report their certified emissions for the most recent year for which they have complete energy use and fuel consumption data as specified in this chapter. Participants that have complete energy use or fuel consumption data for earlier years that can be certified may establish their baseline as any year beginning on or after January 1, 1990. After establishing baseline emissions, participants shall report their certified emissions results in each subsequent year in order to show changes in emissions levels with respect to their baseline year. Participants may report annual emission results without establishing an emissions baseline. Participants shall also report using industry-specific metrics once the registry adopts an industry-specific metric for the industry in question.

(b) (1) Participants shall report direct emissions and indirect emissions separately. Direct emissions are those emissions from applicable sources that are under management control of a participating entity, including onsite combustion, fugitive noncombustion emissions, and vehicles owned and operated by the participant. Indirect emissions that are required to be reported by participants are those emissions embodied in net electricity and steam imports, including offsite steam generation and district heating and cooling. Participants are encouraged, but are not required, to report other indirect emissions based on guidance that is adopted by the registry.

(2) On or after January 1, 2004, the registry board, in coordination with the State Energy Resources Conservation and Development Commission, may revise the scope of indirect emission source types that are required to be reported by participants specified in paragraph (1) after a public workshop and review process conducted by the registry if all of the following requirements have been met.

(A) The State Energy Resources Conservation and Development Commission has approved that revision at a public hearing following a public workshop.

(B) Prior to approving that proposed revision, the commission determines all of the following:

(i) A reasonable and generally accepted methodology exists that will enable participants to accurately estimate and report the emissions for the indirect source type in question.

(ii) The proposed revision will not create an unreasonable reporting burden on the participants.

(iii) The proposed revision is necessary to achieve the purposes listed in Section 42810.

(C) The registry, at any time it acts to revise the scope of indirect emission source types that are required to be reported by participants, establishes a timeframe for the phasein of the revised scope so that participants shall have at least four months before the start of the next annual reporting cycle that incorporates the revised scope.

(3) In cases of joint ownership, emissions are reported by the managing entity, unless the owners decide to report emissions on a pro rata basis.

(4) Participants shall not be required to report emissions of any greenhouse gas that is de minimis in quantity, when summed up across all applicable sources of the participating entity. The State Energy Resources Conservation and Development Commission shall recommend to the registry a definition of de minimis emissions that reasonably accounts for differences in the size, activities, and sources of direct and indirect baseline emissions of participants, and is consistent with the goals and intent of subdivision (f) of Section 42801.

(c) (1) All participants shall report direct and indirect carbon dioxide (CO_2) emissions that are material to their operations.

(2) The registry shall also encourage participants to monitor and report emissions of the following gases:

(A) Hydrofluorocarbons (HFCs).

(B) Methane (CH_4).

(C) Oxides of nitrogen (N_2O).

(D) Perfluorocarbons (PFCs).

(E) Sulfur hexafluoride (SF_6).

(3) The report of information specified in paragraph (2) is optional for three years after a participant joins the registry. After participating in the registry for a total of three years, participants shall report emissions required by both paragraphs (1) and (2).

(4) Emissions of all gases under this subdivision shall be reported in mass units.

(d) The basic unit of participation in the registry shall be an entity in its entirety such as a corporation or other legally constituted body, any city or county, and each state government agency. The registry shall not record emissions baselines and reductions for individual facilities or projects, except to the extent they are included in an entity's emissions reporting.

(1) Corporations may report emissions baselines and annual emissions results from subsidiaries if the parent corporation is clearly defined.

(2) Participants shall report emissions from all of their applicable sources in the state when they initially register.

(3) Participants may, and are encouraged to, at any time, register emissions from all applicable sources based in the United States, so long as this reporting meets all the other requirements established by this chapter. Those participants with emissions in other states that report California emissions only may not be able to receive equal consideration for their emissions records in future national or international regulatory regimes relating to greenhouse gas emissions. In addition, participants with operations outside of the United States are encouraged to register their total worldwide emissions baselines and annual emissions results. Within three years, the registry shall review and report to the Legislature with a recommendation on whether the registry should require, rather than encourage, participants to report all of their greenhouse gas emissions in the United States, not just California emissions.

(4) To ensure that reported emissions reflect actual emissions, participants that outsource production or services shall report emissions associated with the outsourced activity, and remove these emissions from their emissions baseline. The subcontracted entity, if it voluntarily chooses to participate in the registry shall report emissions associated with the outsourced activities it has taken over. Participants shall attest at least once each year that the entity has not outsourced any emissions, or that if it has, that all emissions associated with the outsourced activity have been reported and subtracted from the entity's baseline emissions.

(5) To prevent changes in vertical integration within corporations from leading to apparent emissions reductions when in fact no reductions have occurred, the registry shall treat mergers, acquisitions, and divestitures as follows:

(A) The emissions baselines of any merged or acquired entity shall be added together, and the registry shall treat the resulting entity as if it had been one corporation from the beginning.

(B) In divestitures, the emissions baselines of the affected corporations shall be split, with the effect that the registry shall treat them as if they had been separate corporations from the beginning. If the divested corporation is purchased by another firm, the registry shall treat that purchase as a merger with the purchasing corporation. If the divested corporation remains a separate entity after the divestiture, its registry baseline shall reflect the emissions associated with the entity's operations before the divestiture. Corporations that divest operations may allocate certified emissions results achieved prior to the divestiture among the divesting and the divested entities, and the registry shall adjust their baselines accordingly.

(C) Any adjustments for changes in vertical integration shall be verified in the annual emissions certifications required for recordation of emissions results.

(6) If a participant changes from statewide to national reporting under this program, changes to its baseline will be treated in a similar manner as changes in vertical integration as described in paragraph (5).

(7) To ensure that reported emissions accurately reflect shifts in operations to or from other states, the registry shall adopt, in consultation with the State Energy Resources Conservation and Development Commission, at a public meeting and following at least one public workshop, reporting procedures for participants that choose to report greenhouse emissions on a statewide basis that require participants to show both of the following:

(A) Changes in a participant's operations, such as a facility startup or shutdown, that result in a significant and long-term shift of greenhouse gas emissions from California to other states or from other states to California.

(B) The corresponding change in the participant's baseline.

SEC. 148. Section 44265 of the Health and Safety Code is amended to read:

44265. (a) The grant program described in this chapter may be administered by a local air management district or air pollution control district on a voluntary basis.

(b) Any district that voluntarily administers this grant program is authorized to provide grants from its own funding sources in an amount of five hundred dollars ($500) to one thousand dollars ($1,000) or more per year for each qualified zero-emission vehicle registered within the boundaries of its territorial jurisdiction.

SEC. 149. Section 51452 of the Health and Safety Code is amended to read:

51452. (a) The School Facilities Fee Assistance Fund is hereby established in the State Treasury and, notwithstanding Section 13340 of the Government Code, all money in the fund is continuously appropriated to the Department of General Services for the purposes of this chapter. All repayments of disbursed funds pursuant to this chapter or any interest earned from the investment in the Surplus Money Investment Fund or any other moneys accruing to the fund from whatever source shall be returned to the fund and are available for allocation by the California Housing Finance Agency to programs established pursuant to this chapter.

(b) The following amounts are hereby appropriated from the General Fund to the School Facilities Fee Assistance Fund for administrative costs and to make payments to purchasers of newly constructed residential structures and housing sponsors of housing developments pursuant to this chapter from that fund by fiscal year as follows:

(1) Twenty million dollars ($20,000,000) in the 1998–99 fiscal year.

(2) Forty million dollars ($40,000,000) in the 1999–2000 fiscal year.

(3) Forty million dollars ($40,000,000) in the 2000–01 fiscal year.

(4) Forty million dollars ($40,000,000) in the 2001–02 fiscal year.

(c) The funds shall be distributed to each program in proportion to the original total amounts available for each program as follows:

(1) Twenty-eight million dollars ($28,000,000) shall be available for the program set forth in paragraph (1) of subdivision (a) of Section 51451, except that any funds not expended within 18 months of their appropriation and availability may also be available for programs set forth in paragraphs (2) and (3) of subdivision (a) of Section 51451.

(2) Twenty-eight million dollars ($28,000,000) shall be available for the program set forth in paragraph (2) of subdivision (a) of Section 51451, except that any funds not expended within 18 months of their appropriation and availability may also be available for the program set forth in paragraph (3) of subdivision (a) of Section 51451.

(3) Fifty-two million dollars ($52,000,000) shall be available for the program set forth in paragraph (3) of subdivision (a) of Section 51451.

(4) Fifty-two million dollars ($52,000,000) shall be available for the program set forth in subdivision (b) of Section 51451.

(d) Reservations received on or after January 1, 2002, for participation in the programs authorized by Section 51451 shall not be honored by the California Housing Finance Agency. As of that date, any unobligated amounts remaining in the School Facilities Fee Assistance Fund after the transfer made pursuant to Item 1760-115-0101 of Section 2.00 of the Budget Act of 2001 (Chapter 106 of the Statutes of 2001) shall be transferred to the General Fund.

(e) Any right to receive repayments of assistance provided for by Section 51451 shall be an asset of the School Facilities Fee Assistance

Fund. Any assistance provided for by Section 51451 that is reserved but not ultimately paid, or is repaid to the California Housing Finance Agency, shall be remitted to the Department of General Services for deposit into the General Fund.

SEC. 150. Section 104324.2 of the Health and Safety Code is amended to read:

104324.2. (a) On or before July 1, 2002, the Division of Environmental and Occupational Disease Control in the State Department of Health Services, in consultation with the Office of Environmental Health Hazard Assessment, shall create a working group of technical experts, including experts who have knowledge of the sensitivity and exposure of children, women of childbearing age, seniors, and disparately affected populations to environmental hazards, to do all of the following:

(1) Develop possible approaches to establishing the EHSS, including an estimated cost for each approach.

(2) Prepare and submit a report to the State Department of Health Services, the Office of Environmental Health Hazard Assessment, and appropriate legislative committees, by July 1, 2003, on the possible approaches to establishing the EHSS, including an estimated cost of each approach, and the recommended approach to establishing an EHSS for California.

(3) Develop the health and environmental measurements needed to do both of the following:

(A) Obtain an ongoing picture of the health of Californians.

(B) Establish a database that may facilitate the examination of the relationship between chronic diseases, including birth defects, and the environment.

(b) The Regents of the University of California are requested to cooperate with the division and the office in creating the work group described in this section.

SEC. 151. Section 114090 of the Health and Safety Code is amended to read:

114090. (a) All utensils and equipment shall be scraped, 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 that is not necessarily attached to the sink may be provided. 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 114060.

(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 114065 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 wash water, type and concentration of detergent used therein, and the time the utensils are exposed to the water, shall be sufficient to clean the utensils.

(3) A two-compartment metal sink, having metal drainboards, equipped for hot water sanitization, that 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 that 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 and sanitized throughout the day, at least every four hours.

(2) Equipment food-contact surfaces and utensils may be cleaned and sanitized 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 and sanitized at least every 24 hours.

(3) Equipment food-contact surfaces and utensils may be cleaned and sanitized 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 toxigenic 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. 152. The heading of Chapter 5 (commencing with Section 127630) of Part 2 of Division 107 of the Health and Safety Code is amended to read:

CHAPTER 5. SPECIALTY CARE UNDERSERVED AREAS

SEC. 153. Section 130140.1 of the Health and Safety Code is amended to read:

130140.1. (a) In the event a county elects to participate in the California Children and Families Program, and satisfies the requirements set forth in Section 130140, the county may establish a county commission that is either of the following:

(1) A legal public entity separate from the county.

(2) An agency of the county with independent authority over the strategic plan described in Section 130140 and the local trust fund established pursuant to subparagraph (A) of paragraph (2) of subdivision (d) of Section 130105.

(b) In the event a county elects to establish a county commission as specified in paragraph (1) of subdivision (a), the following conditions shall apply:

(1) The county commission shall be considered a legal public entity separate from the county, and shall file a statement as required by Section 53051 of the Government Code.

(2) The powers, duties, and responsibilities of the county commission shall include, but shall not be limited to, the following:

(A) The power to employ personnel and contract for personal services required to meet its obligations.

(B) The power to enter into any contracts necessary or appropriate to carry out the provisions of this division.

(C) The power to acquire, possess, and dispose of real or personal property, as necessary or appropriate to carry out the provisions and purposes of this division.

(D) The power to sue or be sued.

(3) The county commission shall be deemed to be a public agency that is a unit of local government for purposes of all grant programs and other funding and loan guarantee programs.

(4) Any obligations of the county commission, statutory, contractual, or otherwise, shall be obligations solely of the commission.

(5) All claims or actions for money or damages against a county commission shall be governed by Part 3 (commencing with Section 900) and Part 4 (commencing with Section 940) of Division 3.6 of Title 1 of the Government Code, except as provided by other statutes or regulations that expressly apply to county commissions.

(6) The county commission, its members, and its employees are protected by the immunities applicable to public entities and public employees governed by Part 1 (commencing with Section 810) and Part 2 (commencing with Section 814) of Division 3.6 of Title 1 of the Government Code, except as provided by other statutes or regulations that apply expressly to the county commissions.

(7) If a county board of supervisors elects not to continue the county's participation in the California Children and Families Program, the board shall adopt an ordinance terminating the county commission.

(A) In terminating its county commission, the board of supervisors shall allow, to the extent possible, an appropriate transition period to allow for the county commission's then-existing obligations to be satisfied.

(B) In event of termination, any unencumbered and unexpended moneys remaining in the local Children and Families Trust Fund shall be distributed pursuant to subdivision (e) of Section 130140.

(C) Prior to the termination of the county commission, the board of supervisors shall notify the state Children and Families Commission of its intent to terminate the county commission.

(D) The liabilities of the county commission shall not become obligations of the county upon either the termination of the county commission or the liquidation or disposition of the county commission's remaining assets.

(c) If a county elects to establish a county commission as provided in paragraph (2) of subdivision (a), the county commission shall be deemed to be an agency of the county with independent authority over the strategic plan described in Section 130140 and the local Children and Families Trust Fund established pursuant to subparagraph (A) of paragraph (2) of subdivision (d) of Section 130105.

(d) Any county commission established prior to the effective date of this section that substantially complies with the provisions of either subdivision (b) or (c) shall be deemed to be in compliance with this section.

(e) (1) Individually identifiable physical or mental health information, substance abuse information, child care or education information, personnel or employment information, financial information, criminal justice information, or demographic information, regarding a child or a child's parent, legal guardian, or other family member, that is provided to a county commission by a parent, legal guardian, family member, health care provider, health plan, public health authority, school, law enforcement agency, social services agency, probation agency, or any other source, shall be considered confidential, and may be disclosed only to a person, agency, or entity that receives funding from the county commission, by way of a grant award or

contract or as a service provider for the provision of early childhood services, and only to the extent necessary to the provision of services, unless further disclosure is authorized by a written consent of the parent or legal guardian, or where disclosure is required by state or federal law.

(2) Confidential information identified in accordance with this section shall not 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).

SEC. 154. Section 1874.85 of the Insurance Code is amended to read:

1874.85. An insurer that issues automobile liability or collision policies shall inspect vehicles for which it has approved a claim for the cost of auto body repairs, either during the repair process or after the work has been completed, and the number of vehicles inspected shall be a statistical sampling sufficient to demonstrate to the department the insurer's efforts to reduce fraudulent auto body work during a calendar year.

SEC. 155. Section 10139.5 of the Insurance Code is amended to read:

10139.5. (a) This section shall become operative only upon enactment into law of amendments to the Federal Internal Revenue Code to impose an excise tax on a transfer of structured settlement payment rights if the transfer is not approved by a court.

This section shall remain in effect only until January 1, 2005, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2005, deletes or extends that date.

(b) A direct or indirect transfer of structured settlement payment rights is not effective and a structured settlement obligor or annuity issuer is not required to make any payment directly or indirectly to any transferee of structured settlement payment rights unless the transfer has been approved in advance in a final court order based on express findings by the court that:

(1) The transfer is in the best interest of the payee, taking into account the welfare and support of the payee's dependents.

(2) The payee has been advised in writing by the transferee to seek independent professional advice regarding the transfer and has either received that advice or knowingly waived that advice in writing.

(3) The transferee has provided the payee with a disclosure form consistent with Section 10136 and the transfer agreement complies with Section 10138.

(4) The transfer does not contravene any applicable statute or the order of any court or other government authority.

(c) Following a transfer of structured settlement payment rights under this article:

(1) The structured settlement obligor and the annuity issuer shall, as to all parties except the transferee, be discharged and released from any and all liability for the transferred payments.

(2) The transferee shall be liable to the structured settlement obligor and the annuity issuer if the transfer contravenes the terms of the structured settlement for the following:

(A) Any taxes incurred by those parties as a consequence of the transfer.

(B) Any other liabilities or costs, including reasonable costs and attorney's fees, arising from compliance by those parties with the order of the court or arising as a consequence of the transferee's failure to comply with this article.

(3) Neither the annuity issuer nor the structured settlement obligor may be required to divide any periodic payment between the payee and any transferee or assignee or between two, or more, transferees or assignees.

(4) Any further transfer of structured settlement payment rights by the payee may be made only after compliance with all of the requirements of this article.

(5) An application under this article for approval of a transfer of structured settlement payment rights shall be made by the transferee and brought in the county in which the payee resides if the payee is a resident of California. If the payee is not a resident of California, the application for approval of a transfer of structured settlement payment rights shall be made by the transferee and may be brought as follows:

(A) In the county in which the payee resides.

(B) In the county in which the structured settlement obligor or the annuity issuer maintains its principal place of business.

(C) In any court that approved the structured settlement agreement.

(6) Not less than 20 days prior to the scheduled hearing on any application for approval of a transfer of structured settlement payment rights under this article, the transferee shall file with the court and serve on all interested parties a notice of the proposed transfer and the application for its authorization, and shall include the following with that notice:

(A) A copy of the transferee's application.

(B) A copy of the transfer agreement.

(C) A listing of each of the payee's dependents, together with each dependent's age.

(D) A copy of the disclosure required in subdivision (a) of Section 10136.

(E) A copy of the annuity contract.

(F) A copy of any qualified assignment agreement.

(G) A copy of the underlying structured settlement agreement.

(H) Notification that any interested party is entitled to support, oppose, or otherwise respond to the transferee's application, either in person or by counsel, by submitting written comments to the court or by participating in the hearing.

(I) Notification of the time and place of the hearing and notification of the manner in which and the time by which written responses to the application must be filed, which may not be less than 15 days after service of the transferee's notice, in order to be considered by the court.

(7) All court costs and filing fees shall be paid by the transferee.

(8) No later than the time of filing the petition for court approval, the transferee shall advise the payee of the payee's right to seek counsel in connection with the transferee's petition for court approval of the transfer agreement, and shall further advise the payee that if the payee retains counsel in connection with a petition for an order approving the transfer agreement, that the transferee shall pay the payee's counsel's fees, regardless of whether the transfer agreement is approved, in an amount not to exceed one thousand five hundred dollars ($1,500).

(d) The transferee shall, within 30 days of obtaining final court approval, file with the Attorney General a copy of any final court order approving or denying the transfer of structured settlement payment rights. The transferee shall specify in written form the following information:

(1) Whether the payee was represented by an attorney and the costs paid or owed to that attorney by the transferee and, if known, by the payee.

(2) The county and judicial district where the court approval was filed.

(3) For approved agreements, whether any changes were made to the transfer agreement.

(4) For rejected agreements, the general category for the rejection.

(5) The total court costs and attorney's fees paid by the transferor to obtain court approval.

(6) The purchase prices of the transfer agreement and its effective interest rate.

(e) Not later than March 31, 2004, the Attorney General shall file a report with the Legislature to assist in the evaluation of the impact of this section. The report shall include, based on information the Attorney General has received from transferees, the following:

(1) The number of petitions filed.

(2) The number of petitions approved without change.

(3) The number of petitions approved with changes and the general category of the changes requested.

(4) The number of petitions rejected and the general categories for rejection.

(5) The range of purchase prices, mean purchase price, median purchase price, mean effective interest rate, and median effective interest rate.

(6) The number of petitions in which the payee was represented by counsel, and if known, the amount of compensation paid to counsel by the transferee and the payee.

SEC. 156. Section 10145.4 of the Insurance Code is amended to read:

10145.4. (a) For an insured diagnosed with cancer and accepted into a phase I, phase II, phase III, or phase IV clinical trial for cancer, every policy of disability insurance that provides hospital, medical, or surgical coverage in this state shall provide coverage for all routine patient care costs related to the clinical trial if the insured's treating physician, who is providing covered health care services to the insured under the insured's health benefit plan contract, recommends participation in the clinical trial after determining that participation in the clinical trial has a meaningful potential to benefit the insured. For purposes of this section, a clinical trial's endpoints shall not be defined exclusively to test toxicity, but shall have a therapeutic intent.

(b) (1) "Routine patient care costs" means the costs associated with the provision of health care services, including drugs, items, devices, and services that would otherwise be covered under the plan or contract if those drugs, items, devices, and services were not provided in connection with an approved clinical trial program, including the following:

(A) Health care services typically provided absent a clinical trial.

(B) Health care services required solely for the provision of the investigational drug, item, device, or service.

(C) Health care services required for the clinically appropriate monitoring of the investigational item or service.

(D) Health care services provided for the prevention of complications arising from the provision of the investigational drug, item, device, or service.

(E) Health care services needed for the reasonable and necessary care arising from the provision of the investigational drug, item, device, or service, including the diagnosis or treatment of the complications.

(2) For purposes of this section, "routine patient care costs" does not include the costs associated with the provision of any of the following:

(A) Drugs or devices that have not been approved by the federal Food and Drug Administration and that are associated with the clinical trial.

(B) Services other than health care services, such as travel, housing, companion expenses, and other nonclinical expenses, that an insured may require as a result of the treatment being provided for purposes of the clinical trial.

(C) Any item or service that is provided solely to satisfy data collection and analysis needs and that is not used in the clinical management of the patient.

(D) Health care services which, except for the fact that they are not being provided in a clinical trial, are otherwise specifically excluded from coverage under the insured's health plan.

(E) Health care services customarily provided by the research sponsors free of charge for any enrollee in the trial.

(c) The treatment shall be provided in a clinical trial that either (1) involves a drug that is exempt under federal regulations from a new drug application or (2) that is approved by one of the following:

(A) One of the National Institutes of Health.

(B) The federal Food and Drug Administration, in the form of an investigational new drug application.

(C) The United States Department of Defense.

(D) The United States Veterans' Administration.

(d) In the case of health care services provided by a contracting provider, the payment rate shall be at the agreed-upon rate. In the case of a noncontracting provider, the payment shall be at the negotiated rate the insurer would otherwise pay to a contracting provider for the same services, less applicable copayments and deductibles. Nothing in this section shall be construed to prohibit a disability insurer from restricting coverage for clinical trials to hospitals and physicians in California unless the protocol for the clinical trial is not provided for at a California hospital or by a California physician.

(e) The provision of services when required by this section shall not, in itself, give rise to liability on the part of the insurer.

(f) This section shall not apply to vision-only, dental-only, accident-only, specified disease, hospital indemnity, Medicare supplement, CHAMPUS supplement, long-term care, or disability income insurance, except that for specified disease and hospital indemnity insurance, coverage for benefits under this section shall apply, but only to the extent that the benefits are covered under the general terms and conditions that apply to all other benefits under the policy. Nothing in this section shall be construed as imposing a new benefit mandate on specified disease or hospital indemnity insurance.

(g) Nothing in this section shall be construed to prohibit, limit, or modify an insured's rights to the independent review process available under Section 10145.3 or to the Independent Medical Review System available under Article 3.5 (commencing with Section 10169).

(h) Nothing in this section shall be construed to otherwise limit or modify any existing requirements under the provisions of this chapter or to prevent application of deductible or copayment provisions contained in the policy.

(i) Copayments and deductibles applied to services delivered in a clinical trial shall be the same as those applied to the same services if not delivered in a clinical trial.

SEC. 157. Section 12699.56 of the Insurance Code is amended to read:

12699.56. (a) Upon its approval of a proposal, the board, in collaboration with the State Department of Health Services, may provide the applicant reimbursement in an amount equal to the amount that the applicant will contribute to implement the program described in its proposal, plus the appropriate and allowable amount of federal funds under the State Children's Health Insurance Program (Subchapter 21 (commencing with Section 1397aa) of Chapter 7 of Title 42 of the United States Code). Reimbursement provided from the Children's Health Initiative Matching Fund shall consist of intergovernmental transfers from applicants, as defined in subdivision (b) of Section 12699.51, and the appropriate and allowable federal State Children's Health Insurance Program funds. Not more than 10 percent of the Children's Health Initiative Matching Fund shall be expended for administrative costs, including the costs to the state to administer the proposal. The board, in collaboration with the State Department of Health Services, may audit the expenses incurred by the applicant in implementing its program to ensure that the expenditures comply with the provisions of this part. No reimbursement may be made to an applicant that fails to meet its financial participation obligation under this part. Reasonable startup costs and ongoing administrative costs for the program shall be reimbursed by those entities applying for funding.

(b) Each applicant that is provided funds under this part shall submit to the board a plan to limit initial and continuing enrollment in its program in the event the amount of moneys for its program is insufficient to maintain health insurance coverage for those participating in the program.

SEC. 158. Section 98.7 of the Labor Code is amended to read:

98.7. (a) Any person who believes that he or she has been discharged or otherwise discriminated against in violation of any law under the jurisdiction of the Labor Commissioner may file a complaint with the division within six months after the occurrence of the violation. The six-month period may be extended for good cause. The complaint shall be investigated by a discrimination complaint investigator in accordance with this section. The Labor Commissioner shall establish procedures for the investigation of discrimination complaints. A summary of the procedures shall be provided to each complainant and respondent at the time of initial contact. The Labor Commissioner shall inform complainants charging a violation of Section 6310 or 6311, at the time of initial contact, of his or her right to file a separate, concurrent

complaint with the United States Department of Labor within 30 days after the occurrence of the violation.

(b) Each complaint of unlawful discharge or discrimination shall be assigned to a discrimination complaint investigator who shall prepare and submit a report to the Labor Commissioner based on an investigation of the complaint. The Labor Commissioner may designate the chief deputy or assistant Labor Commissioner or the chief counsel to receive and review the reports. The investigation shall include, where appropriate, interviews with the complainant, respondent, and any witnesses who may have information concerning the alleged violation, and a review of any documents that may be relevant to the disposition of the complaint. The identity of a witness shall remain confidential unless the identification of the witness becomes necessary to proceed with the investigation or to prosecute an action to enforce a determination. The investigation report submitted to the Labor Commissioner or designee shall include the statements and documents obtained in the investigation, and the findings of the investigator concerning whether a violation occurred. The Labor Commissioner may hold an investigative hearing whenever the Labor Commissioner determines, after review of the investigation report, that a hearing is necessary to fully establish the facts. In the hearing the investigation report shall be made a part of the record and the complainant and respondent shall have the opportunity to present further evidence. The Labor Commissioner shall issue, serve, and enforce any necessary subpoenas.

(c) If the Labor Commissioner determines a violation has occurred, he or she shall notify the complainant and respondent and direct the respondent to cease and desist from the violation and take any action deemed necessary to remedy the violation, including, where appropriate, rehiring or reinstatement, reimbursement of lost wages and interest thereon, payment of reasonable attorney's fees associated with any hearing held by the Labor Commissioner in investigating the complaint, and the posting of notices to employees. If the respondent does not comply with the order within 10 working days following notification of the Labor Commissioner's determination, the Labor Commissioner shall bring an action promptly in an appropriate court against the respondent. If the Labor Commissioner fails to bring an action in court promptly, the complainant may bring an action against the Labor Commissioner in any appropriate court for a writ of mandate to compel the Labor Commissioner to bring an action in court against the respondent. If the complainant prevails in his or her action for a writ, the court shall award the complainant court costs and reasonable attorney's fees, notwithstanding any other law. Regardless of any delay in bringing an action in court, the Labor Commissioner shall not be divested of

jurisdiction. In any action, the court may permit the claimant to intervene as a party plaintiff to the action and shall have jurisdiction, for cause shown, to restrain the violation and to order all appropriate relief. Appropriate relief includes, but is not limited to, rehiring or reinstatement of the complainant, reimbursement of lost wages and interest thereon, and any other compensation or equitable relief as is appropriate under the circumstances of the case. The Labor Commissioner shall petition the court for appropriate temporary relief or restraining order unless he or she determines good cause exists for not doing so.

(d) (1) If the Labor Commissioner determines no violation has occurred, he or she shall notify the complainant and respondent and shall dismiss the complaint. The Labor Commissioner may direct the complainant to pay reasonable attorney's fees associated with any hearing held by the Labor Commissioner if the Labor Commissioner finds the complaint was frivolous, unreasonable, groundless, and was brought in bad faith. The complainant may, after notification of the Labor Commissioner's determination to dismiss a complaint, bring an action in an appropriate court, which shall have jurisdiction to determine whether a violation occurred, and if so, to restrain the violation and order all appropriate relief to remedy the violation. Appropriate relief includes, but is not limited to, rehiring or reinstatement of the complainant, reimbursement of lost wages and interest thereon, and other compensation or equitable relief as is appropriate under the circumstances of the case. When dismissing a complaint, the Labor Commissioner shall advise the complainant of his or her right to bring an action in an appropriate court if he or she disagrees with the determination of the Labor Commissioner, and in the case of an alleged violation of Section 6310 or 6311, to file a complaint against the state program with the United States Department of Labor.

(2) The filing of a timely complaint against the state program with the United States Department of Labor shall stay the Labor Commissioner's dismissal of the division complaint until the United States Secretary of Labor makes a determination regarding the alleged violation. Within 15 days of receipt of that determination, the Labor Commissioner shall notify the parties whether he or she will reopen the complaint filed with the division or whether he or she will reaffirm the dismissal.

(e) The Labor Commissioner shall notify the complainant and respondent of his or her determination under subdivision (c) or paragraph (1) of subdivision (d), not later than 60 days after the filing of the complaint. Determinations by the Labor Commissioner under subdivision (c) or (d) may be appealed by the complainant or respondent to the Director of Industrial Relations within 10 days following notification of the Labor Commissioner's determination. The appeal

shall set forth specifically and in full detail the grounds upon which the appealing party considers the Labor Commissioner's determination to be unjust or unlawful, and every issue to be considered by the director. The director may consider any issue relating to the initial determination and may modify, affirm, or reverse the Labor Commissioner's determination. The director's determination shall be the determination of the Labor Commissioner. The director shall notify the complainant and respondent of his or her determination within 10 days of receipt of the appeal.

(f) The rights and remedies provided by this section do not preclude an employee from pursuing any other rights and remedies under any other law.

SEC. 159. Section 230.1 of the Labor Code is amended to read:

230.1. (a) In addition to the requirements and prohibitions imposed on employees pursuant to Section 230, an employer with 25 or more employees may not discharge or in any manner discriminate or retaliate against an employee who is a victim of domestic violence as defined in Section 6211 of the Family Code for taking time off from work to attend to any of the following:

(1) To seek medical attention for injuries caused by domestic violence.

(2) To obtain services from a domestic violence shelter, program, or rape crisis center as a result of domestic violence.

(3) To obtain psychological counseling related to an experience of domestic violence.

(4) To participate in safety planning and take other actions to increase safety from future domestic violence, including temporary or permanent relocation.

(b) (1) As a condition of taking time off for a purpose set forth in subdivision (a), the employee shall give the employer reasonable advance notice of the employee's intention to take time off, unless the advance notice is not feasible.

(2) When an unscheduled absence occurs, the employer shall not take any action against the employee if the employee, within a reasonable time after the absence, provides a certification to the employer. Certification shall be sufficient in the form of any of the following:

(A) A police report indicating that the employee was a victim of domestic violence.

(B) A court order protecting or separating the employee from the perpetrator of an act of domestic violence, or other evidence from the court or prosecuting attorney that the employee appeared in court.

(C) Documentation from a medical professional, domestic violence advocate, health care provider, or counselor that the employee was

undergoing treatment for physical or mental injuries or abuse resulting from victimization from an act of domestic violence.

(3) To the extent allowed by law, employers shall maintain the confidentiality of any employee requesting leave under subdivision (a).

(c) Any employee who is discharged, threatened with discharge, demoted, suspended, or in any other manner discriminated or retaliated against in the terms and conditions of employment by his or her employer because the employee has taken time off for a purpose set forth in subdivision (a) shall be entitled to reinstatement and reimbursement for lost wages and work benefits caused by the acts of the employer. Any employer who willfully refuses to rehire, promote, or otherwise restore an employee or former employee who has been determined to be eligible for rehiring or promotion by a grievance procedure or hearing authorized by law is guilty of a misdemeanor.

(d) (1) Any employee who is discharged, threatened with discharge, demoted, suspended, or in any other manner discriminated or retaliated against in the terms and conditions of employment by his or her employer because the employee has exercised his or her rights as set forth in subdivision (a) may file a complaint with the Division of Labor Standards Enforcement of the Department of Industrial Relations pursuant to Section 98.7.

(2) Notwithstanding any time limitation in Section 98.7, an employee filing a complaint with the division based upon a violation of subdivision (a) shall have one year from the date of occurrence of the violation to file his or her complaint.

(e) An employee may use vacation, personal leave, or compensatory time off that is otherwise available to the employee under the applicable terms of employment, unless otherwise provided by a collective bargaining agreement, for time taken off for a purpose specified in subdivision (a). The entitlement of any employee under this section shall not be diminished by any collective bargaining agreement term or condition.

(f) This section does not create a right for an employee to take unpaid leave that exceeds the unpaid leave time allowed under, or is in addition to the unpaid leave time permitted by, the federal Family and Medical Leave Act of 1993 (29 U.S.C. Sec. 2601 et seq.).

SEC. 160. Section 1161 of the Labor Code is amended to read:

1161. (a) The Agricultural Employee Relief Fund is hereby created as a special fund in the State Treasury and is continuously appropriated to the Agricultural Labor Relations Board for the purposes specified in subdivision (c). The board shall act as a trustee of all moneys deposited in the fund.

(b) Any monetary relief ordered by the board pursuant to this part to be paid by an employer to an employee shall be collected by the board

on behalf of the employee. All monetary relief so collected by the board shall be remitted to the employee for whom the board collected the money.

(c) (1) Notwithstanding Section 1519 of the Code of Civil Procedure, if the board has made a diligent effort to locate an employee on whose behalf the board has collected monetary relief pursuant to this part, and is unable to locate the employee or the lawful representative of the employee for a period of two years after the date the board collected the monetary relief, the board shall deposit those moneys in the fund.

(2) Moneys in the fund shall be used by the board to pay employees the unpaid balance of any monetary relief ordered by the board to be paid by an employer to an employee. Prior to making any payment from the fund, the board first shall make a finding that, in an individual case, the collection of the full amount of the monetary relief ordered is not possible after reasonable efforts have been made to collect the balance from the employer.

(d) As used in this section, ''fund'' means the Agricultural Employee Relief Fund.

(e) On or before July 1, 2002, the board shall report to the Legislature on the status of the fund.

SEC. 161. Section 1776 of the Labor Code, as amended by Section 2 of Chapter 804 of the Statutes of 2001, is amended to read:

1776. (a) Each contractor and subcontractor shall keep accurate payroll records, showing the name, address, social security number, work classification, straight time and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker, or other employee employed by him or her in connection with the public work. Each payroll record shall contain or be verified by a written declaration that it is made under penalty of perjury, stating both of the following:

(1) The information contained in the payroll record is true and correct.

(2) The employer has complied with the requirements of Sections 1771, 1811, and 1815 for any work performed by his or her employees on the public works project.

(b) The payroll records enumerated under subdivision (a) shall be certified and shall be available for inspection at all reasonable hours at the principal office of the contractor on the following basis:

(1) A certified copy of an employee's payroll record shall be made available for inspection or furnished to the employee or his or her authorized representative on request.

(2) A certified copy of all payroll records enumerated in subdivision (a) shall be made available for inspection or furnished upon request to a representative of the body awarding the contract, the Division of Labor

Standards Enforcement, and the Division of Apprenticeship Standards of the Department of Industrial Relations.

(3) A certified copy of all payroll records enumerated in subdivision (a) shall be made available upon request by the public for inspection or for copies thereof. However, a request by the public shall be made through either the body awarding the contract, the Division of Apprenticeship Standards, or the Division of Labor Standards Enforcement. If the requested payroll records have not been provided pursuant to paragraph (2), the requesting party shall, prior to being provided the records, reimburse the costs of preparation by the contractor, subcontractors, and the entity through which the request was made. The public shall not be given access to the records at the principal office of the contractor.

(c) The certified payroll records shall be on forms provided by the Division of Labor Standards Enforcement or shall contain the same information as the forms provided by the division.

(d) A contractor or subcontractor shall file a certified copy of the records enumerated in subdivision (a) with the entity that requested the records within 10 days after receipt of a written request.

(e) Any copy of records made available for inspection as copies and furnished upon request to the public or any public agency by the awarding body, the Division of Apprenticeship Standards, or the Division of Labor Standards Enforcement shall be marked or obliterated to prevent disclosure of an individual's name, address, and social security number. The name and address of the contractor awarded the contract or the subcontractor performing the contract shall not be marked or obliterated. Any copy of records made available for inspection by, or furnished to, a joint labor-management committee established pursuant to the federal Labor Management Cooperation Act of 1978 (29 U.S.C. Sec. 175a) shall be marked or obliterated only to prevent disclosure of an individual's name and social security number. A joint labor management committee may maintain an action in a court of competent jurisdiction against an employer who fails to comply with Section 1774. The court may award restitution to an employee for unpaid wages and may award the joint labor management committee reasonable attorney's fees and costs incurred in maintaining the action. An action under this subdivision may not be based on the employer's misclassification of the craft of a worker on its certified payroll records. Nothing in this subdivision limits any other available remedies for a violation of this chapter.

(f) The contractor shall inform the body awarding the contract of the location of the records enumerated under subdivision (a), including the street address, city, and county, and shall, within five working days, provide a notice of a change of location and address.

(g) The contractor or subcontractor shall have 10 days in which to comply subsequent to receipt of a written notice requesting the records enumerated in subdivision (a). In the event that the contractor or subcontractor fails to comply within the 10-day period, he or she shall, as a penalty to the state or political subdivision on whose behalf the contract is made or awarded, forfeit twenty-five dollars ($25) for each calendar day, or portion thereof, for each worker, until strict compliance is effectuated. Upon the request of the Division of Apprenticeship Standards or the Division of Labor Standards Enforcement, these penalties shall be withheld from progress payments then due. A contractor is not subject to a penalty assessment pursuant to this section due to the failure of a subcontractor to comply with this section.

(h) The body awarding the contract shall cause to be inserted in the contract stipulations to effectuate this section.

(i) The director shall adopt rules consistent with the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code) and the Information Practices Act of 1977 (Title 1.8 (commencing with Section 1798) of Part 4 of Division 3 of the Civil Code) governing the release of these records, including the establishment of reasonable fees to be charged for reproducing copies of records required by this section.

(j) This section shall remain in effect only until January 1, 2003, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2003, deletes or extends that date.

SEC. 162. Section 1776 of the Labor Code, as amended by Section 3 of Chapter 804 of the Statutes of 2001, is amended to read:

1776. (a) Each contractor and subcontractor shall keep an accurate payroll record, showing the name, address, social security number, work classification, and straight time and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker, or other employee employed by him or her in connection with the public work.

(b) The payroll records enumerated under subdivision (a) shall be certified and shall be available for inspection at all reasonable hours at the principal office of the contractor on the following basis:

(1) A certified copy of an employee's payroll record shall be made available for inspection or furnished to the employee or his or her authorized representative on request.

(2) A certified copy of all payroll records enumerated in subdivision (a) shall be made available for inspection or furnished upon request to a representative of the body awarding the contract, the Division of Labor Standards Enforcement, and the Division of Apprenticeship Standards of the Department of Industrial Relations.

(3) A certified copy of all payroll records enumerated in subdivision (a) shall be made available upon request by the public for inspection or for copies thereof. However, a request by the public shall be made through either the body awarding the contract, the Division of Apprenticeship Standards, or the Division of Labor Standards Enforcement. If the requested payroll records have not been provided pursuant to paragraph (2), the requesting party shall, prior to being provided the records, reimburse the costs of preparation by the contractor, subcontractors, and the entity through which the request was made. The public shall not be given access to the records at the principal office of the contractor.

(c) The certified payroll records shall be on forms provided by the Division of Labor Standards Enforcement or shall contain the same information as the forms provided by the division.

(d) Each contractor shall file a certified copy of the records enumerated in subdivision (a) with the entity that requested the records within 10 days after receipt of a written request.

(e) Any copy of records made available for inspection as copies and furnished upon request to the public or any public agency by the awarding body, the Division of Apprenticeship Standards, or the Division of Labor Standards Enforcement shall be marked or obliterated to prevent disclosure of an individual's name, address, and social security number. The name and address of the contractor awarded the contract or performing the contract shall not be marked or obliterated. Any copy of records made available for inspection by, or furnished to, a joint labor-management committee established pursuant to the federal Labor Management Cooperation Act of 1978 (29 U.S.C. Sec. 175a) shall be marked or obliterated only to prevent disclosure of an individual's social security number.

(f) The contractor shall inform the body awarding the contract of the location of the records enumerated under subdivision (a), including the street address, city, and county, and shall, within five working days, provide a notice of a change of location and address.

(g) The contractor shall have 10 days in which to comply subsequent to receipt of written notice specifying in what respects the contractor must comply with this section. In the event that the contractor fails to comply within the 10-day period, he or she shall, as a penalty to the state or political subdivision on whose behalf the contract is made or awarded, forfeit twenty-five dollars ($25) for each calendar day, or portion thereof, for each worker, until strict compliance is effectuated. Upon the request of the Division of Apprenticeship Standards or the Division of Labor Standards Enforcement, these penalties shall be withheld from progress payments then due.

(h) The body awarding the contract shall cause to be inserted in the contract stipulations to effectuate this section. These stipulations shall fix the responsibility for compliance with this section on the prime contractor.

(i) The director shall adopt rules consistent with the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code) and the Information Practices Act of 1977 (Title 1.8 (commencing with Section 1798) of Part 4 of Division 3 of the Civil Code) governing the release of these records, including the establishment of reasonable fees to be charged for reproducing copies of records required by this section.

(j) This section shall become operative January 1, 2003.

SEC. 162.5. Section 2695.1 of the Labor Code is amended to read:

2695.1. (a) In enacting this legislation, it is the intent of the Legislature to codify certain labor protections that should be afforded to sheepherders, as defined. The provisions of this section are in addition to, and are entirely independent from, any other statutory or legal protections, rights, or remedies that are or may be available under this code or any other state law or regulation to sheepherders either as individuals, employees, or persons.

(b) All terms used in this section and in Section 2695.2 have the meanings assigned to them by this code or any other state law or regulation.

SEC. 163. Section 2695.2 of the Labor Code is amended to read:

2695.2. (a) (1) For a sheepherder employed on a regularly scheduled 24-hour shift on a seven-day-a-week ''on-call'' basis, an employer may, as an alternative to paying the minimum wage for all hours worked, instead pay no less than the monthly minimum wage adopted by the Industrial Welfare Commission on April 24, 2001. Any sheepherder who performs nonsheepherding, nonagricultural work on any workday shall be fully covered for that workweek by the provisions of any applicable laws or regulations relating to that work.

(2) After July 1, 2002, the amount of the monthly minimum wage permitted under paragraph (1) shall be increased each time that the state minimum wage is increased and shall become effective on the same date as any increase in the state minimum wage. The amount of the increase shall be determined by calculating the percentage increase of the new rate over the previous rate, and then by applying the same percentage increase to the minimum monthly wage rate.

(b) (1) When tools or equipment are required by the employer or are necessary to the performance of a job, the tools and equipment shall be provided and maintained by the employer, except that a sheepherder whose wages are at least two times the minimum wage provided herein, or if paid on a monthly basis, at least two times the monthly minimum

wage, may be required to provide and maintain handtools and equipment customarily required by the trade or craft.

(2) A reasonable deposit may be required as security for the return of the items furnished by the employer under provisions of paragraph (1) upon issuance of a receipt to the sheepherder for the deposit. The deposits shall be made pursuant to Article 2 (commencing with Section 400) of Chapter 3. Alternatively, with the prior written authorization of the sheepherder, an employer may deduct from the sheepherder's last check the cost of any item furnished pursuant to paragraph (1) when the item is not returned. No deduction shall be made at any time for normal wear and tear. All items furnished by the employer shall be returned by the sheepherder upon completion of the job.

(c) No employer of sheepherders shall employ a sheepherder for a work period of more than five hours without a meal period of no less than 30 minutes, except that when a work period of not more than six hours will complete a day's work, the meal period may be waived by the mutual consent of the employer and the sheepherder. An employer may be relieved of this obligation if a meal period of 30 minutes cannot reasonably be provided because no one is available to relieve a sheepherder tending flock alone on that day. Where a meal period of 30 minutes can be provided but not without interruption, a sheepherder shall be allowed to complete the meal period during that day.

(d) To the extent practicable, every employer shall authorize and permit all sheepherders to take rest periods. The rest period, insofar as is practicable, shall be in the middle of each work period. The authorized rest times shall be based on the total hours worked daily at the rate of 10 minutes net rest time per four hours, or major fraction thereof, of work. However, a rest period need not be authorized for sheepherders whose total daily worktime is less than three and one-half hours.

(e) When the nature of the work reasonably permits the use of seats, suitable seats shall be provided for sheepherders working on or at a machine.

(f) After January 1, 2003, during times when a sheepherder is lodged in mobile housing units where it is feasible to provide lodging that meets the minimum standards established by this section because there is practicable access for mobile housing units, the lodging provided shall include at a minimum all of the following:

(1) Toilets and bathing facilities, which may include portable toilets and portable shower facilities.

(2) Heating.

(3) Inside lighting.

(4) Potable hot and cold water.

(5) Adequate cooking facilities and utensils.

(6) A working refrigerator, which may include a butane or propane gas refrigerator, or for no more than a one-week period during which a nonworking refrigerator is repaired or replaced, a means of refrigerating perishable food items, which may include ice chests, provided that ice is delivered to the sheepherder, as needed, to maintain a continuous temperature required to retard spoilage and ensure food safety.

(g) After January 1, 2003, all sheepherders shall be provided with all of the following at each worksite:

(1) Regular mail service.

(2) A means of communication through telephone or radio solely for use in a medical emergency affecting the sheepherder or for an emergency relating to the herding operation. If the means of communication is provided by telephone, the sheepherder may be charged for the actual cost of nonemergency telephone use. Nothing in this subdivision shall preclude an employer from providing additional means of communication to the sheepherder which are appropriate because telephones or radios are out of range or otherwise inoperable.

(3) Visitor access to the housing.

(4) Upon request and to the extent practicable, access to transportation to and from the nearest locale where shopping, medical, or cultural facilities and services are available on a weekly basis.

(h) In addition to any other civil penalties provided by law, any employer or any other person acting on behalf of the employer who violates or causes to be violated the provisions of this section shall be subject to a civil penalty, as follows:

(1) For the initial violation, fifty dollars ($50) for each underpaid employee for each pay period during which the employee was underpaid, plus an amount sufficient to recover the unpaid wages.

(2) For any subsequent violation, one hundred dollars ($100) for each underpaid employee for each pay period during which the employee was underpaid, plus an amount sufficient to recover the unpaid wages.

(3) The affected employee shall receive payment of all wages recovered.

(i) If the application of any provision of any subdivision, sentence, clause, phrase, word, or portion of this legislation is held invalid, unconstitutional, unauthorized, or prohibited by statute, the remaining provisions thereof shall not be affected and shall continue to be given full force and effect as if the part held invalid or unconstitutional had not been included.

(j) Every employer of sheepherders shall post a copy of this part in an area frequented by sheepherders where it may be easily read during the workday. Where the location of work or other conditions make posting impractical, every employer shall make a copy of this part available to sheepherders upon request. Copies of this part shall be posted and made

available in a language understood by the sheepherder. An employer is deemed to have complied with this subdivision if he or she posts where practical, or makes available upon request where posting is impractical, a copy of the Industrial Welfare Commission Order 14-2001, as adopted on April 24, 2001, relating to sheepherders, provided that the posted material includes a sufficient summary of each of the provisions of this part.

SEC. 164. Section 3212 of the Labor Code is amended to read:

3212. In the case of members of a sheriff's office or the California Highway Patrol, district attorney's staff of inspectors and investigators or of police or fire departments of cities, counties, cities and counties, districts or other public or municipal corporations or political subdivisions, whether those members are volunteer, partly paid, or fully paid, and in the case of active firefighting members of the Department of Forestry and Fire Protection whose duties require firefighting or of any county forestry or firefighting department or unit, whether voluntary, fully paid, or partly paid, and in the case of members of the warden service of the Wildlife Protection Branch of the Department of Fish and Game whose principal duties consist of active law enforcement service, excepting those whose principal duties are clerical or otherwise do not clearly fall within the scope of active law enforcement service such as stenographers, telephone operators, and other officeworkers, the term ''injury'' as used in this act includes hernia when any part of the hernia develops or manifests itself during a period while the member is in the service in the office, staff, division, department, or unit, and in the case of members of fire departments, except those whose principal duties are clerical, such as stenographers, telephone operators, and other officeworkers, and in the case of county forestry or firefighting departments, except those whose principal duties are clerical, such as stenographers, telephone operators, and other officeworkers, and in the case of active firefighting members of the Department of Forestry and Fire Protection whose duties require firefighting, and in the case of members of the warden service of the Wildlife Protection Branch of the Department of Fish and Game whose principal duties consist of active law enforcement service, excepting those whose principal duties are clerical or otherwise do not clearly fall within the scope of active law enforcement service such as stenographers, telephone operators, and other officeworkers, the term ''injury'' includes pneumonia and heart trouble that develops or manifests itself during a period while the member is in the service of the office, staff, department, or unit. In the case of regular salaried county or city and county peace officers, the term ''injury'' also includes any hernia that manifests itself or develops during a period while the officer is in the service. The compensation that is awarded for the hernia, heart trouble, or pneumonia shall include full

hospital, surgical, medical treatment, disability indemnity, and death benefits, as provided by the workers' compensation laws of this state.

The hernia, heart trouble, or pneumonia so developing or manifesting itself in those cases shall be presumed to arise out of and in the course of the employment. This presumption is disputable and may be controverted by other evidence, but unless so controverted, the appeals board is bound to find in accordance with it. The presumption shall be extended to a member following termination of service for a period of three calendar months for each full year of the requisite service, but not to exceed 60 months in any circumstance, commencing with the last date actually worked in the specified capacity.

The hernia, heart trouble, or pneumonia so developing or manifesting itself in those cases shall in no case be attributed to any disease existing prior to that development or manifestation.

SEC. 165. Section 3212.10 of the Labor Code is amended to read:

3212.10. In the case of a peace officer of the Department of Corrections who has custodial or supervisory duties of inmates or parolees, or a peace officer of the Department of the Youth Authority who has custodial or supervisory duties of wards or parolees, or a peace officer as defined in Section 830.5 of the Penal Code and employed by a local agency, the term ''injury'' as used in this division includes heart trouble, pneumonia, tuberculosis, and meningitis that develops or manifests itself during a period in which any peace officer covered under this section is in the service of the department or unit. The compensation that is awarded for that injury shall include full hospital, surgical, medical treatment, disability indemnity, and death benefits as provided by the provisions of this division.

The heart trouble, pneumonia, tuberculosis, and meningitis so developing or manifesting itself shall be presumed to arise out of and in the course of employment. This presumption is disputable and may be controverted by other evidence, but unless so controverted, the appeals board is bound to find in accordance with it. This presumption shall be extended to a member following termination of service for a period of three calendar months for each full year of requisite service, but not to exceed 60 months in any circumstance, commencing with the last date actually worked in the specified capacity.

SEC. 166. Section 9102 of the Labor Code is amended to read:

9102. (a) The owner, manager, or operator of a working warehouse shall secure merchandise stored on shelves higher than 12 feet above the sales floor. Methods of securing merchandise shall include rails, fencing, netting, security doors, gates, cables, or the binding of items on a pallet into one unit by shrink-wrapping, metal or plastic banding, or by tying items together with a cord.

(b) All working warehouses shall comply with the provisions of this section on or before July 1, 2002.

SEC. 167. Section 9103 of the Labor Code is amended to read:

9103. (a) When heavy machinery is used to move merchandise from a shelf, there shall be a safety zone established to temporarily block customers from entering areas where merchandise could fall during removal from a shelf.

(b) All working warehouses shall comply with the provisions of this section on or before July 1, 2002.

SEC. 168. Section 1011 of the Military and Veterans Code is amended to read:

1011. (a) There is in the department a Veterans' Home of California, Yountville, situated at Veterans' Home, Napa County.

(b) (1) The department may establish and construct a second home that shall be situated in the County of Imperial, Los Angeles, Orange, Riverside, San Bernardino, San Diego, or Ventura. The home may be located on one or more sites. The department shall operate the second home concurrently with the first home.

(2) The initial site is the Veterans' Home of California, Barstow, situated in Barstow, San Bernardino County. That site may provide skilled nursing care for up to 250 residents.

(3) When completed, the second site shall be the Veterans' Home of California, Chula Vista, situated in Chula Vista, San Diego County, pursuant to the recommendations made by the commission established pursuant to Section 1011.5.

(4) When completed, the third site shall be the Veterans' Home of California, Lancaster, situated in Lancaster, Los Angeles County, pursuant to the recommendations made by the commission established pursuant to Section 1011.5.

(5) When completed, the fourth site shall be the Veterans' Home of California, Ventura, situated in the community of Saticoy, Ventura County.

(6) There shall be an administrator for, and located at, each site of the southern California home.

(7) The department may complete any preapplication process necessary with the United States Department of Veterans Affairs for construction of the second home.

(c) The Legislature hereby finds and declares that the second home is a new state function. The department may perform any or all work in operating the second home by independent contractors, except the overall administration and management of the home. Any and all actions of the department taken before September 17, 1996, that are consistent with this subdivision are hereby ratified and confirmed, it having at all

times been the intent of the Legislature that the department be so authorized.

SEC. 169. Section 68 of the Penal Code is amended to read:

68. (a) Every executive or ministerial officer, employee, or appointee of the State of California, a county or city therein, or a political subdivision thereof, who asks, receives, or agrees to receive, any bribe, upon any agreement or understanding that his or her vote, opinion, or action upon any matter then pending, or that may be brought before him or her in his or her official capacity, shall be influenced thereby, is punishable by imprisonment in the state prison for two, three, or four years and, in cases in which no bribe has been actually received, by a restitution fine of not less than two thousand dollars ($2,000) or not more than ten thousand dollars ($10,000) or, in cases in which a bribe was actually received, by a restitution fine of at least the actual amount of the bribe received or two thousand dollars ($2,000), whichever is greater, or any larger amount of not more than double the amount of any bribe received or ten thousand dollars ($10,000), whichever is greater, and, in addition thereto, forfeits his or her office, employment, or appointment, and is forever disqualified from holding any office, employment, or appointment, in this state.

(b) In imposing a restitution fine pursuant to this section, the court shall consider the defendant's ability to pay the fine.

SEC. 170. Section 86 of the Penal Code is amended to read:

86. Every member of either of the houses composing the Legislature of this state who asks, receives, or agrees to receive, any bribe, upon any understanding that his or her official vote, opinion, judgment, or action shall be influenced thereby, or shall give, in any particular manner, or upon any particular side of any question or matter upon which he or she may be required to act in his or her official capacity, or gives, or offers or promises to give, any official vote in consideration that another Member of the Legislature shall give this vote either upon the same or another question, is punishable by imprisonment in the state prison for two, three, or four years and, in cases in which no bribe has been actually received, by a restitution fine of not less than two thousand dollars ($2,000) or not more than ten thousand dollars ($10,000) or, in cases in which a bribe was actually received, by a restitution fine of at least the actual amount of the bribe received or two thousand dollars ($2,000), whichever is greater, or any larger amount of not more than double the amount of any bribe received or ten thousand dollars ($10,000), whichever is greater.

In imposing a fine under this section, the court shall consider the defendant's ability to pay the fine.

SEC. 171. Section 290 of the Penal Code is amended to read:

290. (a) (1) (A) Every person described in paragraph (2), for the rest of his or her life while residing in, or, if he or she has no residence, while located within California, or while attending school or working in California, as described in subparagraph (G), shall be required to register with the chief of police of the city in which he or she is residing, or if he or she has no residence, is located, or the sheriff of the county if he or she is residing, or if he or she has no residence, is located, in an unincorporated area or city that has no police department, and, additionally, with the chief of police of a campus of the University of California, the California State University, or community college if he or she is residing, or if he or she has no residence, is located upon the campus or in any of its facilities, within five working days of coming into, or changing his or her residence or location within, any city, county, or city and county, or campus in which he or she temporarily resides, or, if he or she has no residence, is located.

(B) If the person who is registering has more than one residence address or location at which he or she regularly resides or is located, he or she shall register in accordance with subparagraph (A) in each of the jurisdictions in which he or she regularly resides or is located. If all of the addresses or locations are within the same jurisdiction, the person shall provide the registering authority with all of the addresses or locations where he or she regularly resides or is located.

(C) If the person who is registering has no residence address, he or she shall update his or her registration no less than once every 60 days in addition to the requirement in subparagraph (A), on a form as may be required by the Department of Justice, with the entity or entities described in subparagraph (A) in whose jurisdiction he or she is located at the time he or she is updating the registration. It is the intent of the Legislature that efforts be made with respect to persons who are subject to this subparagraph who are on probation or parole to engage them in treatment.

(D) Beginning on his or her first birthday following registration or change of address, the person shall be required to register annually, within five working days of his or her birthday, to update his or her registration with the entities described in subparagraph (A). At the annual update, the person shall provide current information as required on the Department of Justice annual update form, including the information described in subparagraphs (A) to (C), inclusive, of paragraph (2) of subdivision (e).

(E) In addition, every person who has ever been adjudicated a sexually violent predator, as defined in Section 6600 of the Welfare and Institutions Code, shall, after his or her release from custody, verify his or her address no less than once every 90 days and place of employment,

including the name and address of the employer, in a manner established by the Department of Justice.

(F) No entity shall require a person to pay a fee to register or update his or her registration pursuant to this section. The registering agency shall submit registrations, including annual updates or changes of address, directly into the Department of Justice Violent Crime Information Network (VCIN).

(G) Persons required to register in their state of residence who are out-of-state residents employed, or carrying on a vocation in California on a full-time or part-time basis, with or without compensation, for more than 14 days, or for an aggregate period exceeding 30 days in a calendar year, shall register in accordance with subparagraph (A). Persons described in paragraph (2) who are out-of-state residents enrolled in any educational institution in California, as defined in Section 22129 of the Education Code, on a full-time or part-time basis, shall register in accordance with subparagraph (A). The place where the out-of-state resident is located, for purposes of registration, shall be the place where the person is employed, carrying on a vocation, or attending school. The out-of-state resident subject to this subparagraph shall, in addition to the information required pursuant to subdivision (e), provide the registering authority with the name of his or her place of employment or the name of the school attended in California, and his or her address or location in his or her state of residence. The registration requirement for persons subject to this subparagraph shall become operative on November 25, 2000. The terms ''employed or carries on a vocation'' include employment whether or not financially compensated, volunteered, or performed for government or educational benefit.

(2) The following persons shall be required to register pursuant to paragraph (1):

(A) Any person who, since July 1, 1944, has been or is hereafter convicted in any court in this state or in any federal or military court of a violation of Section 207 or 209 committed with intent to violate Section 261, 286, 288, 288a, or 289, Section 220, except assault to commit mayhem, Section 243.4, paragraph (1), (2), (3), (4), or (6) of subdivision (a) of Section 261, or paragraph (1) of subdivision (a) of Section 262 involving the use of force or violence for which the person is sentenced to the state prison, Section 264.1, 266, 266c, subdivision (b) of Section 266h, subdivision (b) of Section 266i, 266j, 267, 269, 285, 286, 288, 288a, 288.5, or 289, subdivision (b), (c), or (d) of Section 311.2, Section 311.3, 311.4, 311.10, 311.11, or 647.6, former Section 647a, subdivision (c) of Section 653f, subdivision 1 or 2 of Section 314, any offense involving lewd or lascivious conduct under Section 272, or any felony violation of Section 288.2; or any person who since that date

has been or is hereafter convicted of the attempt to commit any of the above-mentioned offenses.

(B) Any person who, since July 1, 1944, has been or hereafter is released, discharged, or paroled from a penal institution where he or she was confined because of the commission or attempted commission of one of the offenses described in subparagraph (A).

(C) Any person who, since July 1, 1944, has been or hereafter is determined to be a mentally disordered sex offender under Article 1 (commencing with Section 6300) of Chapter 2 of Part 2 of Division 6 of the Welfare and Institutions Code or any person who has been found guilty in the guilt phase of a trial for an offense for which registration is required by this section but who has been found not guilty by reason of insanity in the sanity phase of the trial.

(D) Any person who, since July 1, 1944, has been, or is hereafter convicted in any other court, including any state, federal, or military court, of any offense that, if committed or attempted in this state, would have been punishable as one or more of the offenses described in subparagraph (A) or any person ordered by any other court, including any state, federal, or military court, to register as a sex offender for any offense, if the court found at the time of conviction or sentencing that the person committed the offense as a result of sexual compulsion or for purposes of sexual gratification.

(E) Any person ordered by any court to register pursuant to this section for any offense not included specifically in this section if the court finds at the time of conviction or sentencing that the person committed the offense as a result of sexual compulsion or for purposes of sexual gratification. The court shall state on the record the reasons for its findings and the reasons for requiring registration.

(F) (i) Notwithstanding any other subdivision, a person who was convicted before January 1, 1976, under subdivision (a) of Section 286, or Section 288a, shall not be required to register pursuant to this section for that conviction if the conviction was for conduct between consenting adults that was decriminalized by Chapter 71 of the Statutes of 1975 or Chapter 1139 of the Statutes of 1976. The Department of Justice shall remove that person from the Sex Offender Registry, and the person is discharged from his or her duty to register pursuant to the following procedure:

(I) The person submits to the Department of Justice official documentary evidence, including court records or police reports, that demonstrate that the person's conviction pursuant to either of those sections was for conduct between consenting adults that was decriminalized; or

(II) The person submits to the department a declaration stating that the person's conviction pursuant to either of those sections was for

consensual conduct between adults that has been decriminalized. The declaration shall be confidential and not a public record, and shall include the person's name, address, telephone number, date of birth, and a summary of the circumstances leading to the conviction, including the date of the conviction and county of the occurrence.

(III) The department shall determine whether the person's conviction was for conduct between consensual adults that has been decriminalized. If the conviction was for consensual conduct between adults that has been decriminalized, and the person has no other offenses for which he or she is required to register pursuant to this section, the department shall, within 60 days of receipt of those documents, notify the person that he or she is relieved of the duty to register, and shall notify the local law enforcement agency with which the person is registered that he or she has been relieved of the duty to register. The local law enforcement agency shall remove the person's registration from its files within 30 days of receipt of notification. If the documentary or other evidence submitted is insufficient to establish the person's claim, the department shall, within 60 days of receipt of those documents, notify the person that his or her claim cannot be established, and that the person shall continue to register pursuant to this section. The department shall provide, upon the person's request, any information relied upon by the department in making its determination that the person shall continue to register pursuant to this section. Any person whose claim has been denied by the department pursuant to this clause may petition the court to appeal the department's denial of the person's claim.

(ii) On or before July 1, 1998, the department shall make a report to the Legislature concerning the status of persons who may come under the provisions of this subparagraph, including the number of persons who were convicted before January 1, 1976, under subdivision (a) of Section 286 or Section 288a and are required to register under this section, the average age of these persons, the number of these persons who have any subsequent convictions for a registerable sex offense, and the number of these persons who have sought successfully or unsuccessfully to be relieved of their duty to register under this section.

(b) (1) Any person who is released, discharged, or paroled from a jail, state or federal prison, school, road camp, or other institution where he or she was confined because of the commission or attempted commission of one of the offenses specified in subdivision (a) or is released from a state hospital to which he or she was committed as a mentally disordered sex offender under Article 1 (commencing with Section 6300) of Chapter 2 of Part 2 of Division 6 of the Welfare and Institutions Code, shall, prior to discharge, parole, or release, be informed of his or her duty to register under this section by the official in charge of the place of confinement or hospital, and the official shall

require the person to read and sign any form that may be required by the Department of Justice, stating that the duty of the person to register under this section has been explained to the person. The official in charge of the place of confinement or hospital shall obtain the address where the person expects to reside upon his or her discharge, parole, or release and shall report the address to the Department of Justice. The official shall at the same time forward a current photograph of the person to the Department of Justice.

(2) The official in charge of the place of confinement or hospital shall give one copy of the form to the person and shall send one copy to the Department of Justice and one copy to the appropriate law enforcement agency or agencies having jurisdiction over the place the person expects to reside upon discharge, parole, or release. If the conviction that makes the person subject to this section is a felony conviction, the official in charge shall, not later than 45 days prior to the scheduled release of the person, send one copy to the appropriate law enforcement agency or agencies having local jurisdiction where the person expects to reside upon discharge, parole, or release; one copy to the prosecuting agency that prosecuted the person; and one copy to the Department of Justice. The official in charge of the place of confinement or hospital shall retain one copy.

(c) (1) Any person who is convicted in this state of the commission or attempted commission of any of the offenses specified in subdivision (a) and who is released on probation, shall, prior to release or discharge, be informed of the duty to register under this section by the probation department, and a probation officer shall require the person to read and sign any form that may be required by the Department of Justice, stating that the duty of the person to register under this section has been explained to him or her. The probation officer shall obtain the address where the person expects to reside upon release or discharge and shall report within three days the address to the Department of Justice. The probation officer shall give one copy of the form to the person, send one copy to the Department of Justice, and forward one copy to the appropriate law enforcement agency or agencies having local jurisdiction where the person expects to reside upon his or her discharge, parole, or release.

(2) Any person who is convicted in this state of the commission or attempted commission of any of the offenses specified in subdivision (a) and who is granted conditional release without supervised probation, or discharged upon payment of a fine, shall, prior to release or discharge, be informed of the duty to register under this section in open court by the court in which the person has been convicted, and the court shall require the person to read and sign any form that may be required by the Department of Justice, stating that the duty of the person to register under

this section has been explained to him or her. If the court finds that it is in the interest of the efficiency of the court, the court may assign the bailiff to require the person to read and sign forms under this section. The court shall obtain the address where the person expects to reside upon release or discharge and shall report within three days the address to the Department of Justice. The court shall give one copy of the form to the person, send one copy to the Department of Justice, and forward one copy to the appropriate law enforcement agency or agencies having local jurisdiction where the person expects to reside upon his or her discharge, parole, or release.

(d) (1) Any person who, on or after January 1, 1986, is discharged or paroled from the Department of the Youth Authority to the custody of which he or she was committed after having been adjudicated a ward of the juvenile court pursuant to Section 602 of the Welfare and Institutions Code because of the commission or attempted commission of any offense described in paragraph (3) shall be subject to registration under the procedures of this section.

(2) Any person who is discharged or paroled from a facility in another state that is equivalent to the Department of the Youth Authority, to the custody of which he or she was committed because of an offense which, if committed or attempted in this state, would have been punishable as one or more of the offenses described in paragraph (3), shall be subject to registration under the procedures of this section.

(3) Any person described in this subdivision who committed an offense in violation of any of the following provisions shall be required to register pursuant to this section:

(A) Assault with intent to commit rape, sodomy, oral copulation, or any violation of Section 264.1, 288, or 289 under Section 220.

(B) Any offense defined in paragraph (1), (2), (3), (4), or (6) of subdivision (a) of Section 261, Section 264.1, 266c, or 267, paragraph (1) of subdivision (b) of, or subdivision (c) or (d) of, Section 286, Section 288 or 288.5, paragraph (1) of subdivision (b) of, or subdivision (c) or (d) of, Section 288a, subdivision (a) of Section 289, or Section 647.6.

(C) A violation of Section 207 or 209 committed with the intent to violate Section 261, 286, 288, 288a, or 289.

(4) Prior to discharge or parole from the Department of the Youth Authority, any person who is subject to registration under this subdivision shall be informed of the duty to register under the procedures set forth in this section. Department of the Youth Authority officials shall transmit the required forms and information to the Department of Justice.

(5) All records specifically relating to the registration in the custody of the Department of Justice, law enforcement agencies, and other agencies or public officials shall be destroyed when the person who is

required to register has his or her records sealed under the procedures set forth in Section 781 of the Welfare and Institutions Code. This subdivision shall not be construed as requiring the destruction of other criminal offender or juvenile records relating to the case that are maintained by the Department of Justice, law enforcement agencies, the juvenile court, or other agencies and public officials unless ordered by a court under Section 781 of the Welfare and Institutions Code.

(e) (1) On or after January 1, 1998, upon incarceration, placement, or commitment, or prior to release on probation, any person who is required to register under this section shall preregister. The preregistering official shall be the admitting officer at the place of incarceration, placement, or commitment, or the probation officer if the person is to be released on probation. The preregistration shall consist of all of the following:

(A) A preregistration statement in writing, signed by the person, giving information that shall be required by the Department of Justice.

(B) The fingerprints and a current photograph of the person.

(C) Any person who is preregistered pursuant to this subdivision is required to be preregistered only once.

(2) A person described in paragraph (2) of subdivision (a) shall register, or reregister if the person has previously registered, upon release from incarceration, placement, or commitment, pursuant to paragraph (1) of subdivision (a). The registration shall consist of all of the following:

(A) A statement in writing signed by the person, giving information as shall be required by the Department of Justice and giving the name and address of the person's employer, and the address of the person's place of employment if that is different from the employer's main address.

(B) The fingerprints and a current photograph of the person taken by the registering official.

(C) The license plate number of any vehicle owned by, regularly driven by, or registered in the name of the person.

(D) Notice to the person that, in addition to the requirements of paragraph (4), he or she may have a duty to register in any other state where he or she may relocate.

(E) Copies of adequate proof of residence, which shall be limited to a California driver's license, California identification card, recent rent or utility receipt, printed personalized checks or other recent banking documents showing that person's name and address, or any other information that the registering official believes is reliable. If the person has no residence and no reasonable expectation of obtaining a residence in the foreseeable future, the person shall so advise the registering official and shall sign a statement provided by the registering official

stating that fact. Upon presentation of proof of residence to the registering official or a signed statement that the person has no residence, the person shall be allowed to register. If the person claims that he or she has a residence but does not have any proof of residence, he or she shall be allowed to register but shall furnish proof of residence within 30 days of the day he or she is allowed to register.

(3) Within three days thereafter, the preregistering official or the registering law enforcement agency or agencies shall forward the statement, fingerprints, photograph, and vehicle license plate number, if any, to the Department of Justice.

(f) (1) If any person who is required to register pursuant to this section changes his or her residence address or location, whether within the jurisdiction in which he or she is currently registered or to a new jurisdiction inside or outside the state, the person shall inform, in writing within five working days, the law enforcement agency or agencies with which he or she last registered of the new address or location. The law enforcement agency or agencies shall, within three days after receipt of this information, forward a copy of the change of address or location information to the Department of Justice. The Department of Justice shall forward appropriate registration data to the law enforcement agency or agencies having local jurisdiction of the new place of residence or location.

(2) If the person's new address is in a Department of the Youth Authority facility or a state prison or state mental institution, an official of the place of incarceration, placement, or commitment shall, within 90 days of receipt of the person, forward the registrant's change of address information to the Department of Justice. The agency need not provide a physical address for the registrant but shall indicate that he or she is serving a period of incarceration or commitment in a facility under the agency's jurisdiction. This paragraph shall apply to persons received in a Department of the Youth Authority facility or a state prison or state mental institution on or after January 1, 1999. The Department of Justice shall forward the change of address information to the agency with which the person last registered.

(3) If any person who is required to register pursuant to this section changes his or her name, the person shall inform, in person, the law enforcement agency or agencies with which he or she is currently registered within five working days. The law enforcement agency or agencies shall forward a copy of this information to the Department of Justice within three days of its receipt.

(g) (1) Any person who is required to register under this section based on a misdemeanor conviction or juvenile adjudication who willfully violates any requirement of this section is guilty of a

misdemeanor punishable by imprisonment in a county jail not exceeding one year.

(2) Except as provided in paragraphs (5) and (7), any person who is required to register under this section based on a felony conviction or juvenile adjudication who willfully violates any requirement of this section or who has a prior conviction or juvenile adjudication for the offense of failing to register under this section and who subsequently and willfully violates any requirement of this section is guilty of a felony and shall be punished by imprisonment in the state prison for 16 months, or two or three years.

If probation is granted or if the imposition or execution of sentence is suspended, it shall be a condition of the probation or suspension that the person serve at least 90 days in a county jail. The penalty described in this paragraph shall apply whether or not the person has been released on parole or has been discharged from parole.

(3) Any person determined to be a mentally disordered sex offender or who has been found guilty in the guilt phase of trial for an offense for which registration is required under this section, but who has been found not guilty by reason of insanity in the sanity phase of the trial, or who has had a petition sustained in a juvenile adjudication for an offense for which registration is required under this section pursuant to subdivision (d), but who has been found not guilty by reason of insanity, who willfully violates any requirement of this section is guilty of a misdemeanor and shall be punished by imprisonment in a county jail not exceeding one year. For any second or subsequent willful violation of any requirement of this section, the person is guilty of a felony and shall be punished by imprisonment in the state prison for 16 months, or two or three years.

(4) If, after discharge from parole, the person is convicted of a felony or suffers a juvenile adjudication as specified in this subdivision, he or she shall be required to complete parole of at least one year, in addition to any other punishment imposed under this subdivision. A person convicted of a felony as specified in this subdivision may be granted probation only in the unusual case where the interests of justice would best be served. When probation is granted under this paragraph, the court shall specify on the record and shall enter into the minutes the circumstances indicating that the interests of justice would best be served by the disposition.

(5) Any person who has ever been adjudicated a sexually violent predator, as defined in Section 6600 of the Welfare and Institutions Code, and who fails to verify his or her registration every 90 days as required pursuant to subparagraph (E) of paragraph (1) of subdivision (a), shall be punished by imprisonment in the state prison, or in a county jail not exceeding one year.

(6) Except as otherwise provided in paragraph (5), and in addition to any other penalty imposed under this subdivision, any person who is required pursuant to subparagraph (C) of paragraph (1) of subdivision (a) to update his or her registration every 60 days and willfully fails to update his or her registration is guilty of a misdemeanor and shall be punished by imprisonment in a county jail not exceeding six months. Any subsequent violation of this requirement that persons described in subparagraph (C) of paragraph (1) of subdivision (a) shall update their registration every 60 days is also a misdemeanor and shall be punished by imprisonment in a county jail not exceeding six months.

(7) Any person who fails to provide proof of residence as required by subparagraph (E) of paragraph (2) of subdivision (e), regardless of the offense upon which the duty to register is based, is guilty of a misdemeanor punishable by imprisonment in a county jail not exceeding six months.

(8) Any person who is required to register under this section who willfully violates any requirement of this section is guilty of a continuing offense.

(h) Whenever any person is released on parole or probation and is required to register under this section but fails to do so within the time prescribed, the parole authority, the Youthful Offender Parole Board, or the court, as the case may be, shall order the parole or probation of the person revoked. For purposes of this subdivision, ''parole authority'' has the same meaning as described in Section 3000.

(i) Except as provided in subdivisions (m) and (n) and Section 290.4, the statements, photographs, and fingerprints required by this section shall not be open to inspection by the public or by any person other than a regularly employed peace officer or other law enforcement officer.

(j) In any case in which a person who would be required to register pursuant to this section for a felony conviction is to be temporarily sent outside the institution where he or she is confined on any assignment within a city or county including firefighting, disaster control, or of whatever nature the assignment may be, the local law enforcement agency having jurisdiction over the place or places where the assignment shall occur shall be notified within a reasonable time prior to removal from the institution. This subdivision shall not apply to any person who is temporarily released under guard from the institution where he or she is confined.

(k) As used in this section, ''mentally disordered sex offender'' includes any person who has been determined to be a sexual psychopath or a mentally disordered sex offender under any provision which, on or before January 1, 1976, was contained in Division 6 (commencing with Section 6000) of the Welfare and Institutions Code.

(*l*) (1) Every person who, prior to January 1, 1997, is required to register under this section, shall be notified whenever he or she next reregisters of the reduction of the registration period from 14 to five working days. This notice shall be provided in writing by the registering agency or agencies. Failure to receive this notification shall be a defense against the penalties prescribed by subdivision (g) if the person did register within 14 days.

(2) Every person who, as a sexually violent predator, as defined in Section 6600 of the Welfare and Institutions Code, is required to verify his or her registration every 90 days, shall be notified wherever he or she next registers of his or her increased registration obligations. This notice shall be provided in writing by the registering agency or agencies. Failure to receive this notice shall be a defense against the penalties prescribed by paragraph (5) of subdivision (g).

(m) (1) When a peace officer reasonably suspects, based on information that has come to his or her attention through information provided by any peace officer or member of the public, that a child or other person may be at risk from a sex offender convicted of a crime listed in paragraph (1) of subdivision (a) of Section 290.4, a law enforcement agency may, notwithstanding any other provision of law, provide any of the information specified in paragraph (4) of this subdivision about that registered sex offender that the agency deems relevant and necessary to protect the public, to the following persons, agencies, or organizations the offender is likely to encounter, including, but not limited to, the following:

(A) Public and private educational institutions, day care establishments, and establishments and organizations that primarily serve individuals likely to be victimized by the offender.

(B) Other community members at risk.

(2) The law enforcement agency may authorize persons and entities who receive the information pursuant to paragraph (1) to disclose information to additional persons only if the agency does the following:

(A) Determines that all conditions set forth in paragraph (1) have been satisfied regarding disclosure to the additional persons.

(B) Identifies the appropriate scope of further disclosure.

(3) Persons notified pursuant to paragraph (1) may disclose the information provided by the law enforcement agency in the manner and to the extent authorized by the law enforcement agency.

(4) The information that may be disclosed pursuant to this section includes the following:

(A) The offender's full name.

(B) The offender's known aliases.

(C) The offender's gender.

(D) The offender's race.

(E) The offender's physical description.

(F) The offender's photograph.

(G) The offender's date of birth.

(H) Crimes resulting in registration under this section.

(I) The offender's address, which must be verified prior to publication.

(J) Description and license plate number of offender's vehicles or vehicles the offender is known to drive.

(K) Type of victim targeted by the offender.

(L) Relevant parole or probation conditions, such as one prohibiting contact with children.

(M) Dates of crimes resulting in classification under this section.

(N) Date of release from confinement.

(O) The offender's enrollment, employment, or vocational status with any university, college, community college, or other institution of higher learning.

However, information disclosed pursuant to this subdivision shall not include information that would identify the victim.

(5) If a law enforcement agency discloses information pursuant to this subdivision, it shall include, with the disclosure, a statement that the purpose of the release of the information is to allow members of the public to protect themselves and their children from sex offenders.

(6) For purposes of this section, ''likely to encounter'' means both of the following:

(A) That the agencies, organizations, or other community members are in a location or in close proximity to a location where the offender lives or is employed, or that the offender visits or is likely to visit on a regular basis.

(B) The types of interaction that ordinarily occur at that location and other circumstances indicate that contact with the offender is reasonably probable.

(7) For purposes of this section, ''reasonably suspects'' means that it is objectively reasonable for a peace officer to entertain a suspicion, based upon facts that could cause a reasonable person in a like position, drawing when appropriate on his or her training and experience, to suspect that a child or other person is at risk.

(8) For purposes of this section, ''at risk'' means a person is or may be exposed to a risk of becoming a victim of a sex offense committed by the offender.

(9) A law enforcement agency may continue to disclose information on an offender under this subdivision for as long as the offender is included in Section 290.4.

(n) In addition to the procedures set forth elsewhere in this section, a designated law enforcement entity may advise the public of the

presence of high-risk sex offenders in its community pursuant to this subdivision.

(1) For purposes of this subdivision:

(A) A high-risk sex offender is a person who has been convicted of an offense specified in paragraph (1) of subdivision (a) of Section 290.4, and also meets one of the following criteria:

(i) Has been convicted of three or more violent sex offenses, at least two of which were brought and tried separately.

(ii) Has been convicted of two violent sex offenses and one or more violent nonsex offenses, at least two of which were brought and tried separately.

(iii) Has been convicted of one violent sex offense and two or more violent nonsex offenses, at least two of which were brought and tried separately.

(iv) Has been convicted of either two violent sex offenses or one violent sex offense and one violent nonsex offense, at least two of which were brought and tried separately, and has been arrested on separate occasions for three or more violent sex offenses, violent nonsex offenses, or associated offenses.

(v) Has been adjudicated a sexually violent predator pursuant to Article 4 (commencing with Section 6600) of Chapter 2 of Part 2 of Division 6 of the Welfare and Institutions Code.

(B) A violent sex offense means any offense defined in Section 220, except attempt to commit mayhem, or Section 261, 264.1, 286, 288, 288a, 288.5, 289, or 647.6, or infliction of great bodily injury during the commission of a sex offense, as provided in Section 12022.8.

(C) A violent nonsex offense means any offense defined in Section 187, subdivision (a) of Section 192, or Section 203, 206, 207, or 236, provided that the offense is a felony, subdivision (a) of Section 273a, Section 273d or 451, or attempted murder, as defined in Sections 187 and 664.

(D) An associated offense means any offense defined in Section 243.4, provided that the offense is a felony, Section 311.1, 311.2, 311.3, 311.4, 311.5, 311.6, 311.7, or 314, Section 459, provided the offense is of the first degree, Section 597 or 646.9, subdivision (d), (h), or (i) of Section 647, Section 653m, or infliction of great bodily injury during the commission of a felony, as defined in Section 12022.7.

(E) For purposes of subparagraphs (B) to (D), inclusive, an arrest or conviction for the statutory predecessor of any of the enumerated offenses, or an arrest or conviction in any other jurisdiction for any offense that, if committed or attempted in this state, would have been punishable as one or more of the offenses described in those subparagraphs, is to be considered in determining whether an offender is a high-risk sex offender.

(F) For purposes of subparagraphs (B) to (D), inclusive, an arrest as a juvenile or an adjudication as a ward of the juvenile court within the meaning of Section 602 of the Welfare and Institutions Code for any of the offenses described in those subparagraphs is to be considered in determining whether an offender is a high-risk sex offender.

(G) Notwithstanding subparagraphs (A) to (D), inclusive, an offender shall not be considered to be a high-risk sex offender if either of the following apply:

(i) The offender's most recent conviction or arrest for an offense described in subparagraphs (B) to (D), inclusive, occurred more than five years prior to the high-risk assessment by the Department of Justice, excluding periods of confinement.

(ii) The offender notifies the Department of Justice, on a form approved by the department and available at any sheriff's office, that he or she has not been convicted in the preceding 15 years, excluding periods of confinement, of an offense for which registration is required under paragraph (2) of subdivision (a), and the department is able, upon exercise of reasonable diligence, to verify the information provided in paragraph (2).

(H) ''Confinement'' means confinement in a jail, prison, school, road camp, or other penal institution, confinement in a state hospital to which the offender was committed as a mentally disordered sex offender under Article 1 (commencing with Section 6300) of Chapter 2 of Part 2 of Division 6 of the Welfare and Institutions Code, or confinement in a facility designated by the Director of Mental Health to which the offender was committed as a sexually violent predator under Article 4 (commencing with Section 6600) of Chapter 2 of Part 2 of Division 6 of the Welfare and Institutions Code.

(I) ''Designated law enforcement entity'' means any of the following: municipal police department; sheriff's department; district attorney's office; county probation department; Department of Justice; Department of Corrections; Department of the Youth Authority; Department of the California Highway Patrol; or the police department of any campus of the University of California, California State University, or community college.

(2) The Department of Justice shall continually search the records provided to it pursuant to subdivision (b) and identify, on the basis of those records, high-risk sex offenders. Four times each year, the department shall provide to each chief of police and sheriff in the state, and to any other designated law enforcement entity upon request, the following information regarding each identified high-risk sex offender: full name; known aliases; gender; race; physical description; photograph; date of birth; and crimes resulting in classification under this section.

(3) The Department of Justice and any designated law enforcement entity to which notice has been given pursuant to paragraph (2) may cause to be made public, by whatever means the agency deems necessary to ensure the public safety, based upon information available to the agency concerning a specific person, including, but not limited to, the information described in paragraph (2); the offender's address, which shall be verified prior to publication; description and license plate number of the offender's vehicles or vehicles the offender is known to drive; type of victim targeted by the offender; relevant parole or probation conditions, such as one prohibiting contact with children; dates of crimes resulting in classification under this section; and date of release from confinement; but excluding information that would identify the victim.

(4) Notwithstanding any other provision of law, any person described in paragraph (2) of subdivision (p) who receives information from a designated law enforcement entity pursuant to paragraph (3) may disclose that information in the manner and to the extent authorized by the law enforcement entity.

(5) The law enforcement agency may authorize persons and entities who receive the information pursuant to paragraph (3) to disclose information to additional persons only if the agency does the following:

(A) Determines that all conditions set forth in this subdivision have been satisfied regarding disclosure to the additional persons.

(B) Identifies the appropriate scope of further disclosure.

(o) Agencies disseminating information to the public pursuant to Section 290.4 shall maintain records of those persons requesting to view the CD-ROM or other electronic media for a minimum of five years. Agencies disseminating information to the public pursuant to subdivision (n) shall maintain records of the means and dates of dissemination for a minimum of five years.

(p) (1) Any law enforcement agency and employees of any law enforcement agency shall be immune from liability for good faith conduct under this section. For the purposes of this section, ''law enforcement agency'' means the Attorney General of California, every district attorney, the Department of Corrections, the Department of the Youth Authority, and every state or local agency expressly authorized by statute to investigate or prosecute law violators.

(2) Any public or private educational institution, day care facility, or any child care custodian described in Section 11165.7, or any employee of a public or private educational institution or day care facility which in good faith disseminates information as authorized pursuant to paragraph (3) of subdivision (m) or paragraph (4) of subdivision (n) that is provided by a law enforcement agency or an employee of a law enforcement agency shall be immune from civil liability.

(q) (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).

(r) The registration and public notification provisions of this section are applicable to every person described in this section, without regard to when his or her crimes were committed or his or her duty to register pursuant to this section arose, and to every offense described in this section, regardless of when it was committed.

SEC. 172. Section 299.5 of the Penal Code is amended to read:

299.5. (a) All DNA and forensic identification profiles and other identification information retained by the Department of Justice pursuant to this chapter are exempt from any law requiring disclosure of information to the public and shall be confidential except as otherwise provided in this chapter.

(b) All evidence and forensic samples containing biological material retained by the Department of Justice DNA Laboratory or other state law enforcement agency are exempt from any law requiring disclosure of information to the public or the return of biological specimens.

(c) Non-DNA forensic identification information may be filed with the offender's file maintained by the Sex Registration Unit of the Department of Justice or in other computerized data bank systems maintained by the Department of Justice.

(d) The DNA and other forensic identification information retained by the Department of Justice pursuant to this chapter shall not be included in the state summary criminal history information. However, nothing in this chapter precludes law enforcement personnel from entering into a person's criminal history information or offender file maintained by the Department of Justice, the fact that the specimens, samples, and print impressions required by this chapter have or have not been collected from that person.

(e) The fact that the blood specimens, saliva samples, and print impressions required by this chapter have been received by the DNA Laboratory of the Department of Justice shall be included in the state summary criminal history information.

The full palm prints of each hand shall be filed and maintained by the Automated Latent Print Section of the Bureau of Criminal Identification and Information of the Department of Justice, and may be included in the state summary criminal history information.

(f) DNA and other forensic identification information shall be released only to law enforcement agencies, including, but not limited to, parole officers of the Department of Corrections, hearing officers of the parole authority, probation officers, the Attorney General's office, district attorneys' offices, and prosecuting city attorneys' offices, or to a court or administrative tribunal, except as specified in this chapter. Dissemination of this information to law enforcement agencies and district attorneys' offices outside this state shall be performed in conformity with the provisions of this chapter. A defendant's DNA and other forensic identification information developed pursuant to this chapter shall be available to his or her defense counsel upon court order made pursuant to Chapter 10 (commencing with Section 1054) of Title 6 of Part 2.

(g) (1) (A) Any person who knowingly uses an offender sample or DNA profile for other than criminal identification or exclusion purposes, or who knowingly discloses DNA or other forensic identification information developed pursuant to this section to an unauthorized individual or agency, for other than criminal identification or exclusion purposes, in violation of this chapter, shall be punished by imprisonment in a county jail not exceeding one year or by imprisonment in the state prison.

(B) Any person who, for the purpose of financial gain, knowingly uses an offender sample or DNA profile for other than criminal identification or exclusion purposes or who, for the purpose of financial gain, knowingly discloses DNA or other forensic identification information developed pursuant to this section to an unauthorized individual or agency, for other than criminal identification or exclusion purposes, in violation of this chapter, shall, in addition to the penalty provided in subparagraph (A), be punished by a criminal fine in an amount three times that of any financial gain received or ten thousand dollars ($10,000), whichever is greater.

(2) (A) If any employee of the Department of Justice knowingly uses an offender sample or DNA profile for other than criminal identification or exclusion purposes, or knowingly discloses DNA or other forensic identification information developed pursuant to this section to an unauthorized individual or agency, for other than criminal identification or exclusion purposes, in violation of this chapter, the department shall be liable in civil damages to the donor of the DNA identification information in the amount of five thousand dollars ($5,000) for each violation, plus attorney's fees and costs. In the event of multiple disclosures, the total damages available to the donor of the DNA is limited to fifty thousand dollars ($50,000) plus attorney's fees and costs.

(B) (i) Notwithstanding any other law, this shall be the sole and exclusive remedy against the Department of Justice and its employees available to the donor of the DNA.

(ii) The Department of Justice employee disclosing DNA identification information in violation of this chapter shall be absolutely immune from civil liability under this or any other law.

(3) It is not a violation of this section for a law enforcement agency to publicly disclose the fact of a DNA profile match.

(h) It is not a violation of this chapter to furnish DNA or other forensic identification information of the defendant to his or her defense counsel for criminal defense purposes in compliance with discovery.

(i) It is not a violation of this section to release DNA and other forensic identification information developed pursuant to this chapter to a jury or grand jury, or in a document filed with a court or administrative agency, or as part of a judicial or administrative proceeding, or for this information to become part of the public transcript or record of proceedings.

(j) It is not a violation of this section to include information obtained from a file in a transcript or record of a judicial proceeding, or in any other public record when the inclusion of the information in the public record is authorized by a court, statute, or decisional law.

(k) It is not a violation of this section for the DNA Laboratory of the Department of Justice or a local public laboratory to use anonymous DNA records for training, research, statistical analysis of populations, or quality control.

(*l*) It is not a violation of this section to disseminate statistical or research information obtained from the offender's file, the computerized databank system, any of the DNA laboratory's databases, or the full palm print file, provided that the subject of the file is not identified and cannot be identified from the information disclosed. All requests for statistical or research information obtained from the DNA databank shall be cataloged by the Department of Justice. Commencing January 1, 2000, the department shall submit an annual letter to the Legislature including, with respect to each request, the requester's name or agency, the purpose of the request, whether the request is related to a criminal investigation or court proceeding, whether the request was granted or denied, any reasons for denial, costs incurred or estimates of the cost of the request, and the date of the request.

(m) The Department of Justice shall make public the methodology and procedures to be used in its DNA program prior to the commencement of DNA testing in its laboratories. The Department of Justice shall review and consider on an ongoing basis the findings and results of any peer review and validation studies submitted to the department by members of the relevant scientific community

experienced in the use of DNA technology. This material shall be available to criminal defense counsel upon court order made pursuant to Chapter 10 (commencing with Section 1054) of Title 6 of Part 2.

(n) In order to maintain the computer system security of the Department of Justice DNA and forensic identification database and databank program, the computer software and database structures used by the DNA Laboratory of the Department of Justice to implement this chapter are confidential.

(o) Nothing in this section shall preclude a court from ordering discovery pursuant to Chapter 10 (commencing with Section 1054) of Title 6 of Part 2.

SEC. 173. Section 637.5 of the Penal Code is amended to read:

637.5. (a) No person who owns, controls, operates, or manages a satellite or cable television corporation, or who leases channels on a satellite or cable system shall:

(1) Use any electronic device to record, transmit, or observe any events or listen to, record, or monitor any conversations that take place inside a subscriber's residence, workplace, or place of business, without obtaining the express written consent of the subscriber. A satellite or cable television corporation may conduct electronic sweeps of subscriber households to monitor for signal quality.

(2) Provide any person with any individually identifiable information regarding any of its subscribers, including, but not limited to, the subscriber's television viewing habits, shopping choices, interests, opinions, energy uses, medical information, banking data or information, or any other personal or private information, without the subscriber's express written consent.

(b) Individual subscriber viewing responses or other individually identifiable information derived from subscribers may be retained and used by a satellite or cable television corporation only to the extent reasonably necessary for billing purposes and internal business practices, and to monitor for unauthorized reception of services. A satellite or cable television corporation may compile, maintain, and distribute a list containing the names and addresses of its subscribers if the list contains no other individually identifiable information and if subscribers are afforded the right to elect not to be included on the list. However, a satellite or cable television corporation shall maintain adequate safeguards to ensure the physical security and confidentiality of the subscriber information.

(c) A satellite or cable television corporation shall not make individual subscriber information available to government agencies in the absence of legal compulsion, including, but not limited to, a court order or subpoena. If requests for information are made, a satellite or cable television corporation shall promptly notify the subscriber of the

nature of the request and what government agency has requested the information prior to responding unless otherwise prohibited from doing so by law.

Nothing in this section shall be construed to prevent local franchising authorities from obtaining information necessary to monitor franchise compliance pursuant to franchise or license agreements. This information shall be provided so as to omit individually identifiable subscriber information whenever possible. Information obtained by local franchising authorities shall be used solely for monitoring franchise compliance and shall not be subject to the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code).

(d) Any individually identifiable subscriber information gathered by a satellite or cable television corporation shall be made available for subscriber examination within 30 days of receiving a request by a subscriber to examine the information on the premises of the corporation. Upon a reasonable showing by the subscriber that the information is inaccurate, a satellite or cable television corporation shall correct the information.

(e) Upon a subscriber's application for satellite or cable television service, including, but not limited to, interactive service, a satellite or cable television corporation shall provide the applicant with a separate notice in an appropriate form explaining the subscriber's right to privacy protection afforded by this section.

(f) As used in this section:

(1) ''Cable television corporation'' shall have the same meaning as that term is given by Section 215.5 of the Public Utilities Code.

(2) ''Individually identifiable information'' means any information identifying an individual or his or her use of any service provided by a satellite or cable system other than the mere fact that the individual is a satellite or cable television subscriber. ''Individually identifiable information'' shall not include anonymous, aggregate, or any other information that does not identify an individual subscriber of a video provider service.

(3) ''Person'' includes an individual, business association, partnership, corporation, limited liability company, or other legal entity, and an individual acting or purporting to act for or on behalf of any government, or subdivision thereof, whether federal, state, or local.

(4) ''Interactive service'' means any service offered by a satellite or cable television corporation involving the collection, reception, aggregation, storage, or use of electronic information transmitted from a subscriber to any other receiving point under the control of the satellite or cable television corporation, or vice versa.

(g) Nothing in this section shall be construed to limit the ability of a satellite or cable television corporation to market satellite or cable television or ancillary services to its subscribers.

(h) Any person receiving subscriber information from a satellite or cable television corporation shall be subject to the provisions of this section.

(i) Any aggrieved person may commence a civil action for damages for invasion of privacy against any satellite or cable television corporation, service provider, or person that leases a channel or channels on a satellite or cable television system that violates the provisions of this section.

(j) Any person who violates the provisions of this section is guilty of a misdemeanor punishable by a fine not exceeding three thousand dollars ($3,000), or by imprisonment in the county jail not exceeding one year, or by both that fine and imprisonment.

(k) The penalties and remedies provided by subdivisions (i) and (j) are cumulative, and shall not be construed as restricting any penalty or remedy, provisional or otherwise, provided by law for the benefit of any person, and no judgment under this section shall preclude any person from obtaining additional relief based upon the same facts.

(*l*) The provisions of this section are intended to set forth minimum state standards for protecting the privacy of subscribers to cable television services and are not intended to preempt more restrictive local standards.

SEC. 173.5. Section 1370 of the Penal Code is amended to read:

1370. (a) (1) (A) If the defendant is found mentally competent, the criminal process shall resume, the trial on the offense charged shall proceed, and judgment may be pronounced.

(B) If the defendant is found mentally incompetent, the trial or judgment shall be suspended until the person becomes mentally competent.

(i) In the meantime, the court shall order that the mentally incompetent defendant be delivered by the sheriff to a state hospital for the care and treatment of the mentally disordered, or to any other available public or private treatment facility approved by the community program director that will promote the defendant's speedy restoration to mental competence, or placed on outpatient status as specified in Section 1600.

(ii) However, if the action against the defendant who has been found mentally incompetent is on a complaint charging a felony offense specified in Section 290, the prosecutor shall determine whether the defendant previously has been found mentally incompetent to stand trial pursuant to this chapter on a charge of a Section 290 offense, or whether the defendant is currently the subject of a pending Section 1368

proceeding arising out of a charge of a Section 290 offense. If either determination is made, the prosecutor shall so notify the court and defendant in writing. After this notification, and opportunity for hearing, the court shall order that the defendant be delivered by the sheriff to a state hospital or other secure treatment facility for the care and treatment of the mentally disordered unless the court makes specific findings on the record that an alternative placement would provide more appropriate treatment for the defendant and would not pose a danger to the health and safety of others.

(iii) If the action against the defendant who has been found mentally incompetent is on a complaint charging a felony offense specified in Section 290 and the defendant has been denied bail pursuant to subdivision (b) of Section 12 of Article I of the California Constitution because the court has found, based upon clear and convincing evidence, a substantial likelihood that the person's release would result in great bodily harm to others, the court shall order that the defendant be delivered by the sheriff to a state hospital for the care and treatment of the mentally disordered unless the court makes specific findings on the record that an alternative placement would provide more appropriate treatment for the defendant and would not pose a danger to the health and safety of others.

(iv) The clerk of the court shall notify the Department of Justice in writing of any finding of mental incompetence with respect to a defendant who is subject to clause (ii) or (iii) for inclusion in his or her state summary criminal history information.

(C) Upon the filing of a certificate of restoration to competence, the court shall order that the defendant be returned to court in accordance with Section 1372. The court shall transmit a copy of its order to the community program director or a designee.

(D) A defendant charged with a violent felony may not be delivered to a state hospital or treatment facility pursuant to this subdivision unless the state hospital or treatment facility has a secured perimeter or a locked and controlled treatment facility, and the judge determines that the public safety will be protected.

(E) For purposes of this paragraph, ''violent felony'' means an offense specified in subdivision (c) of Section 667.5.

(F) A defendant charged with a violent felony may be placed on outpatient status, as specified in Section 1600, only if the court finds that the placement will not pose a danger to the health or safety of others.

(2) Prior to making the order directing that the defendant be confined in a state hospital or other treatment facility or placed on outpatient status, the court shall order the community program director or a designee to evaluate the defendant and to submit to the court within 15 judicial days of the order a written recommendation as to whether the

defendant should be required to undergo outpatient treatment, or committed to a state hospital or to any other treatment facility. No person shall be admitted to a state hospital or other treatment facility or placed on outpatient status under this section without having been evaluated by the community program director or a designee.

(3) When the court orders that the defendant be confined in a state hospital or other public or private treatment facility, the court shall provide copies of the following documents which shall be taken with the defendant to the state hospital or other treatment facility where the defendant is to be confined:

(A) The commitment order, including a specification of the charges.

(B) A computation or statement setting forth the maximum term of commitment in accordance with subdivision (c).

(C) A computation or statement setting forth the amount of credit for time served, if any, to be deducted from the maximum term of commitment.

(D) State summary criminal history information.

(E) Any arrest reports prepared by the police department or other law enforcement agency.

(F) Any court-ordered psychiatric examination or evaluation reports.

(G) The community program director's placement recommendation report.

(H) Records of any finding of mental incompetence pursuant to this chapter arising out of a complaint charging a felony offense specified in Section 290 or any pending Section 1368 proceeding arising out of a charge of a Section 290 offense.

(4) When the defendant is committed to a treatment facility pursuant to clause (i) of subparagraph (B) of paragraph (1) or the court makes the findings specified in clause (ii) or (iii) of subparagraph (B) of paragraph (1) to assign the defendant to a treatment facility other than a state hospital or other secure treatment facility, the court shall order that notice be given to the appropriate law enforcement agency or agencies having local jurisdiction at the site of the placement facility of any finding of mental incompetence pursuant to this chapter arising out of a charge of a Section 290 offense.

(5) When directing that the defendant be confined in a state hospital pursuant to this subdivision, the court shall select the hospital in accordance with the policies established by the State Department of Mental Health.

(6) (A) If the defendant is committed or transferred to a state hospital pursuant to this section, the court may, upon receiving the written recommendation of the medical director of the state hospital and the community program director that the defendant be transferred to a public or private treatment facility approved by the community program

director, order the defendant transferred to that facility. If the defendant is committed or transferred to a public or private treatment facility approved by the community program director, the court may, upon receiving the written recommendation of the community program director, transfer the defendant to a state hospital or to another public or private treatment facility approved by the community program director. In the event of dismissal of the criminal charges before the defendant recovers competence, the person shall be subject to the applicable provisions of the Lanterman-Petris-Short Act (Part 1 (commencing with Section 5000) of Division 5 of the Welfare and Institutions Code). Where either the defendant or the prosecutor chooses to contest either kind of order of transfer, a petition may be filed in the court for a hearing, which shall be held if the court determines that sufficient grounds exist. At the hearing, the prosecuting attorney or the defendant may present evidence bearing on the order of transfer. The court shall use the same standards as are used in conducting probation revocation hearings pursuant to Section 1203.2.

Prior to making an order for transfer under this section, the court shall notify the defendant, the attorney of record for the defendant, the prosecuting attorney, and the community program director or a designee.

(B) If the defendant is initially committed to a state hospital or secure treatment facility pursuant to clause (ii) or (iii) of subparagraph (B) of paragraph (1) and is subsequently transferred to any other facility, copies of the documents specified in paragraph (3) shall be taken with the defendant to each subsequent facility to which the defendant is transferred. The transferring facility shall also notify the appropriate law enforcement agency or agencies having local jurisdiction at the site of the new facility that the defendant is a person subject to clause (ii) or (iii) of subparagraph (B) of paragraph (1).

(b) (1) Within 90 days of a commitment made pursuant to subdivision (a), the medical director of the state hospital or other treatment facility to which the defendant is confined shall make a written report to the court and the community program director for the county or region of commitment, or a designee, concerning the defendant's progress toward recovery of mental competence. Where the defendant is on outpatient status, the outpatient treatment staff shall make a written report to the community program director concerning the defendant's progress toward recovery of mental competence. Within 90 days of placement on outpatient status, the community program director shall report to the court on this matter. If the defendant has not recovered mental competence, but the report discloses a substantial likelihood that the defendant will regain mental competence in the foreseeable future, the defendant shall remain in the state hospital or other treatment facility or on outpatient status. Thereafter, at six-month intervals or until the

defendant becomes mentally competent, where the defendant is confined in a treatment facility, the medical director of the hospital or person in charge of the facility shall report in writing to the court and the community program director or a designee regarding the defendant's progress toward recovery of mental competence. Where the defendant is on outpatient status, after the initial 90-day report, the outpatient treatment staff shall report to the community program director on the defendant's progress toward recovery, and the community program director shall report to the court on this matter at six-month intervals. A copy of these reports shall be provided to the prosecutor and defense counsel by the court. If the report indicates that there is no substantial likelihood that the defendant will regain mental competence in the foreseeable future, the committing court shall order the defendant to be returned to the court for proceedings pursuant to paragraph (2) of subdivision (c). The court shall transmit a copy of its order to the community program director or a designee.

(2) Any defendant who has been committed or has been on outpatient status for 18 months and is still hospitalized or on outpatient status shall be returned to the committing court where a hearing shall be held pursuant to the procedures set forth in Section 1369. The court shall transmit a copy of its order to the community program director or a designee.

(3) If it is determined by the court that no treatment for the defendant's mental impairment is being conducted, the defendant shall be returned to the committing court. The court shall transmit a copy of its order to the community program director or a designee.

(4) At each review by the court specified in this subdivision, the court shall determine if the security level of housing and treatment is appropriate and may make an order in accordance with its determination.

(c) (1) At the end of three years from the date of commitment or a period of commitment equal to the maximum term of imprisonment provided by law for the most serious offense charged in the information, indictment, or misdemeanor complaint, whichever is shorter, a defendant who has not recovered mental competence shall be returned to the committing court. The court shall notify the community program director or a designee of the return and of any resulting court orders.

(2) Whenever any defendant is returned to the court pursuant to paragraph (1) or (2) of subdivision (b) or paragraph (1) of this subdivision and it appears to the court that the defendant is gravely disabled, as defined in subparagraph (B) of paragraph (1) of subdivision (h) of Section 5008 of the Welfare and Institutions Code, the court shall order the conservatorship investigator of the county of commitment of the defendant to initiate conservatorship proceedings for the defendant pursuant to Chapter 3 (commencing with Section 5350) of Part 1 of

Division 5 of the Welfare and Institutions Code. Any hearings required in the conservatorship proceedings shall be held in the superior court in the county that ordered the commitment. The court shall transmit a copy of the order directing initiation of conservatorship proceedings to the community program director or a designee and shall notify the community program director or a designee of the outcome of the proceedings.

(3) Where the defendant is confined in a treatment facility, a copy of any report to the committing court regarding the defendant's progress toward recovery of mental competence shall be provided by the committing court to the prosecutor and to the defense counsel.

(d) The criminal action remains subject to dismissal pursuant to Section 1385. If the criminal action is dismissed, the court shall transmit a copy of the order of dismissal to the community program director or a designee.

(e) If the criminal charge against the defendant is dismissed, the defendant shall be released from any commitment ordered under this section, but without prejudice to the initiation of any proceedings that may be appropriate under the Lanterman-Petris-Short Act, Part 1 (commencing with Section 5000) of Division 5 of the Welfare and Institutions Code.

(f) As used in this chapter, ''community program director'' means the person, agency, or entity designated by the State Department of Mental Health pursuant to Section 1605 of this code and Section 4360 of the Welfare and Institutions Code.

(g) For the purpose of this section, ''secure treatment facility'' shall not include, except for state mental hospitals, state developmental centers, and correctional treatment facilities, any facility licensed pursuant to Chapter 2 (commencing with Section 1250) of, Chapter 3 (commencing with Section 1500) of, or Chapter 3.2 (commencing with Section 1569) of, Division 2 of the Health and Safety Code, or any community board and care facility.

SEC. 174. Section 11174.4 of the Penal Code is amended to read:

11174.4. The following definitions shall govern the construction of this article, unless the context requires otherwise:

(a) ''Elder'' means any person who is 65 years of age or older.

(b) (1) ''Abuse'' means any of the conduct described in Article 2 (commencing with Section 15610) of Chapter 11 of Part 3 of Division 9 of the Welfare and Institutions Code.

(2) Abuse does not include the use of any reasonable and necessary force that may result in an injury used by a peace officer acting within the course of his or her employment as a peace officer.

SEC. 175. Section 12035 of the Penal Code is amended to read:

12035. (a) As used in this section, the following definitions apply:

(1) ''Locking device'' means a device that is designed to prevent the firearm from functioning and when applied to the firearm, renders the firearm inoperable.

(2) ''Loaded firearm'' has the same meaning as set forth in subdivision (g) of Section 12031.

(3) ''Child'' means a person under 18 years of age.

(4) ''Great bodily injury'' has the same meaning as set forth in Section 12022.7.

(5) ''Locked container'' has the same meaning as set forth in subdivision (d) of Section 12026.2.

(b) (1) Except as provided in subdivision (c), a person commits the crime of ''criminal storage of a firearm of the first degree'' if he or she keeps any loaded firearm within any premises that are under his or her custody or control and he or she knows or reasonably should know that a child is likely to gain access to the firearm without the permission of the child's parent or legal guardian and the child obtains access to the firearm and thereby causes death or great bodily injury to himself, herself, or any other person.

(2) Except as provided in subdivision (c), a person commits the crime of ''criminal storage of a firearm of the second degree'' if he or she keeps any loaded firearm within any premises that are under his or her custody or control and he or she knows or reasonably should know that a child is likely to gain access to the firearm without the permission of the child's parent or legal guardian and the child obtains access to the firearm and thereby causes injury, other than great bodily injury, to himself, herself, or any other person, or carries the firearm either to a public place or in violation of Section 417.

(c) Subdivision (b) shall not apply whenever any of the following occurs:

(1) The child obtains the firearm as a result of an illegal entry to any premises by any person.

(2) The firearm is kept in a locked container or in a location that a reasonable person would believe to be secure.

(3) The firearm is carried on the person or within such a close proximity thereto that the individual can readily retrieve and use the firearm as if carried on the person.

(4) The firearm is locked with a locking device that has rendered the firearm inoperable.

(5) The person is a peace officer or a member of the armed forces or National Guard and the child obtains the firearm during, or incidental to, the performance of the person's duties.

(6) The child obtains, or obtains and discharges, the firearm in a lawful act of self-defense or defense of another person, or persons.

(7) The person who keeps a loaded firearm on any premise that is under his or her custody or control has no reasonable expectation, based on objective facts and circumstances, that a child is likely to be present on the premises.

(d) Criminal storage of a firearm is punishable as follows:

(1) Criminal storage of a firearm in the first degree, by imprisonment in the state prison for 16 months, or two or three years, by a fine not exceeding ten thousand dollars ($10,000), or by both that imprisonment and fine; or by imprisonment in a county jail not exceeding one year, by a fine not exceeding one thousand dollars ($1,000), or by both that fine and imprisonment.

(2) Criminal storage of a firearm in the second degree, by imprisonment in a county jail not exceeding one year, by a fine not exceeding one thousand dollars ($1,000), or by both that imprisonment and fine.

(e) If the person who allegedly violated this section is the parent or guardian of a child who is injured or who dies as the result of an accidental shooting, the district attorney shall consider, among other factors, the impact of the injury or death on the person alleged to have violated this section when deciding whether to prosecute an alleged violation. It is the Legislature's intent that a parent or guardian of a child who is injured or who dies as the result of an accidental shooting shall be prosecuted only in those instances in which the parent or guardian behaved in a grossly negligent manner or where similarly egregious circumstances exist. This subdivision shall not otherwise restrict, in any manner, the factors that a district attorney may consider when deciding whether to prosecute alleged violations of this section.

(f) If the person who allegedly violated this section is the parent or guardian of a child who is injured or who dies as the result of an accidental shooting, no arrest of the person for the alleged violation of this section shall occur until at least seven days after the date upon which the accidental shooting occurred.

In addition to the limitation contained in this subdivision, a law enforcement officer shall consider the health status of a child who suffers great bodily injury as the result of an accidental shooting prior to arresting a person for a violation of this section, if the person to be arrested is the parent or guardian of the injured child. The intent of this subdivision is to encourage law enforcement officials to delay the arrest of a parent or guardian of a seriously injured child while the child remains on life-support equipment or is in a similarly critical medical condition.

(g) (1) The fact that the person who allegedly violated this section attended a firearm safety training course prior to the purchase of the firearm that is obtained by a child in violation of this section shall be

considered a mitigating factor by a district attorney when he or she is deciding whether to prosecute the alleged violation.

(2) In any action or trial commenced under this section, the fact that the person who allegedly violated this section attended a firearm safety training course prior to the purchase of the firearm that is obtained by a child in violation of this section, shall be admissible.

(h) Every person licensed under Section 12071 shall post within the licensed premises the notice required by paragraph (7) of subdivision (b) of that section, disclosing the duty imposed by this section upon any person who keeps a loaded firearm.

SEC. 176. Section 12071 of the Penal Code is amended to read:

12071. (a) (1) As used in this chapter, the term ''licensee,'' ''person licensed pursuant to Section 12071,'' or ''dealer'' means a person who has all of the following:

(A) A valid federal firearms license.

(B) Any regulatory or business license, or licenses, required by local government.

(C) A valid seller's permit issued by the State Board of Equalization.

(D) A certificate of eligibility issued by the Department of Justice pursuant to paragraph (4).

(E) A license issued in the format prescribed by paragraph (6).

(F) Is among those recorded in the centralized list specified in subdivision (e).

(2) The duly constituted licensing authority of a city, county, or a city and county shall accept applications for, and may grant licenses permitting, licensees to sell firearms at retail within the city, county, or city and county. The duly constituted licensing authority shall inform applicants who are denied licenses of the reasons for the denial in writing.

(3) No license shall be granted to any applicant who fails to provide a copy of his or her valid federal firearms license, valid seller's permit issued by the State Board of Equalization, and the certificate of eligibility described in paragraph (4).

(4) A person may request a certificate of eligibility from the Department of Justice and the Department of Justice shall issue a certificate to an applicant if the department's records indicate that the applicant is not a person who is prohibited from possessing firearms.

(5) The department shall adopt regulations to administer the certificate of eligibility program and shall recover the full costs of administering the program by imposing fees assessed to applicants who apply for those certificates.

(6) A license granted by the duly constituted licensing authority of any city, county, or city and county, shall be valid for not more than one year from the date of issuance and shall be in one of the following forms:

(A) In the form prescribed by the Attorney General.

(B) A regulatory or business license that states on its face "Valid for Retail Sales of Firearms" and is endorsed by the signature of the issuing authority.

(C) A letter from the duly constituted licensing authority having primary jurisdiction for the applicant's intended business location stating that the jurisdiction does not require any form of regulatory or business license or does not otherwise restrict or regulate the sale of firearms.

(7) Local licensing authorities may assess fees to recover their full costs of processing applications for licenses.

(b) A license is subject to forfeiture for a breach of any of the following prohibitions and requirements:

(1) (A) Except as provided in subparagraphs (B) and (C), the business shall be conducted only in the buildings designated in the license.

(B) A person licensed pursuant to subdivision (a) may take possession of firearms and commence preparation of registers for the sale, delivery, or transfer of firearms at gun shows or events, as defined in Section 178.100 of Title 27 of the Code of Federal Regulations, or its successor, if the gun show or event is not conducted from any motorized or towed vehicle. A person conducting business pursuant to this subparagraph shall be entitled to conduct business as authorized herein at any gun show or event in the state without regard to the jurisdiction within this state that issued the license pursuant to subdivision (a), provided the person complies with (i) all applicable laws, including, but not limited to, the waiting period specified in subparagraph (A) of paragraph (3), and (ii) all applicable local laws, regulations, and fees, if any.

A person conducting business pursuant to this subparagraph shall publicly display his or her license issued pursuant to subdivision (a), or a facsimile thereof, at any gun show or event, as specified in this subparagraph.

(C) A person licensed pursuant to subdivision (a) may engage in the sale and transfer of firearms other than pistols, revolvers, or other firearms capable of being concealed upon the person, at events specified in subdivision (g) of Section 12078, subject to the prohibitions and restrictions contained in that subdivision.

A person licensed pursuant to subdivision (a) also may accept delivery of firearms other than pistols, revolvers, or other firearms capable of being concealed upon the person, outside the building designated in the license, provided the firearm is being donated for the purpose of sale or transfer at an auction or similar event specified in subdivision (g) of Section 12078.

(D) The firearm may be delivered to the purchaser, transferee, or person being loaned the firearm at one of the following places:

(i) The building designated in the license.

(ii) The places specified in subparagraph (B) or (C).

(iii) The place of residence of, the fixed place of business of, or on private property owned or lawfully possessed by, the purchaser, transferee, or person being loaned the firearm.

(2) The license or a copy thereof, certified by the issuing authority, shall be displayed on the premises where it can easily be seen.

(3) No firearm shall be delivered:

(A) Within 10 days of the application to purchase, or, after notice by the department pursuant to subdivision (d) of Section 12076, within 10 days of the submission to the department of any correction to the application, or within 10 days of the submission to the department of any fee required pursuant to subdivision (e) of Section 12076, whichever is later.

(B) Unless unloaded and securely wrapped or unloaded and in a locked container.

(C) Unless the purchaser, transferee, or person being loaned the firearm presents clear evidence of his or her identity and age to the dealer.

(D) Whenever the dealer is notified by the Department of Justice that the person is in a prohibited class described in Section 12021 or 12021.1 of this code or Section 8100 or 8103 of the Welfare and Institutions Code. The dealer shall make available to the person in the prohibited class a prohibited notice and transfer form, provided by the department, stating that the person is prohibited from owning or possessing a firearm, and that the person may obtain from the department the reason for the prohibition.

(4) No pistol, revolver, or other firearm or imitation thereof capable of being concealed upon the person, or placard advertising the sale or other transfer thereof, shall be displayed in any part of the premises where it can readily be seen from the outside.

(5) The licensee shall agree to and shall act properly and promptly in processing firearms transactions pursuant to Section 12082.

(6) The licensee shall comply with Sections 12073, 12076, and 12077, subdivisions (a) and (b) of Section 12072, and subdivision (a) of Section 12316.

(7) The licensee shall post conspicuously within the licensed premises the following warnings in block letters not less than one inch in height:

(A) "IF YOU KEEP A LOADED FIREARM WITHIN ANY PREMISES UNDER YOUR CUSTODY OR CONTROL, AND A PERSON UNDER 18 YEARS OF AGE OBTAINS IT AND USES IT, RESULTING IN INJURY OR DEATH, OR CARRIES IT TO A

PUBLIC PLACE, YOU MAY BE GUILTY OF A MISDEMEANOR OR A FELONY UNLESS YOU STORED THE FIREARM IN A LOCKED CONTAINER OR LOCKED THE FIREARM WITH A LOCKING DEVICE, TO KEEP IT FROM TEMPORARILY FUNCTIONING.''

(B) ''IF YOU KEEP A PISTOL, REVOLVER, OR OTHER FIREARM CAPABLE OF BEING CONCEALED UPON THE PERSON, WITHIN ANY PREMISES UNDER YOUR CUSTODY OR CONTROL, AND A PERSON UNDER 18 YEARS OF AGE GAINS ACCESS TO THE FIREARM, AND CARRIES IT OFF-PREMISES, YOU MAY BE GUILTY OF A MISDEMEANOR, UNLESS YOU STORED THE FIREARM IN A LOCKED CONTAINER, OR LOCKED THE FIREARM WITH A LOCKING DEVICE, TO KEEP IT FROM TEMPORARILY FUNCTIONING.''

(C) ''IF YOU KEEP ANY FIREARM WITHIN ANY PREMISES UNDER YOUR CUSTODY OR CONTROL, AND A PERSON UNDER 18 YEARS OF AGE GAINS ACCESS TO THE FIREARM, AND CARRIES IT OFF-PREMISES TO A SCHOOL OR SCHOOL-SPONSORED EVENT, YOU MAY BE GUILTY OF A MISDEMEANOR, INCLUDING A FINE OF UP TO FIVE THOUSAND DOLLARS ($5,000), UNLESS YOU STORED THE FIREARM IN A LOCKED CONTAINER, OR LOCKED THE FIREARM WITH A LOCKING DEVICE.''

(D) ''DISCHARGING FIREARMS IN POORLY VENTILATED AREAS, CLEANING FIREARMS, OR HANDLING AMMUNITION MAY RESULT IN EXPOSURE TO LEAD, A SUBSTANCE KNOWN TO CAUSE BIRTH DEFECTS, REPRODUCTIVE HARM, AND OTHER SERIOUS PHYSICAL INJURY. HAVE ADEQUATE VENTILATION AT ALL TIMES. WASH HANDS THOROUGHLY AFTER EXPOSURE.''

(E) ''FEDERAL REGULATIONS PROVIDE THAT IF YOU DO NOT TAKE PHYSICAL POSSESSION OF THE FIREARM THAT YOU ARE ACQUIRING OWNERSHIP OF WITHIN 30 DAYS AFTER YOU COMPLETE THE INITIAL BACKGROUND CHECK PAPERWORK, THEN YOU HAVE TO GO THROUGH THE BACKGROUND CHECK PROCESS A SECOND TIME IN ORDER TO TAKE PHYSICAL POSSESSION OF THAT FIREARM.''

(F) ''NO PERSON SHALL MAKE AN APPLICATION TO PURCHASE MORE THAN ONE PISTOL, REVOLVER, OR OTHER FIREARM CAPABLE OF BEING CONCEALED UPON THE PERSON WITHIN ANY 30-DAY PERIOD AND NO DELIVERY SHALL BE MADE TO ANY PERSON WHO HAS MADE AN APPLICATION TO PURCHASE MORE THAN ONE PISTOL, REVOLVER, OR OTHER FIREARM CAPABLE OF BEING

CONCEALED UPON THE PERSON WITHIN ANY 30-DAY PERIOD.''

(8) (A) Commencing April 1, 1994, and until January 1, 2003, no pistol, revolver, or other firearm capable of being concealed upon the person shall be delivered unless the purchaser, transferee, or person being loaned the firearm presents to the dealer a basic firearms safety certificate.

(B) Commencing January 1, 2003, no dealer may deliver a handgun unless the person receiving the handgun presents to the dealer a valid handgun safety certificate. The firearms dealer shall retain a photocopy of the handgun safety certificate as proof of compliance with this requirement.

(C) Commencing January 1, 2003, no handgun may be delivered unless the purchaser, transferee, or person being loaned the firearm presents documentation indicating that he or she is a California resident. Satisfactory documentation shall include a utility bill from within the last three months, a residential lease, a property deed, or military permanent duty station orders indicating assignment within this state, or other evidence of residency as permitted by the Department of Justice. The firearms dealer shall retain a photocopy of the documentation as proof of compliance with this requirement.

(D) Commencing January 1, 2003, except as authorized by the department, no firearms dealer may deliver a handgun unless the recipient performs a safe handling demonstration with that handgun. The demonstration shall commence with the handgun unloaded and locked with the firearm safety device with which it is required to be delivered, if applicable. While maintaining muzzle awareness, that is, the firearm is pointed in a safe direction, preferably down at the ground, and trigger discipline, that is, the trigger finger is outside of the trigger guard and along side of the handgun frame, at all times, the handgun recipient shall correctly and safely perform the following:

(i) If the handgun is a semiautomatic pistol:

(I) Remove the magazine.

(II) Lock the slide back. If the model of firearm does not allow the slide to be locked back, pull the slide back, visually and physically check the chamber to ensure that it is clear.

(III) Visually and physically inspect the chamber, to ensure that the handgun is unloaded.

(IV) Remove the firearm safety device, if applicable. If the firearm safety device prevents any of the previous steps, remove the firearm safety device during the appropriate step.

(V) Load one bright orange dummy round into the magazine.

(VI) Insert the magazine into the magazine well of the firearm.

(VII) Manipulate the slide release or pull back and release the slide.

(VIII) Remove the magazine.

(IX) Visually inspect the chamber to reveal that a round can be chambered with the magazine removed.

(X) Lock the slide back to eject the bright orange dummy round. If the handgun is of a model that does not allow the slide to be locked back, pull the slide back and physically check the chamber to ensure that the chamber is clear.

(XI) Apply the safety, if applicable.

(XII) Apply the firearm safety device, if applicable.

(ii) If the handgun is a double-action revolver:

(I) Open the cylinder.

(II) Visually and physically inspect each chamber, to ensure that the revolver is unloaded.

(III) Remove the firearm safety device. If the firearm safety device prevents any of the previous steps, remove the firearm safety device during the appropriate step.

(IV) While maintaining muzzle awareness and trigger discipline, load one bright orange dummy round into a chamber of the cylinder and rotate the cylinder so that the round is in the next-to-fire position.

(V) Close the cylinder.

(VI) Open the cylinder and eject the round.

(VII) Visually and physically inspect each chamber to ensure that the revolver is unloaded.

(VIII) Apply the firearm safety device, if applicable.

(iii) If the handgun is a single-action revolver:

(I) Open the loading gate.

(II) Visually and physically inspect each chamber, to ensure that the revolver is unloaded.

(III) Remove the firearm safety device required to be sold with the handgun. If the firearm safety device prevents any of the previous steps, remove the firearm safety device during the appropriate step.

(IV) Load one bright orange dummy round into a chamber of the cylinder, close the loading gate and rotate the cylinder so that the round is in the next-to-fire position.

(V) Open the loading gate and unload the revolver.

(VI) Visually and physically inspect each chamber to ensure that the revolver is unloaded.

(VII) Apply the firearm safety device, if applicable.

(E) The recipient shall receive instruction regarding how to render that handgun safe in the event of a jam.

(F) The firearms dealer shall sign and date an affidavit stating that the requirements of subparagraph (D) have been met. The firearms dealer shall additionally obtain the signature of the handgun purchaser on the

same affidavit. The firearms dealer shall retain the original affidavit as proof of compliance with this requirement.

(G) The recipient shall perform the safe handling demonstration for a department certified instructor.

(H) No demonstration shall be required if the dealer is returning the handgun to the owner of the handgun.

(I) Department certified instructors who may administer the safe handling demonstration shall meet the requirements set forth in subdivision (j) of Section 12804.

(J) The persons who are exempt from the requirements of subdivision (b) of Section 12801, pursuant to Section 12807, are also exempt from performing the safe handling demonstration.

(9) Commencing July 1, 1992, the licensee shall offer to provide the purchaser or transferee of a firearm, or person being loaned a firearm, with a copy of the pamphlet described in Section 12080 and may add the cost of the pamphlet, if any, to the sales price of the firearm.

(10) The licensee shall not commit an act of collusion as defined in Section 12072.

(11) The licensee shall post conspicuously within the licensed premises a detailed list of each of the following:

(A) All charges required by governmental agencies for processing firearm transfers required by Sections 12076, 12082, and 12806.

(B) All fees that the licensee charges pursuant to Sections 12082 and 12806.

(12) The licensee shall not misstate the amount of fees charged by a governmental agency pursuant to Sections 12076, 12082, and 12806.

(13) The licensee shall report the loss or theft of any firearm that is merchandise of the licensee, any firearm that the licensee takes possession of pursuant to Section 12082, or any firearm kept at the licensee's place of business within 48 hours of discovery to the appropriate law enforcement agency in the city, county, or city and county where the licensee's business premises are located.

(14) In a city and county, or in the unincorporated area of a county with a population of 200,000 persons or more according to the most recent federal decennial census or within a city with a population of 50,000 persons or more according to the most recent federal decennial census, any time the licensee is not open for business, the licensee shall store all firearms kept in his or her licensed place of business using one of the following methods as to each particular firearm:

(A) Store the firearm in a secure facility that is a part of, or that constitutes, the licensee's business premises.

(B) Secure the firearm with a hardened steel rod or cable of at least one-eighth inch in diameter through the trigger guard of the firearm. The steel rod or cable shall be secured with a hardened steel lock that has a

shackle. The lock and shackle shall be protected or shielded from the use of a bolt cutter and the rod or cable shall be anchored in a manner that prevents the removal of the firearm from the premises.

(C) Store the firearm in a locked fireproof safe or vault in the licensee's business premises.

(15) The licensing authority in an unincorporated area of a county with a population of less than 200,000 persons according to the most recent federal decennial census or within a city with a population of less than 50,000 persons according to the most recent federal decennial census may impose the requirements specified in paragraph (14).

(16) Commencing January 1, 1994, the licensee shall, upon the issuance or renewal of a license, submit a copy of the same to the Department of Justice.

(17) The licensee shall maintain and make available for inspection during business hours to any peace officer, authorized local law enforcement employee, or Department of Justice employee designated by the Attorney General, upon the presentation of proper identification, a firearms transaction record.

(18) (A) On the date of receipt, the licensee shall report to the Department of Justice in a format prescribed by the department the acquisition by the licensee of the ownership of a pistol, revolver, or other firearm capable of being concealed upon the person.

(B) The provisions of this paragraph shall not apply to any of the following transactions:

(i) A transaction subject to the provisions of subdivision (n) of Section 12078.

(ii) The dealer acquired the firearm from a wholesaler.

(iii) The dealer is also licensed as a secondhand dealer pursuant to Article 4 (commencing with Section 21625) of Chapter 9 of Division 8 of the Business and Professions Code.

(iv) The dealer acquired the firearm from a person who is licensed as a manufacturer or importer to engage in those activities pursuant to Chapter 44 (commencing with Section 921) of Title 18 of the United States Code and any regulations issued pursuant thereto.

(v) The dealer acquired the firearm from a person who resides outside this state who is licensed pursuant to Chapter 44 (commencing with Section 921) of Title 18 of the United States Code and any regulations issued pursuant thereto.

(19) The licensee shall forward in a format prescribed by the Department of Justice, information as required by the department on any firearm that is not delivered within the time period set forth in Section 178.102 (c) of Title 27 of the Code of Federal Regulations.

(c) (1) As used in this article, ''clear evidence of his or her identity and age'' means either of the following:

(A) A valid California driver's license.

(B) A valid California identification card issued by the Department of Motor Vehicles.

(2) As used in this section, a ''secure facility'' means a building that meets all of the following specifications:

(A) All perimeter doorways shall meet one of the following:

(i) A windowless steel security door equipped with both a dead bolt and a doorknob lock.

(ii) A windowed metal door that is equipped with both a dead bolt and a doorknob lock. If the window has an opening of five inches or more measured in any direction, the window shall be covered with steel bars of at least one-half inch diameter or metal grating of at least nine gauge affixed to the exterior or interior of the door.

(iii) A metal grate that is padlocked and affixed to the licensee's premises independent of the door and doorframe.

(B) All windows are covered with steel bars.

(C) Heating, ventilating, air-conditioning, and service openings are secured with steel bars, metal grating, or an alarm system.

(D) Any metal grates have spaces no larger than six inches wide measured in any direction.

(E) Any metal screens have spaces no larger than three inches wide measured in any direction.

(F) All steel bars shall be no further than six inches apart.

(3) As used in this section, ''licensed premises,'' ''licensed place of business,'' ''licensee's place of business,'' or ''licensee's business premises'' means the building designated in the license.

(4) For purposes of paragraph (17) of subdivision (b):

(A) A ''firearms transaction record'' is a record containing the same information referred to in subdivision (a) of Section 178.124, Section 178.124a, and subdivision (e) of Section 178.125 of Title 27 of the Code of Federal Regulations.

(B) A licensee shall be in compliance with the provisions of paragraph (17) of subdivision (b) if he or she maintains and makes available for inspection during business hours to any peace officer, authorized local law enforcement employee, or Department of Justice employee designated by the Attorney General, upon the presentation of proper identification, the bound book containing the same information referred to in Section 178.124a and subdivision (e) of Section 178.125 of Title 27 of the Code of Federal Regulations and the records referred to in subdivision (a) of Section 178.124 of Title 27 of the Code of Federal Regulations.

(d) Upon written request from a licensee, the licensing authority may grant an exemption from compliance with the requirements of paragraph (14) of subdivision (b) if the licensee is unable to comply with those

requirements because of local ordinances, covenants, lease conditions, or similar circumstances not under the control of the licensee.

(e) Except as otherwise provided in this subdivision, the Department of Justice shall keep a centralized list of all persons licensed pursuant to subparagraphs (A) to (E), inclusive, of paragraph (1) of subdivision (a). The department may remove from this list any person who knowingly or with gross negligence violates this article. Upon removal of a dealer from this list, notification shall be provided to local law enforcement and licensing authorities in the jurisdiction where the dealer's business is located. The department shall make information about an individual dealer available, upon request, for one of the following purposes only:

(1) For law enforcement purposes.

(2) When the information is requested by a person licensed pursuant to Chapter 44 (commencing with Section 921) of Title 18 of the United States Code for determining the validity of the license for firearm shipments.

(3) When information is requested by a person promoting, sponsoring, operating, or otherwise organizing a show or event as defined in Section 178.100 of Title 27 of the Code of Federal Regulations, or its successor, who possesses a valid certificate of eligibility issued pursuant to Section 12071.1, if that information is requested by the person to determine the eligibility of a prospective participant in a gun show or event to conduct transactions as a firearms dealer pursuant to subparagraph (B) of paragraph (1) of subdivision (b). Information provided pursuant to this paragraph shall be limited to information necessary to corroborate an individual's current license status.

(f) The Department of Justice may inspect dealers to ensure compliance with this article. The department may assess an annual fee, not to exceed one hundred fifteen dollars ($115), to cover the reasonable cost of maintaining the list described in subdivision (e), including the cost of inspections. Dealers whose place of business is in a jurisdiction that has adopted an inspection program to ensure compliance with firearms law shall be exempt from that portion of the department's fee that relates to the cost of inspections. The applicant is responsible for providing evidence to the department that the jurisdiction in which the business is located has the inspection program.

(g) The Department of Justice shall maintain and make available upon request information concerning the number of inspections conducted and the amount of fees collected pursuant to subdivision (f), a listing of exempted jurisdictions, as defined in subdivision (f), the number of dealers removed from the centralized list defined in subdivision (e), and the number of dealers found to have violated this article with knowledge or gross negligence.

(h) Paragraph (14) or (15) of subdivision (b) shall not apply to a licensee organized as a nonprofit public benefit or mutual benefit corporation organized pursuant to Part 2 (commencing with Section 5110) or Part 3 (commencing with Section 7110) of Division 2 of the Corporations Code, if both of the following conditions are satisfied:

(1) The nonprofit public benefit or mutual benefit corporation obtained the dealer's license solely and exclusively to assist that corporation or local chapters of that corporation in conducting auctions or similar events at which firearms are auctioned off to fund the activities of that corporation or the local chapters of the corporation.

(2) The firearms are not pistols, revolvers, or other firearms capable of being concealed upon the person.

SEC. 177. Section 12078 of the Penal Code is amended to read:

12078. (a) (1) The waiting periods described in Sections 12071, 12072, and 12084 shall not apply to deliveries, transfers, or sales of firearms made to persons properly identified as full-time paid peace officers as defined in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2, provided that the peace officers are authorized by their employer to carry firearms while in the performance of their duties. Proper identification is defined as verifiable written certification from the head of the agency by which the purchaser or transferee is employed, identifying the purchaser or transferee as a peace officer who is authorized to carry firearms while in the performance of his or her duties, and authorizing the purchase or transfer. The certification shall be delivered to the dealer or local law enforcement agency acting pursuant to Section 12084 at the time of purchase or transfer and the purchaser or transferee shall identify himself or herself as the person authorized in the certification. The dealer or local law enforcement agency shall keep the certification with the record of sale, or LEFT, as the case may be. On the date that the delivery, sale, or transfer is made, the dealer delivering the firearm or the law enforcement agency processing the transaction pursuant to Section 12084 shall forward by prepaid mail to the Department of Justice a report of the transaction pursuant to subdivision (b) or (c) of Section 12077 or Section 12084. If electronic or telephonic transfer of applicant information is used, on the date that the application to purchase is completed, the dealer delivering the firearm shall transmit to the Department of Justice an electronic or telephonic report of the transaction as is indicated in subdivision (b) or (c) of Section 12077.

(2) Subdivision (b) of Section 12801 and the preceding provisions of this article do not apply to deliveries, transfers, or sales of firearms made to authorized law enforcement representatives of cities, counties, cities and counties, or state or federal governments for exclusive use by those governmental agencies if, prior to the delivery, transfer, or sale of these firearms, written authorization from the head of the agency authorizing

the transaction is presented to the person from whom the purchase, delivery, or transfer is being made. Proper written authorization is defined as verifiable written certification from the head of the agency by which the purchaser or transferee is employed, identifying the employee as an individual authorized to conduct the transaction, and authorizing the transaction for the exclusive use of the agency by which he or she is employed. Within 10 days of the date a pistol, revolver, or other firearm capable of being concealed upon the person is acquired by the agency, a record of the same shall be entered as an institutional weapon into the Automated Firearms System (AFS) via the California Law Enforcement Telecommunications System (CLETS) by the law enforcement or state agency. Those agencies without access to AFS shall arrange with the sheriff of the county in which the agency is located to input this information via this system.

(3) Subdivision (b) of Section 12801 and the preceding provisions of this article do not apply to the loan of a firearm made by an authorized law enforcement representative of a city, county, or city and county, or the state or federal government to a peace officer employed by that agency and authorized to carry a firearm for the carrying and use of that firearm by that peace officer in the course and scope of his or her duties.

(4) Subdivision (b) of Section 12801 and the preceding provisions of this article do not apply to the delivery, sale, or transfer of a firearm by a law enforcement agency to a peace officer pursuant to Section 10334 of the Public Contract Code. Within 10 days of the date that a pistol, revolver, or other firearm capable of being concealed upon the person is sold, delivered, or transferred pursuant to Section 10334 of the Public Contract Code to that peace officer, the name of the officer and the make, model, serial number, and other identifying characteristics of the firearm being sold, transferred, or delivered shall be entered into the Automated Firearms System (AFS) via the California Law Enforcement Telecommunications System (CLETS) by the law enforcement or state agency that sold, transferred, or delivered the firearm. Those agencies without access to AFS shall arrange with the sheriff of the county in which the agency is located to input this information via this system.

(5) Subdivision (b) of Section 12801 and the preceding provisions of this article do not apply to the delivery, sale, or transfer of a firearm by a law enforcement agency to a retiring peace officer who is authorized to carry a firearm pursuant to Section 12027.1. Within 10 days of the date that a pistol, revolver, or other firearm capable of being concealed upon the person is sold, delivered, or transferred to that retiring peace officer, the name of the officer and the make, model, serial number, and other identifying characteristics of the firearm being sold, transferred, or delivered shall be entered into the Automated Firearms System (AFS) via the California Law Enforcement Telecommunications System

(CLETS) by the law enforcement or state agency that sold, transferred, or delivered the firearm. Those agencies without access to AFS shall arrange with the sheriff of the county in which the agency is located to input this information via this system.

(6) Subdivision (d) of Section 12072 and subdivision (b) of Section 12801 do not apply to sales, deliveries, or transfers of firearms to authorized representatives of cities, cities and counties, counties, or state or federal governments for those governmental agencies where the entity is acquiring the weapon as part of an authorized, voluntary program where the entity is buying or receiving weapons from private individuals. Any weapons acquired pursuant to this paragraph shall be disposed of pursuant to the applicable provisions of Section 12028 or 12032.

(7) Subdivision (d) of Section 12072 and subdivision (b) of Section 12801 shall not apply to the sale, loan, delivery, or transfer of a firearm made by an authorized law enforcement representative of a city, county, city and county, state, or the federal government to any public or private nonprofit historical society, museum, or institutional collection or the purchase or receipt of that firearm by that public or private nonprofit historical society, museum, or institutional collection if all of the following conditions are met:

(A) The entity receiving the firearm is open to the public.

(B) The firearm prior to delivery is deactivated or rendered inoperable.

(C) The firearm is not subject to Section 12028, 12028.5, 12030, or 12032.

(D) The firearm is not prohibited by other provisions of law from being sold, delivered, or transferred to the public at large.

(E) Prior to delivery, the entity receiving the firearm submits a written statement to the law enforcement representative stating that the firearm will not be restored to operating condition, and will either remain with that entity, or if subsequently disposed of, will be transferred in accordance with the applicable provisions of this article and, if applicable, Section 12801.

(F) Within 10 days of the date that the firearm is sold, loaned, delivered, or transferred to that entity, the name of the government entity delivering the firearm, and the make, model, serial number, and other identifying characteristics of the firearm and the name of the person authorized by the entity to take possession of the firearm shall be reported to the department in a manner prescribed by the department.

(G) In the event of a change in the status of the designated representative, the entity shall notify the department of a new representative within 30 days.

(8) Subdivision (d) of Section 12072 and subdivision (b) of Section 12801 shall not apply to the sale, loan, delivery, or transfer of a firearm made by any person other than a representative of an authorized law enforcement agency to any public or private nonprofit historical society, museum, or institutional collection if all of the following conditions are met:

(A) The entity receiving the firearm is open to the public.

(B) The firearm is deactivated or rendered inoperable prior to delivery.

(C) The firearm is not of a type prohibited from being sold, delivered, or transferred to the public.

(D) Prior to delivery, the entity receiving the firearm submits a written statement to the person selling, loaning, or transferring the firearm stating that the firearm will not be restored to operating condition, and will either remain with that entity, or if subsequently disposed of, will be transferred in accordance with the applicable, provisions of this article and, if applicable, Section 12801.

(E) If title to a handgun is being transferred to the public or private nonprofit historical society, museum, or institutional collection, then the designated representative of that public or private historical society, museum, or institutional collection within 30 days of taking possession of that handgun, shall forward by prepaid mail or deliver in person to the Department of Justice, a single report signed by both parties to the transaction, that includes information identifying the person representing that public or private historical society, museum, or institutional collection, how title was obtained and from whom, and a description of the firearm in question, along with a copy of the written statement referred to in subparagraph (D). The report forms that are to be completed pursuant to this paragraph shall be provided by the Department of Justice.

(F) In the event of a change in the status of the designated representative, the entity shall notify the department of a new representative within 30 days.

(b) (1) Section 12071, subdivisions (c) and (d) of Section 12072, and subdivision (b) of Section 12801 shall not apply to deliveries, sales, or transfers of firearms 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.

(2) Subdivision (b) of Section 12801 shall not apply to the delivery, sale, or transfer of a handgun to a person licensed pursuant to Section 12071, where the licensee is receiving the handgun in the course and scope of his or her activities as a person licensed pursuant to Section 12071.

(c) (1) Subdivision (d) of Section 12072 shall not apply to the infrequent transfer of a firearm that is not a pistol, revolver, or other firearm capable of being concealed upon the person by gift, bequest, intestate succession, or other means by one individual to another if both individuals are members of the same immediate family.

(2) Subdivision (d) of Section 12072 shall not apply to the infrequent transfer of a pistol, revolver, or other firearm capable of being concealed upon the person by gift, bequest, intestate succession, or other means by one individual to another if both individuals are members of the same immediate family and both of the following conditions are met:

(A) The person to whom the firearm is transferred shall, within 30 days of taking possession of the firearm, forward by prepaid mail or deliver in person to the Department of Justice, a report that includes information concerning the individual taking possession of the firearm, how title was obtained and from whom, and a description of the firearm in question. The report forms that individuals complete pursuant to this paragraph shall be provided to them by the Department of Justice.

(B) If taking possession of the firearm prior to January 1, 2003, the person taking title to the firearm shall first obtain a basic firearms safety certificate. If taking possession on or after January 1, 2003, the person taking title to the firearm shall first obtain a handgun safety certificate.

(3) As used in this subdivision, ''immediate family member'' means any one of the following relationships:

(A) Parent and child.

(B) Grandparent and grandchild.

(d) (1) Subdivision (d) of Section 12072 shall not apply to the infrequent loan of firearms between persons who are personally known to each other for any lawful purpose, if the loan does not exceed 30 days in duration and, when the firearm is a handgun, commencing January 1, 2003, the individual being loaned the handgun has a valid handgun safety certificate.

(2) Subdivision (d) of Section 12072, and subdivision (b) of Section 12801 shall not apply to the loan of a firearm where all of the following conditions exist:

(A) The person loaning the firearm is at all times within the presence of the person being loaned the firearm.

(B) The loan is for a lawful purpose.

(C) The loan does not exceed three days in duration.

(D) The individual receiving the firearm is not prohibited from owning or possessing a firearm pursuant to Section 12021 or 12021.1 of this code, or by Section 8100 or 8103 of the Welfare and Institutions Code.

(E) The person loaning the firearm is 18 years of age or older.

(F) The person being loaned the firearm is 18 years of age or older.

(e) Section 12071, subdivisions (c) and (d) of Section 12072, and subdivision (b) of Section 12801 shall not apply to the delivery of a firearm to a gunsmith for service or repair, or to the return of the firearm to its owner by the gunsmith.

(f) Subdivision (d) of Section 12072 shall not apply to the sale, delivery, or transfer of firearms by persons who reside in this state to persons who reside outside this state who are licensed pursuant to Chapter 44 (commencing with Section 921) of Title 18 of the United States Code and the regulations issued pursuant thereto, if the sale, delivery, or transfer is in accordance with Chapter 44 (commencing with Section 921) of Title 18 of the United States Code and the regulations issued pursuant thereto.

(g) (1) Subdivision (d) of Section 12072 shall not apply to the infrequent sale or transfer of a firearm, other than a pistol, revolver, or other firearm capable of being concealed upon the person, at auctions or similar events conducted by nonprofit mutual or public benefit corporations organized pursuant to the Corporations Code.

As used in this paragraph, the term ''infrequent'' shall not be construed to prohibit different local chapters of the same nonprofit corporation from conducting auctions or similar events, provided the individual local chapter conducts the auctions or similar events infrequently. It is the intent of the Legislature that different local chapters, representing different localities, be entitled to invoke the exemption created by this paragraph, notwithstanding the frequency with which other chapters of the same nonprofit corporation may conduct auctions or similar events.

(2) Subdivision (d) of Section 12072 shall not apply to the transfer of a firearm other than a pistol, revolver, or other firearm capable of being concealed upon the person, if the firearm is donated for an auction or similar event described in paragraph (1) and the firearm is delivered to the nonprofit corporation immediately preceding, or contemporaneous with, the auction or similar event.

(3) The waiting period described in Sections 12071 and 12072 shall not apply to a dealer who delivers a firearm other than a pistol, revolver, or other firearm capable of being concealed upon the person, at an auction or similar event described in paragraph (1), as authorized by subparagraph (C) of paragraph (1) of subdivision (b) of Section 12071. Within two business days of completion of the application to purchase, the dealer shall forward by prepaid mail to the Department of Justice a report of the same as is indicated in subdivision (c) of Section 12077. If the electronic or telephonic transfer of applicant information is used, within two business days of completion of the application to purchase, the dealer delivering the firearm shall transmit to the Department of

Justice an electronic or telephonic report of the same as is indicated in subdivision (c) of Section 12077.

(h) Subdivision (d) of Section 12072 and subdivision (b) of Section 12801 shall not apply to the loan of a firearm to a person 18 years of age or older for the purposes of shooting at targets if the loan occurs on the premises of a target facility that holds a business or regulatory license or on the premises of any club or organization organized for the purposes of practicing shooting at targets upon established ranges, whether public or private, if the firearm is at all times kept within the premises of the target range or on the premises of the club or organization.

(i) (1) Subdivision (d) of Section 12072 shall not apply to a person who takes title or possession of a firearm that is not a pistol, revolver, or other firearm capable of being concealed upon the person by operation of law if the person is not prohibited by Section 12021 or 12021.1 of this code or Section 8100 or 8103 of the Welfare and Institutions Code from possessing firearms.

(2) Subdivision (d) of Section 12072 shall not apply to a person who takes title or possession of a pistol, revolver, or other firearm capable of being concealed upon the person by operation of law if the person is not prohibited by Section 12021 or 12021.1 of this code or Section 8100 or 8103 of the Welfare and Institutions Code from possessing firearms and all of the following conditions are met:

(A) If the person taking title or possession is neither a levying officer as defined in Section 481.140, 511.060, or 680.210 of the Code of Civil Procedure, nor a person who is receiving that firearm pursuant to subparagraph (G), (I), or (J) of paragraph (2) of subdivision (u), the person shall, within 30 days of taking possession, forward by prepaid mail or deliver in person to the Department of Justice, a report of information concerning the individual taking possession of the firearm, how title or possession was obtained and from whom, and a description of the firearm in question. The reports that individuals complete pursuant to this paragraph shall be provided to them by the department.

(B) If the person taking title or possession is receiving the firearm pursuant to subparagraph (G) of paragraph (2) of subdivision (u), the person shall do both of the following:

(i) Within 30 days of taking possession, forward by prepaid mail or deliver in person to the department, a report of information concerning the individual taking possession of the firearm, how title or possession was obtained and from whom, and a description of the firearm in question. The reports that individuals complete pursuant to this paragraph shall be provided to them by the department.

(ii) Prior to taking title or possession of the firearm, if title or possession is taken prior to January 1, 2003, the person shall either obtain a basic firearms safety certificate or be exempt from obtaining a

basic firearms safety certificate pursuant to Section 12081. Prior to taking title or possession of the firearm, if title or possession is taken on or after January 1, 2003, the person shall obtain a handgun safety certificate.

(C) Where the person receiving title or possession of the pistol, revolver, or other firearm capable of being concealed upon the person is a person described in subparagraph (I) of paragraph (2) of subdivision (u), on the date that the person is delivered the firearm, the name and other information concerning the person taking possession of the firearm, how title or possession of the firearm was obtained and from whom, and a description of the firearm by make, model, serial number, and other identifying characteristics, shall be entered into the Automated Firearms System (AFS) via the California Law Enforcement Telecommunications System (CLETS) by the law enforcement or state agency that transferred or delivered the firearm. Those agencies without access to AFS shall arrange with the sheriff of the county in which the agency is located to input this information via this system.

(D) Where the person receiving title or possession of the pistol, revolver, or other firearm capable of being concealed upon the person is a person described in subparagraph (J) of paragraph (2) of subdivision (u), on the date that the person is delivered the firearm, the name and other information concerning the person taking possession of the firearm, how title or possession of the firearm was obtained and from whom, and a description of the firearm by make, model, serial number, and other identifying characteristics, shall be entered into the AFS via the CLETS by the law enforcement or state agency that transferred or delivered the firearm. Those agencies without access to AFS shall arrange with the sheriff of the county in which the agency is located to input this information via this system. In addition, that law enforcement agency shall not deliver that pistol, revolver, or other firearm capable of being concealed upon the person to the person referred to in this subparagraph if delivery takes place prior to January 1, 2003, unless, prior to the delivery of the same, the person presents proof to the agency that he or she is the holder of a basic firearms safety certificate or is exempt from obtaining a basic firearms safety certificate pursuant to Section 12081, or, commencing January 1, 2003, is the holder of a handgun safety certificate.

(3) Subdivision (d) of Section 12072 shall not apply to a person who takes possession of a firearm by operation of law in a representative capacity who subsequently transfers ownership of the firearm to himself or herself in his or her individual capacity. In the case of a pistol, revolver, or other firearm capable of being concealed upon the person, on and after April 1, 1994, and until January 1, 2003, that individual shall have a basic firearms safety certificate in order for the exemption set

forth in this paragraph to apply. Commencing January 1, 2003, the exemption shall not apply, and the individual shall obtain a handgun safety certificate prior to transferring ownership to himself or herself, or taking possession of a handgun in an individual capacity.

(j) Subdivision (d) of Section 12072 and subdivision (b) of Section 12801 shall not apply to deliveries, transfers, or returns of firearms made pursuant to Section 12028, 12028.5, or 12030.

(k) Section 12071, subdivision (c) of Section 12072, and subdivision (b) of Section 12801 shall not apply to any of the following:

(1) The delivery, sale, or transfer of unloaded firearms that are not pistols, revolvers, or other firearms capable of being concealed upon the person by a dealer to another dealer upon proof that the person receiving the firearm is licensed pursuant to Section 12071.

(2) The delivery, sale, or transfer of unloaded firearms by dealers to persons who reside outside this state who are licensed pursuant to Chapter 44 (commencing with Section 921) of Title 18 of the United States Code and the regulations issued pursuant thereto.

(3) The delivery, sale, or transfer of unloaded firearms to a wholesaler if the firearms are being returned to the wholesaler and are intended as merchandise in the wholesaler's business.

(4) The delivery, sale, or transfer of unloaded firearms by one dealer to another dealer if the firearms are intended as merchandise in the receiving dealer's business upon proof that the person receiving the firearm is licensed pursuant to Section 12071.

(5) The delivery, sale, or transfer of an unloaded firearm that is not a pistol, revolver, or other firearm capable of being concealed upon the person by a dealer to himself or herself.

(6) The loan of an unloaded firearm by a dealer who also operates a target facility that holds a business or regulatory license on the premises of the building designated in the license or whose building designated in the license is on the premises of any club or organization organized for the purposes of practicing shooting at targets upon established ranges, whether public or private, to a person at that target facility or that club or organization, if the firearm is at all times kept within the premises of the target range or on the premises of the club or organization.

(*l*) A person who is exempt from subdivision (d) of Section 12072 or is otherwise not required by law to report his or her acquisition, ownership, or disposal of a pistol, revolver, or other firearm capable of being concealed upon the person or who moves out of this state with his or her pistol, revolver, or other firearm capable of being concealed upon the person may submit a report of the same to the Department of Justice in a format prescribed by the department.

(m) Subdivision (d) of Section 12072 and subdivision (b) of Section 12801 shall not apply to the delivery, sale, or transfer of unloaded

firearms to a wholesaler as merchandise in the wholesaler's business by manufacturers or importers 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, or by another wholesaler, if the delivery, sale, or transfer is made in accordance with Chapter 44 (commencing with Section 921) of Title 18 of the United States Code.

(n) (1) The waiting period described in Section 12071 or 12072 shall not apply to the delivery, sale, or transfer of a pistol, revolver, or other firearm capable of being concealed upon the person by a dealer in either of the following situations:

(A) The dealer is delivering the firearm to another dealer and it is not intended as merchandise in the receiving dealer's business.

(B) The dealer is delivering the firearm to himself or herself and it is not intended as merchandise in his or her business.

(2) In order for this subdivision to apply, both of the following shall occur:

(A) If the dealer is receiving the firearm from another dealer, the dealer receiving the firearm shall present proof to the dealer delivering the firearm that he or she is licensed pursuant to Section 12071.

(B) Whether the dealer is delivering, selling, or transferring the firearm to himself or herself or to another dealer, on the date that the application to purchase is completed, the dealer delivering the firearm shall forward by prepaid mail to the Department of Justice a report of the same and the type of information concerning the purchaser or transferee as is indicated in subdivision (b) of Section 12077. Where the electronic or telephonic transfer of applicant information is used, on the date that the application to purchase is completed, the dealer delivering the firearm shall transmit an electronic or telephonic report of the same and the type of information concerning the purchaser or transferee as is indicated in subdivision (b) of Section 12077.

(o) Section 12071 and subdivisions (c) and (d) of Section 12072 shall not apply to the delivery, sale, or transfer of firearms regulated pursuant to Section 12020, Chapter 2 (commencing with Section 12200), or Chapter 2.3 (commencing with Section 12275), if the delivery, sale, or transfer is conducted in accordance with the applicable provisions of Section 12020, Chapter 2 (commencing with Section 12200), or Chapter 2.3 (commencing with Section 12275).

(p) (1) Paragraph (3) of subdivision (a) and subdivision (d) of Section 12072 shall not apply to the loan of a firearm that is not a pistol, revolver, or other firearm capable of being concealed upon the person to a minor, with the express permission of the parent or legal guardian of the minor, if the loan does not exceed 30 days in duration and is for a lawful purpose.

(2) Paragraph (3) of subdivision (a) of Section 12072, subdivision (d) of Section 12072, and subdivision (b) of Section 12801 shall not apply to the loan of a pistol, revolver, or other firearm capable of being concealed upon the person to a minor by a person who is not the parent or legal guardian of the minor if all of the following circumstances exist:

(A) The minor has the written consent of his or her parent or legal guardian that is presented at the time of, or prior to the time of, the loan, or is accompanied by his or her parent or legal guardian at the time the loan is made.

(B) The minor is being loaned the firearm for the purpose of engaging in a lawful, recreational sport, including, but not limited to, competitive shooting, or agricultural, ranching, or hunting activity, or a motion picture, television, or video production, or entertainment or theatrical event, the nature of which involves the use of a firearm.

(C) The duration of the loan does not exceed the amount of time that is reasonably necessary to engage in the lawful, recreational sport, including, but not limited to, competitive shooting, or agricultural, ranching, or hunting activity, or a motion picture, television, or video production, or entertainment or theatrical event, the nature of which involves the use of a firearm.

(D) The duration of the loan does not, in any event, exceed 10 days.

(3) Paragraph (3) of subdivision (a), subdivision (d) of Section 12072, and subdivision (b) of Section 12801 shall not apply to the loan of a pistol, revolver, or other firearm capable of being concealed upon the person to a minor by his or her parent or legal guardian if both of the following circumstances exist:

(A) The minor is being loaned the firearm for the purposes of engaging in a lawful, recreational sport, including, but not limited to, competitive shooting, or agricultural, ranching, or hunting activity, or a motion picture, television, or video production, or entertainment or theatrical event, the nature of which involves the use of a firearm.

(B) The duration of the loan does not exceed the amount of time that is reasonably necessary to engage in the lawful, recreational sport, including, but not limited to, competitive shooting, or agricultural, ranching, or hunting activity, or a motion picture, television, or video production, or entertainment or theatrical event, the nature of which involves the use of a firearm.

(4) Paragraph (3) of subdivision (a) of Section 12072 shall not apply to the transfer or loan of a firearm that is not a pistol, revolver, or other firearm capable of being concealed upon the person to a minor by his or her parent or legal guardian.

(5) Paragraph (3) of subdivision (a) of Section 12072 shall not apply to the transfer or loan of a firearm that is not a pistol, revolver, or other firearm capable of being concealed upon the person to a minor by his or

her grandparent who is not the legal guardian of the minor if the transfer is done with the express permission of the parent or legal guardian of the minor.

(6) Subparagraph (A) of paragraph (3) of subdivision (a) of Section 12072 shall not apply to the sale of a handgun if both of the following requirements are satisfied:

(A) The sale is to a person who is at least 18 years of age.

(B) The firearm is an antique firearm as defined in paragraph (16) of subsection (a) of Section 921 of Title 18 of the United States Code.

(q) Subdivision (d) of Section 12072 shall not apply to the loan of a firearm that is not a pistol, revolver, or other firearm capable of being concealed upon the person to a licensed hunter for use by that licensed hunter for a period of time not to exceed the duration of the hunting season for which that firearm is to be used.

(r) The waiting period described in Section 12071, 12072, or 12084 shall not apply to the delivery, sale, or transfer of a firearm to the holder of a special weapons permit issued by the Department of Justice issued pursuant to Section 12095, 12230, 12250, or 12305. On the date that the application to purchase is completed, the dealer delivering the firearm or the law enforcement agency processing the transaction pursuant to Section 12084, shall forward by prepaid mail to the Department of Justice a report of the same as described in subdivision (b) or (c) of Section 12077 or Section 12084. If the electronic or telephonic transfer of applicant information is used, on the date that the application to purchase is completed, the dealer delivering the firearm shall transmit to the Department of Justice an electronic or telephonic report of the same as is indicated in subdivision (b) or (c) of Section 12077.

(s) Subdivision (d) of Section 12072 and subdivision (b) of Section 12801 shall not apply to the loan of an unloaded firearm or the loan of a firearm loaded with blank cartridges, to a person 18 years of age or older, for use solely as a prop for a motion picture, television, or video production or an entertainment or theatrical event.

(t) (1) The waiting period described in Sections 12071, 12072, and 12084 shall not apply to the sale, delivery, loan, or transfer of a firearm that is a curio or relic, as defined in Section 178.11 of Title 27 of the Code of Federal Regulations, by a dealer or through a law enforcement agency 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 by the Department of Justice pursuant to Section 12071. On the date that the delivery, sale, or transfer is made, the dealer delivering the firearm or the law enforcement agency processing the transaction pursuant to Section 12084, shall forward by prepaid mail to the Department of Justice a report of the transaction

pursuant to subdivision (b) of Section 12077 or Section 12084. If the electronic or telephonic transfer of applicant information is used, on the date that the application to purchase is completed, the dealer delivering the firearm shall transmit to the Department of Justice an electronic or telephonic report of the transaction as is indicated in subdivision (b) or (c) of Section 12077.

(2) Subdivision (d) of Section 12072 shall not apply to the infrequent sale, loan, or transfer of a firearm that is not a pistol, revolver, or other firearm capable of being concealed upon the person, which is a curio or relic manufactured at least 50 years prior to the current date, but not including replicas thereof, as defined in Section 178.11 of Title 27 of the Code of Federal Regulations.

(u) As used in this section:

(1) "Infrequent" has the same meaning as in paragraph (1) of subdivision (c) of Section 12070.

(2) "A person taking title or possession of firearms by operation of law" includes, but is not limited to, any of the following instances wherein an individual receives title to, or possession of, firearms:

(A) The executor or administrator of an estate if the estate includes firearms.

(B) A secured creditor or an agent or employee thereof when the firearms are possessed as collateral for, or as a result of, a default under a security agreement under the Commercial Code.

(C) A levying officer, as defined in Section 481.140, 511.060, or 680.260 of the Code of Civil Procedure.

(D) A receiver performing his or her functions as a receiver if the receivership estate includes firearms.

(E) A trustee in bankruptcy performing his or her duties if the bankruptcy estate includes firearms.

(F) An assignee for the benefit of creditors performing his or her functions as an assignee, if the assignment includes firearms.

(G) A transmutation of property consisting of firearms pursuant to Section 850 of the Family Code.

(H) Firearms passing to a surviving spouse pursuant to Chapter 1 (commencing with Section 13500) of Part 2 of Division 8 of the Probate Code.

(I) Firearms received by the family of a police officer or deputy sheriff from a local agency pursuant to Section 50081 of the Government Code.

(J) The transfer of a firearm by a law enforcement agency to the person who found the firearm where the delivery is to the person as the finder of the firearm pursuant to Article 1 (commencing with Section 2080) of Chapter 4 of Division 3 of the Civil Code.

SEC. 178. The heading of Title 10.2 (commencing with Section 14125) of Part 4 of the Penal Code is amended to read:

TITLE 10.2. ASIAN PACIFIC ISLANDER ANTI-HATE CRIMES PROGRAM

SEC. 178.5. Section 2620.2 of the Probate Code is amended to read:

2620.2. (a) Whenever the conservator or guardian has failed to file an account as required by Section 2620, the court shall require that written notice be given to the conservator or guardian and the attorney of record for the conservatorship or guardianship directing the conservator or guardian to file an account and to set the account for hearing before the court within 60 days of the date of the notice or, if the conservator or guardian is a public agency, within 120 days of the date of the notice.

(b) Failure to file the account within the time specified in the notice and any additional time allowed by the court under subdivision (a), or within 45 days of actual receipt of the notice, whichever is later, shall constitute a contempt of the authority of the court as described in Section 1209 of the Code of Civil Procedure.

(c) If the conservator or guardian does not file an account and set the account for hearing as required by Section 2620 the court shall do one or more of the following:

(1) Remove the conservator or guardian as provided under Article 1 (commencing with Section 2650) of Chapter 9 of Part 4 of Division 4.

(2) Issue and serve a citation requiring a guardian or conservator who does not file a required account to appear and show cause why the guardian or conservator should not be punished for contempt. If the guardian or conservator purposely evades personal service of the citation, the guardian or conservator shall be removed from office.

(3) Suspend the powers of the conservator or guardian and appoint a temporary conservator or guardian, who shall take possession of the assets of the conservatorship or guardianship, investigate the actions of the conservator or guardian, and petition for surcharge if this is in the best interest of the ward or conservatee. Compensation for the temporary conservator or guardian, and counsel for the temporary conservator or guardian, shall be treated as a surcharge against the conservator or guardian, and if unpaid shall be considered a breach of condition of the bond, unless for good cause shown the court finds that the temporary conservator or guardian, and counsel for the temporary conservator or guardian, shall be compensated from the estate.

(4) (A) Appoint legal counsel to represent the ward or conservatee if the court has not suspended the powers of the conservator or guardian and appoint a temporary conservator or guardian pursuant to paragraph (3). Compensation for the counsel appointed for the ward or conservatee shall be treated as a surcharge against the conservator or guardian, and if unpaid shall be considered a breach of a condition on the bond, unless

for good cause shown the court finds that counsel for the ward or conservatee shall be compensated according to Section 1470. The court shall order the legal counsel to do one or more of the following:

(i) Investigate the actions of the conservator or guardian, and petition for surcharge if this is in the best interest of the ward or conservatee.

(ii) Recommend to the court whether the conservator or guardian should be removed.

(iii) Recommend to the court whether money or other property in the estate should be deposited pursuant to Section 2453, 2453.5, 2454, or 2455 to be subject to withdrawal only upon authorization of the court.

(B) After resolution of the matters for which legal counsel was appointed in subparagraph (A), the court shall terminate the appointment of legal counsel, unless the court determines that continued representation of the ward or conservatee and the estate is necessary and reasonable.

(5) Order that money or property in the estate be deposited pursuant to Section 2453, 2453.5, 2454, or 2455 to be subject to withdrawal only upon authorization of the court.

(6) Grant, upon ex parte application or such notice as the court may require, time to file the account, not to exceed an additional 60 days after the expiration of the deadline described in subdivision (a), where the court finds there is good cause and that the estate is adequately bonded. After expiration of any extensions, if the account has not been filed, the court shall take action as described in paragraphs (1) to (5), inclusive.

(d) Subdivision (c) does not preclude the court from additionally taking any other appropriate action in response to a failure to file a proper accounting in a timely manner.

SEC. 179. Section 6122 of the Probate Code is amended to read:

6122. (a) Unless the will expressly provides otherwise, if after executing a will the testator's marriage is dissolved or annulled, the dissolution or annulment revokes all of the following:

(1) Any disposition or appointment of property made by the will to the former spouse.

(2) Any provision of the will conferring a general or special power of appointment on the former spouse.

(3) Any provision of the will nominating the former spouse as executor, trustee, conservator, or guardian.

(b) If any disposition or other provision of a will is revoked solely by this section, it is revived by the testator's remarriage to the former spouse.

(c) In case of revocation by dissolution or annulment:

(1) Property prevented from passing to a former spouse because of the revocation passes as if the former spouse failed to survive the testator.

(2) Other provisions of the will conferring some power or office on the former spouse shall be interpreted as if the former spouse failed to survive the testator.

(d) For purposes of this section, dissolution or annulment means any dissolution or annulment which would exclude the spouse as a surviving spouse within the meaning of Section 78. A decree of legal separation which does not terminate the status of husband and wife is not a dissolution for purposes of this section.

(e) Except as provided in Section 6122.1, no change of circumstances other than as described in this section revokes a will.

(f) Subdivisions (a) to (d), inclusive, do not apply to any case where the final judgment of dissolution or annulment of marriage occurs before January 1, 1985. That case is governed by the law in effect prior to January 1, 1985.

SEC. 180. Section 615 of the Public Resources Code is amended to read:

615. Grants awarded by the department, including, but not limited to, those awarded pursuant to Division 9 (commencing with Section 9000), Division 10.2 (commencing with Section 10200), and Division 12.1 (commencing with Section 14500), are not subject to the State Contract Act (Part 2 (commencing with Section 10100) of Division 2 of the Public Contract Code) or Article 6 (commencing with Section 999) of Chapter 6 of Division 4 of the Military and Veterans Code.

SEC. 181. Section 5095.2 of the Public Resources Code is amended to read:

5095.2. As used in this chapter, the following terms have the following meanings:

(a) ''Active recreational purpose'' means an activity that requires athletic fields, courts, gymnasiums, or other recreational venues for youth soccer, baseball, football, basketball, tennis, or swimming, or any activity the department identifies as meeting this definition.

(b) ''Department'' means the Department of Parks and Recreation.

(c) ''Director'' means the Director of Parks and Recreation.

(d) ''Facility'' includes a place for organized team sports, outdoor recreation, permanent play structures, and multipurpose structures designed to meet the special recreational, educational, vocational, and social needs of youth. ''Facility'' also includes the acquisition of properties or development of venues for the furtherance of the purposes of Section 5095.4 where existing state conservancies or state, community, or regional parks are not readily accessible.

(e) ''Fund'' means the State Urban Parks and Healthy Communities Fund.

(f) ''Nonurbanized local agency'' means any city, county, or district that qualifies as a nonurbanized area as defined in subdivision (e) of

Section 5621 and that is eligible for grant funding pursuant to Chapter 3.2 (commencing with Section 5620).

(g) ''Special district'' means a regional park district, regional park and open-space district, or regional open-space district formed pursuant to Article 3 (commencing with Section 5500) of Chapter 3, or a recreation and park district formed pursuant to Chapter 4 (commencing with Section 5780).

(h) ''State agency'' includes the Department of Parks and Recreation and the state conservancies in existence on the effective date of the act adding this section during the 2001 portion of the 2001–02 Regular Session.

(i) ''Urbanized or heavily urbanized local agencies'' include cities, counties, or a city and county, or special districts as determined by the Department of Finance according to the latest verifiable census data pursuant to subdivisions (c) and (d) of Section 5621.

SEC. 182. The heading of Article 5 (commencing with Section 5096.652) of Chapter 1.696 of Division 2 of the Public Resources Code is amended and renumbered to read:

Article 5.5. Historical and Cultural Resources Preservation

SEC. 183. Section 21158.6 of the Public Resources Code is amended to read:

21158.6. (a) For a project in the City of Oakland that consists of multiple-family residential development, or a residential and commercial or retail mixed-use development with not more than 25 percent of the total floor area of the project utilized as retail space, a focused environmental impact report may be prepared, notwithstanding that the project was not identified in a master environmental impact report, if all of the following conditions are met:

(1) The Oakland City Council does both of the following:

(A) Authorizes the implementation of this section. The city council may authorize the implementation of this section only by voting to approve the practice of preparing focused environmental impact reports for projects in the central business district housing target areas specified in paragraph (11).

(B) Determines that the general plan, zoning ordinance, and related policies and programs are consistent with principles that encourage compact development in a manner that does both of the following:

(i) Promotes efficient transportation systems, economic growth, affordable housing, energy efficiency, and an appropriate balance of jobs and housing.

(ii) Protects the environment, open space, and agricultural areas.

(2) The city submits a draft determination to the Office of Planning and Research that the applicable general plan, zoning ordinance, and any related policies and programs are consistent with the principles described in subparagraph (B) of paragraph (1) prior to the city council making its determination regarding that consistency. The office may submit comments on the draft findings to the city council within 30 days from the date that the city submits the draft determination to the office.

(3) The city has an average population density of at least 5,000 persons per square mile.

(4) The project is consistent with the general plan, any applicable specific plan and community plan, and zoning ordinance, including any variance that is properly granted pursuant to that zoning ordinance, an environmental impact report was prepared for the general plan, and the application for the project is deemed complete pursuant to Section 65943 of the Government Code within three years of the date this section is effective.

(5) The lead agency cannot make the finding described in subdivision (c) of Section 21157.1, a negative declaration or mitigated negative declaration cannot be prepared pursuant to Section 21080, 21157.5, or 21158, and Section 21166 does not apply.

(6) The project meets one or both of the following conditions:

(A) The parcel on which the project is to be developed is surrounded by immediately contiguous urban development.

(B) The parcel on which the project is to be developed is, or has been previously, developed with urban uses.

(7) The density of the project is at least 40 units per net acre.

(8) The parcel on which the project is to be developed is within one-half mile of an existing rail transit station.

(9) The project can be adequately served by existing utilities and municipal services, and there will be adequate capacity for infrastructure, utilities, and services to serve other projects approved and proposed in the service area.

(10) The project does not include a single level building that exceeds the square footage limitation specified in subdivision (a) of Section 21158.5.

(11) The project is located in one of the following central business district housing target areas:

(A) The Valdez cluster, which is bounded on the west by Telegraph Avenue, on the south by 23rd Street, on the east by Harrison Street, and on the north by 27th Street. A project located in this cluster that meets the condition described in paragraph (8) may include a portion up to one acre that does not meet that condition.

(B) The Uptown cluster, which is bounded on the west by Castro Street, on the south by 14th Street from Castro Street to Jefferson Street

and 16th Street from Jefferson Street to Broadway, on the east by Jefferson Street from 14th Street to 16th Street and Broadway from 16th Street to 22nd Street, and on the north by 22nd Street.

(C) The 11th Street cluster, which is bounded by Franklin Street from 12th Street to 15th Street, by Webster from 11th Street to 12th Street, by Alice Street from 11th Street to 13th Street, by 12th Street from Franklin Street to Webster Street, by 11th Street from Webster Street to Alice Street and 13th Street from Alice Street to Madison Street, and on the east by Madison Street from 13th Street to 15th Street, and on the north by 15th Street from Franklin Street to Madison Street.

(D) The Old Oakland cluster, which is bounded on the west by Castro Street, on the south by 7th Street, on the east by Broadway, and on the north by 11th Street.

(b) A focused environmental impact report prepared pursuant to this section shall be limited to a discussion of potentially significant effects on the environment specific to the project. No discussion shall be required of alternatives to the project, cumulative impacts of the project, or the growth inducing impacts of the project.

(c) (1) On or before July 1, 2004, the city shall submit a report to the Office of Planning and Research that includes, but that is not necessarily limited to, all of the following information:

(A) The number of focused environmental impact reports prepared pursuant to this section.

(B) The types of projects for which focused environmental impact reports were prepared pursuant to this section.

(C) The time periods for preparing each of the focused environmental impact reports prepared pursuant to this section, and for acting on each project from the date that the application was deemed complete.

(D) A description of any alternatives to a project, cumulative impacts of a project, growth inducing impacts of a project, or other issues that may have been identified and analyzed if an environmental document, other than a focused environmental impact report, had been prepared for the project.

(2) Prior to submitting the report to the office pursuant to paragraph (1), the city shall hold at least one public hearing and shall respond to oral and written comments regarding the draft report. The city shall include the comments and responses in the final report.

(d) This section shall remain in effect only until January 1, 2005, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2005, deletes or extends that date.

SEC. 183.5. Section 21167.7 of the Public Resources Code is amended to read:

21167.7. Every person who brings an action pursuant to Section 21167 shall comply with the requirements of Section 388 of the Code of

Civil Procedure. Every such person shall also furnish pursuant to Section 388 of the Code of Civil Procedure a copy of any amended or supplemental pleading filed by such person in such action to the Attorney General. No relief, temporary or permanent, shall be granted until a copy of the pleading has been furnished to the Attorney General in accordance with such requirements.

SEC. 184. Section 25403.5 of the Public Resources Code is amended to read:

25403.5. (a) The commission shall, by July 1, 1978, adopt standards by regulation for a program of electrical load management for each utility service area. In adopting the standards, the commission shall consider, but need not be limited to, the following load management techniques:

(1) Adjustments in rate structure to encourage use of electrical energy at off-peak hours or to encourage control of daily electrical load. Compliance with those adjustments in rate structure shall be subject to the approval of the Public Utilities Commission in a proceeding to change rates or service.

(2) End use storage systems which store energy during off-peak periods for use during peak periods.

(3) Mechanical and automatic devices and systems for the control of daily and seasonal peakloads.

(b) The standards shall be cost-effective when compared with the costs for new electrical capacity, and the commission shall find them to be technologically feasible. Any expense or any capital investment required of a utility by the standards shall be an allowable expense or an allowable item in the utility rate base and shall be treated by the Public Utilities Commission as allowable in a rate proceeding.

The commission may determine that one or more of the load management techniques are infeasible and may delay their adoption. If the commission determines that any techniques are infeasible to implement, it shall make a finding in each instance stating the grounds upon which the determination was made and the actions it intends to take to remove the impediments to implementation.

(c) The commission may also grant, upon application by a utility, an exemption from the standards or a delay in implementation. The grant of an exemption or delay shall be accompanied by a statement of findings by the commission indicating the grounds for the exemption or delay. Exemption or delay shall be granted only upon a showing of extreme hardship, technological infeasibility, lack of cost-effectiveness, or reduced system reliability and efficiency.

(d) This section does not apply to proposed sites and related facilities for which a notice of intent or an application requesting certification has

been filed with the commission prior to the effective date of the standards.

SEC. 185. Section 31007 of the Public Resources Code is amended to read:

31007. ''Coastal restoration project'' means any action taken by a local public agency or the conservancy to correct undesirable development patterns in the coastal zone.

SEC. 186. Section 42645 of the Public Resources Code is amended to read:

42645. (a) The board, in consultation with the State Department of Education, the State Board of Education, and the Secretary for Education, shall establish a program to provide grants to school districts and schools to assist in the development and implementation of educational programs and to promote the use of existing educational programs to teach the concepts of source reduction, recycling, and composting.

(b) The board, in consultation with the State Department of Education, the Board of Education, and the Secretary for Education, shall adopt criteria for awarding grants pursuant to this article, including, but not limited to, the grant's structure, the schedule for awarding grants, and grant amount limits. This criteria shall include, but not be limited to, a procedure for the geographic distribution of the grants and the appropriate representation of elementary, middle, and high school as grant recipients. In adopting this criteria, the board shall include, in the criteria, the extent to which an office, a school district, or a school has demonstrated a commitment to achieving the following goals:

(1) The adoption of waste reduction and recycling programs and practices.

(2) The adoption and implementation of the unified education strategy adopted pursuant to Section 42603.

(3) The allocation of adequate space for the safe collection, storage, and loading of recyclable materials.

(4) To the maximum extent feasible, the use of recycled materials and environmentally preferable products in the construction or modernization of public school facilities.

(5) Participation in the environmental ambassador pilot program established pursuant to Section 51226.4 of the Education Code.

(c) Notwithstanding Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, the adoption of criteria for the awarding of grants pursuant to this article is not the adoption of a regulation, and is exempt from the requirements of that chapter.

SEC. 187. Section 71040 of the Public Resources Code is amended to read:

71040. (a) The Secretary for Environmental Protection shall establish permit assistance centers throughout the state to provide businesses and other entities with assistance in complying with laws and regulations implemented by every board, department, and office within the California Environmental Protection Agency. Each permit assistance center shall, to the extent feasible, incorporate permit assistance activities of local and federal entities and of other entities of the state into its operations.

(b) In addition to the centers authorized pursuant to subdivision (a), the secretary shall establish an electronic online permit assistance center through the Internet. The electronic online permit assistance center shall be available for use by any business or other entity subject to a law or regulation implemented by a board, department, or office within the California Environmental Protection Agency, and shall provide a business or other entity with assistance in complying with those laws and regulations. The center, which shall be called the ''California Government-On Line to Desktops'' or ''CALGOLD'' program, shall provide special software, ''hotlinks'' and other online resources and tools that may be used by a business or other entity to streamline and expedite compliance with laws and regulations implemented by a board, department, or office within the California Environmental Protection Agency. The CALGOLD program shall, to the extent feasible, incorporate permit assistance activities of local and federal entities and of other entities of the state into its operations.

(c) The Secretary for Environmental Protection shall report annually, no later than December 1 with respect to the previous fiscal year, to the Governor and the Legislature on the number of permits issued, expedited, or otherwise streamlined by each center; the number and types of businesses assisted by each center; and how the assistance provided to businesses has improved environmental protection. The secretary, in consultation with the Secretary of Technology, Trade and Commerce, shall report on the permit assistance activities of both agencies and shall make recommendations to ensure that these activities are coordinated and nonduplicative.

SEC. 188. Section 331 of the Public Utilities Code is amended to read:

331. The definitions set forth in this section shall govern the construction of this chapter.

(a) ''Aggregator'' means any marketer, broker, public agency, city, county, or special district, that combines the loads of multiple end-use customers in facilitating the sale and purchase of electric energy, transmission, and other services on behalf of these customers.

(b) ''Broker'' means an entity that arranges the sale and purchase of electric energy, transmission, and other services between buyers and sellers, but does not take title to any of the power sold.

(c) ''Direct transaction'' means a contract between any one or more electric generators, marketers, or brokers of electric power and one or more retail customers providing for the purchase and sale of electric power or any ancillary services.

(d) ''Fire wall'' means the line of demarcation separating residential and small commercial customers from all other customers as described in subdivision (e) of Section 367.

(e) ''Marketer'' means any entity that buys electric energy, transmission, and other services from traditional utilities and other suppliers, and then resells those services at wholesale or to an end-use customer.

(f) ''Microcogeneration facility'' means a cogeneration facility of less than one megawatt.

(g) ''Restructuring trusts'' means the two tax-exempt public benefit trusts established by Decision 96-08-038 of the Public Utilities Commission to provide for design and development of the hardware and software systems for the Power Exchange and the Independent System Operator, respectively, and that may undertake other activities, as needed, as ordered by the commission.

(h) ''Small commercial customer'' means a customer that has a maximum peak demand of less than 20 kilowatts.

SEC. 189. Section 332.1 of the Public Utilities Code is amended to read:

332.1. (a) (1) It is the intent of the Legislature to enact Item 1 (revised) on the commission's August 21, 2000 agenda, entitled ''Opinion Modifying Decision (D.) D.00-06-034 and D.00-08-021 to Regarding Interim Rate Caps for San Diego Gas and Electric Company,'' as modified below.

(2) It is also the intent of the Legislature that to the extent that the Federal Energy Regulatory Commission orders refunds to electrical corporations pursuant to their findings, the commission shall ensure that any refunds are returned to customers.

(b) The commission shall establish a ceiling of six and five-tenths cents ($0.065) per kilowatthour on the energy component of electric bills for electricity supplied to residential, small commercial, and street lighting customers by the San Diego Gas and Electric Company, through December 31, 2002, retroactive to June 1, 2000. If the commission finds it in the public interest, this ceiling may be extended through December 2003 and may be adjusted as provided in subdivision (d).

(c) The commission shall establish an accounting procedure to track and recover reasonable and prudent costs of providing electric energy to

retail customers unrecovered through retail bills due to the application of the ceiling provided for in subdivision (b). The accounting procedure shall utilize revenues associated with sales of energy from utility-owned or managed generation assets to offset an undercollection, if undercollection occurs. The accounting procedure shall be reviewed periodically by the commission, but not less frequently than semiannually. The commission may utilize an existing proceeding to perform the review. The accounting procedure and review shall provide a reasonable opportunity for San Diego Gas and Electric Company to recover its reasonable and prudent costs of service over a reasonable period of time.

(d) If the commission determines that it is in the public interest to do so, the commission, after the date of the completion of the proceeding described in subdivision (g), may adjust the ceiling from the level specified in subdivision (b), and may adjust the frozen rate from the levels specified in subdivision (f), consistent with the Legislature's intent to provide substantial protections for customers of the San Diego Gas and Electric Company and their interest in just and reasonable rates and adequate service.

(e) For purposes of this section, ''small commercial customer'' includes, but is not limited to, all San Diego Gas and Electric Company accounts on Rate Schedule A of the San Diego Gas and Electric Company, all accounts of customers who are ''general acute care hospitals,'' as defined in Section 1250 of the Health and Safety Code, all San Diego Gas and Electric Company accounts of customers who are public or private schools for pupils in kindergarten or any of grades 1 to 12, inclusive, and all accounts on Rate Schedule AL-TOU under 100 kilowatts.

(f) The commission shall establish an initial frozen rate of six and five-tenths cents ($0.065) per kilowatthour on the energy component of electric bills for electricity supplied to all customers by the San Diego Gas and Electric Company not subject to subdivision (b), for the time period ending with the end of the rate freeze for the Pacific Gas and Electric Company and the Southern California Edison Company pursuant to Section 368, retroactive to February 7, 2001. The commission shall consider the comparable energy components of rates for comparable customer classes served by the Pacific Gas and Electric Company and the Southern California Edison Company and, if it determines it to be in the public interest, the commission may adjust this frozen rate, and may do so, retroactive to the date that rate increases took effect for customers of Pacific Gas and Electric Company and Southern California Edison Company pursuant to the commission's March 27, 2001, decision. The commission shall determine the Fixed Department of Water Resources Set-Aside pursuant to Section 360.5 for customers

subject to this section, reflecting a retail rate consistent with the rate for the energy component of electric bills as determined in this subdivision, in place of the retail rate in effect on January 5, 2001. This section shall be construed to modify the payment provisions, but may not be construed to modify the electric procurement obligations of the Department of Water Resources, pursuant to any contract or agreement in accordance with Division 27 (commencing with Section 80000) of the Water Code, and in effect as of February 7, 2001, between the Department of Water Resources and San Diego Gas and Electric Company.

(g) The commission shall institute a proceeding to examine the prudence and reasonableness of the San Diego Gas and Electric Company in the procurement of wholesale energy on behalf of its customers, for a period beginning, at the latest, on June 1, 2000. If the commission finds that San Diego Gas and Electric Company acted imprudently or unreasonably, the commission shall issue orders that it determines to be appropriate affecting the retail rates of San Diego Gas and Electric Company customers including, but not limited to, refunds.

(h) Nothing in this section may be construed to limit the authority of the Department of Water Resources pursuant to Division 27 (commencing with Section 80000) of the Water Code.

SEC. 190. Section 332.2 of the Public Utilities Code, as added by Section 2 of Chapter 5 of the 2001–02 First Extraordinary Session, is amended to read:

332.2. Rates set by the commission that are subject to subdivision (f) of Section 332.1 may not result in any retroactive recovery of undercollections by the San Diego Gas and Electric Company. Any undercollection resulting from the retroactive rate reductions ordered pursuant to this chapter, retroactive to February 7, 2001, may not result in a revenue undercollection to San Diego Gas and Electric Company.

SEC. 191. Section 332.2 of the Public Utilities Code, as added by Section 2 of Chapter 6 of the 2001–02 First Extraordinary Session, is amended to read:

332.2. Rates set by the commission that are subject to subdivision (f) of Section 332.1 may not result in any retroactive recovery of undercollections by the San Diego Gas and Electric Company. Any undercollection resulting from the retroactive rate reductions ordered pursuant to this chapter, retroactive to February 7, 2001, may not result in a revenue undercollection to San Diego Gas and Electric Company.

SEC. 192. Section 399.6 of the Public Utilities Code, as amended by Section 1 of Chapter 774 of the Statutes of 2001, is amended to read:

399.6. (a) In order to optimize public investment and ensure that the most cost-effective and efficient investments in renewable resources are vigorously pursued, the Energy Commission shall create an

investment plan as set forth in paragraphs (1) to (3), inclusive, to govern the allocation of funds provided pursuant to this article. The Energy Commission's long-term goal shall be a fully competitive and self-sustaining California renewable energy supply. The investment plan shall be in accordance with all of the following:

(1) The investment plan's objective shall be to increase, in the near term, the quantity of California's electricity generated by in-state renewable energy resources, while protecting system reliability, fostering resource diversity, and obtaining the greatest environmental benefits for California residents.

(2) An additional objective of the plan shall be to identify and support emerging renewable energy technologies that have the greatest near-term commercial promise and that merit targeted assistance.

(3) The investment plan shall contain specific numerical targets, reflecting the projected impact of the plan, for both of the following:

(A) Increased quantity of California electrical generation produced from emerging technologies and from overall renewable resources.

(B) Increased supply of renewable generation available from facilities other than those selling to investor-owned utilities under contracts entered into prior to 1996 under the federal Public Utilities Regulatory Policies Act of 1978 (P.L. 95-617).

(b) The Energy Commission shall, on an annual basis, evaluate progress on meeting the targets set forth in subparagraphs (A) and (B) of paragraph (3) of subdivision (a), or any substitute provisions adopted by the Legislature upon review of the investment plan, and assess the impact of the investment plan on reducing the cost to Californians of renewable energy generation.

(c) In preparing these investment plans, the Energy Commission shall recommend allocations among all of the following:

(1) (A) Except as provided in subparagraph (B), production incentives for new renewable energy, including repowered or refurbished renewable energy.

(B) Allocations may not be made for renewable energy that is generated by a project that remains under a power purchase contract with an electrical corporation originally entered into prior to September 24, 1996, whether amended or restated thereafter.

(C) Notwithstanding subparagraph (B), production incentives for incremental new, repowered, or refurbished renewable energy from existing projects under a power purchase contract with an electrical corporation originally entered into prior to September 24, 1996, whether amended or restated thereafter, may be allowed in any month, if all of the following occur:

(i) The project's power purchase contract provides that all energy delivered and sold under the contract is paid at a price that does not exceed commission-approved short-run avoided cost of energy.

(ii) Either of the following:

(I) The power purchase contract is amended to provide that the kilowatthours used to determine the capacity payment in any time-of-delivery period in any month under the contract shall be equal to the actual kilowatthour production, but no greater than the five-year average of the kilowatthours delivered for the corresponding time-of-delivery period and month, in the years 1994 to 1998, inclusive.

(II) If a project's installed capacity as of December 31, 1998, is less than 75 percent of the nameplate capacity as stated in the power purchase contract, the power purchase contract is amended to provide that the kilowatthours used to determine the capacity payment in any time-of-delivery period in any month under the contract shall be equal to the actual kilowatthour production, but no greater than the product of the five-year average of the kilowatthours delivered for the corresponding time-of-delivery period and month, in the years 1994 to 1998, inclusive, and the ratio of installed capacity as of December 31 of the previous year, but not to exceed contract nameplate capacity, to the installed capacity as of December 31, 1998.

(iii) The production incentive is payable only with respect to the kilowatthours delivered in a particular month that exceeds the corresponding five-year average calculated pursuant to clause (ii).

(2) Rebates, buydowns, or equivalent incentives for emerging renewable technologies.

(3) Customer credits for renewables not under contract with a utility.

(4) Customer education.

(5) Incentives for reducing fuel costs that are confirmed to the satisfaction of the Energy Commission at solid fuel biomass energy facilities in order to provide demonstrable environmental and public benefits, including, but not limited to, air quality.

(6) Solar thermal generating resources that enhance the environmental value or reliability of the electrical system and that require financial assistance to remain economically viable, as determined by the Energy Commission. The Energy Commission may require financial disclosure from applicants for purposes of this paragraph.

(7) Specified fuel cell technologies, if the Energy Commission makes all of the following findings:

(A) The specified technologies have similar or better air pollutant characteristics than renewable technologies in the investment plan.

(B) The specified technologies require financial assistance to become commercially viable by reference to wholesale generation prices.

(C) The specified technologies could contribute significantly to the infrastructure development or other innovation required to meet the long-term objective of a self-sustaining, competitive supply of renewable energy.

(8) Existing wind-generating resources, if the Energy Commission finds that the existing wind-generating resources are a cost-effective source of reliable and environmental benefits compared with other eligible sources, and that the existing wind-generating resources require financial assistance to remain economically viable, as determined by the Energy Commission. The Energy Commission may require financial disclosure from applicants for the purposes of this paragraph.

(d) The commission shall establish a cap on the aggregate amount of funds that may be awarded to public entities from the program that provides customer credits for renewables. The intent of the cap is to assure adequate funding of credits for residential and small commercial customers.

(e) Notwithstanding any other provision of law, moneys collected for renewable energy pursuant to this article shall be transferred to the Renewable Resource Trust Fund of the Energy Commission, to be held until further action by the Legislature. The Energy Commission shall prepare and submit to the Legislature, on or before March 31, 2001, an initial investment plan for these moneys, addressing the application of moneys collected between January 1, 2002, and January 1, 2007. The initial investment plan shall also include an evaluation of and report to the Legislature regarding the appropriateness and structure of a mandatory state purchase of renewable energy. On or before March 31, 2006, the Energy Commission shall prepare an investment plan proposing the application of moneys collected between January 1, 2007, and January 1, 2012. No moneys may be expended in the years covered by these plans without further legislative action.

SEC. 193. Section 2774.5 of the Public Utilities Code is amended to read:

2774.5. An electrical corporation or local publicly owned electric utility, as defined in subdivision (d) of Section 9604, shall immediately notify the Commissioner of the California Highway Patrol, the Office of Emergency Services, and the sheriff and any affected chief of police of the specific area within their respective law enforcement jurisdictions that will sustain a planned loss of power as soon as the planned loss becomes known as to when and where that power loss will occur. The notification shall include common geographical boundaries, grid or block numbers of the affected area, and the next anticipated power loss area designated by the electrical corporation or public entity during rotating blackouts.

SEC. 194. Section 3350 of the Public Utilities Code is amended to read:

3350. In evaluating the eligibility for financing of additional generation facilities, the authority shall utilize the Energy Commission's and the Independent System Operator's, or their successor's, information relating to the need for additional generating facilities and their forecasts of electric supply and demand for the state.

SEC. 195. Section 170016 of the Public Utilities Code is amended to read:

170016. (a) The permanent board shall be established pursuant to this section. The board shall consist of nine members, with three members serving in an executive committee.

(b) The following three members shall comprise the executive committee:

(1) A member of the public who shall be appointed by the Board of Supervisors of the County of San Diego and shall be a resident of an unincorporated area of the county. The initial term for this member shall be two years.

(2) A member of the public who shall be appointed by the Governor and confirmed by the Senate, shall reside in the County of San Diego, but not within the City of San Diego. The initial term for this member, upon confirmation of the Senate, shall be six years.

(3) A member of the public who shall be appointed by the Mayor of the City of San Diego and shall be confirmed by a majority vote of the San Diego City Council. The initial term for this member shall be four years.

(c) The remaining six members of the board shall be as follows:

(1) The Mayor of the City of San Diego, or a member of the city council designated by the mayor to be his or her alternate.

(2) A member of the public appointed by the Mayor of the City of San Diego. The initial term for this member shall be two years.

(3) The mayor of the most populous city, as of the most recent decennial census, among the north area cities. If that mayor declines to serve, he or she shall appoint a member of the public who is a resident of one of the north area cities. The initial term for this member shall be two years.

(4) (A) If the member serving under paragraph (3) is a mayor, then a member of the public selected by the mayors of the north area cities from one of those cities, excluding the most populous city.

(B) If the person serving under paragraph (3) is not a mayor, then the mayors of the north area cities shall select a mayor or council member of a north area city, excluding the most populous city, to serve as the member.

(C) The initial term for this member shall be four years.

(5) The mayor of the most populous city, as of the most recent decennial census, among the south area cities. If that mayor declines to serve, he or she shall appoint a member of the public who is a resident of one of the south area cities. The initial term for this member shall be six years.

(6) (A) If the member serving under paragraph (5) is a mayor, then a member of the public selected by the mayors of the south area cities from one of those cities, excluding the most populous city.

(B) If the person serving under paragraph (5) is not a mayor, then the mayors of the south area cities shall select a mayor or council member of a south area city, excluding the most populous city, to serve as the member.

(C) The initial term for this member shall be four years.

(d) The initial chair shall be the person appointed to the board pursuant to paragraph (2) of subdivision (b). Thereafter, the executive committee shall appoint the chair, who shall serve for a two-year portion of his or her term as a board member, upon confirmation of the full board. A chair may be appointed to consecutive terms, subject to confirmation of the full board.

(e) (1) Members appointed to the first board shall be appointed on or before October 31, 2002, and shall be seated as the board on December 2, 2002.

(2) Any appointment not filled by the respective appointing authority on or before December 1, 2002, shall be filled by appointment by the Governor, consistent with the eligibility requirements of this section for that membership position.

(f) (1) After the initial term, all terms shall be four years, except as otherwise required under subdivision (b) of Section 170018.

(2) The expiration date of the term of office shall be the first Monday in December in the year in which the term is to expire.

SEC. 196. Section 170018 of the Public Utilities Code is amended to read:

170018. (a) The appointing authority for a member whose term has expired shall appoint that member's successor for a full term of four years.

(b) The membership of any member serving on the board as a result of holding another public office shall terminate when the member ceases holding the other public office.

(c) Any vacancy in the membership of the board shall be filled for the expired term by a person selected by the appointing authority for that position.

SEC. 197. Section 62.1 of the Revenue and Taxation Code is amended to read:

62.1. (a) Change in ownership shall not include the following:

(1) Any transfer, on or after January 1, 1985, of a mobilehome park to a nonprofit corporation, stock cooperative corporation, limited equity stock cooperative, or other entity formed by the tenants of a mobilehome park, for the purpose of purchasing the mobilehome park, provided that, with respect to any transfer of a mobilehome park on or after January 1, 1989, subject to this paragraph, the individual tenants who were renting at least 51 percent of the spaces in the mobilehome park prior to the transfer participate in the transaction through the ownership of an aggregate of at least 51 percent of the voting stock of, or other ownership or membership interests in, the entity which acquires the park. If, on or after January 1, 1998, a park is acquired by an entity that did not attain an initial tenant participation level of at least 51 percent on the date of the transfer, the entity shall have up to one year after the date of the transfer to attain a tenant participation level of at least 51 percent. If an individual tenant notifies the county assessor of the intention to comply with the conditions set forth in the preceding sentence, the mobilehome park may not be reappraised by the assessor during that period. However, if a tenant participation level of at least 51 percent is not attained within the one-year period, the county assessor shall thereafter levy escape assessments for the mobilehome park transfer.

(2) Any transfer or transfers on or after January 1, 1985, of rental spaces in a mobilehome park to the individual tenants of the rental spaces, provided that (1) at least 51 percent of the rental spaces are purchased by individual tenants renting their spaces prior to purchase, and (2) the individual tenants of these spaces form, within one year after the first purchase of a rental space by an individual tenant, a resident organization as described in subdivision (*l*) of Section 50781 of the Health and Safety Code, to operate and maintain the park. If, on or after January 1, 1985, an individual tenant or tenants notify the county assessor of the intention to comply with the conditions set forth in the preceding sentence, any mobilehome park rental space that is purchased by an individual tenant in that mobilehome park during that period shall not be reappraised by the assessor. However, if all of the conditions set forth in the first sentence of this paragraph are not satisfied, the county assessor shall thereafter levy escape assessments for the spaces so transferred. This paragraph shall apply only to those rental mobilehome parks that have been in operation for five years or more.

(b) (1) If the transfer of a mobilehome park has been excluded from a change in ownership pursuant to paragraph (1) of subdivision (a) and the park has not been converted to condominium, stock cooperative ownership, or limited equity cooperative ownership, any transfer on or after January 1, 1989, of shares of the voting stock of, or other ownership or membership interests in, the entity that acquired the park in accordance with paragraph (1) of subdivision (a) shall be a change in

ownership of a pro rata portion of the real property of the park unless the transfer is for the purpose of converting the park to condominium, stock cooperative ownership, or limited equity cooperative ownership or is excluded from change in ownership by Section 62, 63, or 63.1.

(2) For the purposes of this subdivision, ''pro rata portion of the real property'' means the total real property of the mobilehome park multiplied by a fraction consisting of the number of shares of voting stock, or other ownership or membership interests, transferred divided by the total number of outstanding issued or unissued shares of voting stock of, or other ownership or membership interests in, the entity that acquired the park in accordance with paragraph (1) of subdivision (a).

(3) Any pro rata portion or portions of real property that changed ownership pursuant to this subdivision may be separately assessed as provided in Section 2188.10.

(4) (A) Notwithstanding any other provision of law, after an exclusion under subdivision (a), the assessor may not levy any escape or supplemental assessment with respect to any change in ownership of a pro rata portion of the real property of the mobilehome park that occurred between January 1, 1989, and January 1, 2002, and for which the assessor did not, prior to January 1, 2000, levy any assessments. However, commencing with the January 1, 2002, lien date, the assessor shall correct the base year value of the pro rata portion of the real property of the park to properly reflect these changes in ownership. A mobilehome park shall provide information requested by the assessor that is necessary to correct the base year value of the property for purposes of this paragraph.

(B) When an assessor corrects the base year value of the real property of the park pursuant to subparagraph (A), the assessor shall notify parks that residents may be eligible for property tax assistance programs offered by either the Controller or the Franchise Tax Board for senior citizens, or blind or disabled persons.

(C) Any outstanding taxes that were levied between January 1, 2000, and January 1, 2002, as a result of a pro rata change in ownership as described in subparagraph (A) shall be canceled. However, there shall be no refund of taxes, as so levied, that were paid prior to January 1, 2002.

(5) A mobilehome park that does not utilize recorded deeds to transfer ownership interest in the spaces or lots shall file, by February 1 of each year, a report with the county assessor's office containing all of the following information:

(A) The full name and mailing address of each owner, stockholder, or holder of an ownership interest in the mobilehome park.

(B) The situs address, including space number, of each unit.

(C) The date that the ownership interest was acquired.

(D) If the unit is a manufactured home, the Department of Housing and Community Development decal number or serial number, or both, and whether the manufactured home is subject to the vehicle license fee or the local property tax.

(6) Within 30 days of a change in ownership, the new resident owner or other purchaser or transferee of a mobilehome within a mobilehome park that does not utilize recorded deeds to transfer ownership interest in the spaces or lots shall file a change in ownership statement described in either Section 480 or 480.2.

(7) Failure to comply with the reporting requirement described in paragraph (5) shall result in a penalty pursuant to Section 482.

(c) It is the intent of the Legislature that, in order to facilitate affordable conversions of mobilehome parks to tenant ownership, paragraph (1) of subdivision (a) apply to all bona fide transfers of rental mobilehome parks to tenant ownership, including, but not limited to, those parks converted to tenant ownership as a nonprofit corporation made on or after January 1, 1985.

SEC. 198. Section 756 of the Revenue and Taxation Code is amended to read:

756. (a) On or before July 31, the board shall transmit to each county auditor a roll showing the unitary and operating nonunitary assessments made by the board in the county and the nonoperating nonunitary assessments made by the board in each city and revenue district in the county; provided, however, that the roll need not show the assessments made by the board in a revenue district which did not levy a tax or assessment during the preceding year. The roll is at all times, during office hours, open to the inspection of any person representing any taxing agency or revenue district, or any district described in Section 2131. If the roll does not show the assessments in a revenue district as herein provided and a notice of a proposed levy is furnished to the board in writing, on or before January 1 preceding the fiscal year for which the levy is to be made, the board shall furnish an estimate of the total assessed value of nonoperating nonunitary state-assessed property in the district and shall transmit thereafter to the county auditor a statement of roll change showing the nonoperating nonunitary assessments made by the board in the district.

(b) Notwithstanding subdivision (a), in making the roll referred to in subdivision (a), the unitary value and nonunitary value of the property of regulated railway companies and property subject to subdivision (i) of Section 98.9 shall be enrolled by revenue district.

SEC. 199. Section 11273 of the Revenue and Taxation Code is amended to read:

11273. If any person required to file a report fails to file it on or before April 30 or at the time as extended by the board, a penalty of 10 percent of the assessed value shall be added to the assessment.

If the assessee establishes to the satisfaction of the board that the failure to file the property statement timely was due to a reasonable cause and occurred notwithstanding the exercise of ordinary care and the absence of willful neglect, the board shall order the penalty abated, provided the assessee has filed with the board written application for abatement of the penalty within the time prescribed by law for filing a petition for reassessment.

SEC. 200. Section 12209 of the Revenue and Taxation Code is amended to read:

12209. (a) For each year beginning on or after January 1, 1999, and before January 1, 2007, there shall be allowed as a credit against the amount of tax, as defined in Section 28 of Article XIII of the California Constitution, an amount equal to 20 percent of the amount of each qualified investment made by a taxpayer during the year into a community development financial institution.

(b) For purposes of determining any tax that may be imposed under Section 685 of the Insurance Code on a taxpayer not organized under the laws of this state, the amount of the credit allowed by subdivision (a) shall be treated as a tax paid under Section 12201 or Section 28 of Article XIII of the California Constitution.

(c) Notwithstanding any other provision of this part, no credit shall be allowed under this section unless the California Organized Investment Network, or its successor within the Department of Insurance, certifies that the investment described in subdivision (a) qualifies for the credit under this section and certifies the total amount of the credit allocated to the taxpayer pursuant to this section. The aggregate amount of qualified investments made by all taxpayers pursuant to this section, Section 17053.57, and Section 23657 shall not exceed ten million dollars ($10,000,000) for each calendar year. However, if the aggregate amount of qualified investments made in any calendar year is less than ten million dollars ($10,000,000), the difference may be carried over to the next year, and any succeeding year during which this section remains in effect, and added to the aggregate amount authorized for those years.

(d) The community development financial institution shall do all of the following:

(1) Apply to the Department of Insurance, California Organized Investment Network, or its successor, for certification of its status as a community development financial institution.

(2) Apply to the Department of Insurance, California Organized Investment Network, or its successor, on behalf of the taxpayer for

certification of the amount of the investment and the credit amount allocated to the taxpayer, obtain the certification, and retain a copy of the certification.

(3) Obtain the taxpayer's California company identification number for tax administration purposes and provide this information to the Department of Insurance, California Organized Investment Network, or its successor, with the application required in paragraph (2).

(4) Provide an annual listing to the State Board of Equalization, in the form and manner agreed upon by the State Board of Equalization and the Department of Insurance, California Organized Investment Network, or its successor, of the names and taxpayer's California company identification numbers of any taxpayer who makes any withdrawal or partial withdrawal of a qualified investment before the expiration of 60 months from the date of the qualified investment.

(e) The Department of Insurance, California Organized Investment Network, or any successor thereof, shall do all of the following:

(1) Accept applications for certification from financial institutions and issue certificates that the applicant is a community development financial institution qualified to receive qualified investments.

(2) Accept applications for certification from any community development financial institution on behalf of the taxpayer and issue certificates to taxpayers in an aggregate amount that shall not exceed the limit specified in subdivision (c). The certificate shall include the amount eligible to be made as an investment that qualifies for the credit and the total amount of the credit to which the taxpayer is entitled for the year. Certificates shall be issued in the order that the applications are received.

(3) Provide an annual listing to the State Board of Equalization, in the form or manner agreed upon by the State Board of Equalization and the Department of Insurance, California Organized Investment Network, or its successor, of the taxpayers who were issued certificates, their respective National Association of Insurance Commissioners company number and employer's tax identification number, the amount of the qualified investment made by each taxpayer, and the total amount of qualified investments.

(f) For purposes of this section:

(1) ''Qualified investment'' means a deposit or loan that does not earn interest, or an equity investment, or an equity-like debt instrument that conforms to the specifications for these instruments as prescribed by the United States Department of the Treasury, Community Development Financial Institutions Fund, or its successor. All qualified investments must be equal to or greater than fifty thousand dollars ($50,000) and made for a minimum duration of 60 months.

(2) ''Community development financial institution'' means a private financial institution located in this state that is certified by the Department of Insurance, California Organized Investment Network, or its successor, that has community development as its primary mission, and that lends in urban, rural, or reservation-based communities in this state. A community development financial institution may include a community development bank, a community development loan fund, a community development credit union, a microenterprise fund, a community development corporation-based lender, and a community development venture fund.

(g) (1) If a qualified investment is withdrawn before the end of the 60th month and not reinvested in another community development financial institution within 60 days, there shall be added to the ''tax,'' as defined in Section 28 of Article XIII of the California Constitution, for the year in which the withdrawal occurs, the entire amount of any credit previously allowed under this section.

(2) If a qualified investment is reduced before the end of the 60th month, but not below fifty thousand dollars ($50,000), there shall be added to the ''tax,'' as defined in Section 28 of Article XIII of the California Constitution, for the taxable year in which the reduction occurs, an amount equal to 20 percent of the total reduction for the year.

(h) In the case where the credit allowed by this section exceeds the ''tax,'' the excess may be carried over to reduce the ''tax'' for the next four years, or until the credit has been exhausted, whichever occurs first.

(i) The State Board of Equalization shall, as requested by the Department of Insurance, California Organized Investment Network, or its successor, advise and assist in the administration of this section.

(j) This section shall remain in effect only until December 31, 2007, and as of that date is repealed.

SEC. 201. Section 17053.57 of the Revenue and Taxation Code is amended to read:

17053.57. (a) For each taxable year beginning on or after January 1, 1997, and before January 1, 2007, there shall be allowed as a credit against the amount of ''net tax,'' as defined in Section 17039, an amount equal to 20 percent of the amount of each qualified investment made by a taxpayer during the taxable year into a community development financial institution.

(b) Notwithstanding any other provision of this part, no credit shall be allowed under this section unless the California Organized Investment Network, or its successor within the Department of Insurance, certifies that the investment described in subdivision (a) qualifies for the credit under this section and certifies the total amount of the credit allocated to the taxpayer pursuant to this section. The aggregate amount of qualified investments made by all taxpayers

pursuant to this section, Section 12209, and Section 23657 shall not exceed ten million dollars ($10,000,000) for each calendar year. However, if the aggregate amount of qualified investments made in any calendar year is less than ten million dollars ($10,000,000), the difference may be carried over to the next year, and any succeeding year during which this section remains in effect, and added to the aggregate amount authorized for those years.

(c) The Community Development Financial Institution shall do all of the following:

(1) Apply to the Department of Insurance, California Organized Investment Network, or its successor, for certification of its status as a Community Development Financial Institution.

(2) Apply to the Department of Insurance, California Organized Investment Network, or its successor, on behalf of the taxpayer for certification of the amount of the investment and the credit amount allocated to the taxpayer, obtain the certification, and retain a copy of the certification.

(3) Obtain the taxpayer's identification number, or in the case of a partnership, the taxpayer identification numbers of all the partners for tax administration purposes and provide this information to the Department of Insurance, California Organized Investment Network, or its successor, with the application required in paragraph (2).

(4) Provide an annual listing to the Franchise Tax Board, in the form and manner agreed upon by the Franchise Tax Board and the Department of Insurance, California Organized Investment Network, or its successor, of the names and taxpayer identification numbers of any taxpayer who makes any withdrawal or partial withdrawal of a qualified investment before the expiration of 60 months from the date of the qualified investment.

(d) The Department of Insurance, California Organized Investment Network, or any successor thereof, shall do all of the following:

(1) Accept applications for certification from financial institutions and issue certificates that the applicant is a Community Development Financial Institution qualified to receive qualified investments.

(2) Accept applications for certification from any Community Development Financial Institution on behalf of the taxpayer and issue certificates to taxpayers in an aggregate amount that shall not exceed the limit specified in subdivision (b). The certificate shall include the amount eligible to be made as an investment that qualifies for the credit and the total amount of the credit to which the taxpayer is entitled for the taxable year. Certificates shall be issued in the order in which the applications are received.

(3) Provide an annual listing to the Franchise Tax Board, in a form or manner agreed upon by the Franchise Tax Board and the Department of

Insurance, California Organized Investment Network, or its successor, of the taxpayers who were issued certificates, their respective tax identification numbers, the amount of the qualified investment made by each taxpayer, and the total amount of all qualified investments.

(e) For purposes of this section:

(1) ''Qualified investment'' means a deposit or loan that does not earn interest, or an equity investment, or an equity-like debt instrument that conforms to the specifications for these instruments as prescribed by the United States Department of the Treasury, Community Development Financial Institutions Fund, or its successor. All qualified investments must be equal to or greater than fifty thousand dollars ($50,000) and made for a minimum duration of 60 months.

(2) ''Community development financial institution'' means a private financial institution located in this state that is certified by the Department of Insurance, California Organized Investment Network, or its successor, that has community development as its primary mission, and that lends in urban, rural, or reservation-based communities in this state. A community development financial institution may include a community development bank, a community development loan fund, a community development credit union, a microenterprise fund, a community development corporation-based lender, and a community development venture fund.

(f) (1) If a qualified investment is withdrawn before the end of the 60th month and not reinvested in another Community Development Financial Institution within 60 days, there shall be added to the ''net tax,'' as defined in Section 17039, for the taxable year in which the withdrawal occurs, the entire amount of any credit previously allowed under this section.

(2) If a qualified investment is reduced before the end of the 60th month, but not below fifty thousand dollars ($50,000), there shall be added to the ''net tax,'' as defined in Section 17039, for the taxable year in which the reduction occurs, an amount equal to 20 percent of the total reduction for the taxable year.

(g) In the case where the credit allowed by this section exceeds the ''net tax,'' the excess may be carried over to reduce the ''net tax'' for the next four taxable years, or until the credit has been exhausted, whichever occurs first.

(h) The Franchise Tax Board shall, as requested by the Department of Insurance, California Organized Investment Network, or its successor, advise and assist in the administration of this section.

(i) This section shall remain in effect only until December 1, 2007, and as of that date is repealed.

SEC. 202. Section 17073 of the Revenue and Taxation Code is amended to read:

17073. (a) Section 63 of the Internal Revenue Code, relating to taxable income defined, shall apply, except as otherwise provided.

(b) The deduction allowed by Section 17208.1, relating to interest on loans or financed indebtedness obtained from a publicly owned utility for the purchase and installation of energy efficient products or equipment, may not be treated as a miscellaneous itemized deduction under Section 67(a) of the Internal Revenue Code, relating to the 2-percent floor on miscellaneous deductions.

(c) For individuals who do not itemize deductions, the standard deduction computed in accordance with Section 17073.5 shall be allowed as a deduction in computing taxable income.

SEC. 203. Section 17942 of the Revenue and Taxation Code is amended to read:

17942. (a) In addition to the tax imposed under Section 17941, every limited liability company subject to tax under Section 17941 shall pay annually to this state a fee equal to:

(1) Nine hundred dollars ($900), if the total income from all sources reportable to this state for the taxable year is two hundred fifty thousand dollars ($250,000) or more, but less than five hundred thousand dollars ($500,000).

(2) Two thousand five hundred dollars ($2,500), if the total income from all sources reportable to this state for the taxable year is five hundred thousand dollars ($500,000) or more, but less than one million dollars ($1,000,000).

(3) Six thousand dollars ($6,000), if the total income from all sources reportable to this state for the taxable year is one million dollars ($1,000,000) or more, but less than five million dollars ($5,000,000).

(4) Eleven thousand seven hundred ninety dollars ($11,790), if the total income from all sources reportable to this state for the taxable year is five million dollars ($5,000,000) or more.

(5) This subdivision shall apply to taxable years beginning on or after January 1, 1997.

(6) The changes made to this subdivision by the act adding this paragraph shall apply to taxable years beginning on or after January 1, 2001.

(b) (1) For purposes of this section, ‘‘total income’’ means gross income, as defined in Section 24271, plus the cost of goods sold that are paid or incurred in connection with the trade or business of the taxpayer. However, ‘‘total income’’ shall not include allocation or attribution of income or gain or distributions made to a limited liability company in its capacity as a member of, or holder of an economic interest in, another limited liability company if the allocation or attribution of income or gain or distributions are directly or indirectly attributable to income that is subject to the payment of the fee described in this section.

(2) In the event a taxpayer is a commonly controlled limited liability company, the total income from all sources reportable to this state, taking into account any election under Section 25110, may be determined by the Franchise Tax Board to be the total income of all the commonly controlled limited liability company members if it determines that multiple limited liability companies were formed for the primary purpose of reducing fees payable under this section. A determination by the Franchise Tax Board under this subdivision may only be made with respect to one limited liability company in a commonly controlled group. However, each commonly controlled limited liability company shall be jointly and severally liable for the fee. For purposes of this section, commonly controlled limited liability companies shall include the taxpayer and any other partnership or limited liability company doing business (as defined in Section 23101) in this state and required to file a return under Section 18633 or 18633.5, in which the same persons own, directly or indirectly, more than 50 percent of the capital interests or profits interests.

(c) The fee assessed under this section shall be due and payable on the date the return of the limited liability company is required to be filed under Section 18633.5, shall be collected and refunded in the same manner as the taxes imposed by this part, and shall be subject to interest and applicable penalties.

SEC. 204. Section 18836 of the Revenue and Taxation Code is amended to read:

18836. (a) An individual may designate on the tax return that a contribution in excess of the tax liability, if any, be made to the Lupus Foundation of America, California Chapters Fund, which is established by Section 18837. That designation is to be used as a voluntary contribution on the tax return.

(b) The contributions shall be in full dollar amounts and may be made individually by each signatory on a joint return.

(c) A designation shall be made for any taxable year on the initial return for that taxable year and once made is irrevocable. If payments and credits reported on the return, together with any other credits associated with the taxpayer's account, do not exceed the taxpayer's liability, the return shall be treated as though no designation has been made. If no designee is specified, the contribution shall be transferred to the General Fund after reimbursement of the direct actual costs of the Franchise Tax Board for the collection and administration of funds under this article.

(d) If an individual designates a contribution to more than one account or fund listed on the tax return, and the amount available is insufficient to satisfy the total amount designated, the contribution shall be allocated among the designees on a pro rata basis.

(e) The Franchise Tax Board shall revise the form of the return to include a space labeled the "Lupus Foundation of America, California Chapters Fund" to allow for the designation permitted. The form shall also include in the instructions information that the contribution may be in the amount of one dollar ($1) or more and that the contribution shall be used for lupus education, awareness, and research.

(f) Notwithstanding any other provision, a voluntary contribution designation for the Lupus Foundation of America, California Chapters Fund may not be added on the tax return until another voluntary contribution designation is removed.

(g) A deduction shall be allowed under Article 6 (commencing with Section 17201) of Chapter 3 of Part 10 for any contribution made pursuant to subdivision (a).

SEC. 205. Section 19551.1 of the Revenue and Taxation Code is amended to read:

19551.1. (a) The Franchise Tax Board may permit the tax officials of any city to obtain tax information pursuant to subdivision (a) of Section 19551.

(b) The information furnished to tax officials of a city under this section shall be limited as follows:

(1) When requested pursuant to a written agreement, the taxing authority of a city may be granted tax information only with respect to taxpayers with an address as reflected on the Franchise Tax Board's records within the jurisdictional boundaries of the city who report income from a trade or business to the Franchise Tax Board.

(2) The tax information that may be provided by the Franchise Tax Board to a city is limited to a taxpayer's name, address, social security or taxpayer identification number, and business activity code.

(3) Tax information provided to the taxing authority of a city may not be furnished to, or used by, any person other than an employee of that taxing authority.

(4) Section 19542 applies to this section.

(5) Section 19542.1 applies to this section.

(c) The Franchise Tax Board may not provide any information pursuant to this section until all of the following have occurred:

(1) An agreement has been executed between a city and the Franchise Tax Board, that provides that an amount equal to all first year costs necessary to furnish the city information pursuant to this section shall be received by the Franchise Tax Board before the Franchise Tax Board incurs any costs associated with the activity permitted by this section. For purposes of this section, first year costs include costs associated with, but not limited to, the purchasing of equipment, the development of processes, and labor.

(2) An agreement has been executed between a city and the Franchise Tax Board, that provides that the annual costs incurred by the Franchise Tax Board, as a result of the activity permitted by this section, shall be reimbursed by the city to the board.

(3) Pursuant to the agreement described in paragraph (1), the Franchise Tax Board has received an amount equal to the first year costs.

(d) This section does not invalidate any other law. This section does not preclude any city or, city and county, from obtaining information about individual taxpayers, including those taxpayers exempt from this section, by any other means permitted by state or federal law.

(e) This section shall remain in effect only until December 31, 2008, and as of that date, is repealed.

SEC. 206. Section 20543 of the Revenue and Taxation Code is amended to read:

20543. (a) (1) The amount of assistance for a claimant owning his or her residential dwelling shall be based on the claimant's household income for the period set forth in Section 20503.

(2) For claims filed with respect to the 2001 calendar year and each calendar year thereafter, the percentage of assistance for which each claimant owning his or her residential dwelling shall be eligible based on the following scale:

If the total household income (as defined in this part) is not more than:	The percentage of tax on the first $34,000 of full value (as determined for tax purposes) used to provide assistance is:
$8,812	139%
9,400	136
9,987	133
10,575	131
11,163	128
11,750	125
12,337	122
12,925	119
13,513	116
14,101	113
14,688	110
15,275	106
15,863	100
16,451	94
17,038	88
17,626	83
18,213	77

18,800	71
19,389	65
19,976	59
20,564	54
21,151	49
21,738	45
22,327	41
22,914	36
23,500	32
24,088	29
24,675	26
25,263	23
25,851	20
26,438	17
27,908	15
29,376	12
30,846	10
32,314	9
33,783	7
35,251	6

(b) With respect to assistance that is provided by the Franchise Tax Board pursuant to this chapter for the 2002 calendar year and each year thereafter, the household income figures that apply to assistance provided by the Franchise Tax Board during that period shall be the household income figures that applied to assistance provided by the Franchise Tax Board in the same period in the immediately preceding year, multiplied by an inflation factor calculated as follows:

(1) On or before February 1 of each year, the Department of Industrial Relations shall transmit to the Franchise Tax Board the percentage change in the California Consumer Price Index for all items from June of the second preceding calendar year to June of the immediately preceding calendar year.

(2) The Franchise Tax Board shall add 100 percent to the percentage change figure that is furnished pursuant to paragraph (1) and divide the result by 100.

(3) The Franchise Tax Board shall multiply the immediately preceding household income figure by the inflation adjustment factor determined in paragraph (2), and round off the resulting product to the nearest one dollar ($1).

SEC. 207. Section 21015.6 of the Revenue and Taxation Code is amended to read:

21015.6. (a) No levy may be made on the principal residence of any innocent investor or the proceeds from the sale or other transaction involving the principal residence of an innocent investor upon notification to the Franchise Tax Board that the residence is the principal residence of an innocent investor and substantiation of both of the following:

(1) The basis for that levy is an underpayment of any tax imposed under Part 10 (commencing with Section 17001) for any taxable year ending on or before December 31, 2000, that is attributable to an abusive tax shelter.

(2) The principal residence is owned by an innocent investor.

(b) Any state tax lien recorded under Chapter 14 (commencing with Section 7150) of Division 7 of Title 1 of the Government Code, including a state tax lien described under Section 522(c)(2)(B) of Title 11 of the United States Code, relating to state tax liens after bankruptcy, on the principal residence of an innocent investor shall be released without satisfaction of the lien upon notification to the Franchise Tax Board that the residence is the principal residence of an innocent investor and substantiation of both of the following:

(1) The basis for that lien is an underpayment of any tax imposed under Part 10 (commencing with Section 17001) for any taxable year ending on or before December 31, 2000, that is attributable to an abusive tax shelter.

(2) The owner of that principal residence is an innocent investor.

(c) For purposes of this section:

(1) ''Abusive tax shelter'' shall satisfy both of the following requirements:

(A) Be a potentially abusive tax shelter within the meaning of Section 6112 of the Internal Revenue Code.

(B) With respect to which either of the following has occurred:

(i) The Internal Revenue Service has imposed a penalty under Section 6700 or 6701 of the Internal Revenue Code.

(ii) The Franchise Tax Board has imposed a penalty under Section 19177 or 19178.

(2) ''Innocent investor'' means any individual (or the spouse or former spouse of that individual) that satisfies each of the following requirements:

(A) Is liable for underpayment of any tax imposed under Part 10 (commencing with Section 17001) for any taxable year ending on or before December 31, 2000, that is attributable to ownership of an interest in an abusive tax shelter.

(B) Had no responsibility for the creation, promotion, operation, management, or control of the abusive tax shelter.

(C) During the tax years to which the underpayment described in subparagraph (A) relates, reasonably believed that the tax treatment of an item attributable to an abusive tax shelter was, more likely than not, the proper tax treatment.

(3) ''Principal residence'' includes any property that qualifies as a declared homestead as defined in Section 704.910 of the Code of Civil Procedure.

(d) Notification required by this section shall be made in the manner prescribed in forms and instructions of the Franchise Tax Board.

(e) (1) If, after January 1, 2002, the Franchise Tax Board has received proceeds from the sale of a principal residence by either levy or the satisfaction of a lien, the amounts received shall be returned to the owner upon notification to the Franchise Tax Board that the residence was the principal residence of an innocent investor and substantiation as specified in subdivision (a) or (b). The notification shall be made in writing and shall be considered a request for the return of the proceeds from the sale of the principal residence.

(2) If the Franchise Tax Board fails to mail notice of denial of the request for the return of the proceeds from the sale of the principal residence within six months after the date the request was submitted, the owner may, prior to the mailing of the notice of denial of the request, consider the request denied and may, in accordance with subdivision (f), bring an action against the Franchise Tax Board for the return of the proceeds from the sale of the principal residence.

(3) Amounts returned pursuant to paragraph (1) shall include interest at the adjusted annual rate established under Section 19521 from the date the amounts are received by the Franchise Tax Board until the date the amounts are returned.

(4) Any amounts required to be returned pursuant to this subdivision shall first be credited against any amount due from the owner (other than an underpayment of tax described in subparagraph (A) of paragraph (2) of subdivision (c)) and the balance, if any, shall be returned to the owner.

(5) No amount may be credited or returned pursuant to this subdivision unless the notification and substantiation described in paragraph (1) occur before the expiration of the one-year period beginning on the date the proceeds are received by the Franchise Tax Board.

(f) (1) If the Franchise Tax Board denies a request for the return of the proceeds from the sale of a principal residence, the owner of the residence may bring an action against the Franchise Tax Board for the return, in whole or in part, of the proceeds the Franchise Tax Board received by levy or in satisfaction of a lien.

(2) The action described in paragraph (1) must be filed within one year from the date the proceeds are received by the Franchise Tax Board

or within 90 days after the Franchise Tax Board notifies the owner of the denial of his or her request for the return of the proceeds from the sale of the principal residence, whichever period expires later.

(3) Except as otherwise provided in this subdivision, an action brought pursuant to this subdivision shall be governed by the provisions of law applicable to an action authorized under Section 19382.

SEC. 208. Section 23684 of the Revenue and Taxation Code is amended to read:

23684. (a) For each taxable year beginning on or after January 1, 2001, and before January 1, 2004, there shall be allowed as a credit against the ''tax,'' as defined in Section 23036, an amount equal to the lesser of 15 percent of the cost that is paid or incurred by a taxpayer, after deducting the value of any other municipal, state, or federal sponsored financial incentives, during the taxable year for the purchase and installation of any solar energy system installed on property in this state, or the applicable dollar amount per rated watt of that solar energy system, as determined by the Franchise Tax Board in consultation with the State Energy Resources Conservation and Development Commission.

(b) For each taxable year beginning on or after January 1, 2004, and before January 1, 2006, there shall be allowed as a credit against the ''tax,'' as defined in Section 23036, an amount equal to the lesser of 7.5 percent of the cost that is paid or incurred by a taxpayer, after deducting the value of any other municipal, state, or federal sponsored financial incentives, during the taxable year for the purchase and installation of any solar energy system installed on property in this state, or the applicable dollar amount per rated watt of that solar energy system, as determined by the Franchise Tax Board in consultation with the State Energy Resources Conservation and Development Commission.

(c) For purposes of this section:

(1) ''Applicable dollar amount'' means four dollars and fifty cents ($4.50) for any taxable year beginning on or after January 1, 2001, and before January 1, 2006.

(2) ''Solar energy system'' means a solar energy device, in the form of either a photovoltaic or wind-driven system, with a peak generating capacity of up to, but not more than, 200 kilowatts, used for the individual function of generating electricity, that is certified by the State Energy Resources Conservation and Development Commission and installed with a five-year warranty against breakdown or undue degradation.

(3) A credit may be allowed under this section with respect to only one solar energy system per each separate legal parcel of property or per each address of the taxpayer in the state.

(4) No credit may be allowed under this section unless the solar energy system is actually used for purposes of producing electricity and is primarily used to meet the taxpayer's own energy needs.

(d) No other credit and no deduction may be allowed under this part for any cost for which a credit is allowed by this section. The basis of the solar energy system shall be reduced by the amount allowed as a credit under subdivision (a) or (b).

(e) No credit may be allowed to any taxpayer engaged in those lines of business described in Sector 22 of the North American Industry Classification System (NAICS) Manual published by the United States Office of Management and Budget, 1997 edition.

(f) If any solar energy system for which a credit is allowed pursuant to this section is thereafter sold or removed from this state within one year from the date the solar energy system is first placed in service in this state, the amount of credit allowed by this section for that solar energy system shall be recaptured by adding that credit amount to the tax of the taxpayer for the taxable year in which the solar energy system is sold or removed.

(g) In the case where the credit allowed by this section exceeds the "tax," the excess may be carried over to reduce the "tax" in the following year, and the succeeding seven years if necessary, until the credit is exhausted.

(h) This section shall remain in effect only until December 1, 2006, and as of that date is repealed.

SEC. 209. Section 32402 of the Revenue and Taxation Code is amended to read:

32402. (a) Except as provided in subdivision (b) no refund shall be approved by the board after three years from the 15th day of the calendar month following the close of the period for which the overpayment was made, or, with respect to determinations made under Article 2 (commencing with Section 32271), Article 3 (commencing with Section 32291), or Article 5 (commencing with Section 32311) of Chapter 6 after six months from the date the determinations become final, or after six months from the date of overpayment, whichever period expires later, unless a claim therefor is filed with the board within that period. No credit shall be approved by the board after the expiration of that period unless a claim for credit is filed with the board within that period, or unless the credit relates to a period for which a waiver is given pursuant to Section 32273.

(b) A refund may be approved by the board for any period for which a waiver is given under Section 32273, if a claim therefor is filed with the board before the expiration of the period agreed upon.

(c) Every claim for refund or credit shall be in writing and shall state the specific grounds upon which the claim is founded.

SEC. 210. Section 730.5 of the Streets and Highways Code is amended to read:

730.5. Any person who by any means, without a permit issued by the department, digs up, cuts down, destroys, prunes, trims, or otherwise injures any tree or shrub on any state highway, rights-of-way, or property shall be liable for a penalty in the sum of ten thousand dollars ($10,000) for each tree so damaged and one thousand dollars ($1,000) for each shrub so damaged; and the department, in the name of the people of the State of California, may recover the penalty in an action at law, in a court of competent jurisdiction, together with the costs and expenses, including attorney and expert fees, incurred in the action and the actual costs incurred because of the damage to any tree or shrub on state property.

SEC. 211. Section 15076.5 of the Unemployment Insurance Code is amended to read:

15076.5. The California Workforce Investment Board shall do all of the following:

(a) Be the lead state agency to establish policies for:

(1) Alleviating adverse conditions that might cause plant closures and, where closures are unavoidable, assisting local efforts to secure alternative employment and retraining opportunities for displaced workers.

(2) Marshaling available state and federal resources to aid workers and communities affected by major plant closures and to foster long-term economic vitality, industrial growth, and job opportunities.

(3) Integrating appropriate activities of the Technology, Trade and Commerce Agency, the Employment Development Department, the Employment Training Panel, the Department of Industrial Relations, the State Department of Education, the Chancellor's Office of the California Community Colleges, and the Governor's Office of Planning and Research with the State Dislocated Worker Unit.

(4) Collection of data and preparation of economic analyses and reporting, intended to provide better and more detailed assessments of future trends within the industrial, commercial, and agricultural sectors of the economy.

(b) Review and comment on the plans for displaced worker assistance programs submitted pursuant to Section 15076.

(c) Recommend to the Governor necessary components of state plans under the jurisdiction of other state offices, departments, or agencies that administer programs appropriate for coordination with dislocated worker assistance programs authorized by this chapter.

(d) Review and make recommendations to the Governor and the Legislature regarding changes needed in current federal and state statutes and programs in order to minimize adverse consequences of

plant closures and promote rapid reemployment of workers and revitalization of communities.

SEC. 212. Section 286 of the Vehicle Code is amended to read:

286. The term ''dealer'' does not include any of the following:

(a) Insurance companies, banks, finance companies, public officials, or any other persons coming into possession of vehicles in the regular course of business, who sell vehicles under a contractual right or obligation, in performance of an official duty, or in authority of any court of law, if the sale is for the purpose of saving the seller from loss or pursuant to the authority of a court.

(b) Persons who sell or distribute vehicles of a type subject to registration or trailers subject to identification pursuant to Section 5014.1 for a manufacturer to vehicle dealers licensed under this code, or who are employed by manufacturers or distributors to promote the sale of vehicles dealt in by those manufacturers or distributors. However, any of those persons who also sell vehicles at retail are vehicle dealers and are subject to this code.

(c) Persons regularly employed as salespersons by vehicle dealers licensed under this code while acting within the scope of that employment.

(d) Persons engaged exclusively in the bona fide business of exporting vehicles or of soliciting orders for the sale and delivery of vehicles outside the territorial limits of the United States, if no federal excise tax is legally payable or refundable on any of the transactions. Persons not engaged exclusively in the bona fide business of exporting vehicles, but who are engaged in the business of soliciting orders for the sale and delivery of vehicles, outside the territorial limits of the United States are exempt from licensure as dealers only if their sales of vehicles produce less than 10 percent of their total gross revenue from all business transacted.

(e) Persons not engaged in the purchase or sale of vehicles as a business, who dispose of any vehicle acquired and used in good faith, for their own personal use, or for use in their business, and not for the purpose of avoiding the provisions of this code.

(f) Persons who are engaged in the purchase, sale, or exchange of vehicles, other than motorcycles subject to identification under this code, that are not intended for use on the highways.

(g) Persons temporarily retained as auctioneers solely for the purpose of disposing of vehicle stock inventories by means of public auction on behalf of the owners at the owners' place of business, or as otherwise approved by the department, if intermediate physical possession or control of, or an ownership interest in, the inventory is not conveyed to the persons so retained.

(h) Persons who are engaged exclusively in the business of purchasing, selling, servicing, or exchanging racing vehicles, parts for racing vehicles, and trailers designed and intended by the manufacturer to be used exclusively for carrying racing vehicles. For purposes of this subdivision, ''racing vehicle'' means a motor vehicle of a type used exclusively in a contest of speed or in a competitive trial of speed that is not intended for use on the highways.

(i) Any person who is a lessor.

(j) Any person who is a renter.

(k) Any salvage pool.

(*l*) Any yacht broker who is subject to the Yacht and Ship Brokers Act (Article 2 (commencing with Section 700) of Chapter 5 of Division 3 of the Harbors and Navigation Code) and who sells used boat trailers in conjunction with the sale of a vessel.

(m) Any licensed automobile dismantler who sells vehicles that have been reported for dismantling as provided in Section 11520.

(n) The Director of Corrections when selling vehicles pursuant to Section 2813.5 of the Penal Code.

(o) (1) Any public or private nonprofit charitable, religious, or educational institution or organization that sells vehicles if all of the following conditions are met:

(A) The institution or organization qualifies for state tax-exempt status under Section 23701d of the Revenue and Taxation Code, and tax-exempt status under Section 501(c)(3) of the federal Internal Revenue Code.

(B) The vehicles sold were donated to the nonprofit charitable, religious, or educational institution or organization.

(C) The vehicles subject to retail sale meet all of the applicable equipment requirements of Division 12 (commencing with Section 24000) and are in compliance with emission control requirements as evidenced by the issuance of a certificate pursuant to subdivision (b) of Section 44015 of the Health and Safety Code. Under no circumstances may any institution or organization transfer the responsibility of obtaining a smog inspection certificate to the buyer of the vehicle.

(D) The proceeds of the sale of the vehicles are retained by that institution or organization for its charitable, religious, or educational purposes.

(2) An institution or organization described in paragraph (1) may sell vehicles on behalf of another institution or organization under the following conditions:

(A) The nonselling institution or organization meets the requirements of paragraph (1).

(B) The selling and nonselling institutions or organizations enter into a signed, written agreement pursuant to subparagraph (A) of paragraph (3) of subdivision (a) of Section 1660.

(C) The selling institution or organization transfers the proceeds from the sale of each vehicle to the nonselling institution or organization within 45 days of the sale. All net proceeds transferred to the nonselling institution or organization shall clearly be identifiable to the sale of a specific vehicle. The selling institution or organization may retain a percentage of the proceeds from the sale of a particular vehicle. However, any retained proceeds shall be used by the selling institution or organization for its charitable, religious, or educational purposes.

(D) At the time of transferring the proceeds, the selling institution or organization shall provide to the nonselling institution or organization, an itemized listing of the vehicles sold and the amount for which each vehicle was sold.

(E) In the event the selling institution or organization cannot complete a retail sale of a particular vehicle, or if the vehicle cannot be transferred as a wholesale transaction to a dealer licensed under this code, the vehicle shall be returned to the nonselling institution or organization and the written agreement revised to reflect that return. Under no circumstances may a selling institution or organization transfer or donate the vehicle to a third party that is excluded from the definition of a dealer under this section.

(3) An institution or organization described in this subdivision shall retain all records required to be retained pursuant to Section 1660.

(p) Any motor club, as defined in Section 12142 of the Insurance Code, that does not arrange or negotiate individual motor vehicle purchase transactions on behalf of its members but refers members to a new motor vehicle dealer for the purchase of a new motor vehicle and does not receive a fee from the dealer contingent upon the sale of the vehicle.

SEC. 213. Section 672 of the Vehicle Code is amended to read:

672. (a) ''Vehicle manufacturer'' is any person who produces from raw materials or new basic components a vehicle of a type subject to registration under this code, off-highway motorcycles subject to identification under this code, or trailers subject to identification pursuant to Section 5014.1, or who permanently alters, for purposes of retail sales, new commercial vehicles by converting the vehicles into housecars that display the insignia of approval required by Section 18056 of the Health and Safety Code and any regulations issued pursuant thereto by the Department of Housing and Community Development. As used in this section, ''permanently alters'' does not include the permanent attachment of a camper to a vehicle.

(b) A vehicle manufacturer that produces a vehicle of a type subject to registration that consists of used or reconditioned parts, for the purposes of the code, is a remanufacturer, as defined in Section 507.8.

(c) Unless a vehicle manufacturer either grants franchises to franchisees in this state, or issues vehicle warranties directly to franchisees in this state or consumers in this state, the manufacturer shall have an established place of business or a representative in this state.

(d) The scope and application of this section are limited to Division 2 (commencing with Section 1500) and Division 5 (commencing with Section 11100).

SEC. 214. Section 5017 of the Vehicle Code is amended to read:

5017. (a) Each identification plate issued under Section 5016 shall bear a distinctive number to identify the equipment, logging vehicle, trailer, semitrailer, or implement of husbandry for which it is issued. The owner, upon being issued a plate, shall attach it to the equipment, logging vehicle, trailer, semitrailer, or implement of husbandry for which it is issued and shall carry the identification certificate issued by the department as provided by Section 4454. It shall be unlawful for any person to attach or use the plate upon any other equipment, logging vehicle, trailer, semitrailer, or implement of husbandry. If the equipment, logging vehicle, trailer, semitrailer, or implement of husbandry is destroyed or the ownership thereof transferred to another person, the person to whom the plate was issued shall, within 10 days, notify the department, on a form approved by the department, that the equipment, logging vehicle, trailer, semitrailer, or implement of husbandry has been destroyed or the ownership thereof transferred to another person.

(b) Upon the implementation of the permanent trailer identification plate program, all trailers except those exempted in paragraphs (1) and (3) of subdivision (a) of Section 5014.1 may be assigned a single permanent plate for identification purposes. Upon issuance of the plate, it shall be attached to the vehicle pursuant to Sections 5200 and 5201.

(c) An identification certificate shall be issued for each trailer or semitrailer assigned an identification plate. The identification certificate shall contain upon its face, the date issued, the name and residence or business address of the registered owner or lessee and of the legal owner, if any, the vehicle identification number assigned to the trailer or semitrailer, and a description of the trailer or semitrailer as complete as that required in the application for registration of the trailer or semitrailer. For those trailers registered under Article 4 (commencing with Section 8050) of Chapter 4 on the effective date of the act adding this sentence that are being converted to the permanent trailer identification program, the identification card may contain only the name of the registrant, and the legal owner's name is not required to be shown. Upon transfer of those trailers, the identification card shall

contain the name of the owner and legal owner, if any. When an identification certificate has been issued to a trailer or semitrailer, the owner or operator shall make that certificate available for inspection by a peace officer upon request.

(d) The application for transfer of ownership of a vehicle with a trailer plate or permanent trailer identification plate shall be made within 10 days of sale of the vehicle. The permanent trailer identification certificate is not a certificate of ownership as described in Section 38076.

SEC. 215. Section 5068 of the Vehicle Code, as added by Section 2 of Chapter 201 of the Statutes of 2001, is amended to read:

5068. (a) (1) Any veterans' organization may apply either individually or with other veterans' organizations to meet the 5,000 application threshold set forth in Section 5060 for special interest plates. An organization that meets the 5,000 minimum application requirement by applying with other organizations pursuant to this subdivision shall be issued a regular license plate bearing a distinctive design or decal approved pursuant to subdivision (a) of Section 5060.

(2) Special interest plates issued pursuant to this section may be issued in a combination of numbers or letters, or both, requested by the owner or lessee of the vehicle, to be displayed in addition to the design or decal authorized under paragraph (1), subject to Section 5105.

(b) In addition to the regular fees for an original registration, a renewal of registration, or a transfer of registration, the following fees shall be paid by individuals applying for a veterans' organization special interest license plate or decal:

(1) Thirty dollars ($30) for the initial issuance of the plates and decals. The plates shall be permanent and shall not be required to be replaced.

(2) Thirty dollars ($30) for each renewal of registration which includes the continued display of the plates or decals.

(3) Fifteen dollars ($15) for transfer of the plates to another vehicle.

(4) Thirty-five dollars ($35) for replacement plates, if they become damaged or unserviceable.

(5) Ten dollars ($10) for replacement decals, if they become damaged or unserviceable.

(6) Forty dollars ($40) for the personalization of the plates, as authorized under paragraph (2) of subdivision (a).

(c) This section shall become operative on July 1, 2002.

SEC. 216. Section 9250.7 of the Vehicle Code is amended to read:

9250.7. (a) (1) A service authority established under Section 22710 may impose a service fee of one dollar ($1) on all vehicles, except vehicles described in subdivision (a) of Section 5014.1, registered to an owner with an address in the county that established the service authority. The fee shall be paid to the department at the time of

registration, or renewal of registration, or when renewal becomes delinquent, except on vehicles that are expressly exempted under this code from the payment of registration fees.

(2) In addition to the one dollar ($1) service fee, and upon the implementation of the permanent trailer identification plate program, and as part of the Commercial Vehicle Registration Act of 2001, all commercial motor vehicles subject to Section 9400.1 registered to an owner with an address in the county that established a service authority under this section shall pay an additional service fee of two dollars ($2).

(b) The department, after deducting its administrative costs, shall transmit, at least quarterly, the net amount collected pursuant to subdivision (a) to the Treasurer for deposit in the Abandoned Vehicle Trust Fund, which is hereby created. All money in the fund is continuously appropriated to the Controller for allocation to a service authority that has an approved abandoned vehicle abatement program pursuant to Section 22710, and for payment of the administrative costs of the Controller. After deduction of its administrative costs, the Controller shall allocate the money in the Abandoned Vehicle Trust Fund to each service authority in proportion to the revenues received from the fee imposed by that authority pursuant to subdivision (a). If any funds received by a service authority pursuant to this section are not expended to abate abandoned vehicles pursuant to an approved abandoned vehicle abatement program that has been in existence for at least two full fiscal years within 90 days of the close of the fiscal year in which the funds were received and the amount of those funds exceeds the amount expended by the service authority for the abatement of abandoned vehicles in the previous fiscal year, a fee imposed pursuant to subdivision (a) shall be suspended for one year, commencing on the July 1 following the Controller's determination pursuant to subdivision (e).

(c) Every service authority that imposes a fee authorized by subdivision (a) shall issue a fiscal yearend report to the Controller on or before October 31 of each year summarizing all of the following:

(1) The total revenues received by the service authority for the previous fiscal year.

(2) The total expenditures by the service authority for the previous fiscal year.

(3) The total number of vehicles abated during the previous fiscal year.

(4) The average cost per abatement during the previous fiscal year.

(5) Any additional, unexpended fee revenues for the service authority for the previous fiscal year.

(d) Each service authority that fails to submit the report required pursuant to subdivision (c) by November 30 of each year shall have the fee suspended for one year pursuant to subdivision (b).

(e) On or before January 1, 2003, and on or before January 1 annually thereafter, the Controller shall review the fiscal yearend reports submitted by each service authority pursuant to subdivision (c) to determine if fee revenues are being utilized in a manner consistent with the service authority's program. If the Controller determines that the use of the fee revenues is not consistent with the service authority's program, or that an excess of fee revenues exists, as specified in subdivision (b), the authority to collect the fee shall be suspended for one year pursuant to subdivision (b). If the Controller determines that a service authority has not submitted a fiscal yearend report as required in subdivision (c), the authorization to collect the service fee shall be suspended for one year pursuant to subdivision (d). The Controller shall inform the Department of Motor Vehicles on or before January 1, 2003, and on or before January 1 annually thereafter, that the authority to collect the fee is suspended. A suspension shall only occur if the service authority has been in existence for at least two full fiscal years and the revenue fee surpluses are in excess of those allowed under this section or the fiscal yearend report has not been submitted.

(f) On or before January 1, 2003, and on or before January 1 annually thereafter, the Controller shall prepare and submit to the Legislature a revenue and expenditure summary for each service authority established under Section 22710 that includes, but is not limited to, all of the following:

(1) The total revenues received by each service authority.

(2) The total expenditures by each service authority.

(3) The unexpended revenues for each service authority.

(4) The total number of vehicle abatements for each service authority.

(5) The average cost per abatement as provided by each service authority to the Controller pursuant to subdivision (c).

(g) The fee imposed by a service authority shall remain in effect only for a period of 10 years from the date that the actual collection of the fee commenced unless the fee is extended pursuant to this subdivision. The fee may be extended in increments of up to 10 years each if the board of supervisors of the county, by a two-thirds vote, and a majority of the cities having a majority of the incorporated population within the county adopt resolutions providing for the extension of the fee.

SEC. 217. Section 12517.5 of the Vehicle Code is amended to read:

12517.5. A person who is employed as a driver of a paratransit vehicle shall not operate that vehicle unless the person meets both of the following requirements:

(a) Has in his or her immediate possession a valid driver's license of a class appropriate to the vehicle driven.

(b) Successfully completes, during each calendar year, four hours of training administered by, or at the direction of, his or her employer or the employer's agent on the safe operation of paratransit vehicles and four hours of training on the special transportation needs of the persons he or she is employed to transport.

This subdivision may be satisfied if the driver receives transportation training or a certificate, or both, pursuant to Section 40082, 40083, 40085, 40085.5, or 40088 of the Education Code.

The employer shall maintain a record of the current training received by each driver in his or her employ and shall present that record on demand to any authorized representative of the Department of the California Highway Patrol.

SEC. 218. Section 12811 of the Vehicle Code, as amended by Section 5 of Chapter 740 of the Statutes of 2001, is amended to read:

12811. (a) (1) When the department determines that the applicant is lawfully entitled to a license, it shall issue to the person a driver's license as applied for. The license shall state the class of license for which the licensee has qualified and shall contain the distinguishing number assigned to the applicant, the date of expiration, the true full name, age, and mailing address of the licensee, a brief description and engraved picture or photograph of the licensee for the purpose of identification, and space for the signature of the licensee.

Each license shall also contain a space for the endorsement of a record of each suspension or revocation thereof.

The department shall use whatever process or processes, in the issuance of engraved or colored licenses, that prohibit, as near as possible, the ability to alter or reproduce the license, or prohibit the ability to superimpose a picture or photograph on the license without ready detection.

(2) In addition to the requirements of paragraph (1), a license issued to a person under 18 years of age shall display the words ''provisional until age 18.''

(b) The department shall provide a form that, when completed, may be carried with the license, by which the licensee may indicate his or her willingness and intent to make an anatomical gift, including the gift of a pacemaker, or his or her refusal to make an anatomical gift pursuant to Section 7150.5 of the Health and Safety Code, and, if applicable, the date that a pacemaker was implanted. The form shall be designed to obtain information sufficient to identify the nature of the anatomical gift and shall include, but not be limited to, all of the following:

(1) A space for the signature of the potential donor.

(2) A space for the signature of one or more witnesses, which should include the spouse, parent, or adult child of the donor or any other next of kin.

(3) A statement sufficient in its terms to meet the requirements of the Uniform Anatomical Gift Act (Chapter 3.5 (commencing with Section 7150) of Part 1 of Division 7 of the Health and Safety Code).

(4) A space for the donor to indicate whether the donor desires to donate tissues or organs, or both, or the donor's entire body for the purpose of transplantation or medical research, or both.

(5) Text informing the donor that the form is a legally binding document, which shall remain binding after death despite any expressed desires of next of kin opposed to the donation.

(6) Text requiring the donor to discuss the decision to donate with family, friends, or any other person who might be directly affected by the donation, particularly those next of kin who might object to the decision and a space for the donor's initials to acknowledge that it is the donor's responsibility to comply with this requirement.

(7) Text informing the donor that rescission of the decision to donate shall require the completion of a new form and the removal of the sticker described in Section 1672.5 from the driver's license or identification card.

(c) (1) The statement required under paragraph (3) of subdivision (b) shall not be deemed to be effective unless both of the following conditions have been met:

(A) The statement is signed by the licensee.

(B) The licensee is 18 years of age or older at the time of signing.

(2) If the licensee cannot sign, the statement may be signed for the licensee, at his or her direction and in his or her presence, in the presence of two witnesses who shall sign the statement in his or her presence.

(d) The department shall present the form provided under subdivision (b), and explain its use, to each applicant for a license or license renewal.

(e) The anatomical gift shall become effective upon the death of the licensee.

(f) No public entity or employee is liable for any loss, detriment, or injury resulting directly or indirectly from false or inaccurate information contained in the form provided pursuant to subdivision (b).

(g) No contract may be let to any nongovernmental entity for the processing of driver's licenses, unless the department receives two or more qualified bids from independent, responsible bidders.

(h) This section shall become inoperative on the date the Director of Finance makes the determination described in subdivision (d) of Section 7152.7 of the Health and Safety Code.

SEC. 219. 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 driver's 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. The impounding agency shall maintain a published telephone number that provides information 24 hours a day regarding the impoundment of vehicles and the rights of a registered owner to request a hearing.

(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 days' 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.

(D) When the vehicle was seized under this section for an offense that does not authorize the seizure of the vehicle.

(E) When the driver reinstates his or her driver's license or acquires a driver's license and proper insurance.

(2) No vehicle shall be released pursuant to this subdivision without 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 days' 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 15th day of impoundment. Neither the impounding authority nor any person having possession of the vehicle shall collect from the legal owner of the type specified in paragraph (1) or the legal owner's agent any administrative charges imposed pursuant to Section 22850.5 unless the legal owner voluntarily requested a poststorage hearing.

(3) The legal owner or the legal owner's agent presents either lawful foreclosure documents or an affidavit of repossession for the vehicle, and a security agreement or title showing proof of legal ownership for the vehicle. Any documents presented may be originals, photocopies, or facsimile copies, or may be transmitted electronically. The impounding agency may require the agent of the legal owner to produce a photocopy or facsimile copy of its repossession agency license or registration issued pursuant to Chapter 11 (commencing with Section 7500) of Division 3 of the Business and Professions Code, or to demonstrate, to the satisfaction of the impounding agency, that the agent is exempt from licensure pursuant to Section 7500.2 or 7500.3 of the Business and Professions Code.

No administrative costs authorized under subdivision (a) of Section 22850.5 shall be charged to the legal owner of the type specified in paragraph (1) who redeems the vehicle unless the legal owner voluntarily requests a poststorage hearing. No city, county, city or county, or state agency shall require a legal owner or a legal owner's agent to request a poststorage hearing as a requirement for release of the vehicle to the legal owner or the legal owner's agent. The impounding agency shall not require any documents other than those specified in this paragraph.

As used in this paragraph, ''foreclosure documents'' means an ''assignment'' as that term is defined in subdivision (o) of Section 7500.1 of the Business and Professions Code.

(g) (1) A legal owner or the legal owner's agent that obtains release of the vehicle pursuant to subdivision (f) may not release the vehicle to the registered owner of 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 may 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 may 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.

(j) The impounding agency shall not be liable to the registered owner for the improper release of the vehicle to the legal owner or the legal owner's agent provided the release complies with the provisions of this section.

SEC. 220. Section 14602.7 of the Vehicle Code is amended to read:

14602.7. (a) A magistrate presented with the affidavit of a peace officer establishing reasonable cause to believe that a vehicle, described by vehicle type and license number, was an instrumentality used in the peace officer's presence in violation of Sections 2800.1, 2800.2, 2800.3, or 23103, shall issue a warrant or order authorizing any peace officer to immediately seize and cause the removal of the vehicle. The warrant or court order may be entered into a computerized database. A vehicle so impounded may be impounded for a period not to exceed 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 and providing the owner with a copy of the warrant or court order. Failure to notify the legal owner within two working days shall prohibit the impounding agency from charging for more than 15 days impoundment when a legal owner redeems the impounded vehicle.

(b) (1) An impounding agency shall release a vehicle to the registered owner or his or her agent prior to the end of the impoundment period and without the permission of the magistrate authorizing the vehicle's seizure 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 the business establishment, including a parking service or repair garage.

(C) When the registered owner of the vehicle causes a peace officer to reasonably believe, based on the totality of the circumstances, that the registered owner was not the driver who violated Section 2800.1, 2800.2, or 2800.3, the agency shall immediately release the vehicle to the registered owner or his or her agent.

(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 the court.

(c) (1) Whenever a vehicle is impounded under this section, the magistrate ordering the storage shall provide the vehicle's registered and legal owners of record, or their agents, with the opportunity for a poststorage hearing to determine the validity of the storage.

(2) A notice of the storage shall be mailed or personally delivered to the registered and legal owners within 48 hours after issuance of the warrant or court order, excluding weekends and holidays, by the person or agency executing the warrant or court order, and shall include all of the following information:

(A) The name, address, and telephone number of the agency providing the notice.

(B) The location of the place of storage and a description of the vehicle, which shall include, if available, the name or make, the manufacturer, the license plate number, and the mileage of the vehicle.

(C) A copy of the warrant or court order and the peace officer's affidavit, as described in subdivision (a).

(D) A statement that, in order to receive their poststorage hearing, the owners, or their agents, are required to request the hearing from the magistrate issuing the warrant or court order in person, in writing, or by telephone, within 10 days of the date of the notice.

(3) The poststorage hearing shall be conducted within two court days after receipt of the request for the hearing.

(4) At the hearing, the magistrate may order the vehicle released if he or she finds any of the circumstances described in subdivision (b) or (e) that allow release of a vehicle by the impounding agency. The magistrate may also consider releasing the vehicle when the continued impoundment will cause undue hardship to persons dependent upon the vehicle for employment or to a person with a community property interest in the vehicle.

(5) Failure of either the registered or legal owner, or his or her agent, to request or to attend a scheduled hearing satisfies the poststorage hearing requirement.

(6) The agency employing the peace officer who caused the magistrate to issue the warrant or court order shall be responsible for the costs incurred for towing and storage if it is determined in the poststorage hearing that reasonable grounds for the storage are not established.

(d) 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.

(e) 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 the impoundment period and without the permission of the magistrate authorizing the seizure of the vehicle 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 financial 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 15th day of impoundment. Neither the impounding authority nor any person having possession of the vehicle shall collect from the legal owner of the type specified in paragraph (1) or the legal owner's agent

any administrative charges imposed pursuant to Section 22850.5 unless the legal owner voluntarily requested a poststorage hearing.

(3) The legal owner or the legal owner's agent presents either lawful foreclosure documents or a certificate of repossession and a security agreement or title showing proof of legal ownership for the vehicle. Any documents presented may be originals, photocopies, or facsimile copies, or may be transmitted electronically. The impounding agency may require the agent of the legal owner to produce a photocopy or facsimile copy of its repossession agency license or registration issued pursuant to Chapter 11 (commencing with Section 7500) of Division 3 of the Business and Professions Code, or to demonstrate, to the satisfaction of the impounding agency, that the agent is exempt from licensure pursuant to Section 7500.2 or 7500.3 of the Business and Professions Code.

No administrative costs authorized under subdivision (a) of Section 22850.5 shall be charged to the legal owner of the type specified in paragraph (1), who redeems the vehicle unless the legal owner voluntarily requests a poststorage hearing. No city, county, city and county, or state agency shall require a legal owner or a legal owner's agent to request a poststorage hearing as a requirement for release of the vehicle to the legal owner or the legal owner's agent. The impounding agency shall not require any documents other than those specified in this paragraph.

As used in this paragraph, ''foreclosure documents'' means an ''assignment'' as that term is defined in subdivision (o) of Section 7500.1 of the Business and Professions Code.

(f) (1) A legal owner or the legal owner's agent that obtains release of the vehicle pursuant to subdivision (e) shall not release the vehicle to the registered owner of the vehicle or any agents of the registered owner, unless a registered owner is a rental car agency, until the termination of the 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 the administrative charges authorized under Section 22850.5 that were incurred by the legal owner in connection with obtaining the custody of the vehicle.

(g) (1) A vehicle impounded and seized under subdivision (a) shall be released to a rental car agency prior to the end of the impoundment period 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 who used the vehicle that was seized to evade a police officer 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 and who evaded the peace officer 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.

(h) 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 and the administrative charges authorized under Section 22850.5 and any parking fines, penalties, and administrative fees incurred by the registered owner.

(i) (1) This section does not apply to vehicles abated under the Abandoned Vehicle Abatement Program pursuant to Sections 22660 to 22668, inclusive, and Section 22710, or to vehicles impounded for investigation pursuant to Section 22655, or to vehicles removed from private property pursuant to Section 22658.

(2) This section does not apply to abandoned vehicles removed pursuant to Section 22669 that are determined by the public agency to have an estimated value of three hundred dollars ($300) or less.

(j) The impounding agency shall not be liable to the registered owner for the improper release of the vehicle to the legal owner or the legal owner's agent provided the release complies with the provisions of this section.

SEC. 221. Section 15302 of the Vehicle Code is amended to read:

15302. No driver of a commercial motor vehicle may operate a commercial motor vehicle for the rest of his or her life if convicted of more than one violation of any of the following:

(a) Driving a commercial motor vehicle while under the influence of alcohol or a controlled substance.

(b) Leaving the scene of an accident involving a commercial motor vehicle operated by the driver.

(c) Using a commercial motor vehicle in the commission of more than one felony arising out of separate occasions of arrest or citation.

(d) Driving a commercial motor vehicle when the driver's commercial driver's license is revoked, suspended, or canceled based on the driver's operation of a commercial motor vehicle or when the driver

is disqualified from operating a commercial motor vehicle based on the driver's operation of a commercial motor vehicle.

(e) Causing a fatality involving conduct defined pursuant to subparagraph (E) of paragraph (1) of subsection (c) of Title 49 of Section 31310 of the United States Code.

(f) A violation of Section 2800.1, 2800.2, or 2800.3 that involves a commercial motor vehicle.

(g) Any combination of the above violations.

SEC. 222. Section 15620 of the Vehicle Code is amended to read:

15620. (a) A parent, legal guardian, or other person responsible for a child who is 6 years of age or younger may not leave that child inside a motor vehicle without being subject to the supervision of a person who is 12 years of age or older, under either of the following circumstances:

(1) Where there are conditions that present a significant risk to the child's health or safety.

(2) When the vehicle's engine is running or the vehicle's keys are in the ignition, or both.

(b) A violation of subdivision (a) is an infraction punishable by a fine of one hundred dollars ($100), except that the court may reduce or waive the fine if the defendant establishes to the satisfaction of the court that he or she is economically disadvantaged and the court, instead, refers the defendant to a community education program that includes education on the dangers of leaving young children unattended in motor vehicles, and provides certification of completion of that program. Upon completion of that program, the defendant shall provide that certification to the court. The court may, at its discretion, require any defendant described in this section to attend an education program on the dangers of leaving young children unattended in motor vehicles.

(c) Nothing in this section shall preclude prosecution under both this section and Section 192 of the Penal Code, or Section 273a of that code, or any other provision of law.

(d) (1) Subdivision (b) and Section 40000.1 do not apply if an unattended child is injured or medical services are rendered on that child because of a violation described in subdivision (a).

(2) Nothing in this subdivision precludes prosecution under any other provision of law.

SEC. 223. Section 23580 of the Vehicle Code is amended to read:

23580. (a) If any person is convicted of a violation of Section 23152 or 23153 and the offense was a second or subsequent offense punishable under Section 23540, 23546, 23550, 23550.5, 23560, or 23566, the court shall require that any term of imprisonment that is imposed include at least one period of not less than 48 consecutive hours of imprisonment or, in the alternative and notwithstanding Section 4024.2 of the Penal Code, that the person serve not less than 10 days of community service.

(b) Notwithstanding any other provision of law, except Section 2900.5 of the Penal Code, unless the court expressly finds in the circumstances that the punishment inflicted would be cruel or unusual punishment prohibited by Section 17 of Article I of the California Constitution, no court or person to whom a person is remanded for execution of sentence shall release, or permit the release of, a person from the requirements of subdivision (a), including, but not limited to, any work-release program, weekend service of sentence program, diversion or treatment program, or otherwise.

(c) For the purposes of this section, ''imprisonment'' means confinement in a jail, in a minimum security facility, or in an inpatient rehabilitation facility, as provided in Part 1309 (commencing with Section 1309.1) of Title 23 of the Code of Federal Regulations.

SEC. 224. Section 10013 of the Water Code is amended to read:

10013. The department, as a part of the preparation of the department's Bulletin 160-03, shall include in the California Water Plan a report on the development of regional and local water projects within each hydrologic region of the state, as described in the department's Bulletin 160-98, to improve water supplies to meet municipal, agricultural, and environmental water needs and minimize the need to import water from other hydrologic regions. The report shall include, but is not limited to, regional and local water projects that use technologies for desalting brackish groundwater and ocean water, reclaiming water for use within the community generating the water to be reclaimed, the construction of improved potable water treatment facilities so that water from sources determined to be unsuitable can be used, and the construction of dual water systems and brine lines, particularly in connection with new developments and when replacing water piping in developed or redeveloped areas.

SEC. 225. Section 10610.2 of the Water Code is amended to read:

10610.2. (a) The Legislature finds and declares all of the following:

(1) The waters of the state are a limited and renewable resource subject to ever-increasing demands.

(2) 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.

(3) A long-term, reliable supply of water is essential to protect the productivity of California's businesses and economic climate.

(4) 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.

(5) Public health issues have been raised over a number of contaminants that have been identified in certain local and imported water supplies.

(6) Implementing effective water management strategies, including groundwater storage projects and recycled water projects, may require specific water quality and salinity targets for meeting groundwater basins water quality objectives and promoting beneficial use of recycled water.

(7) Water quality regulations are becoming an increasingly important factor in water agencies' selection of raw water sources, treatment alternatives, and modifications to existing treatment facilities.

(8) Changes in drinking water quality standards may also impact the usefulness of water supplies and may ultimately impact supply reliability.

(9) The quality of source supplies can have a significant impact on water management strategies and supply reliability.

(b) 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 existing and future demands for water.

SEC. 226. 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 described in subdivision (a). If groundwater is identified as an existing or planned source of water available to the supplier, all of the following information shall be included in the plan:

(1) A copy of any groundwater management plan adopted by the urban water supplier, including plans adopted pursuant to Part 2.75 (commencing with Section 10750), or any other specific authorization for groundwater management.

(2) A description of any groundwater basin or basins from which the urban water supplier pumps groundwater. For those basins for which a court or the board has adjudicated the rights to pump groundwater, a copy of the order or decree adopted by the court or the board and a description of the amount of groundwater the urban water supplier has the legal right to pump under the order or decree. For basins that have

not been adjudicated, information as to whether the department has identified the basin or basins as overdrafted or has projected that the basin will become overdrafted if present management conditions continue, in the most current official departmental bulletin that characterizes the condition of the groundwater basin, and a detailed description of the efforts being undertaken by the urban water supplier to eliminate the long-term overdraft condition.

(3) A detailed description and analysis of the location, amount, and sufficiency of groundwater pumped by the urban water supplier for the past five years. The description and analysis shall be based on information that is reasonably available, including, but not limited to, historic use records.

(4) A detailed description and analysis of the amount and location of groundwater that is projected to be pumped by the urban water supplier. The description and analysis shall be based on information that is reasonably available, including, but not limited to, historic use records.

(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 supplement or 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 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) Water survey programs for single-family residential and multifamily residential customers.

(B) Residential plumbing retrofit.

(C) System water audits, leak detection, and repair.

(D) Metering with commodity rates for all new connections and retrofit of existing connections.

(E) Large landscape conservation programs and incentives.

(F) High-efficiency washing machine rebate programs.

(G) Public information programs.

(H) School education programs.

(I) Conservation programs for commercial, industrial, and institutional accounts.

(J) Wholesale agency programs.

(K) Conservation pricing.

(L) Water conservation coordinator.

(M) Water waste prohibition.

(N) Residential ultra-low-flush toilet replacement programs.

(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 the 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, that 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) Include a description of all water supply projects and water supply programs that may be undertaken by the urban water supplier to meet the total projected water use as established pursuant to subdivision (a) of Section 10635. The urban water supplier shall include a detailed description of expected future projects and programs, other than the demand management programs identified pursuant to paragraph (1) of subdivision (f), that the urban water supplier may implement to increase the amount of the water supply available to the urban water supplier in average, single-dry, and multiple-dry water years. The description shall identify specific projects and include a description of the increase in water supply that is expected to be available from each project. The description shall include an estimate with regard to the implementation timeline for each project or program.

(i) 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. 227. Section 11912 of the Water Code is amended to read:

11912. The department, in fixing and establishing prices, rates, and charges for water and power, shall include as a reimbursable cost of any state water project an amount sufficient to repay all costs incurred by the department, directly or by contract with other agencies, for the preservation of fish and wildlife and determined to be allocable to the costs of the project works constructed for the development of that water and power, or either. Costs incurred for the enhancement of fish and wildlife or for the development of public recreation shall not be included in the prices, rates, and charges for water and power, and shall be nonreimbursable costs.

SEC. 228. Section 13627.4 of the Water Code is amended to read:

13627.4. (a) The civil liability described in Section 13627.1, 13627.2, or 13627.3 may be administratively imposed in accordance with Article 2.5 (commencing with Section 13323) of Chapter 5, except

that the executive director shall issue the complaint with review by the state board.

(b) A remedy under this chapter is in addition to, and does not supersede or limit, any other remedy, civil or criminal, except that no liability is recoverable against an operator under subdivision (c) of Section 13627.1 for a violation for which liability is recovered against the operator under Section 13350 or 13385.

SEC. 229. Section 213.5 of the Welfare and Institutions Code is amended to read:

213.5. (a) After a petition has been filed pursuant to Section 311 to declare a child a dependent child of the juvenile court, and until the time that the petition is dismissed or dependency is terminated, upon application in the manner provided by Section 527 of the Code of Civil Procedure, the juvenile court may issue ex parte orders (1) enjoining any person from molesting, attacking, striking, sexually assaulting, stalking, or battering the child or any other child in the household; (2) excluding any person from the dwelling of the person who has care, custody, and control of the child; and (3) enjoining any person from behavior, including contacting, threatening, or disturbing the peace of the child, that the court determines is necessary to effectuate orders under paragraph (1) or (2). A court issuing an ex parte order pursuant to this subdivision may simultaneously issue an ex parte order enjoining any person from contacting, threatening, molesting, attacking, striking, sexually assaulting, stalking, battering, or disturbing the peace of any parent, legal guardian, or current caretaker of the child, regardless of whether the child resides with that parent, legal guardian, or current caretaker, upon application in the manner provided by Section 527 of the Code of Civil Procedure.

(b) After a petition has been filed pursuant to Section 601 or 602 to declare a child a ward of the juvenile court, and until the time that the petition is dismissed or wardship is terminated, upon application in the manner provided by Section 527 of the Code of Civil Procedure, the juvenile court may issue ex parte orders (1) enjoining any person from molesting, attacking, threatening, sexually assaulting, stalking, or battering the child; (2) excluding any person from the dwelling of the person who has care, custody, and control of the child; or (3) enjoining the child from contacting, threatening, stalking, or disturbing the peace of any person the court finds to be at risk from the conduct of the child, or with whom association would be detrimental to the child.

(c) In the case in which a temporary restraining order is granted without notice, the matter shall be made returnable on an order requiring cause to be shown why the order should not be granted, on the earliest day that the business of the court will permit, but not later than 15 days or, if good cause appears to the court, 20 days from the date the

temporary restraining order is granted. The court may, on the motion of the person seeking the restraining order, or on its own motion, shorten the time for service on the person to be restrained of the order to show cause. Any hearing pursuant to this section may be held simultaneously with any regularly scheduled hearings held in proceedings to declare a child a dependent child or ward of the juvenile court pursuant to Section 300, 601, or 602, or subsequent hearings regarding the dependent child or ward.

(d) The juvenile court may issue, upon notice and a hearing, any of the orders set forth in subdivisions (a), (b), and (c). Any restraining order granted pursuant to this subdivision shall remain in effect, in the discretion of the court, not to exceed three years, unless otherwise terminated by the court, extended by mutual consent of all parties to the restraining order, or extended by further order of the court on the motion of any party to the restraining order.

(e) (1) The juvenile court may issue an order made pursuant to subdivision (a), (c), or (d) excluding a person from a residence or dwelling. This order may be issued for the time and on the conditions that the court determines, regardless of which party holds legal or equitable title or is the lessee of the residence or dwelling.

(2) The court may issue an order under paragraph (1) only on a showing of all of the following:

(A) Facts sufficient for the court to ascertain that the party who will stay in the dwelling has a right under color of law to possession of the premises.

(B) That the party to be excluded has assaulted or threatens to assault the other party or any other person under the care, custody, and control of the other party, or any minor child of the parties or of the other party.

(C) That physical or emotional harm would otherwise result to the other party, to any person under the care, custody, and control of the other party, or to any minor child of the parties or of the other party.

(f) Any order issued pursuant to subdivision (a), (b), (c), or (d) shall state on its face the date of expiration of the order.

(g) The juvenile court shall order any designated person or attorney to mail a copy of any order, or extension, modification, or termination thereof, granted pursuant to subdivision (a), (b), (c), or (d), by the close of the business day on which the order, extension, modification, or termination was granted, and any subsequent proof of service thereof, to each local law enforcement agency designated by the person seeking the restraining order or his or her attorney having jurisdiction over the residence of the person who has care, custody, and control of the child and other locations where the court determines that acts of domestic violence or abuse against the child or children are likely to occur. Each appropriate law enforcement agency shall make available through an

existing system for verification, information as to the existence, terms, and current status of any order issued pursuant to subdivision (a), (b), (c), or (d) to any law enforcement officer responding to the scene of reported domestic violence or abuse.

(h) Any willful and knowing violation of any order granted pursuant to subdivision (a), (b), (c), or (d) shall be a misdemeanor punishable under Section 273.65 of the Penal Code.

(i) A juvenile court restraining order related to domestic violence issued by a court pursuant to this section shall be issued on forms adopted by the Judicial Council of California and that have been approved by the Department of Justice pursuant to subdivision (i) of Section 6380 of the Family Code. However, the fact that an order issued by a court pursuant to this section was not issued on forms adopted by the Judicial Council and approved by the Department of Justice shall not, in and of itself, make the order unenforceable.

(j) Information on any juvenile court restraining order related to domestic violence issued by a court pursuant to this section shall be transmitted to the Department of Justice in accordance with subdivision (b) of Section 6380 of the Family Code.

(k) (1) Prior to a hearing on the issuance or denial of an order under this part, a search shall be conducted as described in subdivision (a) of Section 6306 of the Family Code.

(2) Prior to deciding whether to issue an order under this part, the court shall consider the following information obtained pursuant to a search conducted under paragraph (1): any conviction for a violent felony specified in Section 667.5 of the Penal Code or a serious felony specified in Section 1192.7 of the Penal Code; any misdemeanor conviction involving domestic violence, weapons, or other violence; any outstanding warrant; parole or probation status; any prior restraining order; and any violation of a prior restraining order.

(3) (A) If the results of the search conducted pursuant to paragraph (1) indicate that an outstanding warrant exists against the subject of the search, the court shall order the clerk of the court to immediately notify, by the most effective means available, appropriate law enforcement officials of any information obtained through the search that the court determines is appropriate. The law enforcement officials so notified shall take all actions necessary to execute any outstanding warrants or any other actions, as appropriate and as soon as practicable.

(B) If the results of the search conducted pursuant to paragraph (1) indicate that the subject of the search is currently on parole or probation, the court shall order the clerk of the court to immediately notify, by the most effective means available, the appropriate parole or probation officer of any information obtained through the search that the court determines is appropriate. The parole or probation officer so notified

shall take all actions necessary to revoke any parole or probation, or any other actions, with respect to the subject person, as appropriate and as soon as practicable.

SEC. 230. Section 727.4 of the Welfare and Institutions Code is amended to read:

727.4. (a) Notice of any hearing pursuant to Section 727, 727.2, or 727.3 shall be mailed by the probation officer to the minor, the minor's parent or guardian, any adult provider of care to the minor including, but not limited to, foster parents, relative caregivers, preadoptive parents, community care facility, or foster family agency and to the counsel of record if the counsel of record was not present at the time that the hearing was set by the court, by first-class mail addressed to the last known address of the person to be notified, or shall be personally served on those persons, not earlier than 30 days nor later than 15 days preceding the date of the hearing. The notice shall contain a statement regarding the nature of the status review or permanency planning hearing and any change in the custody or status of the minor being recommended by the probation department. The notice shall also include a statement informing the foster parents, relative caregivers, or preadoptive parents that he or she may attend all hearings or may submit any information he or she deems relevant to the court in writing. The foster parents, relative caregiver, and preadoptive parents are entitled to notice and opportunity to be heard but need not be made parties to the proceedings. Proof of notice shall be filed with the court.

(b) At least 10 calendar days prior to each status review and permanency planning hearing, after the hearing during which the court orders that the care, custody and control of the minor to be under the supervision of the probation officer for placement pursuant to subdivision (a) of Section 727, the probation officer shall file a social study report with the court, pursuant to the requirements listed in Section 706.5.

(c) The probation department shall inform the minor, the minor's parent or guardian, and all counsel of record that a copy of the social study prepared for the hearing will be available 10 days prior to the hearing and may be obtained from the probation officer.

(d) As used in Article 15 (commencing with Section 625) to Article 18 (commencing with Section 725), inclusive:

(1) ''Foster care'' means residential care provided in any of the settings described in Section 11402.

(2) ''At risk of entering foster care'' means that conditions within a minor's family may necessitate his or her entry into foster care unless those conditions are resolved.

(3) ''Preadoptive parent'' means a licensed foster parent who has been approved for adoption by the State Department of Social Services when it is acting as an adoption agency or by a licensed adoption agency.

(4) ''Date of entry into foster care'' means the date that is 60 days after the date on which the minor was removed from his or her home, unless one of the exceptions below applies:

(A) If the minor is detained pending foster care placement, and remains detained for more than 60 days, then the date of entry into foster care means the date the court adjudges the minor a ward and orders the minor placed in foster care under the supervision of the probation officer.

(B) If, before the minor is placed in foster care, the minor is committed to a ranch, camp, school, or other institution pending placement, and remains in that facility for more than 60 days, then the ''date of entry into foster care'' is the date the minor is physically placed in foster care.

(C) If at the time the wardship petition was filed, the minor was a dependent of the juvenile court and in out-of-home placement, then the ''date of entry into foster care'' is the earlier of the date the juvenile court made a finding of abuse or neglect, or 60 days after the date on which the child was removed from his or her home.

(5) ''Reasonable efforts'' means:

(A) Efforts made to prevent or eliminate the need for removing the minor from the minor's home;

(B) Efforts to make it possible for the minor to return home, including, but not limited to, case management, counseling, parenting training, mentoring programs, vocational training, educational services, substance abuse treatment, transportation, and therapeutic day services; and

(C) Efforts to complete whatever steps are necessary to finalize a permanent plan for the minor.

(6) ''Relative'' means an adult who is related to the minor by blood, adoption, or affinity within the fifth degree of kinship including stepparents, stepsiblings, and all relatives whose status is preceded by the words ''great,'' ''great-great,'' ''grand,'' or the spouse of any of these persons even if the marriage was terminated by death or dissolution.

(7) ''Hearing'' means a noticed proceeding with findings and orders that are made on a case-by-case basis, heard by either of the following:

(A) A judicial officer, in a courtroom, recorded by a court reporter.

(B) An administrative panel, provided that the hearing is a status review hearing and that the administrative panel meets the following conditions:

(i) The administrative review shall be open to participation by the minor and parents or legal guardians and all those persons entitled to notice under subdivision (a).

(ii) The minor and his or her parents or legal guardians receive proper notice as required in subdivision (a).

(iii) The administrative review panel is composed of persons appointed by the presiding judge of the juvenile court, the membership of which shall include at least one person who is not responsible for the case management of, or delivery of services to, the minor or the parents who are the subjects of the review.

(iv) The findings of the administrative review panel shall be submitted to the juvenile court for the court's approval and shall become part of the official court record.

SEC. 231. Section 903.5 of the Welfare and Institutions Code is amended to read:

903.5. In addition to the requirements of Section 903.4, and notwithstanding any other provision of law, the parent or other person legally liable for the support of a minor, who voluntarily places the minor in 24-hour out-of-home care, shall be liable for the cost of the minor's care, support, and maintenance when the minor receives Aid to Families with Dependent Children-Foster Care (AFDC-FC), Supplemental Security Income-State Supplementary Program (SSI-SSP), or county-only funds. As used in this section, ''parent'' includes any person specified in Section 903. Whenever the county welfare department or the placing agency determines that a court order would be advisable and effective, the department or the agency shall notify the local child support agency, or the financial evaluation officer designated pursuant to Section 903.45, who shall proceed pursuant to Section 903.4 or 903.45.

SEC. 232. Section 9320 of the Welfare and Institutions Code is amended to read:

9320. (a) The department shall establish a task force to study and make recommendations, including action steps and timelines, on the improvement of legal services delivery to senior citizens in California by exploring the following matters:

(1) Actions to ensure that all area agencies on aging allocate sufficient funding to local legal assistance providers. Actions may include, but not be limited to, the establishment of a minimum percentage of area agency on aging funding for legal assistance providers in California.

(2) Ways to ensure uniformity in the provision of legal services throughout the state, including, but not limited to, possible development of uniform statewide standards for the delivery of legal services in California.

(3) Measures to evaluate and monitor local legal assistance programs to ensure compliance with the federal Older Americans Act and its implementing regulations.

(4) Establishment of statewide reporting system to assess the effectiveness of a legal assistance program for seniors in the state.

(5) The possible establishment of a statewide legal hotline for seniors.

(6) Opportunities to enhance communications among the various service providers and to ensure efficient service delivery involving local programs and a statewide hotline, should it come into existence.

(7) Opportunities for joint training for senior legal services advocates around the state.

(8) Other states' legal services delivery networks.

(b) The director shall serve on or appoint a representative to the task force, and shall appoint the following additional members:

(1) One member of the Legislature or his or her representative.

(2) Three legal service director representatives of existing legal service programs for seniors.

(3) The Legal Services Developer at the California Department of Aging.

(4) Two area agency on aging directors.

(5) Two representatives of senior advocacy organizations.

(6) A representative of the State Bar of California.

(c) The Member of the Legislature, or his or her representative, shall serve on the task force to the extent that the service is compatible with the duties of a Member of the Legislature.

(d) The task force shall report and make its recommendations to the Legislature on or before September 1, 2002.

SEC. 233. Section 9681 of the Welfare and Institutions Code is amended to read:

9681. (a) Funding of projects pursuant to this article shall be subject to the appropriation of funds by the Legislature in the Budget Act or another statute.

(b) Appropriations made pursuant to subdivision (a) shall be expended to fund grants to eligible local public agencies or nonprofit organizations in an amount not to exceed one hundred fifty thousand dollars ($150,000) each.

SEC. 234. Section 11203 of the Welfare and Institutions Code is amended to read:

11203. (a) During those times as the federal government provides funds for the care of a needy relative with whom a needy child or needy children are living, aid to the child or children for any month includes aid to meet the needs of that relative, if money payments are made with respect to the child or children for that month, and if the relative is not receiving aid under Chapter 3 (commencing with Section 12000) or 5 (commencing with Section 13000) of this part or Part A of Title XVI of the Social Security Act for that month. Needy relatives under this

chapter include only natural or adoptive parents, the spouse of a natural or adoptive parent, and other needy caretaker relatives.

(b) (1) The parent or parents shall be considered living with the needy child or needy children for a period of up to 180 consecutive days of the needy child's or children's absence from the family assistance unit and the parent or parents shall be eligible for services under this chapter including services funded under Sections 15204.2 and 15204.8 if all of the following conditions are met:

(A) The child has been removed from the parent or parents and placed in out-of-home care.

(B) When the child was removed from the parent or parents, the family was receiving aid under this section.

(C) The county has determined that the provision of services under this chapter including services funded under Sections 15204.2 and 15204.8, is necessary for reunification.

(2) For purposes of this subdivision, the parent or parents shall not be eligible for any payment of aid under Section 11450.

(c) The department shall revise its state Temporary Assistance for Needy Families plan to incorporate the provisions of subdivision (b) and to incorporate the good cause exception provisions authorized by paragraph (10) of subsection (a) of Section 608 of Title 42 of the United States Code with respect to cases where reunification occurs after 180 consecutive days from the date of the removal of the child or children from the home.

SEC. 235. Section 14087.961 of the Welfare and Institutions Code is amended to read:

14087.961. Governance of the commission shall be vested in a governing body consisting of 13 members, each of whom shall have a fiduciary duty to act in the best interest of the commission and the local initiative, nominated by the following entities, and appointed by the board of supervisors:

(a) Four members shall be nominated by the board of supervisors to represent the County of Los Angeles. No more than one member nominated by the board of supervisors shall be a member of the board of supervisors and each remaining member nominated by the board of supervisors shall possess experience as a health care administrator or as a health care provider.

(b) One member shall be a representative of private hospitals that have Medi-Cal disproportionate share status, or if that status no longer exists, that serve an equivalent patient population, who shall be nominated by the Hospital Council of Southern California.

(c) One member shall be a representative of private hospitals that do not have Medi-Cal disproportionate share status, who shall be nominated by the Hospital Council of Southern California.

(d) One member shall be a representative of free and community clinics, who shall be nominated by an entity or group recognized by the board of supervisors as representing free and community clinics.

(e) One member shall be a representative of federally qualified health centers, who shall be nominated by an entity or group recognized by the board of supervisors as representing federally qualified health centers, or if that status no longer exists, an equivalent group of health centers.

(f) One member shall be a physician representative, who shall be nominated by the Los Angeles County Medical Association, in consultation with other physician associations within the county.

(g) One member shall be a representative of Knox–Keene licensed prepaid health plans, who shall be nominated by the California Association of Health Plans.

(h) One member shall represent health care consumers, and at the time of being nominated, shall be a health care consumer. The initial nominee shall be nominated by the working group on the role of the consumer for the first nominee, and thereafter, by a process determined by the community advisory committee under which only health care consumers may nominate and vote for appointees.

(i) One member shall be a health care consumer advocate, who shall represent health care consumers. The initial nominee shall be nominated by the working group on the role of the consumer for the first nominee, and thereafter, by a process determined by the community advisory committee under which only health care consumers may nominate and vote for appointees.

(j) One member shall be a children's health care provider representative, who shall be nominated by the Children's Planning Council as the coordinating entity for organizations and agencies providing direct services to, or advocacy for, children and families within the county.

SEC. 236. Section 14103.5 of the Welfare and Institutions Code is amended to read:

14103.5. (a) A noncontract hospital that is in a closed health facility planning area is not eligible to receive reimbursement for services provided to a Medi-Cal beneficiary, unless the noncontract hospital provides necessary emergency services to a Medi-Cal beneficiary who is in a life threatening or emergency situation, but cannot be sufficiently stabilized in order to facilitate transport to a contracting hospital.

(b) A noncontract hospital in a closed health facility planning area that provides necessary emergency services to a Medi-Cal beneficiary who is in a life threatening or emergency situation, but cannot be sufficiently stabilized in order to facilitate transport to a contracting hospital, may only be reimbursed for those necessary emergency services when it obtains an approved treatment authorization request.

(c) Any treatment authorization request submitted for any service classified as a necessary emergency service, which would have been subject to prior authorization had it not been so classified, shall be supported by the attending physician's statement that does all of the following:

(1) Describes in detail the nature of the emergency or life threatening situation, including relevant clinical information about the patient's condition.

(2) States why the patient could not be sufficiently stabilized for transport to a contracting hospital and why the necessary emergency services rendered were considered to be immediately required. A mere statement that an emergency existed is not sufficient. The treatment authorization request shall be comprehensive enough to support a finding that an emergency or a life threatening situation existed.

(3) Contains the signature of the attending physician who had direct knowledge of the emergency described in the statement.

(d) For the purposes of this section, "necessary emergency services" are limited to those health services medically necessary for alleviation of severe pain or immediate diagnosis and treatment of unforeseen medical conditions which, if not immediately diagnosed and treated, could lead to significant disability or death.

(e) For the purposes of this section, a "noncontract hospital" means a hospital that has not contracted with the department pursuant to Article 2.6 (commencing with Section 14081) for the provision of inpatient services to Medi-Cal beneficiaries.

(f) Nothing in this section shall be construed as limiting reimbursement for medically necessary care following stabilization, in the event that a contract hospital does not accept transfer of the patient or pending the transfer to a contract hospital.

SEC. 237. Section 14132.99 of the Welfare and Institutions Code is amended to read:

14132.99. For services provided pursuant to Chapter 7 (commencing with Section 14000) of Part 3 of Division 9, Section 14499.5, or Chapter 1 (commencing with Section 101525) to Chapter 4 (commencing with Section 101825), inclusive, of Part 4 of Division 101 of the Health and Safety Code, the cost for services defined in Section 1370.6 of the Health and Safety Code, and Sections 14087.11 and 14132.98 shall be provided by state only funds if federal financial participation is not available.

SEC. 237.5. Section 15657 of the Welfare and Institutions Code is amended to read:

15657. Where it is proven by clear and convincing evidence that a defendant is liable for physical abuse as defined in Section 15610.63, neglect as defined in Section 15610.57, or financial abuse as defined in

Section 15610.30, and that the defendant has been guilty of recklessness, oppression, fraud, or malice in the commission of this abuse, in addition to all other remedies otherwise provided by law:

(a) The court shall award to the plaintiff reasonable attorney's fees and costs. The term ''costs'' includes, but is not limited to, reasonable fees for the services of a conservator, if any, devoted to the litigation of a claim brought under this article.

(b) The limitations imposed by Section 337.34 of the Code of Civil Procedure on the damages recoverable shall not apply. However, the damages recovered shall not exceed the damages permitted to be recovered pursuant to subdivision (b) of Section 3333.2 of the Civil Code.

(c) The standards set forth in subdivision (b) of Section 3294 of the Civil Code regarding the imposition of punitive damages on an employer based upon the acts of an employee shall be satisfied before any damages or attorney's fees permitted under this section may be imposed against an employer.

SEC. 238. Section 19000 of the Welfare and Institutions Code is amended to read:

19000. (a) The Legislature finds and declares as follows:

(1) Work is a valuable and important activity, both for individuals and society, and fulfills the need of an individual to be productive, promotes independence, enhances self-esteem, and allows for participation in the mainstream of life.

(2) Disability is a natural part of human experience and in no way diminishes the capacity of individuals to live independently, enjoy self-determination, make choices, contribute to society, pursue meaningful careers, and enjoy inclusion and integration in the economic, political, social, cultural, and educational mainstream of society.

(3) As a group, individuals with disabilities experience staggering levels of unemployment and poverty.

(4) Increased employment of, and independent living for, individuals with disabilities can be achieved by providing individualized training, independent living services, educational and support services, and meaningful opportunities for employment in integrated work settings with reasonable accommodations.

(5) Individuals with disabilities, including individuals with the most severe disabilities, have demonstrated their ability to achieve gainful employment in integrated settings if appropriate services and supports are provided.

(6) The provision of vocational rehabilitation services can enable individuals with disabilities, including individuals with the most severe disabilities, to pursue meaningful careers by securing gainful employment commensurate with their abilities and capabilities.

(b) The purpose of this division is to assist the Department of Rehabilitation in operating comprehensive, coordinated, effective, efficient, and accountable programs of vocational rehabilitation and independent living that are designed to assess, plan, develop, and provide services for individuals with disabilities, particularly individuals with the most severe disabilities, consistent with their strengths, resources, priorities, concerns, abilities, and capabilities, so that these individuals may prepare for and engage in gainful employment and live more independently.

(c) The Department of Rehabilitation's vocational rehabilitation and independent living programs shall be consistent with the national policy toward people with disabilities articulated in the Americans with Disabilities Act of 1990 (Public Law 101-336) and the Rehabilitation Act Amendments of 1998 (Public Law 105-220).

(d) It shall be the goal of the Department of Rehabilitation to provide individuals with disabilities with the tools necessary to do all of the following:

(1) Make informed choices and decisions.

(2) Maximize employment, independence, and economic and social self-sufficiency in the mainstream of society.

(3) Achieve equality of opportunity and inclusion and integration into all aspects of society.

(e) The Department of Rehabilitation's vocational rehabilitation and independent living programs, projects, and activities shall be carried out in a manner consistent with the following principles:

(1) Respect for individual dignity, personal responsibility, self-determination, and pursuit of independent living and meaningful careers, based on informed choice of individuals with disabilities.

(2) Respect for the privacy, rights, and equal access of individuals with disabilities, including, but not limited to, the use of accessible formats.

(3) Individuals with disabilities, including individuals with the most severe disabilities, shall be generally presumed to be capable of engaging in gainful employment, and the provision of individualized vocational rehabilitation services can improve their ability to become gainfully employed.

(4) Promotion of independence, inclusion, integration, and full participation of individuals with disabilities.

(5) Individuals with disabilities shall be provided the opportunities to obtain competitive employment in integrated settings.

(6) Individuals with disabilities shall be active participants in their own rehabilitation programs, including, but not limited to, making meaningful and informed choices about the selection of their vocational

goals and objectives and the vocational rehabilitation services they receive.

(7) Support for the involvement of a parent, a family member, a guardian, an advocate, or an authorized representative, if an individual with a disability requests, desires, or needs that support.

(8) Individuals with disabilities and their advocates are full partners in the vocational rehabilitation and independent living programs and shall be involved on a regular basis and in a meaningful manner with respect to policy development and implementation.

(9) Qualified vocational rehabilitation counselors, and other qualified personnel facilitate the accomplishment of the employment and independent living goals and objectives of an individual.

(10) Accountability measures must facilitate and not impede the accomplishment of the goals and objectives of the department's programs, including providing vocational rehabilitation and independent living services to, among others, individuals with the most severe disabilities.

SEC. 239. Section 5 of the Santa Clara Valley Water District Act (Chapter 1405 of the Statutes of 1951) is amended to read.

Sec. 5. The district is hereby declared to be a body corporate and politic and, in addition to other powers granted by this act, may take action to carry out all of the following purposes:

1. To have perpetual succession.

2. To sue and be sued in the name of the district in all actions and proceedings in all courts and tribunals of competent jurisdiction.

3. To adopt a seal and alter it at pleasure.

4. To acquire by grant, purchase, lease, gift, devise, contract, construction, or otherwise, and to hold, use, enjoy, sell, let, and dispose of real and personal property of every kind, including lands, structures, buildings, rights-of-way, easements, and privileges, and to construct, maintain, alter, and operate any and all works or improvements, within or outside the district, necessary or proper to carry out any of the objects or purposes of this act and convenient to the full exercise of its powers, and to complete, extend, add to, alter, remove, repair, or otherwise improve any works, or improvements, or property acquired by it as authorized by this act.

5. To store water in surface or underground reservoirs within or outside of the district for the common benefit of the district or of any zone or zones affected; to conserve, reclaim, recycle, distribute, store, and manage water for present and future use within the district; to appropriate and acquire water and water rights, and import water into the district and to conserve within or outside the district, water for any purpose useful to the district; and to do any and every lawful act necessary to be done that sufficient water may be available for any

present or future beneficial use or uses of the lands or inhabitants within the district, including, but not limited to, the acquisition, storage, and distribution of water for irrigation, domestic, fire protection, municipal, commercial, industrial, environmental, and all other beneficial uses; to distribute, sell, or otherwise dispose of, outside the district, any waters not needed for beneficial uses within the district; to commence, maintain, intervene in, defend, or compromise, in the name of the district on behalf of the landowners therein, or otherwise, and to assume the costs and expenses of any action or proceeding involving or affecting the ownership or use of waters or water rights within or outside the district, used or useful for any purpose of the district or of common benefit to any land situated therein, or involving the wasteful use of water therein; to commence, maintain, intervene in, defend, and compromise and to assume the cost and expenses of any and all actions and proceedings now or hereafter begun; to prevent interference with or diminution of, or to declare rights in the natural flow of any stream or surface or subterranean supply of water used or useful for any purpose of the district or of common benefit to the lands within the district or to its inhabitants; to prevent unlawful exportation of water from the district; to prevent contamination, pollution, or otherwise rendering unfit for beneficial use the surface or subsurface water used or useful in the district, and to commence, maintain, and defend actions and proceedings to prevent any such interference with the described waters as may endanger or damage the inhabitants, lands, or use of water in, or flowing into, the district; provided, however, that the district shall not have power to intervene or take part in, or to pay the costs or expenses of, actions or controversies between the owners of lands or water rights that do not affect the interests of the district.

6. To control the flood and storm waters of the district and the flood and storm waters of streams that have their sources outside of the district, but which streams and the floodwaters thereof, flow into said district, and to conserve such waters for beneficial and useful purposes of the district by spreading, storing, retaining, and causing to percolate into the soil within or without the district, or to save or conserve in any manner all or any of those waters and protect from damage from those flood or storm waters the watercourses, watersheds, public highways, life, and property in the district, and the watercourses outside of the district of streams flowing into the district.

7. To enter upon any land, to make surveys and locate the necessary works of improvement and the lines for channels, conduits, canals, pipelines, roadways, and other rights-of-way; to acquire by purchase, lease, contract, gift, devise, or other legal means all lands and water and water rights and other property necessary or convenient for the construction, use, supply, maintenance, repair, and improvement of the

works, including works constructed and being constructed by private owners, lands for reservoirs for storage of necessary water, and all necessary appurtenances, and also where necessary or convenient to that end, and for those purposes and uses, to acquire and to hold in the name of the state, the capital stock of any mutual water company or corporation, domestic or foreign, owning water or water rights, canals, waterworks, franchises, concessions, or rights, when the ownership of such stock is necessary to secure a water supply required by the district or any part thereof, upon the condition that when holding such stock, the district shall be entitled to all the rights, powers, and privileges, and shall be subject to all the obligations and liabilities conferred or imposed by law upon other holders of such stock in the same company; to cooperate with, act in conjunction with, enter into and to do any acts necessary for the proper performance of any agreement with the State of California, or any of its engineers, officers, boards, commissions, departments, or agencies, or with the government of the United States, or any of its engineers, officers, boards, commissions, departments, or agencies or with any state, city and county, city, county, district of any kind, public or private corporation, association, firm, or individual, or any number of them, for the ownership, joint acquisition, leasing, disposition, use, management, construction, installation, extension, maintenance, repair, or operation of any rights, works, or other property of a kind which might lawfully be acquired or owned by the district or for the lawful performance of any power or purpose of the district provided for in this act, including, but not limited to, the granting of the right to the use of any water or the right to store that water in any reservoir of the district or to carrying that water through any tunnel, canal, ditch, or conduit of the district or for the delivery, sale, or exchange of any water right, water supply, or water pumped, stored, appropriated, or otherwise acquired or secured for the use of the district, or for controlling drainage waters, or flood or storm waters of streams in or running into the district, or for the protection of life or property therein, or for the purpose of conserving any waters for the beneficial use within the district, or in any other works, uses, or purposes provided for in this act; and to adopt and carry out any definite plan or system for accomplishing, facilitating, or financing all work which may lawfully be accomplished by the district and to enforce that plan or system by resolution or ordinance.

8. To carry on technical and other necessary investigations, make measurements, collect data, make analyses, studies, and inspections pertaining to water supply, water rights, control of flood and storm waters, and use of water both within and outside the district relating to watercourses or streams flowing in or into the district. For these purposes, the district shall have the right of access through its authorized representatives to all properties within the district and elsewhere relating

to watercourses and streams flowing in or into said district. The district, through its authorized representatives, may enter upon such lands and make examinations, surveys, and maps thereof.

9. To prescribe, revise, and collect fees and charges for facilities furnished or to be furnished to any new building, improvement, or structure by the use of any flood control or storm drainage system constructed or to be constructed in a zone of the district, and whenever a drainage or flood control problem is referred to the district by the County of Santa Clara, or any incorporated city therein, to require the installation of drainage or flood control improvements necessary and/or convenient for needs of the zone, including, but not limited to, residential, subdivision, commercial, and industrial drainage and flood control needs, that county and those cities being hereby authorized to refer all drainage and flood control problems, arising under the Subdivision Map Act (Division 2 (commencing with Section 66410) of Title 7 of the Government Code) or otherwise, to the district for solution. Revenues derived under this section shall be used for the acquisition, construction, reconstruction, maintenance, and operation of the flood control or storm drainage facilities of the zone, to reduce the principal or interest of any bonded indebtedness thereof, or to replace funds expended on behalf of that zone derived from the fund created pursuant to subdivision 1 of Section 13.

10. To incur indebtedness, and to issue bonds in accordance with this act.

11. To cause taxes or assessments to be levied and collected for the purpose of paying any obligation of the district, and to carry out any of the purposes of this act, in the manner hereinafter provided.

12. To make contracts, and to employ labor, and to do all acts necessary for the full exercise of all powers vested in the district or any of the officers thereof, by this act.

13. To have the power and right to disseminate information concerning the rights, properties, activities, plans, and proposals of the district; provided, however, that expenditures during any fiscal year for those purposes shall not exceed one-half cent ($0.005) for each one hundred dollars ($100) of assessed valuation of the district.

14. To pay to any city, public agency, district, or educational institution recognized under Chapter 3 (commencing with Section 94301) of Part 59 of the Education Code, a portion of the cost of water imported by that city, public agency, district, or educational institution into, for use within, and of benefit to the Santa Clara Valley Water District.

15. To establish designated floodways in accordance with the Cobey-Alquist Flood Plain Management Act (Chapter 4 (commencing with Section 8400) of Part 2 of Division 5 of the Water Code).

16. To acquire, construct, maintain, operate, and install landscaping or recreational facilities in connection with any dam, reservoir, or other works owned or controlled by the district.

17. To acquire, construct, maintain, operate and install, lease, and control facilities for the generation, transmission, distribution, sale, exchange, and lease of electric power.

18. To require the sealing of abandoned or unused wells according to standards adopted by the board by ordinance and designed to protect the groundwater resources of the district from contamination. Upon and following the effective date of the ordinance, the County of Santa Clara or any incorporated city therein shall require all persons applying for any land development permit or approval to show the existence and location of any water well upon a map of the property the subject of the application. When a well is shown, the map shall be referred to the district immediately upon receipt for review and investigation. If upon review and investigation the district determines that the well or wells are to be sealed by the applicant pursuant to the ordinance, the determination shall be transmitted promptly to the applicant by the district as a requirement in writing.

SEC. 240. The amendment and renumbering of the heading of Article 5 (commencing with Section 5096.652) of Chapter 1.696 of Division 2 of the Public Resources Code proposed by Section 182 of this act shall only become operative if Proposition 40 is approved by the voters at the March 5, 2002, statewide direct primary election.

SEC. 241. Any section of any act enacted by the Legislature during the 2002 calendar year that takes effect on or before January 1, 2003, and that amends, amends and renumbers, adds, repeals and adds, or repeals a section that is amended, amended and renumbered, added, repealed and added, or repealed by this act, shall prevail over this act, whether that act is enacted prior to, or subsequent to, the enactment of this act. The repeal, or repeal and addition, of any article, chapter, part, title, or division of any code by this act shall not become operative if any section of any other act that is enacted by the Legislature during the 2002 calendar year and takes effect on or before January 1, 2003, amends, amends and renumbers, adds, repeals and adds, or repeals any section contained in that article, chapter, part, title, or division.

CHAPTER 665

An act to amend Sections 2155 and 2156 of the Elections Code, relating to voter registration, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 17, 2002. Filed with
Secretary of State September 18, 2002.]

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

SECTION 1. Section 2155 of the Elections Code is amended to read:

2155. Upon receipt of a properly executed affidavit of registration or address correction notice or letter pursuant to Section 2119, Article 2 (commencing with Section 2220), or the National Voter Registration Act of 1993 (42 U.S.C. Sec. 1973gg), the county elections official shall send the voter a voter notification by nonforwardable, first-class mail, address correction requested. The voter notification shall state the party affiliation for which the voter has registered in the following format:

Party: (Name of political party)

The voter notification shall be substantially in the following form:

VOTER NOTIFICATION

You are registered to vote. The party affiliation for which you have registered is shown on the reverse of this card. This card is being sent as a notification of:

1. Your recently completed affidavit of registration,

OR,

2. A correction to your registration because of an official notice that you have moved. If your residence address has not changed or if your move is temporary, please call or write the county elections official immediately.

You may vote in any election held 15 or more days after the date shown on the reverse side of this card.

Your name will appear on the index kept at the polls.

Please contact your county elections office if the information shown on the reverse side of this card is incorrect.

(Signature of Voter)

SEC. 2. Section 2156 of the Elections Code is amended to read:

2156. The Secretary of State shall print, or cause to be printed, the blank forms of the voter notification prescribed by Section 2155. The

Secretary of State shall supply the forms to the county elections official in quantities and at times requested by the county elections official. The Secretary of State may continue to supply existing voter notification forms prior to printing new or revised forms as required by any changes to Section 2155.

SEC. 3. 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 voter registration verification procedures proposed by this bill as soon as possible, and thereby help ensure the accuracy of voter registration rolls, it is necessary that this act take effect immediately.

CHAPTER 666

An act to amend Sections 16020.1 and 16020.2 of the Vehicle Code, relating to proof of insurance.

[Approved by Governor September 17, 2002. Filed with Secretary of State September 18, 2002.]

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

SECTION 1. Section 16020.1 of the Vehicle Code is amended to read:

16020.1. (a) On and after January 1, 2007, Section 4000.37 does not apply to vehicle owners with a residence address in the County of Los Angeles at the time of registration renewal.

(b) On and after January 1, 2007, subdivisions (a) and (b) of Section 16028 do not apply to a person who drives a motor vehicle upon a highway in the County of Los Angeles.

SEC. 2. Section 16020.2 of the Vehicle Code is amended to read:

16020.2. (a) On and after January 1, 2007, Section 4000.37 does not apply to vehicle owners with a residence address in the City and County of San Francisco at the time of registration renewal.

(b) On and after January 1, 2007, subdivisions (a) and (b) of Section 16028 do not apply to a person who drives a motor vehicle upon a highway in the City and County of San Francisco.

SEC. 3. The provisions of this bill shall not become operative unless Senate Bill 1427 is also enacted.

CHAPTER 667

An act to amend Section 12693.325 of the Insurance Code, relating to the Healthy Families Program.

[Approved by Governor September 17, 2002. Filed with Secretary of State September 18, 2002.]

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

SECTION 1. Section 12693.325 of the Insurance Code is amended to read:

12693.325. (a) (1) Notwithstanding any provision of this chapter, a participating health, dental, or vision plan that is licensed and in good standing as required by subdivision (b) of Section 12693.36 may provide application assistance directly to an applicant acting on behalf of an eligible person who telephones, writes, or contacts the plan in person at the plan's place of business, or at a community public awareness event that is open to all participating plans in the county, or at any other site approved by the board, and who requests application assistance.

(2) Until January 1, 2006, a participating health, dental, or vision plan may also provide application assistance directly to an applicant only under the following conditions:

(A) The assistance is provided upon referral from a government agency, school, or school district.

(B) The applicant has authorized the government agency, school, or school district to allow a health, dental, or vision plan to contact the applicant with additional information on enrolling in free or low-cost health care.

(C) The State Department of Health Services approves the applicant authorization form in consultation with the board.

(D) The plan may not actively solicit referrals and may not provide compensation for the referrals.

(E) If a family is already enrolled in a health plan, the plan that contacts the family cannot encourage the family to change health plans.

(F) The board amends its marketing guidelines to require that when a government agency, school, or school district requests assistance from a participating health, dental, or vision plan to provide application assistance, that all plans in the area shall be invited to participate.

(G) The plan abides by the board's marketing guidelines.

(b) A participating health, dental, or vision plan may provide application assistance to an applicant who is acting on behalf of an eligible or potentially eligible child in any of the following situations:

(1) The child is enrolled in a Medi-Cal managed care plan and the participating plan becomes aware that the child's eligibility status has or

will change and that the child will no longer be eligible for Medi-Cal. In those instances, the plan shall inform the applicant of the differences in benefits and requirements between the Healthy Families Program and the Medi-Cal program.

(2) The child is enrolled in a Healthy Families Program managed care plan and the participating plan becomes aware that the child's eligibility status has changed or will change and that the child will no longer be eligible for Healthy Families. When it appears a child may be eligible for Medi-Cal benefits, the plan shall inform the applicant of the differences in benefits and requirements between the Medi-Cal program and the Healthy Families Program.

(3) The participating plan provides employer-sponsored coverage through an employer and an employee of that employer who is the parent or legal guardian of the eligible or potentially eligible child.

(4) The child and his or her family are participating through the participating plan in COBRA continuation coverage or other group continuation coverage required by either state or federal law and the group continuation coverage will expire within 60 days, or has expired within the past 60 days.

(5) The child's family, but not the child, is participating through the participating plan in COBRA continuation coverage or other group continuation coverage required by either state or federal law, and the group continuation coverage will expire within the past 60 days, or has expired within the past 60 days.

(c) A participating health, dental, or vision plan employee or other representative that provides application assistance shall complete a certified application assistant training class approved by the State Department of Health Services in consultation with the board. The employee or other representative shall in all cases inform an applicant verbally of his or her relationship with the participating health plan. In the case of an in-person contact, the employee or other representative shall provide in writing to the applicant the nature of his or her relationship with the participating health plan and obtain written acknowledgement from the applicant that the information was provided.

(d) A participating health, dental, or vision plan that provides application assistance may not do any of the following:

(1) Directly, indirectly, or through its agents, conduct door-to-door marketing or phone solicitation.

(2) Directly, indirectly, or through its agents, select a health plan or provider for a potential applicant. Instead, the plan shall inform a potential applicant of the choice of plans available within the applicant's county of residence and specifically name those plans and provide the most recent version of the program handbook.

(3) Directly, indirectly, or through its agents, conduct mail or in-person solicitation of applicants for enrollment, except as specified in subdivision (b), using materials approved by the board.

(e) A participating health, dental, or vision plan that provides application assistance pursuant to this section is not eligible for an application assistance fee otherwise available pursuant to Section 12693.32, and may not sponsor a person eligible for the program by paying his or her family contribution amounts or copayments, and may not offer applicants any inducements to enroll, including, but not limited to, gifts or monetary payments.

(f) A participating health, dental, or vision plan may assist applicants acting on behalf of subscribers who are enrolled with the participating plan in completing the program's annual eligibility review package in order to allow those applicants to retain health care coverage.

(g) Each participating health, dental, or vision plan shall submit to the board a plan for application assistance. All scripts and materials to be used during application assistance sessions shall be approved by the board and the State Department of Health Services.

(h) Each participating health, dental, or vision plan shall provide each applicant with the toll-free telephone number for the Healthy Families Program.

(i) When deemed appropriate by the board, the board may refer a participating health, dental, or vision plan to the Department of Managed Health Care or the State Department of Health Services, as applicable, for the review or investigation of its application assistance practices.

(j) The board shall evaluate the impact of the changes required by this section and shall provide a biennial report to the Legislature on or before March 1 of every other year. To prepare these reports, the State Department of Health Services, in cooperation with the board, shall code all the application packets used by a managed care plan to record the number of applications received that originated from managed care plans. The number of applications received that originated from managed care plans shall also be reported on the board's Web site. In addition, the board shall periodically survey those families assisted by plans to determine if the plans are meeting the requirements of this section, and if families are being given ample information about the choice of health, dental, or vision plans available to them.

(k) Nothing in this section shall be seen as mitigating a participating health, dental, or vision plan's responsibility to comply with all federal and state laws, including, but not limited to, Section 1320a-7b of Title 42 of the United States Code.

(*l*) Paragraph (2) of subdivision (a) shall become inoperative on January 1, 2006.

CHAPTER 668

An act to amend Section 44735 of the Education Code, relating to teachers.

[Approved by Governor September 17, 2002. Filed with Secretary of State September 18, 2002.]

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

SECTION 1. Section 44735 of the Education Code is amended to read:

44735. (a) The Teaching As A Priority Block Grant is hereby created to be administered by the State Department of Education with the approval of the State Board of Education. The State Department of Education shall award block grants to school districts on a competitive basis to provide incentives to attract credentialed teachers to be employed and retained in low-performing schools.

(b) (1) To be eligible to receive a full block grant in the third year of participation, a school district shall demonstrate a net decrease in the number of teachers holding an emergency permit or waiver at each school ranked in the bottom half of the academic performance index pursuant to Article 2 (commencing with Section 52051) of Chapter 6.1.

(2) After two years of receiving a block grant, a school district that fails to demonstrate a net decrease in the number of teachers holding an emergency permit or waiver at any of its schools ranked in the bottom half of the academic performance index shall have the amount of the school's block grant reduced by the amount of funds generated by pupils enrolled in that school.

(3) For purposes of this subdivision, ''net decrease'' shall be determined by comparing the number of teachers employed who hold an emergency permit or waiver at the end of the second year of implementation to the number of teachers employed who held an emergency permit or waiver prior to the implementation of the block grant.

(4) This subdivision does not apply to any school district with fewer than 2,501 units of average daily attendance that is in a county that is within the fourth through eighth class as defined in Section 1205.

(5) This subdivision is applicable only when stable funding for the Teaching As A Priority Block Grant program is provided in the annual

Budget Act. For purposes of this subdivision, stable funding means no more than a 5 percent variation in funding from one fiscal year to the next.

(c) (1) Block grant funds may be used at the discretion of a school district for teacher recruitment and retention incentives with the target of reducing the number of teachers on emergency permits. Incentives shall only be used to hire and retain credentialed teachers. Teacher recruitment and retention incentives may include, but are not limited to, all of the following:

(A) Signing bonuses.

(B) Improved work conditions.

(C) Teacher compensation.

(D) Housing subsidies.

(2) A school district receiving block grant funds pursuant to this section may offer incentives to recruit and retain credentialed teachers interested in attaining certification pursuant to Section 44253.3 or 44253.4. Those incentives may include, but are not limited to, both of the following:

(A) Reimbursements to cover the costs of examinations necessary to attain certification pursuant to Sections 44253.3 and 44253.4.

(B) Reimbursements to cover the costs of coursework necessary for preparation programs offering emphasis in certification pursuant to Sections 44253.3 and 44253.4.

(d) Funding shall be allocated to school districts on a per pupil basis for pupils enrolled in schools ranked in the bottom half of the academic performance index pursuant to Article 2 (commencing with Section 52051) of Chapter 6.1. Within the bottom half of the academic performance index, schools ranked in deciles 1, 2, and 3 shall receive $1^1/_2$ times the funding per pupil of schools ranked in deciles 4 and 5. No less than the amount of funding generated by pupils in schools ranked in deciles 1, 2, and 3 shall be expended in those schools.

(e) School districts shall apply to the State Department of Education on behalf of their schools. The district application shall contain information that is specific to each school. Applications shall contain baseline information on the number of teachers with waivers or emergency permits at each school in accordance with subdivision (c).

(f) School districts that participate in the program established in this section shall be encouraged to participate in regional teacher recruitment centers operated by consortia pursuant to Section 44751.

(g) Funds appropriated for the purposes of this chapter shall supplement, and not supplant, existing efforts to recruit and retain fully credentialed teachers in the school district.

(h) The State Board of Education shall submit an evaluation of the program created by this chapter to the Legislature by January 1, 2004.

CHAPTER 669

An act to amend Section 1522.02 of the Health and Safety Code, relating to care facilities.

[Approved by Governor September 17, 2002. Filed with Secretary of State September 18, 2002.]

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

SECTION 1. (a) (1) The State Department of Social Services has established a pilot project to oversee the operation of child care registries pursuant to Section 1522.02 of the Health and Safety Code. This project has operated successfully for over two years, supplying child care providers and child care centers with access to prescreened, qualified employees on short notice, and for limited periods of time. The pilot project currently operates in the Counties of Alameda, Contra Costa, Monterey, San Benito, San Francisco, San Luis Obispo, Santa Barbara, Santa Clara, Santa Cruz, San Mateo, and Ventura.

(2) The service provided by child care registries has been shown to be invaluable to child care providers that use the registries, and allows child care workers who are seeking temporary employment to participate in the workforce.

(b) It is the intent of the Legislature in enacting this act to allow for the continuation of the department's successful substitute employee pilot project by doing both of the following:

(1) Authorizing the department to charge registry providers an offsetting administrative fee.

(2) Limiting the scope of the activities the department is required to administer by shifting responsibility for those activities to child care providers who utilize registries.

SEC. 2. Section 1522.02 of the Health and Safety Code is amended to read:

1522.02. (a) The department may adopt regulations to create substitute employee registries for persons working at more than one facility licensed pursuant to this chapter, Chapter 3.01 (commencing with Section 1568.01), Chapter 3.2 (commencing with Section 1569), Chapter 3.4 (commencing with Section 1569.70), Chapter 3.5 (commencing with Section 1596.90), or Chapter 3.6 (commencing with Section 1597.30), in order to permit these registries to submit fingerprint

cards, and child abuse index information for child care registries so that these facilities have available cleared care staff.

(b) The department may operate a substitute child care employee registry pilot program for the purposes of subdivision (a) and may charge participating registry facilities an administrative fee. The pilot program is subject to all of the following:

(1) The pilot program shall be limited to screening employees for facilities licensed as child care facilities.

(2) Registries shall not hire any child care worker for employment at a child care facility who requires an exemption from the criminal background clearance requirements of law.

(3) The department shall only guarantee the authenticity of criminal background and child abuse index information that registries provide to child care facilities. Any other information provided by registries may be verified by child care facility operators.

(4) The department may limit the operation of the pilot program to the Counties of Alameda, Contra Costa, Monterey, San Benito, San Francisco, San Luis Obispo, Santa Barbara, Santa Clara, Santa Cruz, San Mateo, and Ventura.

CHAPTER 670

An act to amend Sections 431, 671, 5505, 9255.2, and 40000.7 of, and to add Sections 521.5, 543.5, 593, 670.5, and 5506 to, the Vehicle Code, relating to salvage vehicles.

[Approved by Governor September 17, 2002. Filed with Secretary of State September 18, 2002.]

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

SECTION 1. Section 431 of the Vehicle Code is amended to read:

431. A ''nonrepairable vehicle'' is a vehicle of a type otherwise subject to registration that meets the criteria specified in subdivision (a), (b), or (c). The vehicle shall be issued a nonrepairable vehicle certificate and the vehicle, the vehicle frame, or unitized frame and body, as applicable, and as defined in Section 670.5, shall not be titled or registered.

(a) A nonrepairable vehicle is a vehicle that has no resale value except as a source of parts or scrap metal, and which the owner irreversibly designates solely as a source of parts or scrap metal.

(b) A nonrepairable vehicle is a completely stripped vehicle (a surgical strip) recovered from theft, missing all of the bolt on sheet metal

body panels, all of the doors and hatches, substantially all of the interior components, and substantially all of the grill and light assemblies, or that the owner designates has little or no resale value other than its worth as a source of scrap metal, or as a source of a vehicle identification number that could be used illegally.

(c) A nonrepairable vehicle is a completely burned vehicle (burned hulk) that has been burned to the extent that there are no more usable or repairable body or interior components, tires and wheels, or drive train components, and which the owner irreversibly designates as having little or no resale value other than its worth as scrap metal or as a source of a vehicle identification number that could be used illegally.

SEC. 2. Section 521.5 is added to the Vehicle Code, to read:

521.5. ''Revived salvage vehicle'' means a total loss salvage vehicle as defined in Section 544, or a vehicle reported for dismantling pursuant to Section 5500 or 11520, that has been rebuilt or restored to legal operating condition with new or used component parts.

SEC. 3. Section 543.5 is added to the Vehicle Code, to read:

543.5. ''Salvage vehicle rebuilder'' means any person who rebuilds a total loss salvage vehicle, as defined in Section 544, or a vehicle reported for dismantling pursuant to Section 11520, for subsequent resale. A person who, for personal use, rebuilds a total loss salvage vehicle, or a vehicle reported for dismantling, and registers that vehicle in his or her name, is not a salvage vehicle rebuilder. Nothing in this section exempts a salvage vehicle rebuilder from any applicable licensing requirements under this code.

SEC. 4. Section 593 is added to the Vehicle Code, to read:

593. ''Supplemental restraint system'' means an automatic passive restraint system consisting of a bag that is designed to inflate upon collision, commonly referred to as an ''airbag.''

SEC. 5. Section 670.5 is added to the Vehicle Code, to read:

670.5. A ''vehicle frame'' is defined as the main longitudinal structural members of the chassis of the vehicle, or for vehicles with unitized body construction, the lowest main longitudinal structural members of the body of the vehicle, used as the major support in the construction of the motor vehicle.

SEC. 6. Section 671 of the Vehicle Code is amended to read:

671. (a) A ''vehicle identification number'' is the motor number, serial number, or other distinguishing number, letter, mark, character, or datum, or any combination thereof, required or employed by the manufacturer or the department for the purpose of uniquely identifying a motor vehicle or motor vehicle part or for the purpose of registration.

(b) Whenever a vehicle is constructed of component parts identified with one or more different vehicle identification numbers, the vehicle identification number stamped or affixed by the manufacturer or

authorized governmental entity on the frame or unitized frame and body, as applicable, and as defined in Section 670.5, shall determine the identity of the vehicle for registration purposes.

SEC. 7. Section 5505 of the Vehicle Code is amended to read:

5505. (a) This section applies to any vehicle reported to be a total loss salvage vehicle pursuant to Section 11515 and to any vehicle reported for dismantling pursuant to Section 5500 or 11520.

(b) Whenever an application is made to the Department of Motor Vehicles to register a vehicle described in subdivision (a), that department shall inspect the vehicle to determine its proper identity or request that the inspection be performed by the Department of the California Highway Patrol. An inspection by the Department of Motor Vehicles shall not preclude that department from referring the vehicle to the Department of the California Highway Patrol for an additional inspection if deemed necessary.

(c) The Department of the California Highway Patrol shall inspect, on a random basis, those vehicles described in subdivision (a) that have been presented to the Department of Motor Vehicles for registration after completion of the reconstruction process to determine the proper identity of those vehicles. The vehicle being presented for inspection shall be a complete vehicle, in legal operating condition. If the vehicle was originally manufactured with a ''supplemental restraint system'' as defined in Section 593, the reconstructed vehicle shall also be equipped with a supplemental restraint system in good working order that meets applicable federal motor vehicle safety standards and conforms to the manufacturer's specifications for that vehicle. The inspection conducted pursuant to this subdivision shall be a comprehensive, vehicle identification number inspection.

(d) A salvage vehicle rebuilder, as defined in Section 543.5, or other individual in possession of a vehicle described in subdivision (a), who is submitting the vehicle for registration as described in subdivision (b), shall have available, and shall present upon demand of the Department of the California Highway Patrol, bills of sale, invoices, or other acceptable proof of ownership of component parts, and invoices for minor component parts. Additionally, bills of sale and invoices shall include the year, make, model, and the vehicle identification number of the vehicle from which the parts were removed or sold, the name and signature of the person from whom the parts were acquired, and his or her address, and telephone number. To assist in the identification of the seller of new or used parts, the number of the seller's driver's license, identification card, social security card, or Federal Employer Identification Number shall be provided by the seller to the buyer on the bills of sale and invoice. The seller of a salvage vehicle, or the agent of the seller, shall inform the purchaser of the vehicle that ownership

documentation for certain replacement parts used in the repair of the vehicle will be required in the inspection required under this section.

(e) As used in this section, the term "component parts for passenger motor vehicles" includes supplemental restraint systems, the cowl or firewall, front-end assembly, rear clip, including the roof panel, the roof panel when installed separately, and the frame or any portion thereof, or in the case of a unitized body, the supporting structure that serves as the frame, each door, the hood, each fender or quarter panel, deck lid or hatchback, each bumper, both T-tops, replacement transmissions or transaxles, and a replacement motor.

(1) As used in this subdivision, "front-end assembly" includes all of the following: hood, fenders, bumper, and radiator supporting members for these items. For vehicles with a unitized body, the front-end assembly also includes the frame support members.

(2) As used in this subdivision, "rear clip" includes the roof, quarter panels, trunk lid, floor pan, and the support members for each item.

(f) As used in this section, "major component parts for trucks, truck-type or bus-type vehicles" includes the cab, the frame or any portion thereof, and, in the case of a unitized body, the supporting structure which serves as a frame, the cargo compartment floor panel or passenger compartment floor pan, roof panel, and replacement transmissions or transaxles, and replacement motors, each door, hood, each fender or quarter panel, each bumper, and the tailgate. All component parts identified in subdivision (e), common to a truck, truck-type or bus-type vehicle, not listed in this section, shall be considered as included in this section if the part is replaced.

(1) "Major component parts for motorcycles" includes the engine or motor, transmission or transaxle, frame, front fork, and crankcase.

(2) "Minor component parts for motorcycles" includes the fairing and any other body molding.

(g) If the vehicle identification number, year, make, or model required under subdivision (d) cannot be determined, the Department of the California Highway Patrol may accept, in lieu of that information, a certification on a form provided by that department, signed by the person submitting the vehicle for inspection, that the part was not obtained by means of theft or fraud.

SEC. 7.5. Section 5505 of the Vehicle Code is amended to read:

5505. (a) This section applies to any vehicle reported to be a total loss salvage vehicle pursuant to Section 11568 and to any vehicle reported for dismantling pursuant to Section 5500 or 11520.

(b) Whenever an application is made to the Department of Motor Vehicles to register a vehicle described in subdivision (a), that department shall inspect the vehicle to determine its proper identity or request that the inspection be performed by the Department of the

California Highway Patrol. An inspection by the Department of Motor Vehicles shall not preclude that department from referring the vehicle to the Department of the California Highway Patrol for an additional inspection if deemed necessary.

(c) The Department of the California Highway Patrol shall inspect, on a random basis, those vehicles described in subdivision (a) that have been presented to the Department of Motor Vehicles for registration after completion of the reconstruction process to determine the proper identity of those vehicles. The vehicle being presented for inspection shall be a complete vehicle, in legal operating condition. If the vehicle was originally manufactured with a ''supplemental restraint system'' as defined in Section 593, the reconstructed vehicle shall also be equipped with a supplemental restraint system in good working order that meets applicable federal motor vehicle safety standards and conforms to the manufacturer's specifications for that vehicle. The inspection conducted pursuant to this subdivision shall be a comprehensive, vehicle identification number inspection.

(d) A salvage vehicle rebuilder as defined in Section 543.5, or other individual in possession of a vehicle described in subdivision (a), who is submitting the vehicle for registration as described in subdivision (b), shall have available, and shall present upon demand of the Department of the California Highway Patrol, bills of sale, invoices, or other acceptable proof of ownership of component parts, and invoices for minor component parts. Additionally, bills of sale and invoices shall include the year, make, model, and the vehicle identification number of the vehicle from which the parts were removed or sold, the name and signature of the person from whom the parts were acquired, and his or her address, and telephone number. To assist in the identification of the seller of new or used parts, the number of the seller's driver's license, identification card, social security card, or Federal Employer Identification Number shall be provided by the seller to the buyer on the bills of sale and invoice. The seller of a salvage vehicle, or the agent of the seller, shall inform the purchaser of the vehicle that ownership documentation for certain replacement parts used in the repair of the vehicle will be required in the inspection required under this section.

(e) As used in this section, the term ''component parts for passenger motor vehicles'' includes supplemental restraint systems, the cowl or firewall, front-end assembly, rear clip, including the roof panel, the roof panel when installed separately, and the frame or any portion thereof, or in the case of a unitized body, the supporting structure that serves as the frame, each door, the hood, each fender or quarter panel, deck lid or hatchback, each bumper, both T-tops, replacement transmissions or transaxles, and a replacement motor.

(1) As used in this subdivision, ''front-end assembly'' includes all of the following: hood, fenders, bumper, and radiator supporting members for these items. For vehicles with a unitized body, the front-end assembly also includes the frame support members.

(2) As used in this subdivision, ''rear clip'' includes the roof, quarter panels, trunk lid, floor pan, and the support members for each item.

(f) As used in this section, ''major component parts for trucks, truck-type or bus-type vehicles'' includes the cab, the frame or any portion thereof, and, in the case of a unitized body, the supporting structure which serves as a frame, the cargo compartment floor panel or passenger compartment floor pan, roof panel, and replacement transmissions or transaxles, and replacement motors, each door, hood, each fender or quarter panel, each bumper, and the tailgate. All component parts identified in subdivision (e), common to a truck, truck-type or bus-type vehicle, not listed in this section, shall be considered as included in this section if the part is replaced.

(1) ''Major component parts for motorcycles'' includes the engine or motor, transmission or transaxle, frame, front fork, and crankcase.

(2) ''Minor component parts for motorcycles'' includes the fairing and any other body molding.

(g) If the vehicle identification number, year, make, or model required under subdivision (d) cannot be determined, the Department of the California Highway Patrol may accept, in lieu of that information, a certification on a form provided by that department, signed by the person submitting the vehicle for inspection, that the part was not obtained by means of theft or fraud.

SEC. 8. Section 5506 is added to the Vehicle Code, to read:

5506. No salvage vehicle rebuilder may resell or transfer ownership of any vehicle that is subject to inspection as provided in Section 5505, unless either a certificate of inspection issued by the Department of the California Highway Patrol, or vehicle verification form completed by an authorized employee of the Department of Motor Vehicles is provided to the buyer upon sale or transfer. Responsibility for compliance with this section shall rest with the salvage vehicle rebuilder selling or transferring the vehicle. This section shall not apply to a salvage vehicle rebuilder who has applied for and received a title in accordance with Section 5505.

SEC. 9. Section 9255.2 of the Vehicle Code is amended to read:

9255.2. (a) In addition to any other fees specified in this code and the Revenue and Taxation Code, a fee of not more than fifty dollars ($50), as determined by the Department of the California Highway Patrol to cover the costs of implementing and conducting the inspection program required under Section 5505, shall be paid to the Department of Motor Vehicles at the time inspection is made for initial registration

or transfer of ownership of a vehicle included in paragraphs (1) and (2) of subdivision (b) of Section 4453.

(b) The fees collected pursuant to subdivision (a) shall be deposited in the Motor Vehicle Account in the State Transportation Fund. The money deposited in the account shall be available, upon appropriation by the Legislature, for distribution as follows:

(1) Not more than three dollars ($3) of each fee collected under subdivision (a) to the Department of Motor Vehicles.

(2) The remainder to the Department of the California Highway Patrol.

SEC. 10. Section 40000.7 of the Vehicle Code is amended to read:

40000.7. (a) A violation of any of the following provisions is a misdemeanor, and not an infraction:

(1) Section 2416, relating to regulations for emergency vehicles.

(2) Section 2800, relating to failure to obey an officer's lawful order or submit to a lawful inspection.

(3) Section 2800.1, relating to fleeing from a peace officer.

(4) Section 2801, relating to failure to obey a firefighter's lawful order.

(5) Section 2803, relating to unlawful vehicle or load.

(6) Section 2813, relating to stopping for inspection.

(7) Subdivisions (b), (c), and (d) of Section 4461 and subdivisions (b) and (c) of Section 4463, relating to disabled person placards and disabled person and disabled veteran license plates.

(8) Section 4462.5, relating to deceptive or false evidence of vehicle registration.

(9) Section 4463.5, relating to deceptive or facsimile license plates.

(10) Section 5105.5, relating to environmental license plates.

(11) Section 5500, relating to the surrender of registration documents and license plates before dismantling may begin.

(12) Section 5506, relating to the sale of a total loss salvage vehicle, or of a vehicle reported for dismantling by a salvage vehicle rebuilder.

(13) Section 5753, relating to delivery of certificates of ownership and registration when committed by a dealer or any person while a dealer within the preceding 12 months.

(14) Section 5901, relating to dealers and lessor-retailers giving notice.

(15) Section 5901.1, relating to lessors giving notice and failure to pay fee.

(16) Section 8802, relating to the return of canceled, suspended, or revoked certificates of ownership, registration cards, or license plates, when committed by any person with intent to defraud.

(17) Section 8803, relating to return of canceled, suspended, or revoked documents and license plates of a dealer, manufacturer, remanufacturer, transporter, dismantler, or salesman.

(b) This section shall become operative on January 1, 2001.

SEC. 11. Section 7.5 of this bill incorporates amendments to Section 5505 of the Vehicle Code. It shall only become operative if this bill and SB 1743 are enacted and become effective on or before January 1, 2003, and SB 1743 adds Section 11568 to the Vehicle Code in which case Section 7 of this bill shall not become operative.

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.

CHAPTER 671

An act to amend Section 42885.5 of, and to add and repeal Section 42872.5 of, the Public Resources Code, relating to solid waste.

[Approved by Governor September 17, 2002. Filed with Secretary of State September 18, 2002.]

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

SECTION 1. Section 42872.5 is added to the Public Resources Code, to read:

42872.5. (a) In addition to the purposes listed in Section 42872, the tire recycling program may include the awarding of grants to cities, counties, districts, and other local governmental agencies for the funding of public works projects that use rubberized asphalt concrete. In addition to the factors listed in Sections 42874 and 42875, a grant for a public works project that uses rubberized asphalt concrete shall be awarded subject to all of the following:

(1) A grant shall be limited to a project that is both projected to generate between 2,500 and 20,000 tons of rubberized asphalt concrete during the life of the project and that uses 20 pounds or more of crumb rubber per ton of rubberized asphalt concrete.

(2) The amount of a grant that qualifies under paragraph (1) shall be equal to two dollars and fifty cents ($2.50) for each ton of rubberized asphalt concrete projected to be generated by the project.

(3) The total amount of a grant that qualifies under paragraph (1) shall be six thousand two hundred fifty dollars ($6,250) or more, but not more than fifty thousand dollars ($50,000), as determined pursuant to paragraph (2).

(b) Grants made under this section shall be funded by an appropriation in the annual Budget Act from the California Tire Recycling Management Fund established pursuant to Section 42885. To the extent possible, depending on the number of qualified applications and whether there is a sufficient supply of crumb rubber, funds allocated pursuant to this section shall be equal to 16 percent of the funds budgeted pursuant to this chapter for market development and new technology activities for used tires and waste tires.

(c) In order to provide outreach to local agencies regarding the use of rubberized asphalt concrete in public works projects, all of the following shall occur:

(1) The board, in cooperation with its Rubberized Asphalt Concrete Technology Centers, shall create, annually update, and post on each center's Internet Web site a data base of public works projects that include rubberized asphalt concrete that were completed by local agencies.

(2) The Department of Transportation shall post on its public Internet Web site data and descriptions regarding state public works projects using rubberized asphalt concrete.

(3) The board shall post on its public Internet Web site a link to connect to the data base created under paragraph (1) and the data and descriptions provided under paragraph (2).

(d) This section shall become inoperative on June 30, 2006, and, as of January 1, 2007, is repealed, unless a later enacted statute that is enacted before January 1, 2007, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 2. Section 42885.5 of the Public Resources Code is amended to read:

42885.5. (a) The board shall adopt a five-year plan, which shall be updated every two years, to establish goals and priorities for the waste tire program and each program element.

(b) On or before July 1, 2001, and every two years thereafter, the board shall submit the adopted five-year plan to the appropriate policy and fiscal committees of the Legislature. The board shall include, in the plan, programmatic and fiscal issues including, but not limited to, the hierarchy used by the board to maximize productive uses of waste and used tires and the performance objectives and measurement criteria used

by the board to evaluate the success of its waste and used tire recycling program. Additionally, the plan shall describe each program element's effectiveness, based upon performance measures developed by the board, including, but not limited to, the following:

(1) Enforcement and regulations relating to the storage of waste and used tires.

(2) Cleanup, abatement, or other remedial action related to waste tire stockpiles throughout the state.

(3) Research directed at promoting and developing alternatives to the landfill disposal of waste tires.

(4) Market development and new technology activities for used tires and waste tires.

(5) The waste and used tire hauler program and manifest system.

(6) Until June 30, 2006, the grant program authorized under Section 42872.5 to encourage the use of rubberized asphalt concrete technology in public works projects.

(c) The board shall base the budget for the California Tire Recycling Act and program funding on the plan.

CHAPTER 672

An act to amend Sections 798.23 and 798.58 of, and to add Section 798.23.5 to, the Civil Code, relating to mobilehome parks.

[Approved by Governor September 17, 2002. Filed with Secretary of State September 18, 2002.]

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

SECTION 1. Section 798.23 of the Civil Code is amended to read:

798.23. (a) The owner of the park, and any person employed by the park, shall be subject to, and comply with, all park rules and regulations, to the same extent as residents and their guests.

(b) Subdivision (a) of this section does not apply to either of the following:

(1) Any rule or regulation that governs the age of any resident or guest.

(2) Acts of a park owner or park employee which are undertaken to fulfill a park owner's maintenance, management, and business operation responsibilities.

SEC. 2. Section 798.23.5 is added to the Civil Code, to read:

798.23.5. (a) (1) Management shall permit a homeowner to rent his or her home that serves as the homeowner's primary residence or

sublet his or her space, under the circumstances described in paragraph (2) and subject to the requirements of this section.

(2) A homeowner shall be permitted to rent or sublet pursuant to paragraph (1) if a medical emergency or medical treatment requires the homeowner to be absent from his or her home and this is confirmed in writing by an attending physician.

(b) The following provisions shall apply to a rental or sublease pursuant to this section:

(1) The minimum term of the rental or sublease shall be six months, unless the management approves a shorter term, but no greater than 12 months, unless management approves a longer term.

(2) The management may require approval of a prospective renter or sublessee, subject to the process and restrictions provided by subdivision (a) of Section 798.74 for prospective purchasers of mobilehomes. A prospective sublessee shall comply with any rule or regulation limiting residency based on age requirements, pursuant to Section 798.76. The management may charge a prospective sublessee a credit screening fee for the actual cost of any personal reference check or consumer credit report that is provided by a consumer credit reporting agency, as defined in Section 1785.3, if the management or his or her agent requires that personal reference check or consumer credit report.

(3) The renter or sublessee shall comply with all rules and regulations of the park. The failure of a renter or sublessee to comply with the rules and regulations of the park may result in the termination of the homeowner's tenancy in the mobilehome park, in accordance with Section 798.56. A homeowner's tenancy may not be terminated under this paragraph if the homeowner completes an action for unlawful detainer or executes a judgement for possession, pursuant to Chapter 4 (commencing with Section 1159) of Title 3 of Part 3 of the Code of Civil Procedure within 60 days of the homeowner receiving notice of termination of tenancy.

(4) The homeowner shall remain liable for the mobilehome park rent and other park charges.

(5) The management may require the homeowner to reside in the mobilehome park for a term of one year before management permits the renting or subletting of a mobilehome or mobilehome space.

(6) Notwithstanding subdivision (a) of Section 798.39, if a security deposit has been refunded to the homeowner pursuant to subdivision (b) or (c) of Section 798.39, the management may require the homeowner to resubmit a security deposit in an amount or value not to exceed two months' rent in addition to the first month's rent. Management may retain this security deposit for the duration of the term of the rental or sublease.

(7) The homeowner shall keep his or her current address and telephone number on file with the management during the term of rental or sublease. If applicable, the homeowner may provide the name, address, and telephone number of his or her legal representative.

(c) A homeowner may not charge a renter or sublessee more than an amount necessary to cover the cost of space rent, utilities, and scheduled loan payments on the mobilehome, if any.

SEC. 3. Section 798.58 of the Civil Code is amended to read:

798.58. Tenancy may only be terminated for reasons contained in Section 798.56, and a tenancy may not be terminated for the purpose of making a homeowner's site available for a person who purchased or proposes to purchase, or rents or proposes to rent, a mobilehome from the owner of the park or the owner's agent.

CHAPTER 673

An act to amend Section 23114 of the Vehicle Code, relating to vehicles.

[Approved by Governor September 17, 2002. Filed with Secretary of State September 18, 2002.]

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

SECTION 1. Section 23114 of the Vehicle Code is amended to read:

23114. (a) No vehicle shall be driven or moved on any highway unless the vehicle is so constructed, covered, or loaded as to prevent any of its contents or load other than clear water or feathers from live birds from dropping, sifting, leaking, blowing, spilling, or otherwise escaping from the vehicle.

(b) (1) Aggregate material shall only be carried in the cargo area of a vehicle. The cargo area shall not contain any holes, cracks, or openings through which that material may escape, regardless of the degree to which the vehicle is loaded, except as provided in paragraph (2).

(2) Every vehicle used to transport aggregate materials, regardless of the degree to which the vehicle is loaded, shall be equipped with all of the following:

(A) Properly functioning seals on any openings used to empty the load, including, but not limited to, bottom dump release gates and tailgates.

(B) Splash flaps behind every tire, or set of tires, regardless of position on the truck, truck tractor, or trailer.

(C) Center flaps at a location to the rear of each bottom dump release gate as to trucks or trailers equipped with bottom dump release gates. The center flap may be positioned directly behind the bottom dump release gate and in front of the rear axle of the vehicle, or it may be positioned to the rear of the rear axle in line with the splash flaps required behind the tires. The width of the center flap shall extend not more than one inch from one sidewall to the opposite sidewall of the inside tires and shall extend to within five inches of the pavement surface, and shall be not less than 24 inches from the bottom edge to the top edge of that center flap.

(D) Fenders starting at the splash flap with the leading edge of the fenders extending forward at least six inches beyond the center of the axle which cover the tops of tires not already covered by the truck, truck tractor, or trailer body.

(E) Complete enclosures on all vertical sides of the cargo area, including, but not limited to, tailgates.

(F) Shed boards designed to prevent aggregate materials from being deposited on the vehicle body during top loading.

(c) Vehicles comprised of full rigid enclosures are exempt only from subparagraphs (C) and (F) of paragraph (2) of subdivision (b).

(d) For purposes of this section, ''aggregate material'' means rock fragments, pebbles, sand, dirt, gravel, cobbles, crushed base, asphalt, and other similar materials.

(e) (1) On and after September 1, 1990, in addition to subdivisions (a) and (b), no vehicle shall transport any aggregate material upon a highway unless the material is covered.

(2) Vehicles transporting loads composed entirely of asphalt material are exempt only from the provisions of this section requiring that loads be covered.

(3) Vehicles transporting loads composed entirely of petroleum coke material shall not be required to cover their loads if they are loaded using safety procedures, specialized equipment, and a chemical surfactant designed to prevent materials from blowing, spilling, or otherwise escaping from the vehicle.

(4) Vehicles transporting loads of aggregate materials shall not be required to cover their loads if the load, where it contacts the sides, front, and back of the cargo container area, remains six inches from the upper edge of the container area, and if the load does not extend, at its peak, above any part of the upper edge of the cargo container area.

(5) The requirements of this subdivision shall become operative on September 1, 1990.

(f) Any person who provides a location for vehicles to be loaded with any aggregate material or any other material shall provide a location for vehicle operators to comply with this section before entering a highway.

(1) A person shall be exempt from the requirements of this subdivision if the location that he or she provides for vehicles to be loaded with the materials described in this subdivision has 100 yards or less between the scale houses where the trucks carrying aggregate material are weighed and the point of egress to a public road.

(2) Drivers of vehicles loaded with aggregate material leaving locations exempted from the requirements of this subdivision are authorized to operate on public roads only until they are able to safely cover the load at a site near the location's point of egress to the public road, however, an uncovered vehicle shall not be operated more than 200 yards from the point of egress to the public road.

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.

CHAPTER 674

An act to amend Section 709 of, and to add and repeal Section 709.3 of, the Public Utilities Code, relating to telecommunications.

[Approved by Governor September 17, 2002. Filed with Secretary of State September 18, 2002.]

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

SECTION 1. Section 709 of the Public Utilities Code is amended to read:

709. The Legislature hereby finds and declares that the policies for telecommunications in California are as follows:

(a) To continue our universal service commitment by assuring the continued affordability and widespread availability of high-quality telecommunications service to all Californians.

(b) To encourage the development and deployment of new technologies and the equitable provision of services in a way that efficiently meets consumer need and encourages the ubiquitous availability of a wide choice of state-of-the-art services.

(c) To assist in bridging the "digital divide" by encouraging expanded access to state-of-the-art technologies for rural, inner-city, low-income, and disabled Californians.

(d) To promote economic growth, job creation, and the substantial social benefits that will result from the rapid implementation of advanced information and communications technologies by adequate long-term investment in the necessary infrastructure.

(e) To promote lower prices, broader consumer choice, and avoidance of anticompetitive conduct.

(f) To remove the barriers to open and competitive markets and promote fair product and price competition in a way that encourages greater efficiency, lower prices, and more consumer choice.

(g) To encourage fair treatment of consumers through provision of sufficient information for making informed choices, establishment of reasonable service quality standards, and establishment of processes for equitable resolution of billing and service problems.

SEC. 2. Section 709 of the Public Utilities Code is amended to read:

709. The Legislature hereby finds and declares that the policies for telecommunications in California are as follows:

(a) To continue our universal service commitment by assuring the continued affordability and widespread availability of high-quality telecommunications services to all Californians.

(b) To focus efforts on providing educational institutions, health care institutions, community-based organizations, and governmental institutions with access to advanced telecommunications services in recognition of their economic and societal impact.

(c) To encourage the development and deployment of new technologies and the equitable provision of services in a way that efficiently meets consumer need and encourages the ubiquitous availability of a wide choice of state-of-the-art services.

(d) To assist in bridging the "digital divide" by encouraging expanded access to state-of-the-art technologies for rural, inner-city, low-income, and disabled Californians.

(e) To promote economic growth, job creation, and the substantial social benefits that will result from the rapid implementation of advanced information and communications technologies by adequate long-term investment in the necessary infrastructure.

(f) To promote lower prices, broader consumer choice, and avoidance of anticompetitive conduct.

(g) To remove the barriers to open and competitive markets and promote fair product and price competition in a way that encourages greater efficiency, lower prices, and more consumer choice.

(h) To encourage fair treatment of consumers through provision of sufficient information for making informed choices, establishment of

reasonable service quality standards, and establishment of processes for equitable resolution of billing and service problems.

SEC. 3. Section 709.3 is added to the Public Utilities Code, to read:

709.3. (a) (1) No later than April 1, 2003, the commission shall convene a proceeding to develop a plan for encouraging the widespread availability and use of advanced communications infrastructure. The proceeding shall encourage participation that includes a broad cross section of the communications industries, including those entities that the commission does not regulate, as well as users and community representatives. The commission shall also encourage participation by community-based organizations, including, but not limited to, nonprofit community technology programs and libraries that have demonstrated success in assisting low-income residents in bridging the digital divide.

(2) For the purposes of this section, ''nonprofit community technology program'' means a community-based nonprofit organization that is exempt from taxation under Section 501(c)(3) of the Internal Revenue Code and engages in diffusing technology into local communities and training local communities that have no access to, or have limited access to, the Internet and other technologies.

(b) The mission of the plan is to identify factors preventing the ubiquitous availability and use of advanced communications services, assess the consequences of, and develop strategies for, addressing these factors while encouraging the deployment of adequate investment for advanced communications infrastructure that serves the public good and is consistent with the policies described in Section 709.

(c) The commission shall submit a report of its findings and recommendations to the Governor and Legislature, not later than December 31, 2004.

(d) This section shall remain in effect only until January 1, 2005, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2005, deletes or extends that date.

SEC. 4. Section 2 of this bill incorporates amendments to Section 709 of the Public Utilities Code proposed by both this bill and SB 1863. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2003, (2) each bill amends Section 709 of the Public Utilities Code, and (3) this bill is enacted after SB 1863, in which case Section 1 of this bill shall not become operative.

CHAPTER 675

An act to amend Sections 10234.93 and 10236.11 of, and to amend, repeal, and add Section 10235.52 of, the Insurance Code, relating to insurance.

[Approved by Governor September 17, 2002. Filed with Secretary of State September 18, 2002.]

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

SECTION 1. Section 10234.93 of the Insurance Code is amended to read:

10234.93. (a) Every insurer of long-term care in California shall:

(1) Establish marketing procedures to assure that any comparison of policies by its agents or other producers will be fair and accurate.

(2) Establish marketing procedures to assure excessive insurance is not sold or issued.

(3) Submit to the commissioner within six months of the effective date of this act, a list of all agents or other insurer representatives authorized to solicit individual consumers for the sale of long-term care insurance. These submissions shall be updated at least semiannually.

(4) Provide the following continuing education and require that each agent or other insurer representative authorized to solicit individual consumers for the sale of long-term care insurance shall satisfactorily complete the following continuing education requirements which shall be part of, and not in addition to, the continuing education requirements in Section 1749.3:

(A) For licensees issued a license after January 1, 1992, eight hours of education in each of the first four 12-month periods beginning from the date of original license issuance and thereafter and eight hours of education prior to each license renewal.

(B) For licensees issued a license before January 1, 1992, eight hours of education prior to each license renewal.

(C) For nonresident licensees that are not otherwise subject to the continuing education requirements set forth in Section 1749.3, the evidence of education required by this section shall be filed with and approved by the commissioner as provided in subdivision (g) of Section 1749.4.

Licensees shall complete the initial continuing education requirements of this section prior to being authorized to solicit individual consumers for the sale of long-term care insurance.

The continuing education required by this section shall consist of topics related to long-term care services and long-term care insurance, including, but not limited to, California regulations and requirements,

available long-term care services and facilities, changes or improvements in services or facilities, and alternatives to the purchase of private long-term care insurance. On or before July 1, 1998, the following additional continuing education topics shall be required: differences in eligibility for benefits and tax treatment between policies intended to be federally qualified and those not intended to be federally qualified, the effect of inflation in eroding the value of benefits and the importance of inflation protection, and NAIC consumer suitability standards and guidelines.

(5) Display prominently on page one of the policy or certificate and the outline of coverage: ''Notice to buyer: This policy may not cover all of the costs associated with long-term care incurred by the buyer during the period of coverage. The buyer is advised to review carefully all policy limitations.''

(6) Inquire and otherwise make every reasonable effort to identify whether a prospective applicant or enrollee for long-term care insurance already has accident and sickness or long-term care insurance and the types and amounts of any such insurance.

(7) Every insurer or entity marketing long-term care insurance shall establish auditable procedures for verifying compliance with this subdivision.

(8) Every insurer shall provide to a prospective applicant, at the time of solicitation, written notice that the Health Insurance Counseling and Advocacy Program (HICAP) provides health insurance counseling to senior California residents free of charge. Every agent shall provide the name, address, and telephone number of the local HICAP program and the statewide HICAP number, 1-800-434-0222.

(9) Provide a copy of the long-term care insurance shoppers guide developed by the California Department of Aging to each prospective applicant prior to the presentation of an application or enrollment form for insurance.

(b) In addition to other unfair trade practices, including those identified in this code, the following acts and practices are prohibited:

(1) Twisting. Knowingly making any misleading representation or incomplete or fraudulent comparison of any insurance policies or insurers for the purpose of inducing, or tending to induce, any person to lapse, forfeit, surrender, terminate, retain, pledge, assign, borrow on, or convert any insurance policy or to take out a policy of insurance with another insurer.

(2) High pressure tactics. Employing any method of marketing having the effect of or tending to induce the purchase of insurance through force, fright, threat, whether explicit or implied, or undue pressure to purchase or recommend the purchase of insurance.

(3) Cold lead advertising. Making use directly or indirectly of any method of marketing which fails to disclose in a conspicuous manner that a purpose of the method of marketing is solicitation of insurance and that contact will be made by an insurance agent or insurance company.

SEC. 2. Section 10235.52 of the Insurance Code is amended to read:

10235.52. (a) Every policy shall contain a provision that, in the event the insurer develops new benefits or benefit eligibility or new policies with new benefits or benefit eligibility not included in the previously issued policy, the insurer will grant current holders of its policies who are not in benefit or within the elimination period the following rights:

(1) The policyholder will be notified of the availability of the new benefits or benefit eligibility or new policy within 12 months. The insurer's notice shall be filed with the department at the same time as the new policy or rider.

(2) The insurer shall offer the policyholder new benefits or benefit eligibility in one of the following ways:

(A) By adding a rider to the existing policy and paying a separate premium for the new benefit or benefit eligibility based on the insured's attained age. The premium for the existing policy will remain unchanged based on the insured's age at issuance.

(B) By replacing the existing policy or certificate in accordance with Section 10234.87.

(C) By replacing the existing policy or certificate with a new policy or certificate in which case consideration for past insured status shall be recognized by setting the premium for the replacement policy or certificate at the issue age of the policy or certificate being replaced.

(b) The insured may be required to undergo new underwriting, but the underwriting can be no more restrictive than if the policyholder or certificate holder were applying for a new policy or certificate.

(c) The insurer of a group policy as defined under subdivisions (a) to (c), inclusive, of Section 10231.6 must offer the group policyholder the opportunity to have the new benefits and provisions extended to existing certificate holders, but the insurer is relieved of the obligations imposed by this section if the holder of the group policy declines the issuer's offer.

(d) The provisions of paragraph (1) of subdivision (a) that require an insurer to notify current policyholders of an opportunity to exchange or upgrade their current policies for a new policy shall be extended from 12 to 18 months if all the following conditions are met:

(1) The insurer elects to offer insureds with policies that contain an upgrade right approved prior to January 1, 2000, the opportunity to exchange their policies for a new policy that was filed and approved pursuant to subdivision (c) of Section 10236.11.

(2) The notification and offer to policyholders is made within 18 months after approval of the insurer's policy filed to comply with the requirements of Chapter 947 of the Statutes of 1999.

(3) The notification letter is filed and approved by the Department of Insurance. The department shall develop standards for the notification letter by bulletin, in consultation with the Health Insurance and Advocacy Program, insurance industry, agents, and the California Partnership for Long-term Care.

(e) This section shall become inoperative on June 30, 2003, and, as of January 1, 2004, is repealed, unless a later enacted statute that is enacted before January 1, 2004, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 3. Section 10235.52 is added to the Insurance Code, to read:

10235.52. (a) Every policy shall contain a provision that, in the event the insurer develops new benefits or benefit eligibility or new policies with new benefits or benefit eligibility not included in the previously issued policy, the insurer will grant current holders of its policies who are not in benefit or within the elimination period the following rights:

(1) The policyholder will be notified of the availability of the new benefits or benefit eligibility or new policy within 12 months. The insurer's notice shall be filed with the department at the same time as the new policy or rider.

(2) The insurer shall offer the policyholder new benefits or benefit eligibility in one of the following ways:

(A) By adding a rider to the existing policy and paying a separate premium for the new benefit or benefit eligibility based on the insured's attained age. The premium for the existing policy will remain unchanged based on the insured's age at issuance.

(B) By replacing the existing policy or certificate in accordance with Section 10234.87.

(C) By replacing the existing policy or certificate with a new policy or certificate in which case consideration for past insured status shall be recognized by setting the premium for the replacement policy or certificate at the issue age of the policy or certificate being replaced.

(b) The insured may be required to undergo new underwriting, but the underwriting can be no more restrictive than if the policyholder or certificate holder were applying for a new policy or certificate.

(c) The insurer of a group policy as defined under subdivisions (a) to (c), inclusive, of Section 10231.6 must offer the group policyholder the opportunity to have the new benefits and provisions extended to existing certificate holders, but the insurer is relieved of the obligations imposed by this section if the holder of the group policy declines the issuer's offer.

(d) This section shall become operative on June 30, 2003.

SEC. 4. Section 10236.11 of the Insurance Code is amended to read:

10236.11. The premium rate schedules for all individual and group long-term care insurance policies issued in this state shall be filed with and receive the prior approval of the commissioner before the policy may be offered, sold, issued, or delivered to a resident of this state.

All initial rate filings shall be subject to the following:

(a) No approval for an initial premium schedule shall be granted unless the actuary performing the review for the commissioner certifies that the initial premium rate schedule is sufficient to cover anticipated costs under moderately adverse experience and that the premium rate schedule is reasonably expected to be sustainable over the life of the form with no future premium increases anticipated. The certification may rely on supporting data in the filing. The actuary performing the review may request an actuarial demonstration that the assumptions the insurer has used are reasonable. The actuarial demonstration shall include either premium and claim experience on similar policy forms, adjusted for any premium or benefit differences, relevant and creditable data from other studies, or both.

(b) The insurer shall submit to the commissioner for approval a rate filing for each policy form that includes at least all of the following information:

(1) An actuarial memorandum that describes the assumptions the insurer used to develop the premium rate schedule. The actuarial assumptions shall include, but not be limited to, a sufficiently detailed description of morbidity assumptions, voluntary lapse rates, mortality assumptions, asset investment yield rates, a description of all expense components, and plan and option mix assumptions. The memorandum shall also include the expected lifetime loss ratio and projections of yearly earned premiums, incurred claims, incurred claim loss ratios, and changes in contract reserves.

(2) An actuarial certification consisting of at least all of the following:

(A) A statement that the initial premium rate schedule is sufficient to cover anticipated costs under moderately adverse experience and that the premium rate schedule is reasonably expected to be sustainable over the life of the form with no future premium increases anticipated.

(B) A statement that the policy design and coverage provided have been reviewed and taken into consideration.

(C) A statement that the underwriting and claims adjudication processes have been reviewed and taken into consideration.

(D) A complete description of the basis for contract reserves that are anticipated to be held under the form, to include all of the following:

(i) Sufficient detail or sample calculations provided so as to have a complete depiction of the reserve amounts to be held.

(ii) A statement that the assumptions used for reserves contain reasonable margins for adverse experience.

(iii) A statement that the net valuation premium for renewal years does not increase (except for attained-age rating where permitted).

(iv) A statement that the difference between the gross premium and the net valuation premium for renewal years is sufficient to cover expected renewal expenses, or if that statement cannot be made, a complete description of the situations in which this does not occur and the type and level of change in the reserve assumptions that would be necessary for the difference to be sufficient. An aggregate distribution of anticipated issues may be used as long as the underlying gross premiums maintain a reasonably consistent relationship. If the gross premiums for certain age groups appear to be inconsistent with this requirement, the commissioner may request a demonstration under subdivision (a) based on a standard age distribution.

(E) A statement that the premium rate schedule is not less than the premium rate schedule for existing similar policy forms also available from the insurer except for reasonable differences attributable to benefits or a comparison of the premium schedules for similar policy forms that are currently available from the insurer with an explanation of the differences.

(c) Premium rate schedules and new policy forms shall be filed by January 1, 2002, for all group long-term care insurance policies that an insurer will offer, sell, issue, or deliver on or after January 1, 2003, and for all previously approved individual long-term care insurance policies that an insurer will offer, sell, issue, or deliver on or after January 1, 2003, unless the January 1, 2002, deadline is extended by the commissioner. Insurers may continue to offer and market long-term care insurance policies approved prior to January 1, 2002, until the earlier of (1) 90 days after approval of both the premium rate schedules and new policy forms filed pursuant to this section or (2) January 1, 2003. Insurers that have filed premium rate schedules and new policy forms by March 1, 2002, may continue to offer and market long-term care insurance policies approved prior to January 1, 2002, until the earlier of (1) 90 days after approval of both the premium rate schedules and new policy forms filed pursuant to this section or (2) June 30, 2003.

(d) Nothing in this section shall be construed as prohibiting an insurer from filing new group and individual policy forms, or from relieving an insurer of the obligation to file these forms, with the commissioner after January 1, 2003, if the policy form meets all the requirements of this chapter.

CHAPTER 676

An act to amend Section 11019 of the Government Code, and to amend Sections 4433.5, 4474.1, 4520, 4521, 4521.5, 4522, 4523, 4525, 4530, 4535, 4540, 4550, 4551, 4552, 4561, 4564, 4565, 4567, 4568, 4691, and 4712 of, to amend the heading of Article 7 (commencing with Section 4550) of Chapter 2 of Division 4.5 of, to add Sections 4521.6, 4552.5, and 4555 to, to add Article 6 (commencing with Section 4543) to Chapter 2 of, to repeal Sections 4542 and 4554 of, to repeal and add Sections 4553, 4562, and 4563 of, and to repeal and add Chapter 4 (commencing with Section 4570) of, Division 4.5 of, the Welfare and Institutions Code, relating to services for the developmentally disabled, and making an appropriation therefor.

[Approved by Governor September 17, 2002. Filed with Secretary of State September 18, 2002.]

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

SECTION 1. Section 11019 of the Government Code is amended to read:

11019. (a) Any department or authority specified in subdivision (b) may, upon determining that an advance payment is essential for the effective implementation of a program within the provisions of this section, and to the extent funds are available, advance to a community-based private nonprofit agency with which it has contracted, pursuant to federal law and related state law, for the delivery of services, not to exceed 25 percent of the annual allocation to be made pursuant to the contract and those laws during the fiscal year to the private nonprofit agency. Advances in excess of 25 percent may be made on contracts financed by a federal program when the advances are not prohibited by federal guidelines. Advance payments may be provided for services to be performed under any contract with a total annual contract amount of four hundred thousand dollars ($400,000) or less. This amount shall be increased by 5 percent, as determined by the Department of Finance, for each year commencing with 1989. Advance payments may also be made with respect to any contract that the Department of Finance determines has been entered into with any community-based private nonprofit agency with modest reserves and potential cashflow problems. No advance payment shall be granted if the total annual contract exceeds four hundred thousand dollars ($400,000), without the prior approval of the Department of Finance.

The specific departments and authority mentioned in subdivision (b) shall develop a plan to establish control procedures for advance payments. Each plan shall include a procedure whereby the department

or authority determines whether or not an advance payment is essential for the effective implementation of a particular program being funded. Each plan shall be approved by the Department of Finance.

(b) Subdivision (a) shall apply to the Emergency Medical Service Authority, the California Department of Aging, the State Department of Developmental Services, the State Department of Alcohol and Drug Programs, the Department of Corrections, the Department of Economic Opportunity, the Employment Development Department, the State Department of Health Services, the State Department of Mental Health, the Department of Rehabilitation, the State Department of Social Services, the Department of Child Support Services, the Department of the Youth Authority, the State Department of Education, the area boards on developmental disabilities, the State Council on Developmental Disabilities, the Office of Statewide Health Planning and Development, and the California Environmental Protection Agency, including all boards and departments contained therein.

Subdivision (a) shall also apply to the California Health and Human Services Agency, which may make advance payments, pursuant to the requirements of that subdivision, to multipurpose senior services projects as established in Sections 9400 to 9413, inclusive, of the Welfare and Institutions Code.

Subdivision (a) shall also apply to the Resources Agency, including all boards and departments contained in that agency, which may make advance payments pursuant to the requirements of that subdivision with respect to grants and contracts awarded to certified local community conservation corps.

(c) A county may, upon determining that an advance payment is essential for the effective implementation of a program within the provisions of this section, and to the extent funds are available, and not more frequently than once each fiscal year, advance to a community-based private nonprofit agency with which it has contracted, pursuant to any applicable federal or state law, for the delivery of services, not to exceed 25 percent of the annual allocation to be made pursuant to the contract and those laws, during the fiscal year to the private nonprofit agency.

SEC. 2. Section 4433.5 of the Welfare and Institutions Code is amended to read:

4433.5. Notwithstanding Section 4433, the department may contract with the State Council on Developmental Disabilities for the purpose of utilizing area boards to provide clients' rights advocacy services to individuals with developmental disabilities who reside in developmental centers and state hospitals. It is the intent of the Legislature that area boards maintain local discretion in the provision of these advocacy services. The state council shall not direct the advocacy

services provided by area boards pursuant to this contract, except when necessary to ensure compliance with the contracts.

SEC. 3. Section 4474.1 of the Welfare and Institutions Code is amended to read:

4474.1. (a) Whenever the State Department of Developmental Services proposes the closure of a state developmental center, the department shall be required to submit a detailed plan to the Legislature not later than April 1 immediately prior to the fiscal year in which the plan is to be implemented, and as a part of the Governor's proposed budget. No plan submitted to the Legislature pursuant to this section, including any modifications made pursuant to subdivision (b), shall be implemented without the approval of the Legislature.

(b) A plan submitted on or before April 1 immediately prior to the fiscal year in which the plan is to be implemented may be subsequently modified during the legislative review process.

(c) Prior to submission of the plan to the Legislature, the department shall solicit input from the State Council on Developmental Disabilities, the Association of Regional Center Agencies, the protection and advocacy agency specified in Section 4901, the local area board on developmental disabilities, the local regional center, consumers living in the developmental center, parents, family members, guardians, and conservators of persons living in the developmental centers or their representative organizations, persons with developmental disabilities living in the community, developmental center employees and employee organizations, community care providers, the affected city and county governments, and business and civic organizations, as may be recommended by local state Senate and Assembly representatives.

(d) Prior to the submission of the plan to the Legislature, the department shall confer with the county in which the developmental center is located, the regional centers served by the developmental center, and other state departments using similar occupational classifications, to develop a program for the placement of staff of the developmental center planned for closure in other developmental centers, as positions become vacant, or in similar positions in programs operated by, or through contract with, the county, regional centers, or other state departments.

(e) Prior to the submission of the plan to the Legislature, the department shall hold at least one public hearing in the community in which the developmental center is located, with public comment from that hearing summarized in the plan.

(f) The plan submitted to the Legislature pursuant to this section shall include all of the following:

(1) A description of the land and buildings affected.

(2) A description of existing lease arrangements at the developmental center.

(3) The impact on residents and their families.

(4) Anticipated alternative placements for residents.

(5) The impact on regional center services.

(6) Where services will be obtained that, upon closure of the developmental center, will no longer be provided by that facility.

(7) Potential job opportunities for developmental center employees and other efforts made to mitigate the effect of the closure on employees.

(8) The fiscal impact of the closure.

(9) The timeframe in which closure will be accomplished.

SEC. 4. Section 4520 of the Welfare and Institutions Code is amended to read:

4520. (a) The Legislature finds that services for persons with developmental disabilities constitute a major expenditure of public funds, that these programs are provided by hundreds of public and private statewide and local agencies, that the legal, civil, and service rights of persons with developmental disabilities are frequently denied, and that there is no effective method for planning and coordinating the state's resources to assure these rights. Therefore, a State Council on Developmental Disabilities with authority independent of any single state service agency is needed and is hereby created.

(b) The Legislature further finds that the state faces unique challenges because of its size and diversity, and neighborhoods and communities lack the support necessary to monitor system functions and ensure the legal, civil, and service rights of persons with developmental disabilities. Therefore, local area boards on developmental disabilities shall be established to conduct the local advocacy, capacity building, and systemic change activities required by the federal Developmental Disabilities Assistance and Bill of Rights Act of 2000 (Public Law 106-402 (42 U.S.C. Sec. 15001)).

(c) This chapter, Chapter 3 (commencing with Section 4560), and Chapter 4 (commencing with Section 4570), and Division 4.7 (commencing with Section 4900), are intended by the Legislature to secure full compliance with the requirements of the Developmental Disabilities Assistance and Bill of Rights Act of 2000 (Public Law 106-402), as amended and extended, which provides federal funds to assist the state in planning, coordinating, monitoring, and evaluating services for persons with developmental disabilities and in establishing a system to protect and advocate the legal and civil rights of persons with developmental disabilities.

SEC. 5. Section 4521 of the Welfare and Institutions Code is amended to read:

4521. (a) All references to "state council" in this part shall be a reference to the State Council on Developmental Disabilities.

(b) There shall be 29 voting members on the state council appointed by the Governor, as follows:

(1) One member from each of the 13 area boards on developmental disabilities described in Article 6 (commencing with Section 4543), nominated by the area board to serve as a council member, who shall be persons with a developmental disability, as defined in Section 15002(8) of Title 42 of the United States Code, or parents, siblings, guardians or conservators of these persons residing in California. Five of these members shall be persons with a developmental disability, as defined in Section 15002(8) of Title 42 of the United States Code, three shall be parents, siblings, guardians, or conservators of persons with developmental disabilities, and five shall be either a person with a developmental disability or a parent, sibling, guardian, or conservator of a person with a developmental disability. The nominee from each area board shall be an area board member who was appointed by the Governor.

(2) Ten members of the council shall include the following:

(A) The Secretary of the California Health and Human Services Agency, or his or her designee, who shall represent the agency and the state agency that administers funds under Title XIX of the Social Security Act for people with developmental disabilities.

(B) The Director of Developmental Services or his or her chief deputy.

(C) The Director of Rehabilitation or his or her chief deputy.

(D) The Superintendent of Public Instruction or his or her designee.

(E) A representative from a nongovernmental agency or group concerned with the provision of services to persons with developmental disabilities.

(F) One representative from each of the two university centers for excellence in the state, pursuant to 42 U.S.C. Section 15061 et seq., providing training in the field of developmental services. These individuals shall have expertise in the field of developmental disabilities.

(G) The Director of Health Services or his or her chief deputy.

(H) A member of the board of directors of the agency established in California to fulfill the requirements and assurance of Section 142 of the Developmental Disabilities Act of 1984 for a system to protect and advocate the rights of persons with developmental disabilities.

(I) The Director of Aging or his or her chief deputy.

(3) Six members at large, appointed by the Governor, as follows:

(A) Two shall be persons with developmental disabilities, as defined in Section 15002(8) of Title 42 of the United States Code.

(B) One shall be a person who is a parent, sibling, guardian, or conservator of a resident of a developmental center.

(C) One shall be a person who is a parent, sibling, guardian, or conservator of a person with a developmental disability living in the community.

(D) One shall be a person who is a parent, sibling, guardian, or conservator of a person with a developmental disability living in the community, nominated by the Speaker of the Assembly.

(E) One shall be a person with developmental disabilities, as defined in Section 15002(8) of Title 42 of the United States Code, nominated by the Senate Committee on Rules.

(c) Prior to appointing the 29 members pursuant to this section, the Governor shall request and consider recommendations from organizations representing, or providing services to, or both, persons with developmental disabilities, and shall take into account socioeconomic, ethnic, and geographic considerations of the state.

(d) The term of each member described in subdivision (b) shall be for three years; provided, however, of the members first appointed by the Governor pursuant to paragraph (1) of subdivision (b), five shall hold office for three years, four shall hold office for two years, and four shall hold office for one year. In no event shall any member described in subdivision (b) serve for more than a total of six years of service. Service by any individual on any state council on developmental disabilities existing on and after January 1, 2003, shall be included in determining the total length of service.

(e) Members appointed to the state council prior to June 1, 2002, shall continue to serve until the term to which they were appointed expires. Members appointed on June 1, 2002, or thereafter shall have their terms expire on January 1, 2003.

(f) Notwithstanding subdivision (c) of Section 4546, members described in subdivision (b) shall continue to serve on the area board following the expiration of their term on the area board until their term on the state council has expired.

(g) A member may continue to serve following the expiration of his or her term until the Governor appoints that member's successor. The state council shall notify the Governor regarding membership requirements of the council and shall notify the Governor at least 60 days before a member's term expires, and when a vacancy on the council remains unfilled for more than 60 days.

SEC. 6. Section 4521.5 of the Welfare and Institutions Code is amended to read:

4521.5. Notwithstanding Section 7.5 of the Government Code, for purposes of this chapter, the Secretary of Health and Human Services, the Director of Developmental Services, the Director of the Department

of Rehabilitation, and the Director of the California Department of Aging may designate his or her chief deputy of his or her department or agency to act as the member in his or her place and stead to all intents and purposes as though the director or secretary were personally present, including the right of the chief deputy to be counted in constituting a quorum to participate in the proceeding of the state council and to vote upon any and all matters.

Each chief deputy so designated shall have the right to represent the director or secretary who appointed him or her regardless of the number of other deputies designated to represent directors or secretaries at a particular meeting or session of the state council. Each chief deputy shall represent only one director or secretary at any meeting or session of the state council.

SEC. 7. Section 4521.6 is added to the Welfare and Institutions Code, to read:

4521.6. For purposes of this chapter, the Governor's appointment of the Secretary of Health and Human Services, the Director of the California Department of Aging, Director of Developmental Services, Director of Health Services, and Director of the Department of Rehabilitation shall also constitute his or her appointment as a member of the State Council on Developmental Disabilities.

SEC. 8. Section 4522 of the Welfare and Institutions Code is amended to read:

4522. Nothing in this chapter shall prevent the reappointment or replacement of any individual presently serving on the existing state council if the reappointment or replacement is in conformity with all of the criteria established in this chapter.

SEC. 9. Section 4523 of the Welfare and Institutions Code is amended to read:

4523. Persons appointed to membership on the state council shall have demonstrated interest and leadership in human service activities, including interest in Californians who have developmental disabilities, their families, services, and supports.

SEC. 10. Section 4525 of the Welfare and Institutions Code is amended to read:

4525. (a) In order to prevent any potential conflicts of interest, members of the state council may not be employees of a state, local, or private agency or facility that provides services to persons with a developmental disability, or be members of the governing board of any entity providing the service, when the service is funded in whole or in part with state funds.

(b) For purposes of this section, "employees of a state, local, or private agency or facility that provides services to persons with a

developmental disability'' shall not be deemed to include any of the following:

(1) A parent, relative, guardian or conservator, who receives public funds expressly for the purpose of providing direct services to his or her child, relative, ward or conservatee, respectively, who is a person with a developmental disability.

(2) A person with a developmental disability who receives employment services through a provider receiving state or federal funds.

(3) A person who serves as a member of an area board.

(c) This section shall not apply to the appointments made pursuant to subparagraphs (A), (B), (C), (D), (F), (G), (H), and (I) of paragraph (2) of subdivision (b) of Section 4521.

SEC. 11. Section 4530 of the Welfare and Institutions Code is amended to read:

4530. For administrative purposes only, the state council shall be attached to the California Health and Human Services Agency. The agency secretary shall ensure the state council is provided efficient accounting, financial management, personnel, and other reasonable support services when requested by the council in the performance of its mandated responsibilities.

The attachment of the state council to the California Health and Human Services Agency shall not limit the council's scope of concern to health programs or limit the council's responsibilities or functions regarding all other pertinent state and local programs, as defined in Article 5 (commencing with Section 4540) of this chapter.

The administrative attachment of the state council to the California Health and Human Services Agency shall not be construed to interfere in any way with the provisions of Section 4552 requiring all personnel employed by the council to be solely responsible, organizationally and administratively, to the council.

SEC. 12. Section 4535 of the Welfare and Institutions Code is amended to read:

4535. (a) The state council shall meet at least six times each year, and, on call of its chairperson, as often as necessary to fulfill its duties. All meetings and records of the state council shall be open to the public.

(b) The state council shall, by majority vote of the voting members, elect its own chairperson and vice chairperson who shall have full voting rights on all state council actions, from among the appointed members, described in paragraph (1), (3), or (4) of subdivision (b) of Section 4521, and shall establish any committees it deems necessary or desirable. The chairperson shall appoint all members of committees of the state council. The chairs and vice chairs of the state council and its standing committees shall be individuals with a developmental disability, or the

parent, sibling, guardian, or conservator of an individual with a developmental disability.

(c) The state council may appoint technical advisory consultants and may establish committees composed of professional persons serving persons with developmental disabilities as necessary for technical assistance. The state council may call upon representatives of all agencies receiving state or federal funds for assistance and information, and shall invite persons with developmental disabilities, their parents, guardians, or conservators, professionals, or members of the general public to participate on state council committees, when appropriate.

(d) When convening any task force or advisory group, the state council shall make its best effort to ensure representation by consumers and family members representing the state's multicultural diversity.

SEC. 13. Section 4540 of the Welfare and Institutions Code is amended to read:

4540. In order to comply with the intent and requirements of this division and Public Law 106-402 (42 U.S.C. Sec. 15001 et seq.), the state council, in addition to any other responsibilities established under this division and to the extent that resources are available, shall do all of the following:

(a) Serve as the ''state planning council'' responsible for developing the ''California Developmental Disabilities State Plan,'' in accordance with requirements issued by the United States Secretary of Health and Human Services, monitoring and evaluating the implementation of this plan, reviewing and commenting on other plans and programs in the state affecting persons with developmental disabilities, and submitting these reports as the United States Secretary of Health and Human Services may reasonably request.

(b) Serve as the official agency responsible for planning the provision of the federal funds allotted to the state under Public Law 106-402 (42 U.S.C. Sec. 15001 et seq.), and apportion these funds among agencies and area developmental disabilities boards in compliance with applicable state and federal law.

(c) Prepare and approve a budget, for the use of amounts paid to the state to hire any staff and to obtain the services of any professional, technical, or clerical personnel consistent with state and federal law, as the council determines to be necessary to carry out its functions.

(d) (1) Conduct activities related to meeting the objectives of the state plan. To the extent that resources are available, these activities shall include all of the following:

(A) Through support of the area boards, engaging in geographically based outreach and individual and systemic advocacy to assist and enable individuals and families to obtain services, supports, and other forms of assistance.

(B) Support and conduct technical assistance activities to assist public and private entities to contribute to the objectives of the state plan.

(C) Support and conduct activities to promote interagency collaboration and coordination at the state and local levels.

(D) Support and conduct activities to educate the public about the capabilities, preferences, and needs of individuals with developmental disabilities and their families, and to develop and support coalitions that support the policy agenda of the council, including training in self-advocacy, education of policymakers, and citizen leadership roles.

(E) Support and conduct activities to provide information to policymakers.

(2) These activities may also include, but shall not be limited to, all of the following:

(A) Support and conduct training for persons with developmental disabilities, their families, and personnel, to enable these individuals to obtain access to, or to provide, community services, individualized supports, and other forms of assistance.

(B) Support and conduct activities to assist neighborhoods and communities to respond positively to individuals with disabilities and their families.

(C) Support and conduct activities to eliminate barriers to access and use of community services by individuals with developmental disabilities, enhance system design and redesign, and enhance citizen participation.

(D) Support and conduct, on a time-limited basis, activities to demonstrate new approaches to serving individuals with developmental disabilities that are a part of an overall strategy for systemic change.

(e) Conduct other activities, including, but not limited to, public hearings and forums and the evaluation and issuance of public reports on the programs identified in the state plan, as may be necessary to carry out the duties of the state council.

(f) Review and comment on pertinent portions of the proposed plans and budgets of all state agencies serving persons with developmental disabilities to include, but not be limited to, the State Department of Education, the Department of Rehabilitation, and the State Department of Developmental Services. This review may include public hearings prior to the submission of the Governor's Budget to the Legislature, with advice directed to the Governor, and after introduction of the Governor's Budget, with advice directed to the Legislature.

(g) Prepare an annual written report of its activities, its recommendations, and an evaluation of the efficiency of the administration of this division to the Governor and the Legislature.

This report shall include both the statewide activities of the state council and the local activities of the area boards.

(h) Review and publicly comment on significant regulations proposed to be promulgated by any state agency in the implementation of this division.

(i) Monitor the execution of this division and report directly to the Governor and the Legislature any delay in the rapid execution of this division.

(j) Be responsible for monitoring and evaluating the effectiveness of appeals procedures established in this division.

(k) Provide testimony to legislative committees reviewing fiscal or policy matters pertaining to persons with developmental disabilities.

(*l*) Conduct, or cause to be conducted, investigations or public hearings to resolve disagreements between state agencies, or between state and regional or local agencies, or between persons with developmental disabilities and agencies receiving state funds. These investigations or public hearings shall be conducted at the discretion of the state council only after all other appropriate administrative procedures for appeal, as established in state and federal law, have been fully utilized.

Except as otherwise provided in this division, the state council shall not engage in the administration of the day-to-day operation of service programs identified in the state plan, nor in the financial management and accounting of funds. These activities shall be performed by appropriate agencies designated in the state plan.

(m) To the greatest extent possible, area boards shall participate in conducting the activities described in this section.

SEC. 14. Section 4542 of the Welfare and Institutions Code is repealed.

SEC. 15. Article 6 (commencing with Section 4543) is added to Chapter 2 of Division 4.5 of the Welfare and Institutions Code, to read:

Article 6. Area Boards on Developmental Disabilities

4543. (a) Because of the vast size, complexity, and diversity of the State of California, the Legislature finds that the planning activities of the State Council on Developmental Disabilities depend upon the direct involvement of local representatives familiar with the structure and operation of services and programs for persons with developmental disabilities. The Legislature further finds that the legal, civil, and service rights of persons with developmental disabilities cannot be adequately guaranteed throughout the state, and the state plan cannot be implemented, unless monitoring responsibility is established on a regional basis through area boards on developmental disabilities.

(b) For administrative purposes and to ensure compliance with federal and state laws, the area boards shall be attached to the state council.

4544. The area boards in existence as of January 1, 2003, shall continue to exist, within the same geographic regions of the state after January 1, 2003, but shall thereafter be constituted and shall operate according to this article.

4545. The State Council on Developmental Disabilities shall periodically conduct a thorough review of the geographic boundaries served by area boards to determine whether existing area board boundaries should be changed, or additional area boards should be established to more effectively implement this division. In conducting this review, the state council shall seek input from area boards, persons with developmental disabilities, family members, service providers, advocates, and other interested parties. Prior to recommending the establishment of new geographic boundaries, the state council shall hold a public hearing within any existing area board geographic area affected by the proposed change. The state council shall submit to the Governor and the Legislature any recommendations for changes in area board boundaries or recommendations that additional area boards be established. Any area board established after January 1, 2003, shall nominate a member to be appointed by the Governor as a voting member of the state council pursuant to Section 4521.

4546. After January 1, 2003, area boards shall be comprised as follows:

(a) For areas consisting of one to four counties, the area board shall consist of a total of 12 voting members appointed by the governing bodies of the counties, each county appointing an equal number of voting members, and five voting members appointed by the Governor.

(b) For areas consisting of five to seven counties, the area board shall consist of two voting members appointed by the governing body of each county, and five voting members appointed by the Governor.

(c) For areas consisting of eight or more counties, the area board shall consist of one voting member appointed by the governing body of each county, and five members appointed by the Governor.

Of the members first appointed, five shall serve for one year, five shall serve for two years, and the remaining members shall serve for three years. Subsequent members shall serve for three years. In counties with a population of more than 100,000, no member shall serve more than two consecutive three-year terms.

(d) The governing bodies of the counties in each area shall select their appointees from among the following groups, and, to the extent feasible, in the following proportions:

(1) Sixty percent from persons with developmental disabilities or the immediate relatives, guardians, or conservators of these persons.

(2) Forty percent from representatives of the general public.

(e) The appointments made by the Governor shall meet the requirements of paragraph (1) of subdivision (b) of Section 4521.

(f) (1) Prior to making their appointments, the Governor and the governing bodies of counties shall request recommendations from professional organizations, from organizations within the area representing persons with developmental disabilities, and from organizations and agencies within the area that deliver services to these individuals.

(2) In making their appointments, the Governor and the governing bodies of counties shall appoint persons who have demonstrated interest and leadership in human service activities.

(g) (1) In order to prevent any potential conflicts of interest, voting members of area boards shall not be employees of a state, local, or private agency or facility that provides service to a person with a developmental disability, or be members of the governing board of any entity providing this service, when the service is funded in whole or in part with state funds.

(2) For purposes of this section ''employees of a state, local, or private agency or facility that provides services to a person with a developmental disability'' shall not be deemed to include any of the following:

(A) A parent, relative, guardian, or conservator who receives public funds expressly for the purpose of providing direct services to his or her child, relative, ward, or conservatee, respectively, who is a person with a developmental disability.

(B) A person with a developmental disability who receives employment services through a provider receiving state or federal funds.

(C) A person who serves as a member of the state council.

(h) The Governor shall give consideration to the relative populations of the counties within the area in selecting appointees to the area boards.

(i) A member may continue to serve following the expiration of his or her term until the Governor or appointing body of the county appoints that member's successor. The state council shall notify the Governor or the appointing body of the county regarding membership requirements of the area boards and shall notify the Governor or the appointing body of the county at least 60 days before a member's term expires, and when a vacancy on an area board remains unfilled for more than 60 days.

(j) All members of the area board shall be residents of the area.

(k) The members of an area board shall serve without compensation, but shall be reimbursed for any actual and necessary expenses incurred

in connection with the performance of their duties as members of the board or of committees established by the board.

4547. (a) Each area board shall meet at least quarterly, and on call of the board chairperson, as often as necessary to fulfill its duties. All meetings and records of the area board shall be open to the public.

(b) (1) Each area board shall, by majority vote of the voting members, elect its own chairperson from among the appointed members who are persons with developmental disabilities, or immediate relatives, guardians, or conservators of these persons, and shall establish any committees it deems necessary or desirable. The board chairperson shall appoint all members of committees of the area board.

(2) An area board may call upon representatives of all agencies receiving state funds, for assistance and information, and shall invite persons with developmental disabilities, their immediate relatives, guardians, or conservators, professionals, or members of the general public to participate on area board committees.

(3) When convening any task force or advisory group, the area board shall make its best effort to ensure representation by consumers and family members representing the community's multicultural diversity.

4548. (a) Area boards shall locally assist the state council with the implementation of subtitles A and B of Title I of Public Law 106-402 (42 U.S.C. Sec. 15001 et seq.).

(b) Area boards shall protect and advocate the rights of all persons in the area with developmental disabilities.

(c) Area boards shall conduct capacity building activities and provide advocacy for systemic change.

(d) (1) The area board shall have the authority to pursue legal, administrative, and other appropriate remedies to ensure the protection of the legal, civil, and service rights of persons who require services or who are receiving services in the area. In carrying out this responsibility, area boards may appoint a representative to assist the person in expressing his or her desires and in making decisions and advocating his or her needs, preferences, and choices, where the person with developmental disabilities has no parent, guardian, or conservator legally authorized to represent him or her and the person has either requested the appointment of a representative or the rights or interests of the person, as determined by the area board, will not be properly protected or advocated without the appointment of a representative.

(2) Where there is no guardian or conservator, the person's choice, if expressed, including the right to reject the assistance of a representative, shall be honored. If the person does not express a preference, the order of preference for selection of the representative shall be the person's parent, involved family member, or a volunteer selected by the area board. In establishing these preferences, it is the intent of the Legislature

that parents or involved family members shall not be required to be appointed guardian or conservator in order to be selected. Unless the consumer expresses otherwise, or good cause otherwise exists, the request of the parents or involved family members to be appointed the representative shall be honored.

(3) Where appropriate pursuant to this section, the area board shall appoint a representative to advocate the rights and protect the interests of a person residing in a developmental center for whom community placement is proposed pursuant to Section 4803.

(4) The area board shall identify any evidence of the denial of these rights, shall inform the appropriate local, state, or federal officials of their findings, and shall assist these officials in eliminating all forms of discrimination against persons with developmental disabilities in housing, recreation, education, health and mental health care, employment, and other service programs available to the general population.

(e) Area boards shall conduct, or cause to be conducted, public information programs for consumers, families, professional groups, and for the general public, to increase professional and public awareness of prevention and habilitation programs, and to eliminate barriers to social integration, employment, and participation of persons with developmental disabilities in all community activities.

(f) Area boards shall encourage and assist in the establishment or strengthening of self-advocacy organizations led by individuals with developmental disabilities.

(g) (1) To the extent that resources are available, area boards shall review the policies and practices of publicly funded agencies that serve or may serve persons with developmental disabilities, to determine if the programs are meeting their obligations under local, state, and federal laws. A regional center may notify the area board when the regional center believes a publicly funded program is failing to meet its obligations in serving persons with developmental disabilities. The regional center may provide the area board with a comprehensive summary of the issues and the statute or regulation alleged to be violated. If the area board finds that the agency is not meeting its obligations, the area board shall inform the director and the managing board of the noncomplying agency, in writing, of its findings.

(2) Within 15 days, the agency shall respond, in writing, to the area board's findings. Following receipt of the agency's response, if the area board continues to find that the agency is not meeting its obligations, the area board shall pursue informal efforts to resolve the issue.

(3) If, within 30 days of implementing informal efforts to resolve the issue, the area board continues to find that the agency is not meeting its

obligations under local, state, or federal statutes, the area board shall conduct a public hearing to receive testimony on its findings.

(4) If the problem has not been resolved within 30 days following the public hearing, the area board may provide the state council with its findings and may request authorization to initiate legal action. An area board shall not initiate legal action without prior authorization from the state council. However, the area board may assist any other person, agency, or organization that may pursue litigation related to the area board's findings.

(5) The executive director of the state council shall review the findings developed pursuant to this subdivision and may conduct additional factfinding investigations. The executive director shall report his or her findings to the state council within 30 days and shall recommend a course of action to be pursued by the council, the area board, or other state administrative or legislative officials.

(6) The state council shall review the report of the executive director and shall take any action it deems necessary to resolve the problem. If the state council authorizes the area board to initiate legal action, the state council shall make legal assistance available to the area board pursuant to the legal services provisions of Public Law 106-402 (42 U.S.C. Sec. 15001 et seq.).

(h) Area boards shall encourage the development of needed services and supports of good quality that do not result in duplication, fragmentation of services, and unnecessary expenditures. Prior to providing additional funds for major expansion of existing programs, creation of new programs, or establishment of pilot projects to test new methodologies of service delivery for persons with developmental disabilities within an area board catchment area, the department or regional center, as appropriate, shall consult with the area board regarding the appropriateness of those program developments.

(i) In carrying out their review functions, area boards shall solicit the advice of knowledgeable professionals, consumers, and consumer representatives about problems within the service delivery system in the region. In enacting this article, it is the intent of the Legislature that the area boards not duplicate the functions assigned to other agencies that are routinely responsible for monitoring, regulating, or licensing programs for persons with developmental disabilities. Area boards may call upon these agencies for information and assistance in order to carry out their responsibilities more effectively. Unless otherwise prohibited by law, these agencies shall provide information requested by the area boards, and shall cooperate fully in complying with all reasonable requests for assistance.

(j) (1) Area boards shall remain informed about the quality of services in the area, and shall inform appropriate state and local licensing

agencies of alleged fire, safety, health, or other violations of legally established standards, in any facility providing service to persons with developmental disabilities, that may be brought to the attention of the area board.

(2) If an area board receives evidence of criminal misconduct by an individual or agency funded in whole or in part with state funds under this division, the area board shall immediately inform appropriate public safety agencies about the alleged misconduct.

(k) (1) Area boards shall cooperate with county coordinating councils on developmental disabilities, other regional planning bodies, and consumer organizations in the area. Area boards shall comply with the reasonable requests of these groups and may request the assistance of the groups in carrying out area board responsibilities.

(2) The governing body of any county within the area may request that the area board study or investigate programs in the county for persons with developmental disabilities. The area board shall cooperate with county governments to the fullest extent possible within the limitations of the resources of the board.

(*l*) Each area board shall submit to the state council a summary of its activities and accomplishments in the previous year. The state council, in consultation with area boards, shall determine the timing of, and format for, this summary.

(m) It is the intent of the Legislature that area boards shall maintain local discretion in conducting their advocacy activities. The state council shall not direct the advocacy activities of the area boards, except when specifically authorized by law, or when necessary to ensure compliance with federal requirements.

SEC. 16. The heading of Article 7 (commencing with Section 4550) of Chapter 2 of Division 4.5 of the Welfare and Institutions Code is amended to read:

Article 7. State Council and Area Board Costs and Support Services

SEC. 17. Section 4550 of the Welfare and Institutions Code is amended to read:

4550. The state council's operating costs shall include honoraria and actual and necessary expenses for council members, costs associated with the area boards, as described in this article, and other administrative, professional, and secretarial support services necessary to the operation of the state council. Federal developmental disability funds received by the state under Public Law 106-402 (42 U.S.C. Sec. 15001 et seq.), shall be allotted in any one year for these operating costs. Each member of the state council shall receive one hundred dollars ($100) per day for each full day of work performed directly related to

council business, not to exceed 50 days in any fiscal year, and shall be reimbursed for any actual and necessary expenses incurred in connection with the performance of their duties under this division.

SEC. 18. Section 4551 of the Welfare and Institutions Code is amended to read:

4551. (a) (1) Within the limit of funds allotted for these purposes, the state council chairperson, with the concurrence of a majority of the state council, shall appoint an executive director and, pursuant to paragraph (1) of subdivision (c) of Section 4553, shall appoint an executive director for each area board. The Governor, upon the recommendation of the state council following consultation with the area boards, shall appoint a deputy director for area board operations. The Governor, upon recommendation of the executive director of the state council, shall appoint not more than two deputy directors. All other state council employees that the state council may require shall be appointed by the executive director, with the approval of the state council.

(2) The executive director, all deputy directors, and each area board executive director, shall be paid a salary that is comparable to the director, deputy director, or manager of other state boards, commissions, or state department regional offices with similar responsibilities. The executive director and three deputy directors of the state council and the executive director of each area board shall be exempt from civil service.

(b) Among other duties as the executive director of the state council may require, the deputy director for area board operations shall provide assistance to the area boards, including, but not limited to, resolving common problems, improving coordination, and fostering the exchange of information among the area boards and between the area boards and the state council.

(c) Each area board executive director employed by the state on December 31, 2002, shall continue to be employed in a job classification at the same or higher salary by the council on January 1, 2003, and thereafter, unless he or she resigns or is terminated from employment for good cause. The Executive Director of the Organization of Area Boards on December 31, 2002, shall continue to be employed in a job classification at the same or higher salary by the council on January 1, 2003, and shall serve as the deputy director of area board operations unless he or she resigns or is terminated from employment for good cause.

SEC. 19. Section 4552 of the Welfare and Institutions Code is amended to read:

4552. The state council may contract for additional assistance with any public or private agency or individual to carry out planning, monitoring, evaluation, and other responsibilities under this division. In

order to comply with Public Law 106-402 (42 U.S.C. Sec. 15001 et seq.) regulations, all personnel employed by the state council shall be solely responsible, organizationally and administratively, to the state council. The state council shall have responsibility for the selection, hiring, and supervision of all this personnel.

SEC. 20. Section 4552.5 is added to the Welfare and Institutions Code, to read:

4552.5. The state council may request information, records, and documents from any other agency of state government, except for confidential patient records. These agencies shall comply with the reasonable requests of the state council.

SEC. 21. Section 4553 of the Welfare and Institutions Code is repealed.

SEC. 22. Section 4553 is added to the Welfare and Institutions Code, to read:

4553. (a) The Legislature finds and declares that the advocacy, coordinating, appeals, and other related functions of area boards cannot be effectively provided unless area boards have staff support services from personnel directly responsible and accountable to the area board and state council. Area board staff shall be state employees of the state council.

(b) (1) Each area board shall provide to the state council all information and documentation required by the council to prepare and account for the expenditures of an annual budget that includes the basic funding necessary for the area boards to meet the requirements of applicable state and federal law. The state council, in consultation with the area boards, shall determine the timing of, and format for, the provision of this information and documentation. An area board may present for consideration by the state council a proposal for funds to support any additional activities of the area board not anticipated to be funded through their basic allocation. The state council shall review all area board proposals and shall determine the amount of federal funds under Public Law 106-402 (42 U.S.C. Sec. 15001 et seq.) that shall be allotted to each area board. Nothing in this section shall prevent the appropriation of additional funds to the state council or area boards, or both, from the General Fund or other sources. These funds shall be used only for purposes of extending the activities of the state council or area boards, or both, as authorized by state or federal law.

(2) The state council may receive, on behalf of the council or on behalf of any area board, grants of funds in addition to any allocation of state funds or federal funds under Public Law 106-402 (42 U.S.C. Sec. 15001 et seq.), as authorized under this division. These funds shall be used only for purposes of extending the council's or area boards' activities as authorized by state or federal law.

(c) (1) Each area board shall have an executive director, nominated by the affirmative votes of a majority of the members of the area board, appointed by the executive director of the state council, and approved by the state council. The executive director shall select and supervise persons to serve in any staff positions as the area board and state council may authorize, pursuant to subdivision (a) of Section 4551. The affirmative votes of a majority of the members of the area board and approval of the state council shall be necessary for removal of an executive director by the executive director of the state council.

(2) Each area board, with the approval of the state council, may contract for additional assistance to carry out its duties as established by this division.

(3) Notwithstanding the Bagley-Keene Open Meeting Act (Article 9 (commencing with Section 11120) of Chapter 1 of Part 1 of Division 3 of Title 2), an area board may meet in executive session for purposes of discussing confidential matters, including, but not limited to, personnel matters.

SEC. 23. Section 4554 of the Welfare and Institutions Code is repealed.

SEC. 24. Section 4555 is added to the Welfare and Institutions Code, to read:

4555. Notwithstanding any other provision of law, any contract entered into between the State of California and the state council may provide for periodic advanced payments for services to be performed under the contract. No advanced payment made pursuant to this section shall exceed 25 percent of the total annual contract amount.

SEC. 25. Section 4561 of the Welfare and Institutions Code is amended to read:

4561. In order to integrate all relevant state planning and budgeting, and in order to comply with federal requirements, a California Developmental Disabilities State Plan shall be prepared by the state council not less often than once every five years, and shall be reviewed and revised, as necessary, on an annual basis. All references in this part to ''state plan'' shall be references to the California Developmental Disabilities State Plan.

The state plan shall include, but not be limited to, all state plan requirements contained in subtitles A and B of Title I of Public Law 106-402 (42 U.S.C. Sec. 15001 et seq.), or requirements established by the United States Secretary of Health and Human Services.

SEC. 26. Section 4562 of the Welfare and Institutions Code is repealed.

SEC. 27. Section 4562 is added to the Welfare and Institutions Code, to read:

4562. (a) The state council and the area boards on developmental disabilities shall conduct activities necessary to develop or implement the state plan in the various regions of the state.

(b) In preparing this plan, the council shall utilize information provided by the area boards, statewide and local entities, individuals with developmental disabilities, family members, and other interested parties, to help identify and prioritize actions needed to improve California's system of services and supports for persons with developmental disabilities. The purpose of the plan shall be to ensure a coordinated and comprehensive system of community services and supports that is consumer and family centered and consumer and family directed, and to enable individuals with developmental disabilities to exercise self-determination, independence, productivity, and to be integrated and included in all facets of community life.

SEC. 28. Section 4563 of the Welfare and Institutions Code is repealed.

SEC. 29. Section 4563 is added to the Welfare and Institutions Code, to read:

4563. (a) Area boards shall assess the extent to which services, supports, and other forms of assistance are available to individuals with developmental disabilities and their families within the area board catchment area, and shall make recommendations of objectives in both policy reform and service demonstration, based on identified service and support needs and priorities within the area board catchment area, to be included in the state plan.

(b) Area boards shall participate with the state council in the development and implementation of the state plan and shall submit any information concerning the area's services, needs, and priorities to the state council in a time and format as may be required to meet federal reporting requirements.

SEC. 30. Section 4564 of the Welfare and Institutions Code is amended to read:

4564. The state council, in conjunction with the area boards, shall conduct open hearings on the state plan and related budgetary issues prior to submission of the plan pursuant to Section 4565.

SEC. 31. Section 4565 of the Welfare and Institutions Code is amended to read:

4565. The state plan shall be given to the Governor, the Secretary of the California Health and Human Services Agency, the protection and advocacy agency designated by the Governor to fulfill the requirements and assurances of the federal Developmental Disabilities Assistance and Bill of Rights Act of 2000, the Superintendent of Public Instruction, the Legislature, and to the chairpersons of all area boards for review and

comment prior to its submission by the chairperson of the state council to the United States Secretary of Health and Human Services.

Copies of the state plan shall be provided, no later than November 1 of each year, to the Director of Finance and to the Legislature for guidance in the development of the Governor's Budget and legislative review of the budget, and for guidance in other legislation pertaining to programs for persons with developmental disabilities.

SEC. 32. Section 4567 of the Welfare and Institutions Code is amended to read:

4567. All state agencies shall cooperate with the reasonable requests of the state council by providing information to the state council in the preparation of the state plan. Any expenditures incurred by state agencies in providing this assistance to the state council shall be identified in the state plan and in the state agency's annual budget. These expenditures may be funded in whole or in part by state funds appropriated as the required state share of the developmental disabilities program, or by federal funds from Public Law 106-402, as amended (42 U.S.C. Sec. 15001 et seq.), or both, when the state council allots funds for these purposes in the state plan.

SEC. 33. Section 4568 of the Welfare and Institutions Code is amended to read:

4568. In no event shall the state council allot federal funds from Public Law 106-402, as amended (42 U.S.C. Sec. 15001 et seq.), to state agencies to replace state funds currently allocated to those agencies for the purpose of planning programs for persons with developmental disabilities.

SEC. 34. Chapter 4 (commencing with Section 4570) of Division 4.5 of the Welfare and Institutions Code is repealed.

SEC. 35. Chapter 4 (commencing with Section 4570) is added to Division 4.5 of the Welfare and Institutions Code, to read:

CHAPTER 4. LIFE QUALITY ASSESSMENTS CONDUCTED BY AREA BOARDS

4570. (a) In order to remain informed regarding the quality of services in the area and to protect the legal, civil, and service rights of persons with developmental disabilities, the Legislature finds that it is necessary to conduct life quality assessments with consumers served by the regional centers.

(b) The department shall enter into an interagency agreement with the state council, on behalf of the area boards, to conduct the life quality assessments described in this section. This interagency agreement shall include assurances that the state council shall not direct the area boards

in their conduct of these assessments or in the content or format of the annual reports submitted to the council by the area boards.

(c) Consistent with the responsibilities described in this chapter, the area board, with the consent of the consumer and, when appropriate, a family member, shall conduct life quality assessments with consumers living in out-of-home placements, supported living arrangements, or independent living arrangements no less than once every three years or more frequently upon the request of a consumer, or, when appropriate, a family member. A regional center or the department shall annually provide the local area board with a list, including, but not limited to, the name, address, and telephone number of each consumer, and, when appropriate, a family member, the consumer's date of birth, and the consumer's case manager, for all consumers living in out-of-home placements, supported living arrangements, or independent living arrangements, in order to facilitate area board contact with consumers and, when appropriate, family members, for the purpose of conducting life quality assessments.

(d) The life quality assessments shall be conducted by utilizing the "Looking at Life Quality Handbook" or subsequent revisions developed by the department.

(e) The assessments shall be conducted by consumers, families, providers, and others, including volunteer surveyors. Each area board shall recruit, train, supervise, and coordinate surveyors. Upon request, and if feasible, the area board shall respect the request of a consumer and, when appropriate, family member, for a specific surveyor to conduct the life quality assessment. An area board may provide stipends to surveyors.

(f) A life quality assessment shall be conducted within 90 days prior to a consumer's triennial individual program plan meeting, so that the consumer and regional center may use this information as part of the planning process.

(g) Prior to conducting a life quality assessment, the area board shall meet with the regional center to coordinate the exchange of appropriate information necessary to conduct the assessment and ensure timely followup to identified violations of any legal, civil, or service rights.

(h) Following the conduct of each life quality assessment, the area board shall develop a report of its findings and provide a copy of the report to the consumer, when appropriate, family members, and the regional center providing case management services to the consumer. In the event that a report identifies alleged violations of any legal, civil, or service right, the area board shall notify the regional center and the department of the alleged violation. The department shall monitor the regional center to ensure that violations are addressed and resolved in a timely manner.

(i) Regional centers shall review information from the life quality assessments on a systemic basis in order to identify training and resource development needs.

(j) (1) On an annual basis, each area board shall prepare and submit a report to the state council describing its activities and accomplishments related to the implementation of this section. The report shall include, but not be limited to, the number of life quality assessments conducted, the number of surveyors, including those provided stipends, a description of the surveyor recruitment process and training program, including any barriers to recruitment, the number, nature, and outcome of any identified violations of legal, civil, or service rights reported to regional centers, and recommendations for improvement in the life quality assessment process.

(2) By September 15 of each year, the state council shall compile these reports and forward to the Governor, the Legislature, and the department.

(k) Implementation of this section shall be subject to an annual appropriation of funds in the Budget Act for this purpose.

SEC. 36. Section 4691 of the Welfare and Institutions Code is amended to read:

4691. (a) The Legislature reaffirms its intent that community-based day programs be planned and provided as part of a continuum of services to enable persons with developmental disabilities to approximate the pattern of everyday living available to people of the same age without disabilities. The Legislature further intends that standards be developed to ensure high quality services, and that equitable ratesetting procedures based upon those standards be established, maintained, and revised, as necessary. The Legislature intends that ratesetting procedures be developed for all community-based day programs, which include adult development centers, activity centers, infant day programs, behavior management programs, social recreational programs, and independent living programs.

(b) For the purpose of ensuring that regional centers may secure high quality services for persons with developmental disabilities, the State Department of Departmental Services shall promulgate regulations establishing program standards and an equitable process for setting rates of state payment for community-based day programs. These regulations shall include, but are not limited to:

(1) The standards and requirements related to the operation of the program including, but not limited to, staff qualifications, staff-to-client ratios, client entrance and exit criteria, program design, program evaluation, program and client records and documentation, client placement, and personnel requirements and functions.

(2) The allowable cost components of the program including salary and wages, staff benefits, operating expenses, and management organization costs where two or more programs are operated by a separate and distinct corporation or entity.

(3) The rate determination processes for establishing rates, based on the allowable costs of the allowable cost components. Different rate determination processes may be developed for establishing rates for new and existing programs, and for the initial and subsequent years of implementation of the regulations. The processes shall include, but are not limited to:

(A) The procedure for identification and grouping of programs by type of day program and approved staff-to-client ratio.

(B) The requirements for an identification of the program, cost, and other information, if any, which the program is required to submit to the department or the regional center, the consequences, if any, for failure to do so, and the timeframes and format for submission and review.

(C) The ratesetting methodology.

(D) A procedure for adjusting rates as a result of anticipated and unanticipated program changes and fiscal audits of the program and a procedure for appealing rates, including the timeframes for the program to request an adjustment or appeal, and for the department to respond.

(E) A procedure for increasing established rates and the allowable range of rates due to cost-of-living adjustments.

(F) A procedure for increasing established rates as a result of Budget Act appropriations made pursuant to the ratesetting methodology established pursuant to Section 4691.5 and subdivision (c).

The department shall develop these regulations in consultation with representatives from organizations representing the developmental services system as determined by the department. The State Council on Developmental Disabilities, and other organizations representing regional centers, providers, and clients shall have an opportunity to review and comment upon the proposed regulations prior to their promulgation. The department shall promulgate these regulations for all community-based day programs by July 1, 1990.

(c) Upon the promulgation of regulations pursuant to subdivision (b), and pursuant to Section 4691.5, and by September 1 of each year thereafter, the department shall establish rates pursuant to the regulations. Rate increases during fiscal years 1990–91 and 1991–92 shall be limited to those specified in subdivision (b). For fiscal year 1992–93 and all succeeding fiscal years, any increases proposed during those years in the rates of reimbursement established pursuant to the regulations, except for rate increases due to rate appeals and rate adjustments based on unanticipated program changes, shall be subject to the appropriation of sufficient funds in the Budget Act, for those

purposes, to fully provide the proposed increase to all eligible programs for the entire fiscal year. If the funds appropriated in the Budget Act are not sufficient to fully provide for the proposed increase in the rates of reimbursement for all eligible programs for the entire fiscal year, the proposed increase shall be limited to the level of funds appropriated. The increases proposed in the rates of reimbursement shall be reduced equitably among all eligible providers in accordance with funds appropriated and the eligible programs shall be reimbursed at the reduced amount for the entire fiscal year.

(d) Using the reported costs of day programs reimbursed at a permanent rate and the standards and ratesetting processes promulgated pursuant to subdivision (b) as a basis, the department shall report to the Legislature as follows:

(1) By April 15, 1993, and every odd year thereafter, the difference between permanent rates for existing programs and the rates of those programs based upon their allowable costs and client attendance, submitted pursuant to the regulations specified in subdivision (b). In reporting the difference, the department shall also identify the amount of the difference associated with programs whose rates are above the allowable range of rates, which is available for increasing the rates of programs whose rates are below the allowable range, to within the allowable range, and any other pertinent cost or rate information which the department deems necessary.

(2) By April 15, 1994, and every even year thereafter, the level of funding, if any, which was not appropriated to reimburse providers at the proposed rates reported the prior fiscal year pursuant to paragraph (1), and any other pertinent cost or rate information which the department deems necessary.

(3) The April 15, 1996, report pursuant to paragraph (2) shall be prepared jointly by the department and organizations representing community-based day program providers, as determined by the department. That report shall also include a review of the ratesetting process and recommendations, if any, for its modification.

(e) Rates established by the department pursuant to subdivision (b) are exempt from the provisions of Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

(f) The department shall ensure that the regional centers monitor compliance with program standards.

SEC. 37. Section 4712 of the Welfare and Institutions Code is amended to read:

4712. (a) The fair hearing shall be held within 50 days of the date the hearing request form is received by the service agency, unless a continuance based upon a showing of good cause has been granted to the claimant. The service agency may also request a continuance based upon

a showing of good cause, provided that the granting of the continuance does not extend the time period for rendering a final administrative decision beyond the 90-day period provided for in this chapter. For purposes of this section, good cause includes, but is not limited to, the following circumstances:

(1) Death of a spouse, parent, child, brother, sister, grandparent of the claimant or authorized representative, or legal guardian or conservator of the claimant.

(2) Personal illness or injury of the claimant or authorized representative.

(3) Sudden and unexpected emergencies, including, but not limited to, court appearances of the claimant or authorized representative, conflicting schedules of the authorized representative if the conflict is beyond the control of the authorized representative.

(4) Unavailability of a witness or evidence, the absence of which would result in serious prejudice to the claimant.

(5) An intervening request by the claimant or his or her authorized representative for mediation.

(b) Notwithstanding Sections 19130, 19131, and 19132 of the Government Code, the department shall contract for the provision of independent hearing officers. Hearing officers shall have had at least two years of full-time legal training at a California or American Bar Association accredited law school or the equivalent in training and experience as established by regulations to be adopted by the department pursuant to Section 4705. These hearing officers shall receive training in the law and regulations governing services to developmentally disabled individuals and administrative hearings. Training shall include, but not be limited to, the Lanterman Developmental Disabilities Services Act and regulations adopted thereunder, relevant case law, information about services and supports available to persons with developmental disabilities, including innovative services and supports, the standard agreement contract between the department and regional centers and regional center purchase-of-service policies, and information and training on protecting the rights of consumers at administrative hearings, with emphasis on assisting, where appropriate, those consumers represented by themselves or an advocate inexperienced in administrative hearings in fully developing the administrative record. The State Department of Developmental Services shall seek the advice of the State Council on Developmental Disabilities, the protection and advocacy agency designated by the Governor in this state to fulfill the requirements and assurances of the federal Developmental Disabilities Assistance and Bill of Rights Act of 2000, contained in Chapter 144 (commencing with Section 15001) of Title 42 of the United States Code, the Association of Regional Center Agencies,

and other state agencies or organizations and consumers and family members as designated by the department in the development of standardized hearing procedures for hearing officers and training materials and the implementation of training procedures by the department. The department shall provide formal training for hearing officers on at least an annual basis. The training shall be developed and presented by the department, however, the department shall invite those agencies and organizations listed in this subdivision to participate.

(c) The hearing officer shall not be an employee, agent, board member, or contractor of the service agency against whose action the appeal has been filed, or a spouse, parent, child, brother, sister, grandparent, legal guardian, or conservator of the claimant, or any person who has a direct financial interest in the outcome of the fair hearing, or any other interest which would preclude a fair and impartial hearing.

(d) The claimant and the service agency shall exchange a list of potential witnesses, the general subject of the testimony of each witness, and copies of all potential documentary evidence at least five calendar days prior to the hearing. The hearing officer may prohibit testimony of a witness that is not disclosed and may prohibit the introduction of documents that have not been disclosed. However, the hearing officer may allow introduction of the testimony or witness in the interest of justice.

(e) The fair hearing shall be held at a time and place reasonably convenient to the claimant and the authorized representative. The claimant or the authorized representative of the claimant and the regional center shall agree on the location of the fair hearing.

(f) Merits of a pending fair hearing shall not be discussed between the hearing officer and a party outside the presence of the other party.

(g) The hearing officer shall voluntarily disqualify himself or herself and withdraw from any case in which he or she cannot accord a fair and impartial hearing or consideration. Any party may request the disqualification of the hearing officer by filing an affidavit, prior to the taking of evidence at a hearing, stating with particularity the grounds upon which it is claimed that a fair and impartial hearing cannot be accorded. The issue shall be decided by the hearing officer.

(h) Both parties to the fair hearing shall have the rights specified in subdivision (f) of Section 4701.

(i) The fair hearing need not be conducted according to the technical rules of evidence and those related to witnesses. Any relevant evidence shall be admitted. Both parties shall be allowed to submit documents into evidence at the beginning of the hearing. No party shall be required to formally authenticate any document unless the hearing officer determines the necessity to do so in the interest of justice. All testimony

shall be under oath or affirmation which the hearing officer is empowered to administer.

(j) A service agency shall present its witnesses and all other evidence before the claimant presents his or her case unless the parties agree otherwise or the hearing officer determines that there exists good cause for a witness to be heard out of order. This section does not alter the burden of proof.

(k) A recording shall be made of the proceedings before the hearing officer. Any cost of recording shall be borne by the responsible state agency.

(*l*) The fair hearing shall be conducted in the English language. However, if the claimant, the claimant's guardian or conservator, parent of a minor claimant, or authorized representative does not understand English, an interpreter shall be provided by the responsible state agency.

(m) The fair hearing shall be open to the public except at the request of the claimant or authorized representative or when personnel matters are being reviewed.

(n) The agency awarded the contract for independent hearing officers shall biennially conduct, or cause to be conducted, an evaluation of the hearing officers who conduct hearings under this part. The department shall approve the methodology used to conduct the evaluation. Information and data for this evaluation shall be solicited from consumers who were claimants in an administrative hearing over the past two years, their family members or authorized representative if involved in the hearing, regional centers, and nonattorney advocates, attorneys who represented either party in an administrative hearing over the past two years, and the organizations identified in subdivision (b). Regional centers shall forward copies of administrative decisions reviewed by the superior court to the department. The areas of evaluation shall include, but not be limited to, the hearing officers' demeanor toward parties and witnesses, conduct of the hearing in accord with fairness and standards of due process, ability to fairly develop the record in cases where consumers represent themselves or are represented by an advocate that does not have significant experience in administrative hearings, use of legal authority, clarity of written decisions, and adherence to the requirements of subdivision (b) of Section 4712.5. The department shall be provided with a copy of the evaluation and shall use the evaluation in partial fulfillment of its evaluation of the contract for the provision of independent hearing officers. A summary of the data collected shall be made available to the public upon request, provided that the names of individual hearing officers and consumers shall not be disclosed.

SEC. 38. As of January 1, 2003, the area boards on developmental disabilities will become a program within the State Council on

Developmental Disabilities. As of January 1, 2003, no further expenditures shall be charged against Item 4110-001-0001 of Section 2.00 of the Budget Act of 2002. All remaining area board appropriation authority, including reimbursements for the clients' rights advocacy program, volunteer advocacy services program, and the life quality assessment program pursuant to the Lanterman Act existing interagency agreements with the State Department of Developmental Services, shall be transferred to items in Section 2.00 of the Budget Act of 2002 for which the first four digits are 4100, and the schedule shall be amended accordingly. It is the intent of the Legislature that the funding appropriated for the area boards in the Budget Act of 2002 shall not be reduced as a result of this section.

CHAPTER 677

An act relating to criminal procedure, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 17, 2002. Filed with Secretary of State September 18, 2002.]

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

SECTION 1. (a) The State Department of Mental Health, in collaboration with representatives from the Judicial Council, district attorneys, public defenders, local mental health agencies, the counties, and mental health advocates shall undertake a study of the current application and impact of the process described in Section 1026.2 of the Penal Code pertaining to how persons found not guilty by reason of insanity are judicially restored to sanity. This study shall examine, but not be limited to, the following issues, from the standpoint of the existing or potential impact on both government processes and on patients affected by this section:

(1) The current use of and practices for applications brought pursuant to Section 1026.2 of the Penal Code, including, but not limited to, how many applications are brought annually statewide and by county, the disposition of these applications, the estimated costs of handling these applications, and how many times applicants previously have filed applications pursuant to Section 1026.2 of the Penal Code.

(2) The incidence of frivolous applications, as determined by objective criteria identified in the study.

(3) The potential advantages and disadvantages of increasing the minimum time for inpatient status from 180 days to 365 days, or any other increase contemplated or recommended by the study.

(4) The potential advantages and disadvantages of requiring that the local mental health director, or his or her designee, concur in the restoration of sanity.

(5) The potential advantages and disadvantages of requiring that a patient cooperatively, continuously, and regularly engage in treatment plans provided by both the state hospital and the local conditional release program staff while in inpatient treatment.

(6) The potential advantages and disadvantages of increasing the current one-year time period for filing an application for a restoration of sanity hearing after a denial to up to five years, or any other increase contemplated or recommended by the study.

(7) Any cost avoidance, including for counties, courts, prosecutors, defense attorneys, mental health, or others for cases that do not result in a significant number of days that an applicant spends in the conditional release program.

(b) The State Department of Mental Health shall complete a written report comprised of the study required by this section, and provide a copy of it to the Legislature, no later than January 1, 2004.

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 facilitate implementation of corrective procedures regarding outpatient and restoration of sanity procedures, it is necessary that this act take immediate effect.

CHAPTER 678

An act to add Section 1797.8 to, and to add Chapter 2.5 (commencing with Section 11758) to Division 10.5 of, the Health and Safety Code, relating to drugs.

[Approved by Governor September 17, 2002. Filed with Secretary of State September 18, 2002.]

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

SECTION 1. The Legislature finds and declares all of the following:

(a) Because drug overdose deaths are preventable, it is therefore an appropriate role for the state to do all of the following:

(1) Seek to prevent the onset of drug use through preventive measures.

(2) Provide cessation treatment for those addicted to drugs.

(3) Prosecute those who sell controlled substances.

(4) Seek to prevent needless death and suffering among individuals who cannot or will not stop using drugs.

(b) According to the vital statistics database of the federal Centers for Disease Control and Prevention, the number of fatal drug overdoses in California quadrupled between 1980 and 1997.

(c) The Director of the United States Drug Enforcement Administration testified to Congress that nationwide overdose deaths from the prescription drug opiate OxyContin totaled at least 117 over the last two years, and that in another 179 overdose deaths OxyContin was the likely cause of death.

(d) In recent years, increasing rates of heroin use and the widened variability of its potency have resulted in an escalating death toll among both novice users, younger users, and an aging population of heroin-addicted adults. Heroin overdose is now a leading cause of death for men between the ages of 20 and 54 in several cities and rural counties in the western part of the United States.

(e) In 1998, the last year for which this data was available from the federal Centers for Disease Control and Prevention, an adult male in San Diego was just as likely to die of a drug overdose as from a motor vehicle collision or a gunshot wound. During that same time period in San Francisco, an adult male was twice as likely to die of a drug overdose than from a motor vehicle collision or a gunshot wound, according to federal Centers for Disease Control and Prevention statistics.

(f) In the Counties of Kern, Monterey, Orange, Riverside, Sacramento, San Joaquin, Santa Cruz, and Ventura, the rate of drug overdose fatalities increased, ranging from 200 percent to 500 percent, between 1990 and 1998. Many predominantly rural counties, including Butte, Imperial, and Sonoma Counties, experienced equal or greater increases.

(g) In addition to the many deaths caused by illicit drugs, there are many preventable deaths in California each year among our oldest citizens and other chronically ill Californians who rely on opiate-based prescription medicines to dull pain and contribute to their productivity and quality of life. Efforts need to be made to improve the education of prescription drug users and their families to address the risk of overdose, and to improve the response of our emergency medical services to both illicit and legal opiate-based drug overdoses.

(h) Los Angeles County has the highest annual number of fatal drug overdoses in the state. According to data from the federal Substance Abuse and Mental Health Services Administration (SAMHSA), over

700 people in Los Angeles County died of drug overdoses in 1999. This number represents a 45 percent increase in the number of deaths from the year before. Heroin overdose is a major cause of these deaths.

(i) A heroin overdose death typically occurs one to three hours after the last injection, and studies suggest that the majority of heroin overdoses are witnessed by others. There is ample time to save the victim's life, provided that witnesses are able and willing to intervene.

(j) The life of an overdose victim can be saved if witnesses, who are often drug users themselves, are able to provide cardiopulmonary resuscitation and summon emergency medical assistance by calling 911.

(k) In California, paramedics, physicians, nurses, nurse practitioners, and emergency medical technicians II are currently authorized to administer naloxone hydrochloride, which is the antidote to heroin overdose. Naloxone hydrochloride is highly effective, inexpensive, and relatively easy to administer. A study by San Francisco General Hospital found that if an overdose victim had a pulse at the time of paramedic arrival, likelihood of survival was 94 percent. Police, firefighters, and emergency service personnel who respond first to medical emergencies need to be trained and authorized to administer the antidote in the absence of paramedics in any county in which the medical director of the local emergency medical services authority deems it important.

(*l*) Last year, California enacted Assembly Bill 559 (Chapter 458 of the Statutes of 2001), which authorizes school personnel to inject children with epinephrine in case of a life-threatening emergency. The analysis of the Assembly Committee on Appropriations predicted that the Emergency Medical Services Authority would incur only minor, absorbable costs for writing regulations and developing rules and standards for administration. Similarly, training an emergency medical technician-I (EMT-I) to administer naloxone hydrochloride should result in a minor expense, and increase the number of lives saved.

SEC. 2. Section 1797.8 is added to the Health and Safety Code, to read:

1797.8. (a) For purposes of this section, the following definitions apply:

(1) ''EMT-I'' means any person who has training and a valid certificate as prescribed by Section 1797.80.

(2) ''EMT certifying authority'' means the medical director of the local emergency medical services agency.

(b) Any county may, at the discretion of the county or regional medical director of emergency medical services, develop a program to certify an EMT-I to administer naloxone hydrochloride by means other than intravenous injection.

(c) Any county that chooses to implement a program to certify an EMT-I to administer naloxone hydrochloride, as specified in

subdivision (b), shall approve and administer a training and testing program leading to certification consistent with guidelines established by the state Emergency Medical Services Authority.

(d) On or before July 1, 2003, the state Emergency Medical Services Authority shall develop guidelines relating to the county certification programs authorized pursuant to subdivision (b).

(e) An EMT-I may be authorized by the EMT certifying authority to administer naloxone hydrochloride by means other than intravenous injection only if the EMT-I has completed training and passed an examination administered or approved by the EMT certifying authority in the area.

(f) This section shall be operative only until the operative date of regulations that revise the regulations set forth in Chapter 3 (commencing with Section 100101) of Division 9 of Title 22 of the California Code of Regulations and that authorize an EMT-I to receive EMT-II training in administering naloxone hydrochloride without having to complete the entire EMT-II certification course.

SEC. 3. Chapter 2.5 (commencing with Section 11758) is added to Division 10.5 of the Health and Safety Code, to read:

CHAPTER 2.5. FATAL DRUG OVERDOSE INFORMATION

11758. The definitions contained in this article shall govern the construction of this chapter, unless the context requires otherwise.

11758.03. ''Department'' means the State Department of Alcohol and Drug Programs.

11758.06. (a) On or before July 1, 2004, and on or before January 1, 2009, as specified in subdivision (c), the department shall place on its Internet Web site information on drug overdose trends in California, including county and state death rates, from existing data, in order to ascertain changes in the causes or rates of fatal and nonfatal drug overdoses for the preceding five years.

(b) The information required by subdivision (a) shall include , to the extent available, data on all of the following:

(1) Trends in drug overdose death rates by county or city, or both.

(2) Suggested improvements in data collection.

(3) A description of interventions that may be effective in reducing the rate of fatal or nonfatal drug overdoses.

(c) The information required by subdivision (a) to be placed on the department's Internet Web site shall remain on the Internet Web site for a period of not less than six months. The department shall update the information required pursuant to subdivision (a) and shall place the

updated information on the Internet Web site on or before January 1, 2009, for a period of not less than six months.

CHAPTER 679

An act to add Section 115928 to the Health and Safety Code, relating to water safety.

[Approved by Governor September 17, 2002. Filed with Secretary of State September 18, 2002.]

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

SECTION 1. Section 115928 is added to the Health and Safety Code, to read:

115928. Whenever a construction permit is issued for the construction of a new swimming pool or spa, the pool or spa shall meet all of the following requirements:

(a) (1) The suction outlet of the pool or spa for which the permit is issued shall be equipped to provide circulation throughout the pool or spa as prescribed in paragraph (2).

(2) The swimming pool or spa shall have at least two circulation drains per pump that shall be hydraulically balanced and symmetrically plumbed through one or more ''T'' fittings, and that are separated by a distance of at least three feet in any dimension between the drains.

(b) Suction outlets that are less than 12 inches across shall be covered with antientrapment grates that cannot be removed except with the use of tools. Slots or openings in the grates or similar protective devices shall be of a shape, area, and arrangement that would prevent physical entrapment and would not pose any suction hazard to bathers.

(c) Any backup safety system that an owner of a new swimming pool or spa may choose to install in addition to the requirements set forth in subdivisions (a) and (b) shall meet the standards as published in the document, ''Guidelines for Entrapment Hazards: Making Pools and Spas Safer,'' Publication Number 363, January 1998, United States Consumer Products Safety Commission.

SEC. 2. If the United States Consumer Product Safety Commission adopts new standards relating to entrapment hazards in swimming pools and spas, the Director of Health Services shall review the standards within 90 days of their adoption, and shall make his or her recommendations to the Governor and the Legislature regarding whether the State of California should adopt the new federal standards.

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.

CHAPTER 680

An act to amend Section 18712 of the Business and Professions Code, relating to boxing and martial arts.

[Approved by Governor September 17, 2002. Filed with Secretary of State September 18, 2002.]

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

SECTION 1. Section 18712 of the Business and Professions Code is amended to read:

18712. (a) Notwithstanding any other provision of law, any person applying for a license or the renewal of a license as a professional boxer or as a professional martial arts fighter shall present documentary evidence satisfactory to the commission that the applicant has been administered a test, by a laboratory in the United States that possesses a certificate under the Clinical Laboratory Improvement Act (42 U.S.C. Sec. 263a), to detect the presence of antibodies both to the human immunodeficiency virus (HIV) and to hepatitis C virus (HCV) and to detect the presence of the antigen of hepatitis B virus (HBV) within 30 days prior to the date of the application and that the results of all three tests are negative. A negative report for all three tests shall also be required of a professional boxer or professional martial arts fighter prior to competing in a match that will occur 180 days or more after the date of the tests submitted for the issuance or renewal of his or her license.

(b) Information received under this section and any other medical information about an applicant or licensee shall be confidential and not subject to discovery or subpoena. If the commission denies a license or the renewal of a license or suspends or revokes a license because of a licensee's HIV or HCV antibody status or HBV antigen status, it shall state only that the action was taken for medical reasons. An applicant or licensee may appeal the commission's denial, suspension, or revocation of a license under this section. The commission shall notify each person

in writing of his or her right to a closed hearing for that appeal. An applicant or licensee must make a request for a hearing to the commission within 30 days of receiving notification from the commission of the applicant's or licensee's right to a hearing.

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.

CHAPTER 681

An act to amend Section 473.15 of the Business and Professions Code, relating to healing arts.

[Approved by Governor September 17, 2002. Filed with Secretary of State September 18, 2002.]

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

SECTION 1. Section 473.15 of the Business and Professions Code is amended to read:

473.15. (a) The Joint Legislative Sunset Review Committee established pursuant to Section 473 shall review the following boards established by initiative measures, as provided in this section:

(1) The State Board of Chiropractic Examiners established by an initiative measure approved by electors November 7, 1922.

(2) The Osteopathic Medical Board of California established by an initiative measure approved June 2, 1913, and acts amendatory thereto approved by electors November 7, 1922.

(b) The Osteopathic Medical Board of California shall prepare an analysis and submit a report as described in subdivisions (a) to (e), inclusive, of Section 473.2, to the Joint Legislative Sunset Review Committee on or before September 1, 2003.

(c) The State Board of Chiropractic Examiners shall prepare an analysis and submit a report as described in subdivisions (a) to (e), inclusive, of Section 473.2, to the Joint Legislative Sunset Review Committee on or before September 1, 2005.

(d) The Joint Legislative Sunset Review Committee shall, during the interim recess of 2003 for the Osteopathic Medical Board of California,

and during the interim recess of 2005 for the State Board of Chiropractic Examiners, hold public hearings to receive testimony from the Director of Consumer Affairs, the board involved, the public, and the regulated industry. In that hearing, each board shall be prepared to demonstrate a compelling public need for the continued existence of the board or regulatory program, and that its licensing function is the least restrictive regulation consistent with the public health, safety, and welfare.

(e) The Joint Legislative Sunset Review Committee shall evaluate and make determinations pursuant to Section 473.4 and shall report its findings and recommendations to the department as provided in Section 473.5.

(f) In the exercise of its inherent power to make investigations and ascertain facts to formulate public policy and determine the necessity and expediency of contemplated legislation for the protection of the public health, safety, and welfare, it is the intent of the Legislature that the State Board of Chiropractic Examiners and the Osteopathic Medical Board of California be reviewed pursuant to this section.

(g) It is not the intent of the Legislature in requiring a review under this section to amend the initiative measures that established the State Board of Chiropractic Examiners or the Osteopathic Medical Board of California.

CHAPTER 682

An act to add Section 207 to the Business and Professions Code, relating to consumer affairs.

[Approved by Governor September 17, 2002. Filed with Secretary of State September 18, 2002.]

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

SECTION 1. Section 207 is added to the Business and Professions Code, to read:

207. (a) Notwithstanding any other provision of law, the money in any fund described in Section 205 that is attributable to administrative fines, civil penalties, and criminal penalties imposed by a regulating entity, or cost recovery by a regulating entity from enforcement actions and case settlements, shall not be continuously appropriated. The money in each fund that is not continuously appropriated shall be available for expenditure as provided in this code only upon appropriation by the Legislature.

(b) Notwithstanding any other provision of law, the annual Budget Act may appropriate, in a single budget item for each individual fund described in paragraphs (1) to (40), inclusive, of subdivision (a) of Section 205, the entire amount available for expenditure in the budget year for that fund. That appropriation may include funds that are continuously appropriated and funds that are not continuously appropriated.

CHAPTER 683

An act to add Section 685 to the Business and Professions Code, relating to student loans, and making an appropriation therefor.

[Approved by Governor September 17, 2002. Filed with Secretary of State September 18, 2002.]

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

SECTION 1. Section 685 is added to the Business and Professions Code, to read:

685. (a) (1) A board may cite and fine a currently licensed health care practitioner if he or she is in default on a United States Department of Health and Human Services education loan, including a Health Education Assistance Loan.

(2) Each board that issues citations and imposes fines shall retain the money from these fines for deposit into its appropriate fund.

(b) The board may deny a license to an applicant to be a health care practitioner or deny renewal of a license if he or she is in default on a United States Department of Health and Human Services education loan, including a Health Education Assistance Loan, until the default is cleared or until the applicant or licensee has made satisfactory repayment arrangements.

(c) In determining whether to issue a citation and the amount of the fine to a health care practitioner or to deny a license to an applicant to be a health care practitioner or to deny the renewal of a license, a board shall take into consideration the following:

(1) The population served by the health care practitioner.

(2) The health care practitioner's economic status.

(d) For purposes of this section, the following terms shall have the following meanings:

(1) ''Board'' means a licensing board or agency having jurisdiction of a licensee, but does not include the Board of Chiropractic Examiners.

(2) "Health care practitioner" means a person licensed or certified pursuant to this division or licensed pursuant to the Osteopathic Initiative Act.

(e) This section shall become operative on July 1, 2003.

CHAPTER 684

An act to add Article 4.9 (commencing with Section 14149) to Chapter 7 of Part 3 of Division 9 of the Welfare and Institutions Code, relating to Medi-Cal.

[Approved by Governor September 18, 2002. Filed with Secretary of State September 18, 2002.]

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

SECTION 1. Article 4.9 (commencing with Section 14149) is added to Chapter 7 of Part 3 of Division 9 of the Welfare and Institutions Code, to read:

Article 4.9. Medi-Cal Managed Care Benefits for Nondisabled Persons with HIV

14149. (a) It is the intent of the Legislature in enacting this article, to expand eligibility for Medi-Cal benefits, with the exception of prescription drug benefits provided by the AIDS Drug Assistance Program (ADAP), to persons with HIV who are enrolled in ADAP and who are not disabled, but who, if disabled, would qualify for Medi-Cal benefits.

(b) It is further the intent of the Legislature that this expansion of the existing Medi-Cal program be funded by cost savings achieved through the voluntary enrollment into the existing Medi-Cal managed care program of persons who are disabled as a result of AIDS, and who are either receiving Medi-Cal benefits on a fee-for-service basis as of January 1, 2003, or who become eligible to receive Medi-Cal benefits on or after January 1, 2003.

(c) It is further the intent of the Legislature that the State Department of Health Services encourage the voluntary enrollment into the existing Medi-Cal managed care program of persons described in subdivision (b) in order to obtain sufficient cost savings to provide Medi-Cal benefits to the maximum feasible number of persons with HIV subject to the constraints of this article.

(d) It is further the intent of the Legislature that all protections of state and federal law and regulations that apply to the state's Medi-Cal managed care program shall apply to those persons who become eligible for Medi-Cal pursuant to this article.

14149.3. (a) Subject to subdivisions (b) and (c), paragraph (2) of subdivision (f), and subdivision (k), the department shall, commencing July 1, 2003, or the date that all necessary federal waivers have been obtained, whichever is later, expand eligibility for benefits under this chapter, with the exception of those prescription drug benefits provided pursuant to ADAP, to any person with HIV who meets both of the following criteria:

(1) The person is enrolled in the ADAP program pursuant to Section 120960 of the Health and Safety Code, and maintains enrollment in that program.

(2) The person would otherwise qualify for Medi-Cal benefits if the person were disabled as defined in subdivision (h).

(b) Any person eligible for benefits pursuant to subdivision (a), and seeking enrollment in Medi-Cal pursuant to this article shall be enrolled on a first-come-first-served basis pursuant to an allocation mechanism that shall be developed by the department.

(c) Any person who is eligible for enrollment in Medi-Cal pursuant to this article shall be required to elect a Medi-Cal managed care plan in those counties in which a managed care plan is available, unless the department determines that the cost-neutrality requirements provided for in subdivision (f) and the enrollment goals provided for in this article can be achieved without this requirement.

(d) In implementing this article, the department shall ensure that all of the following standards are met:

(1) All state and federal laws and regulations that apply to the state's Medi-Cal managed care program shall apply to the expansion provided by this article and to the beneficiaries eligible for Medi-Cal pursuant to this article.

(2) The Medi-Cal benefits provided under this article shall include prescription drugs not provided by the AIDS Drug Assistance Program.

(3) All participating plans that assume full risk for all health care services, including inpatient and outpatient services, shall be licensed pursuant to the Knox-Keene Act (Article 1 commencing with Section 1340) of Chapter 2.2 of Division 2 of the Health and Safety Code), except as provided in Section 1343 of the Health and Safety Code.

(4) Health care service plans participating in the Medi-Cal managed care program shall comply with the applicable sections of the Knox-Knee Act (Article 1 (commencing with Section 1340) of Chapter 2.2 of Division 2 of the Health and Safety Code), including Sections

1367 and 1374.16 of the Health and Safety Code and the regulations adopted pursuant to Section 1374.16 of the Health and Safety Code.

(5) Primary care case management plans participating in the Medi-Cal managed care program shall comply with the applicable sections of Article 2.9 (commencing Section 14088). Primary care case management plans are required to maintain grievance and appeal procedures consistent with the existing Medi-Cal managed care program, to address beneficiary grievances.

(e) The department shall establish capitation rates to be paid to Medi-Cal managed care plans for services provided pursuant to this section. These capitation rates may not exceed 95 percent of the fee-for-service equivalent costs to the Medi-Cal program for medical services for persons with HIV.

(f) (1) The department shall meet federal revenue neutrality requirements through the savings generated by the voluntary enrollment into Medi-Cal managed care of persons who are disabled as a result of AIDS, and who are either receiving Medi-Cal benefits on a fee-for-service basis as of January 1, 2003, or who become eligible to receive Medi-Cal benefits on or after January 1, 2003. The savings generated by increased voluntary enrollments in Medi-Cal managed care shall be used to fund enrollment by individuals eligible for the expansion of Medi-Cal eligibility provided for pursuant to subdivision (a). Nothing in this subdivision shall preclude the department from implementing other means of meeting the federal revenue neutrality requirements, provided that all requirements of this article are met.

(2) The department may not enroll individuals described in subdivision (a) until the department can ensure sufficient savings, pursuant to paragraph (1), equal to or greater than the cost of providing benefits to these individuals.

(g) The department shall encourage the voluntary enrollment into Medi-Cal managed care of persons who are disabled as a result of AIDS. The department shall conduct all outreach and awareness activities necessary to implement this requirement in a manner consistent with Section 14407 to ensure that persons who enroll in managed care do so voluntarily. These outreach and awareness activities shall include information on how electing managed care may alter provider relationships and how persons may revert to fee-for-service if they prefer to return to fee-for-service.

(h) For the purposes of this section, ‘‘disabled’’ means a person who meets the eligibility criteria 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).

(i) Notwithstanding Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, the department shall implement this article, without taking any regulatory action, by means of an all-county letter or similar instruction. Thereafter, the department shall adopt regulations in accordance with the requirements of Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

(j) Commencing January 1, 2003, the department shall seek the appropriate federal waiver under Section 1115 of the Social Security Act (42 U.S.C. Sec. 1315) to implement the expansion of eligibility provided for pursuant to this section. The department shall maximize the federal reimbursement received for services provided under this article to those eligible pursuant to this section.

(k) This article shall be implemented only if, and to the extent that, the department determines that federal financial participation is available pursuant to Title XIX of the federal Social Security Act (42 U.S.C. Sec. 1396 et seq.).

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.

CHAPTER 685

An act to add Section 22963 to the Business and Professions Code, relating to tobacco products.

[Approved by Governor September 18, 2002. Filed with Secretary of State September 18, 2002.]

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

SECTION 1. Section 22963 is added to the Business and Professions Code, to read:

22963. (a) The distribution or sale of tobacco products directly or indirectly to any person under the age of 18 years through the United States Postal Service or through any other public or private postal or package delivery service at locations, including, but not limited to, public mailboxes and mailbox stores, is prohibited.

(b) Any person selling or distributing tobacco products directly to a consumer in the state through the United States Postal Service or by any other public or private postal or package delivery service, including orders placed by mail, telephone, facsimile transmission, or the Internet, shall comply with the following provisions:

(1) (A) Before enrolling a person as a customer or distributing or selling the tobacco product through any of these means, the distributor or seller shall verify that the purchaser is 18 years of age or older. The distributor or seller shall attempt to match the name, address, and date of birth provided by the customer to information contained in records in a database of individuals whose age has been verified to be 18 years or older by reference to an appropriate database of government records kept by the distributor, a direct marketing firm, or any other entity. The distributor or seller shall also verify that the billing address on the check or credit card offered for payment by the purchaser matches the address listed in the database.

(B) If the distributor or seller is unable to verify that the purchaser is 18 years of age or older pursuant to subparagraph (A), he or she shall require the customer to submit an age-verification kit consisting of an attestation signed by the customer that he or she is 18 years of age or older and a copy of a valid form of government identification. For the purposes of this section, a valid form of government identification includes a driver's license, state identification card, passport, an official naturalization or immigration document, such as an alien registration receipt card (commonly known as a ''green card'') or an immigrant visa, or military identification. The distributor or seller shall also verify that the billing address on the check or credit card provided by the consumer matches the address listed in the form of government identification.

(2) The distributor or seller shall impose a two-carton minimum on each order of cigarettes, and shall require payment for the purchase of any tobacco product to be made by personal check of the purchaser or the purchaser's credit card. No money order or cash payment shall be received or permitted. The distributor or seller shall submit to each credit card acquiring company with which it has credit card sales identification information in an appropriate form and format so that the words ''tobacco product'' may be printed in the purchaser's credit card statement when a purchase of a tobacco product is made by credit card payment.

(3) The distributor or seller shall make a telephone call after 5 p.m. to the purchaser confirming the order prior to shipping the tobacco products. The telephone call may be a person-to-person call or a recorded message. The distributor or seller is not required to speak directly with a person and may leave a message on an answering machine or by voice mail.

(4) The distributor or seller shall deliver the tobacco product to the purchaser's verified billing address on the check or credit card used for payment. No delivery described under this section shall be permitted to any post office box.

(c) Notwithstanding subdivisions (a) and (b), if a distributor or seller complies with all of the requirements of this section and a minor obtains a tobacco product by any of the means described in subdivision (b), the seller or distributor is not in violation of this section.

(d) For the purposes of the enforcement of this section pursuant to Section 22958, the acts of the United States Postal Service or other common carrier when engaged in the business of transporting and delivering packages for others, and the acts of a person, whether compensated or not, who transports or delivers a package for another person without any reason to know of the package's contents, are not unlawful and are not subject to civil penalties.

(e) (1) For the purposes of this section, a "distributor" is any person or entity, within or outside the state, who agrees to distribute tobacco products to a customer within the state. The United States Postal Service or any other public or private postal or package delivery service are not distributors within the meaning of this section.

(2) For the purpose of this section, a "seller" is any person or entity, within or outside the state, who agrees to sell tobacco products to a customer within the state. The United States Postal Service or any other public or private postal or package delivery service are not sellers within the meaning of this section.

(3) For the purpose of this section, a "carton" is a package or container that contains 200 cigarettes.

(f) A district attorney, city attorney, or the Attorney General may assess civil penalties against any person, firm, corporation, or other entity that violates this section, according to the following schedule:

(1) A civil penalty of not less than one thousand dollars ($1,000) and not more than two thousand dollars ($2,000) for the first violation.

(2) A civil penalty of not less than two thousand five hundred dollars ($2,500) and not more than three thousand five hundred dollars ($3,500) for the second violation.

(3) A civil penalty of not less than four thousand dollars ($4,000) and not more than five thousand dollars ($5,000) for the third violation within a five-year period.

(4) A civil penalty of not less than five thousand five hundred dollars ($5,500) and not more than six thousand five hundred dollars ($6,500) for the fourth violation within a five-year period.

(5) A civil penalty of ten thousand dollars ($10,000) for a fifth or subsequent violation within a five-year period.

CHAPTER 686

An act to add Section 1021.10 to the Code of Civil Procedure, and to add Section 30101.7 to the Revenue and Taxation Code, relating to tobacco products.

[Approved by Governor September 18, 2002. Filed with Secretary of State September 18, 2002.]

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

SECTION 1. The Legislature finds and declares all of the following:

(a) The people of California have established special tobacco surtaxes intended to diminish the demand for tobacco products, particularly among children and minors. Tobacco surtaxes are intended to increase the price of tobacco to discourage its use, diminish the public costs associated with tobacco use, finance motivational and tobacco cessation programs to help tobacco users quit, and provide medical services to communities with elevated levels of tobacco-related injuries. Internet and mail-order sales of tobacco that evade California's taxes subvert important public health policies and are contrary to the interest and public health of the people of California.

(b) It is the intent of the Legislature in enacting this act to facilitate the collection of all applicable state surtaxes and sales or use taxes on cigarettes sold to residents of California over the Internet or by mail order.

SEC. 2. Section 1021.10 is added to the Code of Civil Procedure, to read:

1021.10. Notwithstanding any other provision of law, in an action brought in the name of the people of the State of California against any person for failure to comply with Chapter 10A (commencing with Section 375) of Title 15 of the United States Code, otherwise known as the ''Jenkins Act,'' the court, to the extent not expressly prohibited by federal law, shall award fees and costs, including reasonable attorney's fees, to the people if the people succeed on any claim to enforce the Jenkins Act. Any attorney's fees awarded under this section shall be in addition to any other remedies or penalties available under all other laws of this state.

SEC. 3. Section 30101.7 is added to the Revenue and Taxation Code, to read:

30101.7. (a) It is the intent of the Legislature in enacting this section to facilitate the collection of all applicable state surtaxes and sales or use taxes on cigarettes sold to residents of the state.

(b) Except as provided in subdivision (d), no person may engage in a retail sale of cigarettes in California unless the sale is a vendor-assisted, face-to-face sale.

(c) For the purposes of this section, ''face-to-face sale'' means a sale in which the purchaser is in the physical presence of the seller or the seller's employee or agent at the time of the sale. A face-to-face sale does not include any transaction conducted by mail order, the Internet, telephone, or any other anonymous transaction method in which the buyer is not in the seller's physical presence or the physical presence of the seller's employee or agent at the time of the sale.

(d) A person may engage in a non-face-to-face sale of cigarettes to a person in California provided that either of the following conditions is met:

(1) All applicable California taxes on the cigarettes have been paid.

(2) The seller includes on the outside of the shipping container for any cigarettes shipped to a resident in California from any source in the United States an externally visible and easily legible notice located on the same side of the shipping container as the address to which the package is delivered stating as follows:

> ''IF THESE CIGARETTES HAVE BEEN SHIPPED TO YOU FROM A SELLER LOCATED OUTSIDE OF THE STATE IN WHICH YOU RESIDE, THE SELLER HAS REPORTED PURSUANT TO FEDERAL LAW THE SALE OF THESE CIGARETTES TO YOUR STATE TAX COLLECTION AGENCY, INCLUDING YOUR NAME AND ADDRESS. YOU ARE LEGALLY RESPONSIBLE FOR ALL APPLICABLE UNPAID STATE TAXES ON THESE CIGARETTES.''

(e) The Attorney General or a city attorney, county counsel, or district attorney may bring a civil action to enforce this section against any person that violates this section and, in addition to any other remedies provided by law, the court shall assess a civil penalty in accordance with the following schedule:

(1) A civil penalty of not less than one thousand dollars ($1,000) and not more than two thousand dollars ($2,000) for the first violation.

(2) A civil penalty of not less than two thousand five hundred dollars ($2,500) and not more than three thousand five hundred dollars ($3,500) for the second violation within a five-year period.

(3) A civil penalty of not less than four thousand dollars ($4,000) and not more than five thousand dollars ($5,000) for the third violation within a five-year period.

(4) A civil penalty of not less than five thousand five hundred dollars ($5,500) and not more than six thousand five hundred dollars ($6,500) for a fourth violation within a five-year period.

(5) A civil penalty of ten thousand dollars ($10,000) for a fifth or subsequent violation within a five-year period.

(f) This section does not prohibit any lawful sale of a tobacco product that occurs by means of a vending machine.

(g) Nothing in this section shall relieve the seller of cigarettes from any other applicable requirement of state law relating to the sale of cigarettes.

(h) The provisions of this section are severable. If any provision of this section 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 687

An act to add and repeal Section 30474.5 of the Revenue and Taxation Code, relating to taxation.

[Approved by Governor September 18, 2002. Filed with Secretary of State September 18, 2002.]

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

SECTION 1. Section 30474.5 is added to the Revenue and Taxation Code, to read:

30474.5. (a) This section shall be known as and may be cited as the Black Market Cigarette and Street Corruption Prevention Act.

(b) The Legislature finds that the sale of black-market, untaxed cigarettes has resulted in the loss of hundreds of millions of dollars in revenue to the state, robbing state health care and programs designed to help children.

(c) It is the intent of the Legislature, by enacting the act adding this section, to provide resources to prosecutors and local law enforcement personnel, and to enable local jurisdictions to develop a multiagency task force for the purpose of significantly reducing the sales of black-market cigarettes and creating a deterrent to those sales through the focused investigation and prosecution of sales of black-market cigarettes, and other associated offenses and related crimes.

(d) In addition to the fine or sentence, or both, imposed by Section 30474, each person convicted under Section 30474 shall pay one hundred dollars ($100) for each carton of 200 cigarettes, or portion thereof, knowingly possessed, or kept, stored, or retained for the purpose of sale, or sold or offered for sale in violation of Section 30474, as determined by the court. The court shall direct that the penalty of one hundred dollars ($100) assessed under this section shall be transmitted to the Controller for deposit in the Unlawful Sales Reduction Fund, which is hereby created. Upon appropriation by the Legislature, the moneys in the fund shall be allocated to the Office of Criminal Justice Planning for the funding of a competitive grant program to be established by the Legislature to award grants to local jurisdictions for the purpose of establishing a multiagency task force, the composition of which shall include prosecutors and local law enforcement personnel and may include state law enforcement personnel, for the purpose of significantly reducing the sales of black-market cigarettes, and creating a deterrent to those sales through the focused investigation and prosecution of sales of black-market cigarettes and other associated offenses and related crimes. No more than 5 percent of the amount transmitted from the penalty of one hundred dollars ($100) assessed under this section may be retained to fund the costs of administering the competitive grant program.

(e) The Office of Criminal Justice Planning shall consult with the State Board of Equalization in the administration of the competitive grant program.

(f) (1) The one hundred dollar ($100) penalty for each carton of 200 cigarettes knowingly possessed, or kept, stored, or retained for the purpose of sale, or sold, or offered for sale in violation of Section 30474, as authorized under subdivision (d), shall only be imposed for the period beginning on January 1, 2003, and ending on January 1, 2006.

(2) This section shall remain in effect until December 1, 2006, or until all the moneys remaining in the Unlawful Sales Reduction Fund on January 1, 2006, have been appropriated by the Legislature for allocation to the Office of Criminal Justice Planning for funding the competitive grant program established under this section, whichever occurs later.

CHAPTER 688

An act to amend Section 130240 of the Public Utilities Code, and to amend Section 143 of the Streets and Highways Code, relating to transportation.

[Approved by Governor September 18, 2002. Filed with Secretary of State September 18, 2002.]

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

SECTION 1. The Legislature finds and declares all of the following:

(a) It is essential for the economic well-being of the state and the maintenance of a high quality of life that the people of California have an efficient transportation system.

(b) The Department of Transportation (hereafter the department) is a party to a franchise agreement with the California Private Transportation Company, L.P. (CPTC), as authorized by Section 143 of the Streets and Highways Code, providing for privately financed transportation facilities within State Highway Route 91 (hereafter Route 91), with transportation facility development rights extending from Interstate 15 in Riverside County to the Los Angeles County and Orange County boundary. The completed facilities include two lanes in each direction for approximately 10 miles in the County of Orange. Tolls are imposed for use of the facilities to provide a revenue stream for the CPTC to finance the costs of construction and operation of the transportation facilities and to earn a profit consistent with the provisions of the franchise agreement. The franchise agreement extends to the year 2030 and includes provisions prohibiting improvements to Route 91 in order to protect the investment in the privately financed facilities (hereafter noncompete provisions).

(c) The County of Riverside is currently challenging the legality of the noncompete provisions in a legal proceeding against the department and the CPTC.

(d) Current congestion on Route 91 and projections for future vehicle traffic and transportation demand through this corridor make it imperative that Route 91 improvements be planned and constructed as soon as possible.

(e) The Orange County Transportation Authority (OCTA) has determined that acquisition of the CPTC interest in the franchise agreement is desirable and is the most appropriate means to eliminate the noncompete provisions of the franchise agreement. By replacing private control of the franchise agreement and bringing the transportation facilities under public ownership, OCTA will restore the authority to public agencies, including OCTA, the department, and the Riverside County Transportation Commission (hereafter RCTC), to make much needed improvements in the heavily congested Route 91 corridor and for OCTA to manage the transportation facilities to maximize throughput of vehicles and passengers rather than profits.

(f) The noncompete provisions shall be eliminated through the sale of CPTC's interest in the franchise agreement to the OCTA. This will facilitate the end of the litigation and enable planning and construction of critically needed transportation improvements to Route 91 through the Counties of Orange and Riverside.

(g) In pursuing the acquisition of the franchise agreement, OCTA undertook a rigorous valuation process that was comprised of three discrete elements. First, OCTA staff examined pertinent traffic and related revenue projections provided by CPTC and determined a value of the CPTC enterprise based on a discounted cashflow, a business valuation method in common use and believed to be most appropriate in this circumstance in the absence of other comparative business enterprises operating privately controlled toll lanes in public highways. This produced a valuation range between two hundred ten million dollars ($210,000,000) and two hundred fifteen million dollars ($215,000,000). Second, OCTA examined the cost to replace the transportation facility at today's construction costs. This produced a valuation estimate of two hundred million dollars ($200,000,000). Finally, OCTA engaged an outside accounting firm to prepare an independent third-party fairness opinion on the valuation process, which validated the OCTA valuation methods and produced a valuation estimate of the transportation facility in a range between two hundred two million dollars ($202,000,000) and two hundred twenty million dollars ($220,000,000).

(h) OCTA used the valuation range produced as a guideline in bilateral negotiations with CPTC to acquire the franchise agreement rights. A purchase price was negotiated with a value of two hundred seven million five hundred thousand dollars ($207,500,000). Based on this purchase price, OCTA has structured a financing plan that would have OCTA assume existing CPTC debt of one hundred thirty-five million dollars ($135,000,000), supplemented by an additional payment by OCTA to CPTC of seventy-two million five hundred thousand dollars ($72,500,000) in cash from existing reserves available to OCTA. As a result of the proposed transaction, OCTA will replace CPTC as the holder of the franchise agreement and the authority for CPTC to collect tolls will terminate.

(i) Current tolls should be reduced and to the extent feasible, the duration of the imposition of tolls should be minimized, but tolls shall be adequate to assure the payment of all financing required to acquire the facilities, and tolls shall be eliminated no later than the year 2030, consistent with the terms of the franchise agreement and Section 143 of the Streets and Highways Code.

SEC. 2. Section 130240 of the Public Utilities Code is amended to read:

130240. (a) "Transit" means as defined in Section 40005.

(b) (1) The Orange County Transportation Authority may acquire, construct, develop, lease, jointly develop, own, operate, maintain, control, use, jointly use, or dispose of rights-of-way, rail lines, monorails, guideways, buslines, stations, platforms, switches, yards, terminals, parking lots, air rights, land rights, development rights, entrances and exits, and any and all other facilities for, incidental to, necessary for, or convenient for transit service, including, but not limited to, facilities and structures physically or functionally related to transit service, within or partly without the county, underground, upon, or above the ground and under, upon or over public streets, highways, bridges, or other public ways or waterways, together with all physical structures necessary for, incidental to, or convenient for the access of persons and vehicles thereto, and may acquire, lease, sell, or otherwise contract with respect to any interest in or rights to the use or joint use of any or all of the foregoing. However, installations on state freeways are subject to the approval of the Department of Transportation and installations in other state highways are subject to Article 2 (commencing with Section 670) of Chapter 3 of Division 1 of the Streets and Highways Code.

(2) With respect to the segment of State Highway Route 91 between Interstate Highway Route 15 and State Highway Route 55 only, the Orange County Transportation Authority may exercise all of the powers contained in paragraph (1) that apply to streets, highways, bridges, and connector roads.

(3) The exercise of the powers provided to the Orange County Transportation Authority in paragraph (2) is subject to approval by the Board of Supervisors of Riverside County and the Riverside County Transportation Commission and in consultation with the advisory committee described in paragraph (1) of subdivision (h) as it relates to the use of those powers in Riverside County under the terms of the franchise agreement described in subdivision (c).

(c) If the Orange County Transportation Authority requests, the department shall approve the assignment to the Orange County Transportation Authority of the Amended and Restated Development Franchise Agreement, as amended, between the department and the California Private Transportation Company, L.P. (CPTC) for the State Highway Route 91 median improvements as authorized by Section 143 of the Streets and Highways Code, subject to the requirement that subdivisions (a) to (f), inclusive, of Section 2 of Article 3 of the restated franchise agreement be deleted in their entirety in the event that CPTC and the authority agree to the assignment of all of CPTC's interests in the franchise agreement to the authority.

(d) The Orange County Transportation Authority shall have the authority to impose tolls for use of the State Highway Route 91 facilities as authorized by the franchise agreement. After the bonds issued pursuant to subdivision (f) are paid in their entirety or on December 31, 2030, whichever occurs earlier, the Orange County Transportation Authority shall have no further authority to impose or to collect a toll for the use of the segment of State Highway Route 91 between Interstate Highway Route 15 and State Highway Route 55.

(e) Toll revenues from the use of State Highway Route 91 facilities between Interstate Highway Route 15 and State Highway Route 55 shall only be used by the Orange County Transportation Authority for capital and operating expenses, including payment of purchase costs, debt service, and satisfaction of other covenants and obligations relating to indebtedness, and for transportation related to State Highway Route 91 between Interstate Highway Route 15 and State Highway Route 55, excluding other toll roads. Prior to July 1, 2003, the Orange County Transportation Authority, in consultation with the department and the Riverside County Transportation Commission, shall issue a plan and a proposed completion schedule for the improvements on State Highway Route 91 between Interstate Highway Route 15 and State Highway Route 55. The Orange County Transportation Authority shall update the plan on an annual basis until all improvements described in the plan have been completed.

(f) The Orange County Transportation Authority may incur indebtedness and obligations, and may issue bonds, refund bonds, and assume existing bonds for purposes authorized by this section for a period not to extend beyond the year 2030. Indebtedness and bonds issued under this section do not constitute a debt or liability of the state or any other public agency, other than the authority, or a pledge of the faith and credit of the state or any other public agency, other than the authority. Bonds issued under this section shall not be deemed to constitute a debt or liability of the state or any political subdivision thereof, other than the bank and the authority, or a pledge of the faith and credit of the state or of any political subdivision, but shall be payable solely from the revenues and assets pledged to the repayment of the bonds. All bonds issued under this section shall contain on the face of the bond a statement to the same effect.

(g) Notwithstanding Section 143 of the Streets and Highways Code, the State Highway Route 91 facility constructed and operated under the authority of a franchise agreement approved pursuant to that section shall revert to the state at the expiration of the lease or termination of the franchise agreement at no cost to the state.

(h) (1) An advisory committee shall be created to review issues and make recommendations to the Orange County Transportation Authority

regarding the transportation facilities acquired from CPTC, including tolls imposed, operations, maintenance, and use of toll revenues, and improvements in the area of State Highway Route 91 between Interstate Highway Route 15 and State Highway Route 55, including the identification and siting of alternative highways. The committee shall consist of 10 voting members and three nonvoting members, as follows:

(A) Five members of the board of directors of the Orange County Transportation Authority appointed by that board.

(B) Five members of the Riverside County Transportation Commission appointed by that commission.

(C) One member of the San Bernardino Associated Governments appointed by that body and the district directors of Districts 8 and 12 of the Department of Transportation, all of whom shall be nonvoting members.

(2) When reviewing the initial toll structure proposed by the Orange County Transportation Authority or any changes to the toll structure, the advisory committee shall place an information item on a regularly scheduled agenda for due public comment and consideration of the advisory committee.

(3) The Orange County Transportation Authority shall conduct an audit on an annual basis of the toll revenues collected and expenditures made during the term of franchise agreement. The audit shall review revenues and expenditures for consistency with the provisions of this section and shall be provided to the advisory committee.

(4) The Orange County Transportation Authority shall pay all costs associated with the requirements of this subdivision.

(i) The Orange County Transportation Authority shall not impose tolls for the use of nor construct and operate State Highway Route 91 facilities in the County of Riverside without prior approval by the Board of Supervisors of the County of Riverside, the Riverside County Transportation Commission, and the advisory committee.

(j) The Orange County Transportation Authority shall not sell or assign its interest in the franchise agreement without approval by the Legislature by enactment of a statute provided that approval shall not be required in connection with granting rights and remedies to lenders under Article 16 of the restated franchise agreement.

(k) After the bonds issued pursuant to this section are paid off in their entirety, or on December 31, 2030, whichever occurs earlier, that segment of State Highway Route 91 between Interstate Highway Route 15 and State Highway Route 55 shall revert to the department.

(*l*) In the event that the Orange County Transportation Authority decides to sell or assign its interest in the franchise agreement, the Orange County Transportation Authority shall provide written notice at least 90 days in advance of the date they submit their request for approval

by the department pursuant to this subdivision. The written notice shall be provided to the advisory committee and the Riverside County Transportation Commission.

SEC. 3. Section 143 of the Streets and Highways Code is amended to read:

143. (a) The department may solicit proposals and enter into agreements with private entities, or consortia thereof, for the construction by, and lease to, private entities of two public transportation demonstration projects. The department shall not enter into an agreement for any new proposals under this authority after January 1, 2003.

(b) For the purpose of facilitating those projects, the agreements may include provisions for the lease of rights-of-way in, and airspace over or under, state highways, for the granting of necessary easements, and for the issuance of permits or other authorizations to enable the private entity to construct transportation facilities supplemental to existing state-owned transportation facilities. Facilities constructed by a private entity pursuant to this section shall, at all times, be owned by the state. The agreement shall provide for the lease of those facilities to the private entity for up to 35 years. In consideration therefor, the agreement shall provide for complete reversion of the privately constructed facility to the state at the expiration of the lease at no charge to the state.

(c) The department may exercise any power possessed by it with respect to the development and construction of state transportation projects to facilitate the development and construction of transportation projects pursuant to this section. Agreements for maintenance and police services entered into pursuant to this section shall provide for full reimbursement for services rendered by the department or other state agencies. The department may provide services for which it is reimbursed with respect to preliminary planning, environmental certification, and preliminary design of the demonstration projects.

(d) (1) Agreements entered into pursuant to this section shall authorize the private entity to impose tolls for use of a facility constructed by it, and shall require that over the term of the lease the toll revenues be applied to payment of the private entity's capital outlay costs for the project, the costs associated with operations, toll collection, administration of the facility, reimbursement to the state for the costs of maintenance and police services, and a reasonable return on investment to the private entity. The agreement shall require that any excess toll revenue either be applied to any indebtedness incurred by the private entity with respect to the project or be paid into the State Highway Account, or both.

(2) The authority to collect tolls for the use of these facilities shall terminate at the expiration of the franchise agreement.

(e) The plans and specifications for each project constructed pursuant to this section shall comply with the department's standards for state transportation projects. A facility constructed by and leased to a private entity shall, during the term of the lease, be deemed to be a part of the state highway system for purposes of identification, maintenance, enforcement of traffic laws, and for the purposes of Division 3.6 (commencing with Section 810) of Title 1 of the Government Code.

(f) The assignment authorized by subdivision (c) of Section 130240 of the Public Utilities Code is consistent with this section.

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.

CHAPTER 689

An act to amend Sections 7583.9 and 7583.12 of, and to add Section 7588.2 to, the Business and Professions Code, relating to private security services.

[Approved by Governor September 18, 2002. Filed with Secretary of State September 18, 2002.]

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

SECTION 1. Section 7583.9 of the Business and Professions Code is amended to read:

7583.9. (a) Upon accepting employment by a private patrol operator, any employee who performs the function of a security guard or security patrolperson who is not currently registered with the bureau, shall complete an application for registration on a form as prescribed by the director, and obtain two classifiable fingerprint cards for submission to the Department of Justice. The Department of Justice shall forward one classifiable fingerprint card to the Federal Bureau of Investigation for purposes of a background check. The applicant shall submit the application and registration fee to the bureau on or before the same business day that he or she is assigned to work as a security guard or security patrolperson performing any of the functions set forth in subdivision (a) of Section 7582.1. If the applicant is assigned to work on

a Saturday, Sunday, or on a federal holiday, the applicant may submit the application and registration fee to the bureau on the first business day immediately following the Saturday, Sunday, or federal holiday. The applicant shall submit the fingerprints to the bureau within three business days after being assigned to work with a temporary registration card.

(b) If a private patrol operator pays the application fee on behalf of the applicant, nothing in this section shall preclude the private patrol operator from withholding the amount of the fee from the applicant's compensation.

(c) The licensee shall maintain supplies of applications and fingerprint cards that shall be provided by the bureau upon request.

(d) In lieu of classifiable fingerprint cards provided for in this section, the bureau may authorize applicants to submit their fingerprints into an electronic fingerprinting system administered by the Department of Justice. Applicants who submit their fingerprints by electronic means shall have their fingerprints entered into the system through a terminal operated by a law enforcement agency or other facility authorized by the Department of Justice to conduct electronic fingerprinting. The enforcement agency responsible for operating the terminal may charge a fee sufficient to reimburse it for the costs incurred in providing this service.

(e) Upon receipt of an applicant's electronic fingerprints as provided in this section, the Department of Justice shall determine whether the applicant has been convicted of any crime and forward the information to the bureau.

(f) (1) The requirement of submission of fingerprint cards set forth in subdivision (a) shall not apply to currently employed, full-time peace officers holding peace officer status under Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2 of the Penal Code, or to level I or level II reserve officers as described in paragraphs (1) and (2) of subdivision (a) of Section 832.6 of the Penal Code.

(2) This subdivision does not apply to a peace officer required to obtain a firearm qualification card pursuant to Section 7583.12.

(g) Peace officers exempt from the submission of classifiable fingerprints pursuant to subdivision (f) shall submit verification of their active duty peace officer status to the bureau with their application for registration. A photocopy of the front and back of their peace officer identification badge shall be adequate verification.

(h) Peace officers exempt from the submission of classifiable fingerprints pursuant to subdivision (f) shall report a change in their active duty peace officer status to the bureau within 72 hours of the change in active duty peace officer status.

(i) (1) Peace officers exempt from obtaining a firearm qualification card pursuant to subdivision (c) of Section 7583.12 shall submit to the bureau with their application for registration a letter of approval from his or her primary employer authorizing him or her to carry a firearm while working as a security guard or security officer.

(2) For purposes of this section, ''primary employer'' means a public safety agency currently employing a peace officer subject to this section.

(j) In addition to the amount authorized pursuant to Section 7570.1, the bureau may impose an additional fee not to exceed three dollars ($3) for processing classifiable fingerprint cards submitted by applicants excluding those submitted into an electronic fingerprint system using electronic fingerprint technology.

(k) An employee shall, on the first day of employment, display to the client his or her registration card if it is feasible and practical to comply with this disclosure requirement. The employee shall thereafter display to the client his or her registration card upon the request of the client.

(*l*) ''Submit,'' as used in subdivision (a), means any of the following:

(1) To ensure that the application and registration fee have been received by the bureau on or before the business day that the employee is assigned to work.

(2) To ensure that the application and registration fee either have been mailed to the bureau and officially postmarked with a date on or before the employee is assigned to work or have been deposited with a carrier performing overnight delivery services on or before the business day that the employee is assigned to work.

(3) To ensure, if the applicant is assigned to work on a Saturday, Sunday, or on a federal holiday, that the application and registration fee either have been mailed to the bureau and officially postmarked with a date on the first business day immediately following that Saturday, Sunday, or federal holiday or have been deposited with a carrier performing overnight delivery services on the first business day immediately following that Saturday, Sunday, or federal holiday.

SEC. 1.1. Section 7583.9 of the Business and Professions Code is amended to read:

7583.9. (a) Upon accepting employment by a private patrol operator, lawful business, or public agency, any employee who performs the function of a security guard or security patrolperson who is not currently registered with the bureau, shall complete an application for registration on a form as prescribed by the director, and obtain two classifiable fingerprint cards for submission to the Department of Justice. The Department of Justice shall forward one classifiable fingerprint card to the Federal Bureau of Investigation for purposes of a background check. The applicant shall submit the application and registration fee to the bureau on or before the same business day that he

or she is assigned to work as a security guard or security patrolperson performing any of the functions set forth in subdivision (a) of Section 7582.1. If the applicant is assigned to work on a Saturday, Sunday, or on a federal holiday, the applicant may submit the application and registration fee to the bureau on the first business day immediately following the Saturday, Sunday, or federal holiday. The applicant shall submit the fingerprints to the bureau within three business days after being assigned to work with a temporary registration card.

(b) If a private patrol operator pays the application fee on behalf of the applicant, nothing in this section shall preclude the private patrol operator from withholding the amount of the fee from the applicant's compensation.

(c) The licensee shall maintain supplies of applications and fingerprint cards that shall be provided by the bureau upon request.

(d) In lieu of classifiable fingerprint cards provided for in this section, the bureau may authorize applicants to submit their fingerprints into an electronic fingerprinting system administered by the Department of Justice. Applicants who submit their fingerprints by electronic means shall have their fingerprints entered into the system through a terminal operated by a law enforcement agency or other facility authorized by the Department of Justice to conduct electronic fingerprinting. The enforcement agency responsible for operating the terminal may charge a fee sufficient to reimburse it for the costs incurred in providing this service.

(e) Upon receipt of an applicant's electronic fingerprints as provided in this section, the Department of Justice shall determine whether the applicant has been convicted of any crime and forward the information to the bureau.

(f) (1) The requirement of submission of fingerprint cards set forth in subdivision (a) shall not apply to currently employed, full-time peace officers holding peace officer status under Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2 of the Penal Code, or to level I or level II reserve officers as described in paragraphs (1) and (2) of subdivision (a) of Section 832.6 of the Penal Code.

(2) This subdivision does not apply to a peace officer required to obtain a firearm qualification card pursuant to Section 7583.12.

(g) Peace officers exempt from the submission of classifiable fingerprints pursuant to subdivision (f) shall submit verification of their active duty peace officer status to the bureau with their application for registration. A photocopy of the front and back of their peace officer identification badge shall be adequate verification.

(h) Peace officers exempt from the submission of classifiable fingerprints pursuant to subdivision (f) shall report a change in their

active duty peace officer status to the bureau within 72 hours of the change in active duty peace officer status.

(i) (1) Peace officers exempt from obtaining a firearm qualification card pursuant to subdivision (c) of Section 7583.12 shall submit to the bureau with their application for registration a letter of approval from his or her primary employer authorizing him or her to carry a firearm while working as a security guard or security officer.

(2) For purposes of this section, ''primary employer'' means a public safety agency currently employing a peace officer subject to this section.

(j) In addition to the amount authorized pursuant to Section 7570.1, the bureau may impose an additional fee not to exceed three dollars ($3) for processing classifiable fingerprint cards submitted by applicants excluding those submitted into an electronic fingerprint system using electronic fingerprint technology.

(k) An employee shall, on the first day of employment, display to the client his or her registration card if it is feasible and practical to comply with this disclosure requirement. The employee shall thereafter display to the client his or her registration card upon the request of the client.

(*l*) ''Submit,'' as used in subdivision (a), means any of the following:

(1) To ensure that the application and registration fee have been received by the bureau on or before the business day that the employee is assigned to work.

(2) To ensure that the application and registration fee either have been mailed to the bureau and officially postmarked with a date on or before the employee is assigned to work or have been deposited with a carrier performing overnight delivery services on or before the business day that the employee is assigned to work.

(3) To ensure, if the applicant is assigned to work on a Saturday, Sunday, or on a federal holiday, that the application and registration fee either have been mailed to the bureau and officially postmarked with a date on the first business day immediately following that Saturday, Sunday, or federal holiday or have been deposited with a carrier performing overnight delivery services on the first business day immediately following that Saturday, Sunday, or federal holiday.

SEC. 1.2. Section 7583.9 of the Business and Professions Code is amended to read:

7583.9. (a) Upon accepting employment by a private patrol operator, any employee who performs the function of a security guard or security patrolperson who is not currently registered with the bureau, shall complete an application for registration on a form as prescribed by the director, and obtain two classifiable fingerprint cards for submission to the Department of Justice. The applicant shall submit the application, the registration fee, and his or her fingerprints to the bureau. The bureau shall forward the classifiable fingerprint cards to the Department of

Justice. The Department of Justice shall forward one classifiable fingerprint card to the Federal Bureau of Investigation for purposes of a background check.

(b) If a private patrol operator pays the application fee on behalf of the applicant, nothing in this section shall preclude the private patrol operator from withholding the amount of the fee from the applicant's compensation.

(c) The licensee shall maintain supplies of applications and fingerprint cards that shall be provided by the bureau upon request.

(d) In lieu of classifiable fingerprint cards provided for in this section, the bureau may authorize applicants to submit their fingerprints into an electronic fingerprinting system administered by the Department of Justice. Applicants who submit their fingerprints by electronic means shall have their fingerprints entered into the system through a terminal operated by a law enforcement agency or other facility authorized by the Department of Justice to conduct electronic fingerprinting. The enforcement agency responsible for operating the terminal may charge a fee sufficient to reimburse it for the costs incurred in providing this service.

(e) Upon receipt of an applicant's electronic or hard card fingerprints as provided in this section, the Department of Justice shall disseminate the following information to the bureau:

(1) Every conviction rendered against the applicant.

(2) Every arrest for an offense for which the applicant is presently awaiting trial, whether the applicant is incarcerated or has been released on bail or on his or her own recognizance pending trial.

(f) (1) A currently employed, full-time peace officer holding peace officer status under Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2 of the Penal Code, or a level I or level II reserve officer as described in paragraphs (1) and (2) of subdivision (a) of Section 832.6 of the Penal Code may immediately perform the functions of a security guard or security patrolperson, provided that he or she has submitted an application, the applicable fees, and his or her fingerprints to the bureau for a security guard registration.

(2) This subdivision does not apply to a peace officer required to obtain a firearm qualification card pursuant to Section 7583.12.

(g) Peace officers exempt from the submission of classifiable fingerprints pursuant to subdivision (f) shall submit verification of their active duty peace officer status to the bureau with their application for registration. A photocopy of the front and back of their peace officer identification badge shall be adequate verification.

(h) Peace officers exempt from the submission of classifiable fingerprints pursuant to subdivision (f) shall report a change in their

active duty peace officer status to the bureau within 72 hours of the change in active duty peace officer status.

(i) (1) Peace officers exempt from obtaining a firearm qualification card pursuant to subdivision (c) of Section 7583.12 shall submit to the bureau with their application for registration a letter of approval from his or her primary employer authorizing him or her to carry a firearm while working as a security guard or security officer.

(2) For purposes of this section, ''primary employer'' means a public safety agency currently employing a peace officer subject to this section.

(j) In addition to the amount authorized pursuant to Section 7570.1, the bureau may impose an additional fee not to exceed three dollars ($3) for processing classifiable fingerprint cards submitted by applicants excluding those submitted into an electronic fingerprint system using electronic fingerprint technology.

(k) An employee shall, on the first day of employment, display to the client his or her registration card if it is feasible and practical to comply with this disclosure requirement. The employee shall thereafter display to the client his or her registration card upon the request of the client.

SEC. 1.3. Section 7583.9 of the Business and Professions Code is amended to read:

7583.9. (a) Upon accepting employment by a private patrol operator, lawful business, or public agency, any employee who performs the function of a security guard or security patrolperson who is not currently registered with the bureau, shall complete an application for registration on a form as prescribed by the director, and obtain two classifiable fingerprint cards for submission to the Department of Justice. The applicant shall submit the application, the registration fee, and his or her fingerprints to the bureau. The bureau shall forward the classifiable fingerprint cards to the Department of Justice. The Department of Justice shall forward one classifiable fingerprint card to the Federal Bureau of Investigation for purposes of a background check.

(b) If a private patrol operator pays the application fee on behalf of the applicant, nothing in this section shall preclude the private patrol operator from withholding the amount of the fee from the applicant's compensation.

(c) The licensee shall maintain supplies of applications and fingerprint cards that shall be provided by the bureau upon request.

(d) In lieu of classifiable fingerprint cards provided for in this section, the bureau may authorize applicants to submit their fingerprints into an electronic fingerprinting system administered by the Department of Justice. Applicants who submit their fingerprints by electronic means shall have their fingerprints entered into the system through a terminal operated by a law enforcement agency or other facility authorized by the Department of Justice to conduct electronic fingerprinting. The

enforcement agency responsible for operating the terminal may charge a fee sufficient to reimburse it for the costs incurred in providing this service.

(e) Upon receipt of an applicant's electronic or hard card fingerprints as provided in this section, the Department of Justice shall disseminate the following information to the bureau:

(1) Every conviction rendered against the applicant.

(2) Every arrest for an offense for which the applicant is presently awaiting trail, whether the applicant is incarcerated or has been released on bail or on his or her own recognizance pending trial.

(f) (1) A currently employed, full-time peace officer holding peace officer status under Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2 of the Penal Code, or a level I or level II reserve officer as described in paragraphs (1) and (2) of subdivision (a) of Section 832.6 of the Penal Code may immediately perform the functions of a security guard or security patrolperson, provided that he or she has submitted an application, the applicable fees, and his or her fingerprints to the bureau for a security guard registration.

(2) This subdivision does not apply to a peace officer required to obtain a firearm qualification card pursuant to Section 7583.12.

(g) Peace officers exempt from the submission of classifiable fingerprints pursuant to subdivision (f) shall submit verification of their active duty peace officer status to the bureau with their application for registration. A photocopy of the front and back of their peace officer identification badge shall be adequate verification.

(h) Peace officers exempt from the submission of classifiable fingerprints pursuant to subdivision (f) shall report a change in their active duty peace officer status to the bureau within 72 hours of the change in active duty peace officer status.

(i) (1) Peace officers exempt from obtaining a firearm qualification card pursuant to subdivision (c) of Section 7583.12 shall submit to the bureau with their application for registration a letter of approval from his or her primary employer authorizing him or her to carry a firearm while working as a security guard or security officer.

(2) For purposes of this section, ''primary employer'' means a public safety agency currently employing a peace officer subject to this section.

(j) In addition to the amount authorized pursuant to Section 7570.1, the bureau may impose an additional fee not to exceed three dollars ($3) for processing classifiable fingerprint cards submitted by applicants excluding those submitted into an electronic fingerprint system using electronic fingerprint technology.

(k) An employee shall, on the first day of employment, display to the client his or her registration card if it is feasible and practical to comply

with this disclosure requirement. The employee shall thereafter display to the client his or her registration card upon the request of the client.

SEC. 2. Section 7583.12 of the Business and Professions Code is amended to read:

7583.12. (a) No employee of a licensee shall carry or use a firearm unless the employee has in his or her possession both of the following:

(1) A valid guard registration card issued pursuant to this chapter.

(2) A valid firearm qualification card issued pursuant to this chapter.

(b) Paragraph (2) of subdivision (a) shall not apply to a duly appointed peace officer, as defined in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2 of the Penal Code, who meets all of the following:

(1) He or she has successfully completed a course of study in the use of firearms.

(2) He or she is authorized to carry a concealed firearm in the course and scope of his or her employment pursuant to subdivision (a) of Section 12027 of the Penal Code.

(3) He or she has proof that he or she has applied to the bureau for a firearms qualification card.

(c) (1) This section shall not apply to a duly appointed peace officer, as defined in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2 of the Penal Code, who has written approval from his or her primary employer, as defined in paragraph (2) of subdivision (i) of Section 7583.9, to carry a firearm while working as a security guard or security officer.

(2) A peace officer exempt under this subdivision shall carry on his or her person a letter of approval from his or her primary employer authorizing him or her to carry a firearm while working as a security guard or security officer.

SEC. 3. Section 7588.2 is added to the Business and Professions Code, to read:

7588.2. (a) A peace officer of this state or a political subdivision thereof who engages in off-duty employment solely and exclusively as a security guard or security officer, and who is required to be registered as a security guard or security officer pursuant to this chapter, shall only be subject to the fees required by subdivision (h) of Section 7588.

(b) A peace officer shall also be subject to the fees required by paragraphs (1) and (2) of subdivision (i) of Section 7588 if the peace officer carries or uses a firearm as part of the off-duty employment and has not received approval of his or her primary employer, as defined in paragraph (2) of subdivision (i) of Section 7583.9, to carry a firearm while working as a security guard or security officer, and has not submitted verification of that approval to the bureau pursuant to subdivision (i) of Section 7583.9.

SEC. 4. (a) Section 1.1 of this bill incorporates amendments to Section 7583.9 of the Business and Professions Code proposed by both this bill and AB 248. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2003, (2) each bill amends Section 7583.9 of the Business and Professions Code, (3) SB 1241 is not enacted or as enacted does not amend that section, and (4) this bill is enacted after AB 248, in which case Sections 1, 1.2, and 1.3 of this bill shall not become operative.

(b) Section 1.2 of this bill incorporates amendments to Section 7583.9 of the Business and Professions Code proposed by both this bill and SB 1241. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2003, (2) each bill amends Section 7583.9 of the Business and Professions Code, (3) AB 248 is not enacted or as enacted does not amend that section, and (4) this bill is enacted after SB 1241, in which case Sections 1, 1.1, and 1.3 of this bill shall not become operative.

(c) Section 1.3 of this bill incorporates amendments to Section 7583.9 of the Business and Professions Code proposed by this bill, AB 248, and SB 1241. It shall only become operative if (1) all three bills are enacted and become effective on or before January 1, 2003, (2) all three bills amend Section 7583.9 of the Business and Professions Code, and (3) this bill is enacted after AB 248 and SB 1241, in which case Sections 1, 1.1, and 1.2 of this bill shall not become operative.

CHAPTER 690

An act to amend Sections 17131, 17731, and 19109 of, to amend and renumber Section 17132.6 of, to add Section 19559 to, and to repeal and add Section 18572 of, the Revenue and Taxation Code, relating to taxation, to take effect immediately, tax levy.

[Approved by Governor September 18, 2002. Filed with Secretary of State September 18, 2002.]

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

SECTION 1. Section 17131 of the Revenue and Taxation Code is amended to read:

17131. Part III of Subchapter B of Chapter 1 of Subtitle A of the Internal Revenue Code, as amended by Sections 111 and 113 of the Victims of Terrorism Tax Relief Act of 2001 (Public Law 107-134), relating to items that are specifically excluded from gross income, shall apply, except as otherwise provided.

SEC. 2. Section 17132.6 of the Revenue and Taxation Code, as amended by Section 20 of Chapter 322 of the Statutes of 1998, is amended and renumbered to read:

17132.5. Section 101 of the Internal Revenue Code, relating to certain death benefits, is modified as follows:

(a) Section 101(h) of the Internal Revenue Code, relating to survivor benefits attributable to service by a public safety officer who is killed in the line of duty, is modified to apply to amounts received in taxable years beginning after December 31, 1996, with respect to individuals dying after December 31, 1996.

(b) (1) The amendments made to Section 101 of the Internal Revenue Code by Section 102 of the Victims of Terrorism Tax Relief Act of 2001 (Public Law 107-134) shall apply to taxable years ending before, on, or after September 11, 2001.

(2) If a refund or a credit of any overpayment of tax resulting from the amendments made by the act amending and renumbering this section is precluded at any time before the close of the one-year period beginning on the operative date of that act by the operation of any law or rule of law, including res judicata, that refund or credit may nevertheless be made or allowed if a claim therefor is filed on or before the close of that one-year period.

SEC. 3. Section 17731 of the Revenue and Taxation Code is amended to read:

17731. (a) Subchapter J of Chapter 1 of Subtitle A of the Internal Revenue Code, relating to estates, trusts, beneficiaries, and decedents, shall apply, except as otherwise provided.

(b) (1) (A) The amendments made to Section 692 of the Internal Revenue Code by Section 101 of the Victims of Terrorism Tax Relief Act of 2001 (Public Law 107-134) shall apply to taxable years ending before, on, or after September 11, 2001, except as otherwise provided.

(B) Section 692(d)(2) of the Internal Revenue Code, relating to the ten thousand dollar ($10,000) minimum benefit, does not apply.

(2) The amendments made to Sections 642 and 692 of the Internal Revenue Code by Sections 113 and 116 of the Victims of Terrorism Tax Relief Act of 2001 (Public Law 107-134) shall apply to taxable years ending on or after September 11, 2001.

(c) If a refund or a credit of any overpayment of tax resulting from the amendments made by this section is prevented at any time before the close of the one-year period beginning on the date of enactment of this act by the operation of any law or rule of law (including res judicata), that refund or credit may nevertheless be made or allowed if a claim therefor is filed on or before the close of that one-year period.

SEC. 4. Section 18572 of the Revenue and Taxation Code is repealed.

SEC. 5. Section 18572 is added to the Revenue and Taxation Code, to read:

18572. (a) Section 7508A of the Internal Revenue Code, relating to postponement of certain tax related deadlines, shall apply, except as otherwise provided.

(b) The amendments made to Section 7508A of the Internal Revenue Code by Section 112 of the Victims of Terrorism Tax Relief Act of 2001 (Public Law 107-134) shall apply to disasters and terroristic or military actions occurring on or after September 11, 2001, with respect to any action of the Secretary of the Treasury, the Secretary of Labor, or the Pension Benefit Guaranty Corporation occurring on or after January 23, 2002.

SEC. 6. Section 19109 of the Revenue and Taxation Code is amended to read:

19109. (a) If the Franchise Tax Board extends for any period the time for filing a return under Section 18572 or subdivision (a) of Section 18567 and the time for paying the tax under Section 18572 or subdivision (c) of Section 18567 (and waives any penalties relating to the failure to so file or so pay) for any taxpayer located in a presidentially declared disaster area or any county or city in this state which is proclaimed by the Governor to be in a state of disaster that incurred a loss, the Franchise Tax Board shall, notwithstanding subdivision (b) of Section 18572, abate for that period the assessment of any interest prescribed under this article on that tax.

(b) For purposes of subdivision (a), the term ''presidentially declared disaster area'' means, with respect to any taxpayer, any area which the President has determined warrants assistance by the federal government under the Disaster Relief and Emergency Assistance Act.

SEC. 7. Section 19559 is added to the Revenue and Taxation Code, to read:

19559. (a) (1) The Franchise Tax Board may disclose returns and return information to federal agencies on the same terms and to the same extent as returns and return information may be disclosed by the Secretary of the Treasury under paragraph (3)(C) or paragraph (7) of Section 6103 (i) of the Internal Revenue Code, as amended by Section 201 of the Victims of Terrorism Tax Relief Act of 2001 (Public Law 107-134).

(2) Notwithstanding paragraph (1), the Franchise Tax Board may not disclose any return or return information under this section if the Franchise Tax Board determines, in the manner specified by the board, that this disclosure would identify a confidential informant or seriously impair a civil or criminal tax investigation.

(b) This section shall apply to disclosures made on or after January 23, 2002, except that no disclosures may be made under this section after December 31, 2003.

SEC. 8. (a) (1) For purposes of the Internal Revenue Code of 1986, as applicable for purposes of Part 10 (commencing with Section 17001), Part 10.2 (commencing with Section 18401), and Part 11 (commencing with Section 23001) of the Revenue and Taxation Code, payments made by an organization described in Section 501(c)(3) of the Internal Revenue Code by reason of the death, injury, wounding, or illness of an individual incurred as the result of the terrorist attacks against the United States on September 11, 2001, or an attack involving anthrax occurring on or after September 11, 2001, and before January 1, 2002, shall be treated as related to the purpose or function constituting the basis for that organization's exemption under Section 501 of the Internal Revenue Code, if the payments are made in good faith using a reasonable and objective formula that is consistently applied.

(2) This subdivision shall apply to payments made on or after September 11, 2001.

(b) For purposes of the Internal Revenue Code of 1986, as applicable for purposes of Part 10 (commencing with Section 17001), Part 10.2 (commencing with Section 18401), and Part 11 (commencing with Section 23001) of the Revenue and Taxation Code, both of the following shall apply:

(1) Gross income does not include any amount that, but for this section, would be includable in gross income by reason of the discharge, in whole or in part, of indebtedness of any taxpayer if the discharge is by reason of the death of an individual incurred as the result of the terrorist attacks against the United States on September 11, 2001, or as the result of illness incurred as a result of an attack involving anthrax occurring on or after September 11, 2001, and before January 1, 2002.

(2) Return requirements under Section 6050P of the Internal Revenue Code, shall not apply to any discharge described in paragraph (1).

(3) This subdivision shall apply to discharges made on or after September 11, 2001, and before January 1, 2002.

SEC. 9. The amendments made by this act to Sections 18572 and 19109 of the Revenue and Taxation Code apply to any disaster that occurs on or after September 11, 2001.

SEC. 10. This act provides for a tax levy within the meaning of Article IV of the Constitution and shall go into immediate effect.

CHAPTER 691

An act to amend Section 1758 of the Business and Professions Code, relating to dental hygienists, and making an appropriation therefor.

[Approved by Governor September 18, 2002. Filed with Secretary of State September 18, 2002.]

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

SECTION 1. It is the intent of the Legislature to increase access to preventive dental care for children and adults in California, particularly in those areas of the state that have few or no registered dental hygienists and in the health care safety net facilities identified in paragraph (3) of subdivision (b) of Section 1758 of the Business and Professions Code.

SEC. 2. Section 1758 of the Business and Professions Code is amended to read:

1758. (a) The board shall license as a registered dental hygienist a person who satisfies all of the following requirements:

(1) Completion of an educational program for registered dental hygienists, approved by the board, and accredited by the Commission on Dental Accreditation, and conducted by a degree-granting, postsecondary institution.

(2) Satisfactory performance on an examination required by the board.

(3) Satisfactory completion of a national written dental hygiene examination approved by the board.

(b) The board may grant a license as a registered dental hygienist to an applicant who has not taken an examination before the board if the applicant submits all of the following to the board:

(1) A completed application form and all fees required by the board.

(2) Proof of a current license as a registered dental hygienist issued by another state that is not revoked, suspended, or otherwise restricted.

(3) Proof that the applicant has been in clinical practice as a registered dental hygienist or has been a full-time faculty member in an accredited dental hygiene education program for a minimum of 750 hours per year for at least five years preceding the date of his or her application under this section. The clinical practice requirement shall be deemed met if the applicant provides proof of at least three years of clinical practice and commits to completing the remaining two years of clinical practice by filing with the board a copy of a pending contract to practice dental hygiene in any of the following facilities:

(A) A primary care clinic licensed under subdivision (a) of Section 1204 of the Health and Safety Code.

(B) A primary care clinic exempt from licensure pursuant to subdivision (c) of Section 1206 of the Health and Safety Code.

(C) A clinic owned or operated by a public hospital or health system.

(D) A clinic owned and operated by a hospital that maintains the primary contract with a county government to fill the county's role under Section 17000 of the Welfare and Institutions Code.

(4) Proof that the applicant has not been subject to disciplinary action by any state in which he or she is or has been previously licensed as a registered dental hygienist or dentist. If the applicant has been subject to disciplinary action, the board shall review that action to determine if it warrants refusal to issue a license to the applicant.

(5) Proof of graduation from a school of dental hygiene accredited by the Commission on Dental Accreditation.

(6) Proof of satisfactory completion of the Dental Hygiene National Board Examination and of a state or regional clinical licensure examination.

(7) Proof that the applicant has not failed the examination for licensure to practice dental hygiene under this chapter more than once and that, if he or she has failed the examination once, the failure was not within the five years prior to the date of his or her application for a license under this section.

(8) Documentation of completion of a minimum of 25 units of continuing education earned in the two years preceding application, including completion of any continuing education requirements imposed by the board on registered dental hygienists licensed in this state at the time of application.

(9) Any other information as specified by the board to the extent that it is required of applicants for licensure by examination under this article.

(c) The board may periodically request verification of compliance with the requirements of paragraph (3) of subdivision (b), and may revoke license upon a finding that the employment requirement or any other requirement of paragraph (3) has not been met.

(d) The board shall provide in the application packet to each out-of-state dental hygienist pursuant to this section the following information:

(1) The location of dental manpower shortage areas in the state.

(2) Any not-for-profit clinics, public hospitals, and accredited dental hygiene education programs seeking to contract with licensees for dental hygiene service delivery or training purposes.

(e) The board shall review the impact of this section on the availability of actively practicing dental hygienists in California and report to the appropriate policy and fiscal committees of the Legislature by January 1, 2006. The report shall include a separate section providing

data specific to dental hygienists who intend to fulfill the alternative clinical practice requirements of subdivision (b). The report shall include, but not be limited to, the following:

(1) The number of applicants from other states who have sought licensure.

(2) The number of dental hygienists from other states licensed pursuant to this section, the number of licenses not granted under this section, and the reason why the license was not granted.

(3) The practice location of dental hygienists licensed pursuant to this section.

(4) The number of dental hygienists licensed pursuant to this section who establish a practice in a rural area or in an area designated as having a shortage of practicing dental hygienists or no dental hygienists or in a safety net facility identified in paragraph (3) of subdivision (b).

(5) The length of time dental hygienists licensed pursuant to this section practiced in the reported location.

(f) In identifying a dental hygienist's location of practice, the board shall use medical service study areas or other appropriate geographic descriptions for regions of the state.

SEC. 3. Section 1758 of the Business and Professions Code is amended and renumbered to read:

1766. (a) The board shall license as a registered dental hygienist a person who satisfies all of the following requirements:

(1) Completion of an educational program for registered dental hygienists, approved by the board, and accredited by the Commission on Dental Accreditation, and conducted by a degree-granting, postsecondary institution.

(2) Satisfactory performance on an examination required by the board.

(3) Satisfactory completion of a national written dental hygiene examination approved by the board.

(b) The board may grant a license as a registered dental hygienist to an applicant who has not taken an examination before the board, if the applicant submits all of the following to the board:

(1) A completed application form and all fees required by the board.

(2) Proof of a current license as a registered dental hygienist issued by another state that is not revoked, suspended, or otherwise restricted.

(3) Proof that the applicant has been in clinical practice as a registered dental hygienist or has been a full-time faculty member in an accredited dental hygiene education program for a minimum of 750 hours per year for at least five years preceding the date of his or her application under this section. The clinical practice requirement shall be deemed met if the applicant provides proof of at least three years of clinical practice and commits to completing the remaining two years of clinical practice by

filing with the board a copy of a pending contract to practice dental hygiene in any of the following facilities:

(A) A primary care clinic licensed under subdivision (a) of Section 1204 of the Health and Safety Code.

(B) A primary care clinic exempt from licensure pursuant to subdivision (c) of Section 1206 of the Health and Safety Code.

(C) A clinic owned or operated by a public hospital or health system.

(D) A clinic owned and operated by a hospital that maintains the primary contract with a county government to fill the county's role under Section 17000 of the Welfare and Institutions Code.

(4) Proof that the applicant has not been subject to disciplinary action by any state in which he or she is or has been previously licensed as a registered dental hygienist or dentist. If the applicant has been subject to disciplinary action, the board shall review that action to determine if it warrants refusal to issue a license to the applicant.

(5) Proof of graduation from a school of dental hygiene accredited by the Commission on Dental Accreditation.

(6) Proof of satisfactory completion of the Dental Hygiene National Board Examination and of a state or regional clinical licensure examination.

(7) Proof that the applicant has not failed the examination for licensure to practice dental hygiene under this chapter more than once or once within five years prior to the date of his or her application for a license under this section.

(8) Documentation of completion of a minimum of 25 units of continuing education earned in the two years preceding application, including completion of any continuing education requirements imposed by the board on registered dental hygienists licensed in this state at the time of application.

(9) Any other information as specified by the board to the extent that it is required of applicants for licensure by examination under this article.

(c) The board may periodically request verification of compliance with the requirements of paragraph (3) of subdivision (b), and may revoke license upon a finding that the employment requirement or any other requirement of paragraph (3) has not been met.

(d) The board shall provide in the application packet to each out-of-state dental hygienist pursuant to this section the following information:

(1) The location of dental manpower shortage areas in the state.

(2) Any not-for-profit clinics, public hospitals, and accredited dental hygiene education programs seeking to contract with licensees for dental hygiene service delivery or training purposes.

(e) The board shall review the impact of this section on the availability of actively practicing dental hygienists in California and report to the appropriate policy and fiscal committees of the Legislature by January 1, 2006. The report shall include a separate section providing data specific to dental hygienists who intend to fulfill the alternative clinical practice requirements of subdivision (b). The report shall include, but not be limited to, the following:

(1) The number of applicants from other states who have sought licensure.

(2) The number of dental hygienists from other states licensed pursuant to this section, the number of licenses not granted under this section, and the reason why the license was not granted.

(3) The practice location of dental hygienists licensed pursuant to this section.

(4) The number of dental hygienists licensed pursuant to this section who establish a practice in a rural area or in an area designated as having a shortage of practicing dental hygienists or no dental hygienists or in a safety net facility identified in paragraph (3) of subdivision (b).

(5) The length of time dental hygienists licensed pursuant to this section practiced in the reported location.

(f) In identifying a dental hygienist's location of practice, the board shall use medical service study areas or other appropriate geographic descriptions for regions of the state.

SEC. 4. Section 3 of this bill incorporates amendments to Section 1758 of the Business and Professions Code proposed by both this bill and SB 2022. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2003, (2) each bill amends Section 1758 of the Business and Professions Code, and (3) this bill is enacted after SB 2022, in which case Section 2 of this bill shall not become operative.

CHAPTER 692

An act to amend Section 7110 of, and to add Section 7110.5 to, the Government Code, relating to military bases.

[Approved by Governor September 18, 2002. Filed with Secretary of State September 18, 2002.]

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

SECTION 1. Section 7110 of the Government Code is amended to read:

7110. (a) The governing body may, either by ordinance or resolution, propose an eligible area within its respective jurisdiction as the geographic area for a local agency military base recovery area. A county may propose an area within the unincorporated area as the geographic area for a local agency military base recovery area, but shall not propose an area within an incorporated area. A city may propose an area within the incorporated area as the geographic area for a local agency military base recovery area, but may not propose an area within an unincorporated area. A city and county may propose an area within the city and county for designation as a local agency military base recovery area. This proposed geographic area shall be based upon findings by the governing body that the area meets the criteria in Section 7111 and that the designation as a local agency military base recovery area is necessary in order to assist in attracting private sector investment in the area. The governing body shall establish definitive boundaries, not to exceed former base property, for the area to be included in the application for designation and, if designated by the agency, the designation shall be binding for the period described in Section 7110.5.

(b) Following the application for designation of a local agency military base recovery area, the governing body shall apply to the agency for designation. The agency shall adopt regulations and guidelines concerning the necessary contents of each application for designation.

(c) Any governing body with an eligible area within its jurisdiction may complete a preliminary application.

(d) In designating a local agency military base recovery area, the agency shall select from the applications submitted those proposed local agency military base recovery areas which, based on a comparison of those applications, propose the most effective, innovative, and comprehensive regulatory, tax, program, and other incentives to attract private sector investment in the proposed local agency military base recovery area. For purposes of this paragraph:

(1) ''Regulatory incentives'' include, but are not limited to, the elimination or reduction of fees for applications, permits, and local government facilities and services; and the establishment of a streamlined permit process.

(2) ''Tax incentives'' include, but are not limited to, the elimination or reduction of business license taxes and utility user taxes.

(3) ''Program'' and ''other incentives'' may include, but are not limited to the provision or expansion of infrastructure; the targeting of federal block grant moneys, including small cities, education, and health and welfare block grants; the targeting of economic development grants and loan moneys, including grant and loan moneys provided by the federal Urban Development Action Grant program and the federal Economic Development Administration; the targeting of state and

federal job disadvantaged and vocational education grant moneys, including moneys provided by the federal Job Partnership Training Act of 1982; the targeting of federal or state transportation grant moneys; and the targeting of federal or state low-income housing and rental assistance moneys.

(e) The agency shall also consider the following:

(1) The unemployment rate for the area under the jurisdiction of the local governing body.

(2) The number of civilian and military jobs lost as a result of the base closure when compared to the number of jobs available in the area.

(3) Whether the local agency has a comprehensive economic development plan that is consistent with the reuse plan.

(4) Whether the local agency has a prepared plan for appropriate hazardous waste management facilities as an integral part of the base and shall give extra consideration for any plan which includes provisions for critically needed hazardous waste facilities.

(5) The governing body has resolved, as part of the reuse plan approval, to prepare a program environmental impact report that is in compliance with the California Environmental Quality Control Act and associated guidelines.

(f) In evaluating applications for designation, the agency shall ensure that applications are not disqualified solely because of technical deficiencies and shall provide applicants with an opportunity to correct the deficiencies. Applications shall be disqualified if the deficiencies are not corrected within two weeks. The agency shall provide technical assistance to applicants that request it.

SEC. 2. Section 7110.5 is added to the Government Code, to read:

7110.5. A designation of a local agency military base recovery area pursuant to Section 7110 shall be for an eight-year period, that shall expire eight years after the agency has determined that the later of the following conditions has been met:

(a) The governing body has notified the agency that legal title to the economic development parcels at the former base has been transferred to the governing body and, in cases in which early transfer authority has been exercised, the terms and conditions necessary for satisfying the requirements of Section 9601 and following of Title 42 of the United States Code are met and regulatory closure has occurred.

(b) The governing body has notified the agency that vouchers have been issued to an employer that has entered into a lease or received title to property located within the local agency military base recovery area.

CHAPTER 693

An act to amend Section 44017.4 of the Health and Safety Code, and to add Section 4750.1 to the Vehicle Code, relating to emission control.

[Approved by Governor September 18, 2002. Filed with Secretary of State September 18, 2002.]

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

SECTION 1. Section 44017.4 of the Health and Safety Code is amended to read:

44017.4. (a) Upon registration with the Department of Motor Vehicles, a passenger vehicle or pickup truck that is a specially constructed vehicle, as defined in Section 580 of the Vehicle Code, shall be inspected by stations authorized to perform referee functions. This inspection shall be for the purposes of determining the engine model-year used in the vehicle or the vehicle model-year, and the emission control system application. The owner shall have the option to choose whether the inspection is based on the engine model-year used in the vehicle or the vehicle model-year.

(1) In determining the engine model-year, the referee shall compare the engine to engines of the era that the engine most closely resembles. The referee shall assign the 1960 model-year to the engine in any specially constructed vehicle that does not sufficiently resemble a previously manufactured engine. The referee shall require only those emission control systems that are applicable to the established engine model-year and that the engine reasonably accommodates in its present form.

(2) In determining the vehicle model-year, the referee shall compare the vehicle to vehicles of the era that the vehicle most closely resembles. The referee shall assign the 1960 model-year to any specially constructed vehicle that does not sufficiently resemble a previously manufactured vehicle. The referee shall require only those emission control systems that are applicable to the established model-year and that the vehicle reasonably accommodates in its present form.

(b) Upon the completion of the inspection, the referee shall affix a tamper-resistant label to the vehicle and issue a certificate that establishes the engine model-year or the vehicle model-year, and the emission control system application.

(c) The Department of Motor Vehicles shall annually provide a registration to no more than the first 500 vehicles that meet the criteria described in subdivision (a) that are presented to that department for registration pursuant to this section. The 500-vehicle annual limitation

does not apply to the renewal of registration of a vehicle registered pursuant to this section.

SEC. 2. Section 4750.1 is added to the Vehicle Code, to read:

4750.1. (a) If the department receives an application for registration of a specially constructed passenger vehicle or pickup truck after it has registered 500 specially constructed vehicles during that calendar year pursuant to Section 44017.4 of the Health and Safety Code, and the vehicle has not been previously registered, the vehicle shall be assigned the same model-year as the calendar year in which the application is submitted, for purposes of determining emissions control equipment and inspection requirements for the vehicle.

(b) If the department receives an application for registration of a specially constructed passenger vehicle or pickup truck that has been previously registered after it has registered 500 specially constructed vehicles during that calendar year pursuant to Section 44017.4 of the Health and Safety Code, and the application requests a model-year determination different from the model-year assigned in the previous registration, the application for registration shall be denied and the vehicle owner is subject to the emission control and inspection requirements applicable to the model-year assigned in the previous registration. However, a denial of an application for registration issued pursuant to this subdivision does not preclude the vehicle owner from applying for a different model-year determination and application for registration under Section 44017.4 of the Health and Safety Code in a subsequent calendar year.

CHAPTER 694

An act to add Section 19570 to the Revenue and Taxation Code, relating to taxation.

[Approved by Governor September 18, 2002. Filed with Secretary of State September 18, 2002.]

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

SECTION 1. It is the intent of the Legislature that the Franchise Tax Board continue to implement Section 19551.1 of the Revenue and Taxation Code, provided that the requirements of subdivision (c) of Section 19551.1 have been met.

SEC. 2. Section 19570 is added to the Revenue and Taxation Code, to read:

19570. The provisions of Sections 1798.35, 1798.36, 1798.37, and Article 9 (commencing with Section 1798.45) of Chapter 1 of Title 1.8 of the Civil Code shall not be applied, directly or indirectly, to the determination of the existence or possible existence of liability (or the amount thereof) of any person for any tax, penalty, interest, fine, forfeiture, or other imposition or offense to which the provisions of Part 10 (commencing with Section 17001), Part 11 (commencing with Section 23001), or this part apply.

CHAPTER 695

An act to amend Section 31751 of, and to add Sections 31639.95, 31755.1, 31755.2, and 31755.3 to, the Government Code, relating to county employees' retirement, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 18, 2002. Filed with Secretary of State September 18, 2002.]

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

SECTION 1. Section 31639.95 is added to the Government Code, to read:

31639.95. (a) This section shall only be applicable to the retirement system of Contra Costa County and only if the board of supervisors of that county adopts, by majority vote, a resolution making this section applicable in the county. Notwithstanding any other provision of law, the board of supervisors may make this section applicable in the county on a date specified in the resolution, which date may be different than the date of the resolution.

(b) (1) When the board of supervisors meets and confers pursuant to the Meyers-Milias-Brown Act (Chapter 10 (commencing with Section 3500) of Division 4 of Title 1) with any recognized employee organization that represents county employees who are safety members, the parties may agree, pursuant to a memorandum of understanding, to either or both of the following:

(A) Whether the employees shall be required to pay all or part of the employer's contributions required to fund the benefits of Section 31664.1, the amount or percentage of that contribution, the method by which the contribution is made, and the commencement date, which may predate the effective date of the memorandum of understanding.

(B) Changing any of those conditions described in subparagraph (A), including, but not limited to, increasing or reducing, for any years, the

portion and the amount of the employer's contributions that employees are required to pay.

(2) The terms of any agreements reached with a recognized employee organization pursuant to this subdivision may be made applicable by the board of supervisors to unrepresented county employees who are safety members.

(c) (1) After the board of supervisors has adopted the resolution described in subdivision (a), the governing body of a district within the county may make this section applicable to its employees who are safety members pursuant to a memorandum of understanding under the Meyers-Milias-Brown Act with any recognized employee organization that represents district employees who are safety members on any of the matters described in subdivision (b).

(2) The terms of any agreements reached with a recognized employee organization pursuant to this subdivision may be made applicable by the governing body of the district to unrepresented district employees who are safety members.

(d) Any contributions paid by a member pursuant to this section shall be deemed to be part of the member's accumulated contributions.

SEC. 2. Section 31751 of the Government Code is amended to read:

31751. Notwithstanding any other provision of law:

(a) (1) The Board of Supervisors of Contra Costa County may make this section, Tier Two, applicable to officers and employees of the county, by adopting a resolution specifying the future operative date of its application.

(2) After the board of supervisors has adopted that resolution, the governing body of a district may make this section applicable as Tier Two to its officers and employees on and after the future operative date it specifies.

(b) Except as otherwise provided in this section, Tier Two shall cover all officers and employees who become members or return to membership in the county on or after April 4, 1980, and in a district on or after the date of its applicability thereto.

(c) (1) This section may not cover any employee who is in, or eligible for, safety membership under this chapter.

(2) This section may not cover any person who is a member of the retirement system in the county or district on the operative date of its application thereto unless and until the person voluntarily in writing irrevocably requests coverage.

(3) This section may not cover any member who does not request coverage, is then laid off, and later returns to membership.

(4) This section may not cover any member who does not request coverage, then becomes a deferred member, and later returns to active membership.

(5) This section may not cover any person referred to in subparagraph (C) of paragraph (2) of subdivision (d) who does not request coverage.

(d) (1) The board of supervisors shall adopt regulations allowing individual county and district employees to irrevocably request coverage under Tier Two.

(2) The regulations shall specify the period during which each person may request coverage.

(A) For persons who are employees on the applicability date of this section, Tier Two, to the county or district, this period may not exceed one year after that date.

(B) For persons not subject to subparagraph (A), who before the Tier Two applicability date chose deferred retirement under Article 9 (commencing with Section 31700) from the county's Tier One retirement system, and who thereafter while still in deferred status returned to active membership, this period may not exceed 90 days after that return.

(C) For persons not subject to subparagraph (A) who enter or reenter employment in the county or the district, for the first time after Tier Two is applicable thereto, with reciprocal rights under Article 15 (commencing with Section 31830), this period may not exceed 90 days after that entry or reentry.

(e) Anyone requesting coverage as provided for in this section, who becomes permanently incapacitated as defined in Section 31720.1, shall be granted a disability allowance under Section 31727.01 if the member has completed five years of service.

(f) This section is intended to, and shall, apply retroactively, from the effective date of the original enactment of Section 31751, April 4, 1980, forward so that its beneficial effects and those of the original enactment are available to all persons covered by this section as though it had been originally enacted in its present form.

(g) Notwithstanding any other provision of law, if a county adopts a resolution pursuant to subdivision (a) of Section 31755.1, this section may, pursuant to a memorandum of understanding in accordance with the Meyers-Milias-Brown Act (Chapter 10 (commencing with Section 3500) of Division 4 of Title 1), be made inapplicable to those officers and employees of the county specified in the resolution for service performed on and after the operative date specified in the memorandum of understanding. In that event, this section shall also be inapplicable to nonrepresented employees within similar job classifications as employees in applicable bargaining units and to the supervisors and managers of those employees. If a district adopts a resolution pursuant to subdivision (a) of Section 31755.1, this section shall be inapplicable to the officers and employees of the district on and after the operative date of the resolution.

(h) No district may make this section applicable to any of its officers or employees on or after the effective date of the act adding this subdivision.

SEC. 3. Section 31755.1 is added to the Government Code, to read:

31755.1. Notwithstanding any other provision of law:

(a) (1) The Board of Supervisors of Contra Costa County may, pursuant to a memorandum of understanding in accordance with the Meyers-Milias-Brown Act (Chapter 10 (commencing with Section 3500) of Division 4 of Title 1), adopt a resolution making this section applicable to the officers and employees of the county specified in the resolution and specifying the future operative date of its application.

(2) After the board of supervisors has adopted that resolution, the governing body of a district may make this section applicable to its officers and employees by adopting a resolution specifying the future operative date of its application, which date may not be earlier than the operative date of the resolution described in paragraph (1).

(b) (1) Except as otherwise provided in this section, Tier Three, as described in Section 31755, shall apply to all officers and employees who become members or return to membership in the county or district, and with respect to service performed, on or after the date this section becomes applicable in the county or district.

(2) On the date this section becomes applicable in the county or district, those officers and employees specified in the resolution described in subdivision (a) and then-subject to Tier Two shall thereafter be covered by Tier Three, as described in Section 31755, for service performed on and after that date.

(c) This section may not apply to an employee for any service performed while he or she is a safety member under this chapter or is subject to Tier One, as described in Section 31755.

(d) The benefit formula set forth in Section 31752 shall apply to the Tier Two service with which a member is entitled to be credited at retirement.

(e) If the county adopts a resolution pursuant to subdivision (a), this section shall apply equally to any nonrepresented employees in similar job classifications as employees within applicable bargaining units and to the supervisors and managers of those employees.

SEC. 4. Section 31755.2 is added to the Government Code, to read:

31755.2. Notwithstanding any other provision of law:

(a) (1) The Board of Supervisors of Contra Costa County may, pursuant to a memorandum of understanding in accordance with the Meyers-Milias-Brown Act (Chapter 10 (commencing with Section 3500) of Division 4 of Title 1), adopt a resolution making this section applicable to the officers and employees of the county specified in the resolution and specifying the future operative date of its application.

(2) After the board of supervisors has adopted that resolution, the governing body of a district may make this section applicable to its officers and employees by adopting a resolution specifying the future operative date of its application, which date may not be earlier than the operative date of the resolution described in paragraph (1).

(b) Notwithstanding any other provision of law, the benefit formula set forth in Section 31676.16 shall apply to the Tier Three service with which a member, who retires on or after the date this section becomes applicable in the county or district, is entitled to be credited and for which the member has paid Tier Three member contributions.

(c) Notwithstanding any other provision of law, Section 31676.16 does not apply to any periods of service performed as Tier Two service under Section 31751, except to the extent that Tier Three service credit is purchased by or on behalf of the member for those periods.

(d) If the county adopts a resolution pursuant to subdivision (a), this section shall apply equally to any nonrepresented employees in similar job classifications as employees within applicable bargaining units and to the supervisors and managers of those employees.

SEC. 5. Section 31755.3 is added to the Government Code, to read:

31755.3. Notwithstanding any other provision of law:

(a) (1) The Board of Supervisors of Contra Costa County may, pursuant to a memorandum of understanding in accordance with the Meyers-Milias-Brown Act (Chapter 10 (commencing with Section 3500) of Division 4 of Title 1), adopt a resolution making this section applicable to the officers and employees of the county specified in the resolution and specifying the future operative date of its application.

(2) After the board of supervisors has adopted that resolution, the governing body of a district may make this section applicable to its officers and employees by adopting a resolution specifying the future operative date of its application, which date may not be earlier than the operative date of the resolution described in paragraph (1).

(b) The benefit formula set forth in Section 31676.16 shall apply to the Tier One service with which a member is entitled to be credited at retirement. As used in this section, ''Tier One'' shall have the meaning set forth in Section 31755.

(c) If the county adopts a resolution pursuant to subdivision (a), this section shall apply equally to any nonrepresented employees in similar job classifications as employees within applicable bargaining units and to the supervisors and managers of those employees.

SEC. 6. 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 for the provisions of this act to be applicable to employment contracts negotiated during the current year, it is necessary that this bill take effect immediately.

CHAPTER 696

An act to amend Sections 185020 and 185034 of, and to add Section 185038 to, the Public Utilities Code, relating to transportation.

[Approved by Governor September 19, 2002. Filed with Secretary of State September 19, 2002.]

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

SECTION 1. Section 185020 of the Public Utilities Code is amended to read:

185020. (a) There is in state government a High-Speed Rail Authority.

(b) (1) The authority is composed of nine members as follows:

(A) Five members appointed by the Governor.

(B) Two members appointed by the Senate Committee on Rules.

(C) Two members appointed by the Speaker of the Assembly.

(2) For the purposes of making appointments to the authority, the Governor, the Senate Committee on Rules, and the Speaker of the Assembly shall take into consideration geographical diversity to ensure that all regions of the state are adequately represented.

(c) Except as provided in subdivision (d), and until their successors are appointed, members of the authority shall hold office for terms of four years. A vacancy shall be filled by the appointing power making the original appointment, by appointing a member to serve the remainder of the term.

(d) (1) On and after January 1, 2001, the terms of all persons who are then members of the authority shall expire, but those members may continue to serve until they are reappointed or until their successors are appointed. In order to provide for evenly staggered terms, persons appointed or reappointed to the authority after January 1, 2001, shall be appointed to initial terms to expire as follows:

(A) Of the five persons appointed by the Governor, one shall be appointed to a term which expires on December 31, 2002, one shall be appointed to a term which expires on December 31, 2003, one shall be appointed to a term which expires on December 31, 2004, and two shall be appointed to terms which expires on December 31, 2005.

(B) Of the two persons appointed by the Senate Committee on Rules, one shall be appointed to a term which expires on December 31, 2002, and one shall be appointed to a term which expires on December 31, 2004.

(C) Of the two persons appointed by the Speaker of the Assembly, one shall be appointed to a term which expires on December 31, 2003, and one shall be appointed to a term which expires on December 31, 2005.

(2) Following expiration of each of the initial terms provided for in this subdivision, the term shall expire every four years thereafter on December 31.

(e) Members of the authority are subject to the Political Reform Act of 1974 (Title 9 (commencing with Section 81000)).

(f) From among its members, the authority shall elect a chairperson, who shall preside at all meetings of the authority, and a vice chairperson to preside in the absence of the chairperson. The chairperson shall serve a term of one year.

(g) Five members of the authority constitute a quorum for taking any action by the authority.

SEC. 1.5. Section 185020 of the Public Utilities Code is amended to read:

185020. (a) There is in state government a High-Speed Rail Authority.

(b) (1) The authority is composed of nine members as follows:

(A) Five members appointed by the Governor.

(B) Two members appointed by the Senate Committee on Rules.

(C) Two members appointed by the Speaker of the Assembly.

(2) For the purposes of making appointments to the authority, the Governor, the Senate Committee on Rules, and the Speaker of the Assembly shall take into consideration geographical diversity to ensure that all regions of the state are adequately represented. Not less than two members shall be residents of the San Joaquin Valley.

(c) Except as provided in subdivision (d), and until their successors are appointed, members of the authority shall hold office for terms of four years. A vacancy shall be filled by the appointing power making the original appointment, by appointing a member to serve the remainder of the term.

(d) (1) On and after January 1, 2001, the terms of all persons who are then members of the authority shall expire, but those members may continue to serve until they are reappointed or until their successors are appointed. In order to provide for evenly staggered terms, persons appointed or reappointed to the authority after January 1, 2001, shall be appointed to initial terms to expire as follows:

(A) Of the five persons appointed by the Governor, one shall be appointed to a term which expires on December 31, 2002, one shall be appointed to a term which expires on December 31, 2003, one shall be appointed to a term which expires on December 31, 2004, and two shall be appointed to terms which expire on December 31, 2005.

(B) Of the two persons appointed by the Senate Committee on Rules, one shall be appointed to a term which expires on December 31, 2002, and one shall be appointed to a term which expires on December 31, 2004.

(C) Of the two persons appointed by the Speaker of the Assembly, one shall be appointed to a term which expires on December 31, 2003, and one shall be appointed to a term which expires on December 31, 2005.

(2) Following expiration of each of the initial terms provided for in this subdivision, the term shall expire every four years thereafter on December 31.

(e) Members of the authority are subject to the Political Reform Act of 1974 (Title 9 (commencing with Section 81000)).

(f) From among its members, the authority shall elect a chairperson, who shall preside at all meetings of the authority, and a vice chairperson to preside in the absence of the chairperson. The chairperson shall serve a term of one year.

(g) Five members of the authority constitute a quorum for taking any action by the authority.

(h) The authority shall prepare a report for submission to the Legislature on or before December 1, 2003, that includes recommendations for changes to the composition of the membership of the authority in a manner that improves representation. The recommendations shall be developed with input from the public during regularly scheduled hearings of the authority, and shall include, but not be limited to, consideration of the most recent legislative changes to the composition of the membership of the authority and how the membership may best be structured in order to ensure equitable, regional representation.

SEC. 2. Section 185034 of the Public Utilities Code is amended to read:

185034. The authority may do any of the following:

(1) Conduct engineering and other studies related to the selection and acquisition of rights-of-way and the selection of a franchisee, including, but not limited to, environmental impact studies, socioeconomic impact studies, and financial feasibility studies.

(2) Evaluate alternative high-speed rail technologies, systems and operators, and select an appropriate high-speed rail system.

(3) Establish criteria for the award of a franchise.

(4) Accept grants, fees, and allocations from the state, from political subdivisions of the state or from the federal government, foreign governments, and private sources.

(5) Select a proposed franchisee, a proposed route, and proposed terminal sites.

(6) Enter into contracts with public and private entities for the preparation of the plan.

(7) Prepare a detailed financing plan, including any necessary taxes, fees, or bonds to pay for the construction of the high-speed train network.

(8) Develop a proposed high-speed rail financial plan, including necessary taxes, bonds, or both, or other indebtedness, and submit the plan to the Legislature and to the Governor.

(9) Keep the public informed of its activities.

SEC. 3. Section 185038 is added to the Public Utilities Code, to read:

185038. Any legal or equitable action brought against the authority shall be brought in a court of competent jurisdiction in the County of Sacramento. For purposes of this section, subdivision (1) of Section 401 of the Code of Civil Procedure does not apply.

SEC. 4. Section 1.5 of this bill incorporates amendments to Section 185020 of the Public Utilities Code proposed by both this bill and SB 1799. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2003, (2) each bill amends Section 185020 of the Public Utilities Code, and (3) this bill is enacted after SB 1799, in which case Section 185020 of the Public Utilities Code as amended by SB 1799, shall remain operative only until the operative date of this bill, at which time Section 1.5 of this bill shall become operative, and Section 1 of this bill shall not become operative.

CHAPTER 697

An act to add Chapter 20 (commencing with Section 2704) to Division 3 of the Streets and Highways Code, relating to financing a high-speed passenger train system by providing the funds necessary therefor through the issuance and sale of bonds of the State of California and by providing for the handling and disposition of those funds.

[Approved by Governor September 19, 2002. Filed with Secretary of State September 19, 2002.]

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

SECTION 1. (a) In light of the events of September 11, 2001, it is very clear that a high-speed passenger train network as described in the High-Speed Rail Authority's Business Plan is essential for the transportation needs of the growing population and economic activity of this state.

(b) The initial high-speed train network linking San Francisco and the Bay Area to Los Angeles will serve as the backbone of what will become an extensive 700-mile system that will link all of the state's major population centers, including Sacramento, the Bay Area, the Central Valley, Los Angeles, the Inland Empire, Orange County, and San Diego, and address the needs of the state.

(c) The initial network from San Francisco and the Bay Area Bay Area to Southern California could be in limited operation by 2008.

(d) The high-speed passenger train bond funds are intended to encourage the federal government and the private sector to make a significant contribution toward the construction of the high-speed train network.

(e) The initial segments shall be built in a manner that yields maximum benefit consistent with available revenues.

(f) After the initial investment from the state, operating revenues from the initial segments and funds from the federal government and the private sector will be used to pay for expansion of the system. It is the intent of the Legislature that the entire high- speed train system shall be constructed as quickly as possible in order to maximize ridership and the mobility of Californians.

(g) At a minimum, the entire 700-mile system described in the High-Speed Rail Authority's Business Plan should be constructed and in revenue service by 2020.

SEC. 2. Chapter 20 (commencing with Section 2704) is added to Division 3 of the Streets and Highways Code, to read:

CHAPTER 20. SAFE, RELIABLE HIGH-SPEED PASSENGER TRAIN BOND ACT FOR THE 21ST CENTURY

Article 1. General Provisions

2704. This chapter shall be known and may be cited as the Safe, Reliable High-Speed Passenger Train Bond Act for the 21st Century.

2704.01. As used in this chapter, the following terms have the following meanings:

(a) ''Committee'' means the High-Speed Passenger Train Finance Committee created pursuant to Section 2704.12.

(b) ''Authority'' means the High-Speed Rail Authority created pursuant to Section 185020 of the Public Utilities Code.

(c) ''Fund'' means the High-Speed Passenger Train Bond Fund created pursuant to Section 2704.05.

(d) ''High-speed train'' means a passenger train capable of sustained revenue operating speeds of at least 200 miles per hour where conditions permit those speeds.

(e) ''High-speed train system'' means a system with high-speed trains and includes, but is not limited to, the following components: right-of-way, track, power system, rolling stock, stations, and associated facilities.

Article 2. High-Speed Passenger Train Financing Program

2704.04. (a) It is the intent of the Legislature by enacting this chapter and of the people of California by approving the bond measure pursuant to this chapter to initiate the construction of a high-speed train network consistent with the authority's Final Business Plan of June 2000.

(b) (1) Nine billion dollars ($9,000,000,000) of the proceeds of bonds authorized pursuant to this chapter, as well as federal funds and other revenues made available to the authority, to the extent consistent with federal and other fund source conditions, shall be used for planning and eligible capital costs, as defined in subdivision (c), for the segment of the high-speed train system between San Francisco Transbay Terminal and Los Angeles Union Station. Once construction of the San Francisco-Los Angeles segment is fully funded, all remaining funds described in this subdivision shall be used for planning and eligible capital costs, as defined in subdivision (c), for the following additional high-speed train segments without preference to order:

(A) Oakland-San Jose.

(B) Sacramento-Merced.

(C) Los Angeles-Inland Empire.

(D) Inland Empire-San Diego.

(E) Los Angeles-Irvine.

(2) Revenues generated by operations above and beyond operating and maintenance costs shall be used to fund construction of the high-speed train system.

(c) Capital costs eligible to be paid from proceeds of bonds authorized for high-speed train purposes pursuant to this chapter include all activities necessary for acquisition of right-of-way, construction of tracks, structures, power systems, and stations, purchase of rolling stock and related equipment, and other related capital facilities and equipment.

(d) Proceeds of bonds authorized pursuant to this chapter shall not be used for any operating or maintenance costs of trains or facilities.

(e) The State Auditor shall perform periodic audits of the authority's use of proceeds of bonds authorized pursuant to this chapter for consistency with the requirements of this chapter.

2704.05. The proceeds of bonds issued and sold pursuant to this chapter shall be deposited in the High-Speed Passenger Train Bond Fund, which is hereby created.

2704.06. Nine billion dollars ($9,000,000,000) of the money in the fund, upon appropriation by the Legislature, shall be available, without regard to fiscal years, for planning and construction of a high-speed train system in this state, consistent with the authority's Final Business Plan of June 2000, as subsequently modified pursuant to environmental studies conducted by the authority.

2704.07. The authority shall pursue and obtain other private and public funds, including, but not limited to, federal funds, funds from revenue bonds, and local funds, to augment the proceeds of this chapter.

2704.08. Proceeds of bonds authorized for high-speed train purposes pursuant to this chapter shall not be used for more than one-half of the total cost of construction of track and station costs of each segment of the high-speed train system.

2704.09. The high-speed train system to be constructed pursuant to this chapter shall have the following characteristics:

(a) Electric trains that are capable of sustained maximum revenue operating speeds of no less than 200 miles per hour.

(b) Maximum express service travel times for each corridor that shall not exceed the following:

(1) San Francisco-Los Angeles Union Station: two hours, 42 minutes.

(2) Oakland-Los Angeles Union Station: two hours, 42 minutes.

(3) San Francisco-San Jose: 31 minutes.

(4) San Jose-Los Angeles: two hours, 14 minutes.

(5) San Diego-Los Angeles: one hour.

(6) Inland Empire-Los Angeles: 29 minutes.

(7) Sacramento-Los Angeles: two hours, 22 minutes.

(8) Sacramento-San Jose: one hour, 12 minutes.

(c) Achievable operating headway (time between successive trains) shall be five minutes or less.

(d) The total number of stations to be served by high-speed trains for all of the segments described in subdivision (b) of Section 2704.04 shall not exceed 24.

(e) Trains shall have the capability to transition intermediate stations, or to bypass those stations, at mainline operating speed.

(f) For each corridor described in subdivision (b), passengers shall have the capability of traveling from any station on that corridor to any other station on that corridor without being required to change trains.

(g) In order to reduce impacts on communities and the environment, the alignment for the high-speed train system shall follow existing transportation or utility corridors to the extent possible.

(h) Stations shall be located in areas with good access to local mass transit or other modes of transportation.

(i) The high-speed train system shall be planned and constructed in a manner that minimizes urban sprawl and impacts on the natural environment.

(j) Preserving wildlife corridors and mitigating impacts to wildlife movement where feasible in order to limit the extent to which the system may present an additional barrier to wildlife's natural movement.

2704.095. (a) (1) Of the proceeds of bonds authorized pursuant to this chapter, nine hundred fifty million dollars ($950,000,000) shall be allocated to eligible recipients for capital improvements to intercity and commuter rail lines and urban rail systems to provide connectivity to the high-speed train system as that system is described in subdivision (b) of Section 2704.04 and to provide capacity enhancements and safety improvements. Funds under this section shall be available upon appropriation by the Legislature in the Annual Budget act for the eligible purposes described in subdivision (d).

(2) Twenty percent (one hundred ninety million dollars ($190,000,000)) of the amount authorized by this section shall be allocated for intercity rail to the Department of Transportation, for state-supported intercity rail lines that provide regularly scheduled service and use public funds to operate and maintain rail facilities, rights-of-way, and equipment. A minimum of 25 percent of the amount available under this paragraph (forty-seven million five hundred thousand dollars ($47,500,000)) shall be allocated to each of the state's three intercity rail corridors.

The California Transportation Commission shall allocate the available funds to eligible recipients consistent with this section and shall develop guidelines to implement the requirements of this section. The guidelines shall include provisions for the administration of funds, including, but not limited to, the authority of the intercity corridor operators to loan these funds by mutual agreement between intercity rail corridors.

(3) Eighty percent (seven hundred sixty million dollars ($760,000,000)) of the amount authorized by this section shall be allocated to eligible recipients, except intercity rail, as described in subdivision (c) based upon a percentage amount calculated to incorporate all of the following:

(A) One-third of the eligible recipient's percentage share of statewide track miles.

(B) One-third of the eligible recipient's percentage share of statewide annual vehicle miles.

(C) One-third of the eligible recipient's percentage share of statewide annual passenger trips.

The California Transportation Commission shall allocate the available funds to eligible recipients consistent with this section and shall develop guidelines to implement the requirements of this section.

(b) For the purposes of this section, the following terms have the following meanings:

(1) ''Track miles'' means the miles of track used by a public agency or joint powers authority for regular passenger rail service.

(2) ''Vehicle miles'' means the total miles traveled, commencing with pullout from the maintenance depot, by all locomotives and cars operated in a train consist for passenger rail service by a public agency or joint powers authority.

(3) ''Passenger trips'' means the annual unlinked passenger boardings reported by a public agency or joint powers authority for regular passenger rail service.

(4) ''Statewide'' when used to modify the terms in paragraphs (A), (B), and (C) of paragraph (3) of subdivision (a) means the combined total of those amounts for all eligible recipients.

(c) Eligible recipients for funding under paragraph (3) of subdivision (a) shall be public agencies and joint powers authorities that operate regularly scheduled passenger rail service in the following categories:

(1) Commuter rail.

(2) Light rail.

(3) Heavy rail.

(4) Cable car.

(d) Funds allocated pursuant to this section shall be used for connectivity with the high-speed train system or for the rehabilitation or modernization of, or safety improvements to, tracks utilized for public passenger rail service, signals, structures, facilities, and rolling stock.

(e) Eligible recipients may use the funds for any eligible rail element set forth in subdivision (d).

(f) In order to be eligible for funding under this section, an eligible recipient under paragraph (3) of subdivision (a) shall provide matching funds in an amount not less than the total amount allocated to the recipient under this section.

(g) An eligible recipient of funding under paragraph (3) of subdivision (a) shall certify that it has met its matching funds requirement, and all other requirements of this section, by resolution of

its governing board, subject to verification by the California Transportation Commission.

(h) Funds made available to an eligible recipient under paragraph (3) of subdivision (a) shall supplement existing local, state, or federal revenues being used for maintenance or rehabilitation of the passenger rail system. Eligible recipients of funding under paragraph (3) of subdivision (a) shall maintain their existing commitment of local, state, or federal funds for these purposes in order to remain eligible for allocation and expenditure of the additional funding made available by this section.

(i) In order to receive any allocation under this section, an eligible recipient under paragraph (3) of subdivision (a) shall annually expend from existing local, state, or federal revenues being used for the maintenance or rehabilitation of the passenger rail system in an amount not less than the annual average of its expenditures from local revenues for those purposes during the 1998–99, 1999–2000, and 2000–01 fiscal years.

(j) Funds allocated pursuant to this section to the Southern California Regional Rail Authority for eligible projects within its service area shall be apportioned each fiscal year in accordance with memorandums of understanding to be executed between the Southern California Regional Rail Authority and its member agencies. The memorandum or memorandums of understanding shall take into account the passenger service needs of the Southern California Regional Rail Authority and of the member agencies, revenue attributable to member agencies, and separate contributions to the Southern California Regional Rail Authority from the member agencies.

Article 3. Fiscal Provisions

2704.10. Bonds in the total amount of nine billion nine hundred fifty million dollars ($9,950,000,000), exclusive of refunding bonds, or so much thereof as is necessary, may be issued and sold to provide a fund to be used for carrying out the purposes expressed in this chapter and to be used to reimburse the General Obligation Bond Expense Revolving Fund pursuant to Section 16724.5 of the Government Code. The bonds, when sold, shall be and constitute a valid and binding obligation of the State of California, and the full faith and credit of the State of California is hereby pledged for the punctual payment of both principal of, and interest on, the bonds as the principal and interest become due and payable.

2704.11. (a) Except as provided in subdivision (b), the bonds authorized by this chapter shall be prepared, executed, issued, sold, paid, and redeemed as provided in the State General Obligation Bond Law,

Chapter 4 (commencing with Section 16720) of Part 3 of Division 4 of Title 2 of the Government Code, and all of the provisions of that law apply to the bonds and to this chapter and are hereby incorporated in this chapter as though set forth in full in this chapter.

(b) Notwithstanding any provision of the State General Obligation Bond Law, each issue of bonds authorized by the committee shall have a final maturity of not more than 30 years.

2704.12. (a) Solely for the purpose of authorizing the issuance and sale, pursuant to the State General Obligation Bond Law, of the bonds authorized by this chapter, the High-Speed Passenger Train Finance Committee is hereby created. For purposes of this chapter, the High-Speed Passenger Train Finance Committee is ''the committee'' as that term is used in the State General Obligation Bond Law. The committee consists of the Treasurer, the Director of Finance, the Controller, the Secretary of the Business, Transportation and Housing Agency, and the chairperson of the authority, or their designated representatives. The Treasurer shall serve as chairperson of the committee. A majority of the committee may act for the committee.

(b) For purposes of the State General Obligation Bond Law, the authority is designated the ''board.''

2704.13. The committee shall determine whether or not it is necessary or desirable to issue bonds authorized pursuant to this chapter in order to carry out the actions specified in Sections 2704.06 and 2704.095 and, if so, the amount of bonds to be issued and sold. Successive issues of bonds may be issued and sold to carry out those actions progressively, and it is not necessary that all of the bonds authorized be issued and sold at any one time. However, bonds for the high-speed train system may not be issued and sold prior to January 1, 2006. The committee shall consider program funding needs, revenue projections, financial market conditions, and other necessary factors in determining the shortest feasible term for the bonds to be issued.

2704.14. There shall be collected each year and in the same manner and at the same time as other state revenue is collected, in addition to the ordinary revenues of the state, a sum in an amount required to pay the principal of, and interest on, the bonds each year. It is the duty of all officers charged by law with any duty in regard to the collection of the revenue to do and perform each and every act which is necessary to collect that additional sum.

2704.15. Notwithstanding Section 13340 of the Government Code, there is hereby appropriated from the General Fund in the State Treasury, for the purposes of this chapter, an amount equal to that sum annually necessary to pay the principal of, and interest on, bonds issued and sold pursuant to this chapter, as the principal and interest become due and payable.

2704.16. The board may request the Pooled Money Investment Board to make a loan from the Pooled Money Investment Account, in accordance with Section 16312 of the Government Code, for purposes of this chapter. The amount of the request shall not exceed the amount of the unsold bonds which the committee has, by resolution, authorized to be sold for the purpose of this chapter, less any amount borrowed pursuant to Section 2701.17. The committee may adopt a resolution for such purposes prior to January 1, 2006. The board shall execute such documents as required by the Pooled Money Investment Board to obtain and repay the loan. Any amount loaned shall be deposited in the fund to be allocated by the board in accordance with this chapter.

2704.17. For the purpose of carrying out this chapter, the Director of Finance may authorize the withdrawal from the General Fund of an amount or amounts not to exceed the amount of unsold bonds which have been authorized by the committee to be sold for the purpose of carrying out this chapter, less any amount borrowed pursuant to Section 2704.16. Any amount withdrawn shall be deposited in the fund. Any money made available under this section shall be returned to the General Fund, plus the interest that the amounts would have earned in the Pooled Money Investment Account, from the sale of bonds for the purpose of carrying out this chapter.

2704.18. All money deposited in the fund which is derived from premium and accrued interest on bonds sold shall be reserved in the fund and shall be available for transfer to the General Fund as a credit to expenditures for bond interest.

2704.19. The bonds may be refunded in accordance with Article 6 (commencing with Section 16780) of the State General Obligation Bond Law. Approval by the electors of the state for the issuance of bonds shall include approval of the issuance of any bonds issued to refund any bonds originally issued or any previously issued refunding bonds.

2704.20. The Legislature hereby finds and declares that, inasmuch as the proceeds from the sale of bonds authorized by this chapter are not ''proceeds of taxes'' as that term is used in Article XIII B of the California Constitution, the disbursement of these proceeds is not subject to the limitations imposed by that article.

2704.21. Notwithstanding any provision of the State General Obligation Bond Law with regard to the proceeds from the sale of bonds authorized by this chapter that are subject to investment under Article 4 (commencing with Section 16470) of Chapter 3 of Part 2 of Division 4 of Title 2 of the Government Code, the Treasurer may maintain a separate account for investment earnings, order the payment of those earnings to comply with any rebate requirement applicable under federal law, and may otherwise direct the use and investment of those proceeds

so as to maintain the tax-exempt status of those bonds and to obtain any other advantage under federal law on behalf of the funds of this state.

SEC. 3. Section 2 of this act shall take effect upon the adoption by the voters of the Safe, Reliable High-Speed Passenger Train Bond Act for the 21st Century, as set forth in Section 2 of this act.

SEC. 4. (a) Section 2 of this act shall be submitted to the voters at the November 2, 2004, general election in accordance with provisions of the Government Code and the Elections Code governing the submission of statewide measures to the voters.

(b) Notwithstanding any other provision of law, all ballots of the November 2, 2004, general election shall have printed thereon and in a square thereof, exclusively, the words ''Safe, Reliable High-Speed Passenger Train Bond Act for the 21st Century'' and in the same square under those words, the following in 8-point type: ''This act provides for the Safe, Reliable High-Speed Passenger Train Bond Act for the 21st Century. For the purpose of reducing traffic on the state's highways and roadways, upgrading commuter transportation, improving people's ability to get safely from city to city, alleviating congestion at airports, reducing air pollution, and providing for California's growging population, shall the state build a high-speed train system and improve existing passenger rail lines serving the state's major population centers by creating a rail trust fund that will issue bonds totaling $9.95 billion, paid from existing state funds at an average cost of ____ dollars ($____) per year over the 30-year life of the bonds, with all expenditures subject to an independent audit?'' The blank space in the question to appear on the ballot pursuant to this subdivision shall be filled in by the Attorney General with the appropriate figure provided by the Legislative Analyst relative to the annual average cost of the bonds. Opposite the square, there shall be left spaces in which the voters may place a cross in the manner required by law to indicate whether they vote for or against the measure.

(c) Notwithstanding Sections 13247 and 13281 of the Elections Code, the language in subdivision (b) shall be the only language included in the ballot label for the condensed statement of the ballot title, and the Attorney General shall not supplement, subtract from, or revise that language, except that the Attorney General may include the financial impact summary prepared pursuant to Section 9087 of the Elections Code and Section 88003 of the Government Code. The ballot label is the condensed statement of the ballot title and the financial impact summary.

(d) Where the voting in the election is done by means of voting machines used pursuant to law in the manner that carries out the intent

of this section, the use of the voting machines and the expression of the voters' choice by means thereof are in compliance with this section.

CHAPTER 698

An act to amend Section 17591 of the Business and Professions Code, relating to telephone solicitations.

[Approved by Governor September 19, 2002. Filed with Secretary of State September 19, 2002.]

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

SECTION 1. Section 17591 of the Business and Professions Code is amended to read:

17591. (a) The Attorney General shall not later than April 1, 2003, maintain a ''do not call'' list, updated no less frequently than quarterly, which shall set forth the California telephone numbers and ZIP Codes, but not the names or addresses, of subscribers, arranged by area code and numerical sequence, who do not wish to receive unsolicited and unwanted telephone calls from telephone solicitors as defined in Section 17592. The ''do not call'' list shall indicate any exclusions designated by the subscriber as provided in subdivision (b).

(b) Subscribers may place their telephone numbers and ZIP Codes on the ''do not call'' list in the manner prescribed by the Attorney General. The subscriber's placement on the ''do not call'' list shall expire three years after the date on which the subscriber's telephone number and ZIP Code first became available on the list to telephone solicitors. The Attorney General shall triennially charge these subscribers a fee not to exceed one dollar ($1.00). A subscriber may exclude from the coverage of the ''do not call'' list telephone calls from entities identified by the subscriber. The subscriber shall designate any exclusions in the manner prescribed by the Attorney General.

(c) Telephone solicitors, as defined in Section 17592, shall obtain copies of the ''do not call'' list by paying a fee to the Attorney General in an amount not to exceed the costs incurred by the Attorney General in the preparation, maintenance, production, and distribution of that list. The Attorney General shall establish a sliding scale fee schedule, charging a telephone solicitor with more than 1,000 employees or independent contractors the maximum fee and charging a telephone solicitor with fewer than the equivalent of five full-time employees or independent contractors no fee. The Attorney General shall provide a telephone solicitor the option of paying this fee on a quarterly or annual

basis. The Attorney General shall offer a statewide list and shall also offer lists of areas within the state. The determination of the number and definition of areas shall be within the discretion of the Attorney General. It shall be a violation of this section for anyone, other than the Attorney General, to sell or lease this list. It shall be a violation of this section for anybody to purchase this list except from the Attorney General.

(d) The Attorney General shall utilize the best available, cost-effective technology to ensure that subscribers may easily place their telephone numbers on the ''do not call'' list. This technology includes, but is not limited to, methods by which a subscriber may effect placement on the list by using a state-designated Internet Web site or a designated, statewide toll-free telephone number. When the subscriber utilizes the toll-free telephone number method, the subscriber shall call from the telephone that is also the number to be included on the list. The Attorney General shall also utilize the best available, cost-effective technology to ensure that telephone solicitors may easily obtain and manipulate the ''do not call'' list. This technology may include, but is not limited to, methods that are computer compatible and that allow the downloading of the list and the sorting of the list by ZIP Code and that make the list available on CD-ROM. The Attorney General may contract with a private vendor to establish, maintain, and administer the ''do not call'' list and a contract entered into in that regard shall include appropriate provisions to protect the confidentiality of subscriber information. The Attorney General may promulgate regulations to implement the provisions of this article.

(e) It is the intent of the Legislature that the fees paid to the Attorney General by telephone solicitors and subscribers be utilized by the Attorney General in carrying out this article. The Attorney General shall annually reduce the amount of the fee paid by subscribers and telephone solicitors set forth in this section based on revenue history and costs so that the fees do not exceed the actual estimated costs in carrying out this article. The fees obtained by the Attorney General shall be deposited in the Special Telephone Solicitors Fund, which is hereby created. All moneys in the fund shall be subject to annual appropriation in the Budget Act.

(f) A person or entity that obtains a ''do not call'' list shall not use the list for any purpose other than to comply with this article. These unlawful purposes include, but are not limited to, selling or leasing the ''do not call'' list to a person other than a telephone solicitor, selling or leasing the ''do not call'' list by a telephone solicitor, causing a subscriber to participate in and be included on, the ''do not call'' list without the subscriber's knowledge or consent, selling or leasing the ''do not call'' list to a person other than a telephone solicitor, selling or leasing by a telephone solicitor of the ''do not call'' list, and a telephone

solicitor, either directly or indirectly, persuading a subscriber with whom it has an established business relationship to place his or her telephone number on the "do not call" list, if the solicitation has the effect of preventing competitors from contacting that solicitor's customers.

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.

CHAPTER 699

An act to add Section 17538.41 to the Business and Professions Code, relating to advertising.

[Approved by Governor September 19, 2002. Filed with Secretary of State September 19, 2002.]

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

SECTION 1. Section 17538.41 is added to the Business and Professions Code, to read:

17538.41. (a) (1) Except as provided in subdivision (b), (c), or (d), no person or entity conducting business in this state shall transmit or cause to be transmitted a text message advertisement to a cellular telephone or pager equipped with short message capability or any similar capability allowing the transmission of text messages. A text message advertisement is a message, the principal purpose of which is to promote the sale of goods or services to the recipient, consisting of advertising material for the lease, sale, rental, gift offer, or other disposition of any realty, goods, services, or extension of credit.

(2) This section shall apply when a text message advertisement is transmitted to a telephone number assigned for cellular telephone or pager service to a California resident.

(b) This section shall not apply to text messages transmitted at the direction of a person or entity offering cellular telephone or pager service if the subscriber is offered an option to not receive those text messages.

(c) This section shall not apply to text messages transmitted by a business that has an existing relationship with the subscriber if the

subscriber is offered an option not to receive text messages from that business.

(d) This section shall not apply to text messages transmitted by an affiliate of a business that has an existing relationship with the subscriber, but only if the subscriber has provided consent to the business with which he or she has that relationship to receive text messages from affiliates of that business. ''Affiliate'' means any company that controls, is controlled by, or is under common control with, another company.

(e) Subdivision (a) shall not impose an obligation on a person or entity offering cellular or pager service to control the transmission of a text message unless the message is transmitted at the direction of that person or entity.

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.

CHAPTER 700

An act to amend Section 17538.4 of the Business and Professions Code, relating to advertising.

[Approved by Governor September 19, 2002. Filed with Secretary of State September 19, 2002.]

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

SECTION 1. Section 17538.4 of the Business and Professions Code is amended to read:

17538.4. (a) No person or entity conducting business in this state shall electronically mail (e-mail) or cause to be e-mailed documents containing unsolicited advertising material for the lease, sale, rental, gift offer, or other disposition of any realty, goods, services, or extension of credit unless that person or entity establishes a toll-free telephone number or valid sender operated return e-mail address that the recipient of the unsolicited documents may call or e-mail to notify the sender not to e-mail any further unsolicited documents.

(b) All unsolicited e-mailed documents subject to this section shall include a statement informing the recipient of the toll-free telephone number that the recipient may call, or a valid return address to which the recipient may write or e-mail, as the case may be, notifying the sender not to e-mail the recipient any further unsolicited documents to the e-mail address, or addresses, specified by the recipient.

The statement shall be the first text in the body of the message and shall be of the same size as the majority of the text of the message.

(c) Upon notification by a recipient of his or her request not to receive any further unsolicited e-mailed documents, no person or entity conducting business in this state shall e-mail or cause to be e-mailed any unsolicited documents to that recipient.

(d) This section shall apply when the unsolicited e-mailed documents are delivered to a California resident via an electronic mail service provider's service or equipment located in this state. For these purposes ''electronic mail service provider'' means any business or organization qualified to do business in this state that provides individuals, corporations, or other entities the ability to send or receive electronic mail through equipment located in this state and that is an intermediary in sending or receiving electronic mail.

(e) As used in this section, ''unsolicited e-mailed documents'' means any e-mailed document or documents consisting of advertising material for the lease, sale, rental, gift offer, or other disposition of any realty, goods, services, or extension of credit that meet both of the following requirements:

(1) The documents are addressed to a recipient with whom the initiator does not have an existing business or personal relationship.

(2) The documents are not sent at the request of, or with the express consent of, the recipient.

(f) As used in this section, ''e-mail'' or ''cause to be e-mailed'' does not include or refer to the transmission of any documents by a telecommunications utility or Internet service provider to the extent that the telecommunications utility or Internet service provider merely carries that transmission over its network.

(g) In the case of e-mail that consists of unsolicited advertising material for the lease, sale, rental, gift offer, or other disposition of any realty, goods, services, or extension of credit, the subject line of each and every message shall include ''ADV:'' as the first four characters. If these messages contain information that consists of unsolicited advertising material for the lease, sale, rental, gift offer, or other disposition of any realty, goods, services, or extension of credit that may only be viewed, purchased, rented, leased, or held in possession by an individual 18 years of age and older, the subject line of each and every message shall include ''ADV:ADLT'' as the first eight characters.

(h) An employer who is the registered owner of more than one e-mail address may notify the person or entity conducting business in this state e-mailing or causing to be e-mailed documents consisting of unsolicited advertising material for the lease, sale, rental, gift offer, or other disposition of any realty, goods, services, or extension of credit of the desire to cease e-mailing on behalf of all of the employees who may use employer-provided and employer-controlled e-mail addresses.

(i) This section, or any part of this section, shall become inoperative on and after the date that federal law is enacted that prohibits or otherwise regulates the transmission of unsolicited advertising by electronic mail (e-mail).

CHAPTER 701

An act to add Article 12 (commencing with Section 32425) to Chapter 3 of Part 19 of the Education Code, to add Section 17131.1 to the Revenue and Taxation Code, to add Section 2629.5 to the Unemployment Insurance Code, and to amend Section 11008.20 of the Welfare and Institutions Code, relating to holocaust reparations, and making an appropriation therefor.

[Approved by Governor September 19, 2002. Filed with Secretary of State September 19, 2002.]

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

SECTION 1. Article 12 (commencing with Section 32425) is added to Chapter 3 of Part 19 of the Education Code, to read:

Article 12. Excludable Restitution Payments

32425. Excludable restitution payments, as defined in Section 17133.1 of the Revenue and Taxation Code, shall not be included in the income or resources of an individual who is eligible for the exclusion under Section 17131.1 of the Revenue and Taxation Code, for determining eligibility for any grant, enrollment, or priority for services in any program under this code, to the extent permitted by federal law.

SEC. 2. Section 17131.1 is added to the Revenue and Taxation Code, to read:

17131.1. (a) Gross income does not include any excludable restitution payments received by an eligible individual (or the individual's heirs or estate) and any excludable interest.

(b) For purposes of this section:

(1) The basis of any property received by an eligible individual (or the individual's heirs or estate) as part of an excludable restitution payment shall be the fair market value of that property as of the time of the receipt.

(2) ''Eligible individual'' means a person who was persecuted on the basis of race, religion, physical or mental disability, or sexual orientation by Nazi Germany, any other Axis regime, or any other Nazi-controlled or Nazi-allied country.

(3) ''Excludable restitution payment'' means any payment or distribution to an individual (or the individual's heirs or estate) that is any of the following:

(A) Is payable by reason of the individual's status as an eligible individual, including any amount payable by any foreign country, the United States of America, or any other foreign or domestic entity, or a fund established by any such country or entity, any amount payable as a result of a final resolution of a legal action, and any amount payable under a law providing for payments or restitution of property.

(B) Constitutes the direct or indirect return of, or compensation or reparation for, assets stolen or hidden from, or otherwise lost to, the individual before, during, or immediately after World War II by reason of the individual's status as an eligible individual, including any proceeds of insurance under policies issued on eligible individuals by European insurance companies immediately before and during World War II.

(C) Consists of interest which is payable as part of any payment or distribution described in subparagraph (A) or (B).

(4) ''Excludable interest'' means any interest earned by any of the following:

(A) Escrow accounts or settlement funds established pursuant to the settlement of the action entitled ''In re: Holocaust Victim Assets Litigation,'' (E.D.N.Y.) C.A. No. 96-4849.

(B) Funds to benefit eligible individuals or their heirs created by the International Commission on Holocaust Insurance Claims as a result of the Agreement between the Government of the United States of America and the Government of the Federal Republic of Germany concerning the Foundation ''Remembrance, Responsibility, and Future,'' dated July 17, 2000.

(C) Similar funds subject to the administration of the United States courts created to provide excludable restitution payments to eligible individuals (or eligible individuals' heirs or estates).

(c) (1) This section shall apply to any amount received on or after January 1, 2000.

(2) Nothing in this section shall be construed to create any inference with respect to the proper tax treatment of any amount received before January 1, 2000.

SEC. 3. Section 2629.5 is added to the Unemployment Insurance Code, to read:

2629.5. To the extent permitted by federal law, excludable restitution payments, as defined in Section 17131.1 of the Revenue and Taxation Code, may not be applied to reduce the amount of disability benefits to which an individual may otherwise be entitled under law.

SEC. 4. Section 11008.20 of the Welfare and Institutions Code is amended to read:

11008.20. (a) Notwithstanding any other provision of law, any amount, including any interest or property, received by a holocaust victim, as defined in subparagraph (A) of paragraph (2) of subdivision (b) of Section 17155 of the Revenue and Taxation Code either as compensation pursuant to the German Act Regulating Unresolved Property Claims, as amended (Gesetz zur Regelung offener Vermogensfragen), or as a result of a settlement of claims against any entity or individual for any recovered asset, shall not be considered as income or resources for purposes of determining eligibility to receive Medi-Cal benefits or public assistance benefits or the amounts of those benefits.

(b) To the extent permitted by federal law, excludable restitution payments, as defined in Section 17131.1 of the Revenue and Taxation Code, shall not be included in income or resources of any individual who is eligible for the exclusion under Section 17131.1 of the Revenue and Taxation Code for purposes of determining eligibility for any aid, grant, or benefit under this division.

(c) This section shall not be construed to permit any retroactive services or payments to be provided to recipients of Medi-Cal or public assistance benefits.

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.

CHAPTER 702

An act to amend Section 51226.3 of, and to add and repeal Chapter 3.64 (commencing with Section 44775.1) of Part 25 of, the Education Code, relating to public schools.

[Approved by Governor September 19, 2002. Filed with Secretary of State September 19, 2002.]

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

SECTION 1. This act shall be known, and may be cited as, the Holocaust, Genocide, Human Rights, and Tolerance Education Act of 2003.

SEC. 2. The Legislature finds and declares all of the following:

(a) There is a known link between violence, vandalism, and ethnic and racial intolerance. However, national studies indicate that fewer than 25 percent of pupils have an understanding of the organized attempts throughout history at the elimination of various ethnic groups through a systematic program of mass killings or genocide.

(b) The importance of teaching respect and tolerance in the schools is hereby reaffirmed. Pupils must develop a respect for each person as a unique individual and understand the importance of a universal concern for ethics, human rights, tolerance, and democracy.

(c) In order to create an awareness of the enormity of the crimes of prejudice, bigotry, inhumanity, and intolerance and to foster responsibility by future generations to confront these crimes, it is crucial that we teach the lessons of the Holocaust and genocide.

(d) The Model Curriculum for Human Rights and Genocide adopted by the State Board of Education, pursuant to Section 51226 of the Education Code, is an important resource for teaching our youth these historical lessons and the significance of the defense of human rights and democracy. In addition, the revised 2001 edition of the History-Social Science Framework and Content Standards for California Public Schools provides the guidelines for teaching in this area.

(e) While the Model Curriculum for Human Rights and Genocide establishes excellent guidelines, it is important to build upon that framework by providing educators with easier access to curricular materials and more accessible teacher training for providing instruction on the Holocaust, genocide, human rights, and social tolerance. A statewide coordinated program can ensure that these resources are accessible to all teachers.

(f) While the current version of the Model Curriculum for Human Rights and Genocide and the History-Social Science Framework and Content Standards for California Public Schools include many examples of the Holocaust, genocide, and human rights violations, it is important to recognize that there are many other historical events of genocide and human rights violations that may be included in the discussion on these issues.

(g) The personal stories of survivors, rescuers, liberators, and witnesses are a powerful and effective tool in teaching about human rights, genocide, and the Holocaust.

SEC. 3. Chapter 3.64 (commencing with Section 44775.1) is added to Part 25 of the Education Code, to read:

CHAPTER 3.64. THE HOLOCAUST, GENOCIDE, HUMAN RIGHTS, AND TOLERANCE

Article 1. General

44775.1. (a) As used in this chapter, the following words have the following meanings:

(1) "Taskforce" means the California Taskforce on Holocaust, Genocide, Human Rights, and Tolerance Education established pursuant to this chapter.

(2) "Center" means the Center for Excellence on the Study of the Holocaust, Genocide, Human Rights, and Tolerance established pursuant to this chapter.

(3) "State" means the State of California.

(b) This chapter shall remain in effect only until January 1, 2005, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 2005, deletes or extends that date.

Article 2. The California Taskforce on Holocaust, Genocide, Human Rights, and Tolerance Education

44775.2. (a) The California Taskforce on Holocaust, Genocide, Human Rights, and Tolerance Education is hereby established.

(b) (1) The taskforce shall be composed of 11 members appointed as follows:

(A) The Executive Director of the State Board of Education, or his or her designee.

(B) The Superintendent of Public Instruction, or his or her designee.

(C) The Chancellor of the California State University, or his or her designee.

(D) The Executive Director of the Commission on Teacher Credentialing, or his or her designee.

(E) Three public members appointed by the Governor.

(F) Two public members appointed by the Speaker of the Assembly.

(G) Two public members appointed by the Senate Committee on Rules.

(2) The Executive Director of the State Board of Education, the Superintendent of Public Instruction, the Chancellor of the California

State University, and the Executive Director of the Commission on Teacher Credentialing, or their designees, shall serve as ex officio members.

(3) The public members of the taskforce shall be residents of the state and shall be appointed with due regard to, but not limited to, any of the following:

(A) Persons who have served prominently as spokespersons for or as leaders of organizations serving members of religious, ethnic, national heritage or social groups, which were subjected to genocide, torture, wrongful deprivation of liberty or property, officially imposed or sanctioned violence, or other forms of human rights violations and persecution.

(B) Persons who are survivors of the Holocaust or genocide, or are experts in oral history on the Holocaust or genocide.

(C) Persons who are experienced in the field of genocide or Holocaust education, have a demonstrated interest or involvement in genocide or Holocaust studies, or represent liberators of victims of genocide or the Holocaust.

(D) Representatives of the academic community on Holocaust or genocide studies or educators from the elementary and secondary school system.

(c) The term of each member of the taskforce shall be two years. A vacancy shall be filled within 60 days of its occurrence by the appointing authority.

(d) Appointments shall be made during the 2003 calendar year.

44775.3. (a) A person may not continue as a member of the taskforce if he or she ceases to hold the office or be a member of an association or organization that qualifies that person for appointment to the taskforce.

(b) The taskforce shall work with the Center for Excellence established pursuant to Section 44775.7 and other Holocaust, genocide, and tolerance institutions, programs, and organizations to carry out its duties.

(c) Members of the taskforce shall serve without compensation, but may be reimbursed for actual and necessary expenses incurred in the performance of their duty. However, any reimbursement for these expenses shall not be from state funds.

(d) A quorum shall consist of a majority of the members of the taskforce, but the taskforce may establish a lesser quorum for conducting scheduled meetings. All meetings of the board shall be held in accordance with the Bagley-Keene Open Meetings Act (Article 9 (commencing with Section 11120) of Chapter 1 of Part 1 of Division 3 of Title 2 of the Government Code).

(e) The taskforce shall establish a schedule of meetings to be held a minimum of four times a year or as determined by the State Board of Education.

44775.4. The duties of the taskforce shall include, but are not limited to, all of the following:

(a) Advise the Governor and Legislature on strategies to improve Holocaust and genocide, human rights, and tolerance education in the state.

(b) Identify, to the extent possible, all programs in the state that train teachers in Holocaust or genocide studies, or both.

(c) Identify any state Web sites that include information on how teachers can access information on the Holocaust or genocide coursework and resources.

(d) Identify strategies for improving access to Holocaust, genocide, and tolerance education materials and information.

(e) Promote the implementation of Holocaust and genocide, human rights, and tolerance education.

(f) Coordinate activities that will appropriately memorialize the Holocaust and genocide education throughout the state.

(g) Secure private ongoing funding for the taskforce.

(h) Carry out any other tasks that are deemed by the State Board of Education to be necessary to support the ability of the state to meet it goals in providing Holocaust, genocide, human rights, and tolerance education.

(i) Submit an annual report to the Legislature on the progress and status of the taskforce.

44775.5. With respect to its duties, the taskforce shall be an advisory body only, and there shall be no right or obligation on the part of the state, or the parties meeting or conferring, to implement the findings or recommendations of the taskforce without further legislation that specifically authorizes implementation of the findings or recommendations.

44775.6. The taskforce may apply for and accept grants and receive gifts, donations, and other financial support from the public or private sources, subject to Sections 11005 and 11005.1 of the Government Code, for the purpose of carrying out its duties pursuant to this chapter.

Article 3. The Center for Excellence on the Study of the Holocaust, Genocide, Human Rights, and Tolerance Pilot Program

44775.7. (a) The Center for Excellence on the Study of the Holocaust, Genocide, Human Rights, and Tolerance shall be established as a pilot program at California State University, Chico pursuant to this

chapter. The purpose of the pilot program is to accomplish all of the following:

(1) Create a center to coordinate and act as a clearinghouse of information on programs that provide teachers with the knowledge, training, and curricular materials to effectively teach pupils in the public schools about the Holocaust, genocide, human rights, and tolerance as established in the History-Social Science Framework and Content Standards for California Public Schools.

(2) Expand upon the work of existing Holocaust and genocide institutions, programs and organizations, including the Museum of Tolerance, to provide teacher training, curricular materials, and other instructional resources and that complement and integrate, rather than duplicate, those efforts.

(b) The goals of the center shall be to accomplish all of the following:

(1) Expand upon the framework established by the Model Curriculum for Human Rights and Genocide offered by the State Department of Education.

(2) Develop and facilitate teacher access to instructional materials on the Holocaust, genocide, human rights, and tolerance.

(3) Expand delivery of training, materials and resources on the Holocaust, genocide, human rights, and tolerance through the provision of online as well as face-to-face resources and classes.

(4) Create an integrated statewide clearinghouse of information on teacher training, instructional materials, and resources available through existing Holocaust and genocide institutions, programs, organizations, and the center.

(5) Support the integration of survivor testimony into instruction on the Holocaust, genocide, human rights, and tolerance.

(c) The director of the center shall prepare a master plan for the implementation of the pilot program that outlines how the goals of the program will be accomplished and measured.

(d) The center shall work cooperatively with designated California State University campuses, including, but not limited to, Fresno, San Diego, San Francisco, Sacramento, Stanislaus, Sonoma, Northridge, and Long Beach, to offer training, curricular materials, and resources for teachers to effectively instruct on the Holocaust, genocide, human rights, and tolerance.

44775.8. The center shall engage in the following activities:

(a) Support and facilitate teachers' use of certificate programs in Holocaust and genocide studies developed through the California State University.

(b) Act as a clearinghouse for teacher training materials.

(c) Provide specialized training for teachers and school districts.

(d) Assess and monitor the effectiveness of teacher training programs provided by the center.

(e) Promote Holocaust and genocide awareness.

(f) Compile a roster of volunteers who are willing to share their survivor testimony in classrooms, seminars, and workshops on the subject of the Holocaust or genocide and make the roster available on the center's Web site.

(g) Solicit financial support from both the public and private sectors.

(h) Promote activities to memorialize the Holocaust and genocide events.

(i) Prepare and submit a report to the Secretary of Education, the Governor, and the Legislature no later than January 31, 2004, outlining the activities of the center and reporting on the progress made in achieving the goals outlined in subdivision (b) of Section 44775.7. In addition, the report shall include information on the amount of nonstate funds secured for the purposes of the center and the number of teachers who have participated in training provided by the center.

SEC. 4. Section 51226.3 of the Education Code is amended to read:

51226.3. (a) The State Department of Education shall incorporate, into publications that provide examples of curriculum resources for teacher use, those materials developed by publishers of nonfiction, trade books, and primary sources, or other public or private organizations, that are age-appropriate and consistent with the subject frameworks on history and social science that deal with civil rights, human rights violations, genocide, slavery, and the Holocaust.

(b) The Legislature encourages the incorporation of survivor, rescuer, liberator, and witness testimony into the teaching of human rights, genocide, and the Holocaust.

(c) The Legislature encourages all state and local professional development activities to provide teachers with content background and resources to assist in teaching about civil rights, human rights violations, genocide, slavery, and the Holocaust.

(c) The Legislature encourages all state and local professional development activities to provide teachers with content background and resources to assist in teaching about the Great Irish Famine of 1845–50.

(d) The Great Irish Famine of 1845–50 shall be considered in the next cycle in which the history/social science curriculum framework and its accompanying instructional materials are adopted.

(e) The Model Curriculum for Human Rights and Genocide adopted by the State Board of Education, pursuant to Section 51226, shall be made available to schools in grades 7 to 12, inclusive, as soon as funding is available for this purpose. In addition, the State Department of Education shall make the curriculum available on its Web site.

SEC. 5. If the Budget Act of 2002 in Item 6610-001-0001 of Section 2.00 of that act provides for the appropriation of funds for the CSU Centers for Excellence pursuant to legislation, all of those one-time funds may be used to establish the Center for Excellence on the Study of the Holocaust, Genocide, Human Rights, and Tolerance, as a pilot program at California State University, Chico, pursuant to Section 44775.7 of the Education Code. No state funds beyond the fifty thousand dollars ($50,000) described by that item may be used to support the center in any subsequent fiscal year.

CHAPTER 703

An act to amend Section 11580.011 of the Insurance Code, and to add Section 27362.1 to the Vehicle Code, relating to insurance.

[Approved by Governor September 19, 2002. Filed with Secretary of State September 19, 2002.]

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

SECTION 1. Section 11580.011 of the Insurance Code is amended to read:

11580.011. (a) As used in this section, ''child passenger restraint system'' means a system as described in Section 27360 of the Vehicle Code.

(b) Every policy of automobile liability insurance, as described in Section 16054 of the Vehicle Code, shall provide liability coverage for replacement of a child passenger restraint system that was in use by a child during an accident for which liability coverage under the policy is applicable due to the liability of an insured.

(c) Every policy of automobile liability insurance that provides uninsured motorist property damage coverage, as described in paragraph (2) of subdivision (a) of Section 11580.26, shall provide coverage for replacement of a child passenger restraint system that was in use by a child during an accident for which uninsured motorist property damage coverage under the policy is applicable due to the liability of an uninsured motorist.

(d) Every policy that provides automobile collision coverage or automobile physical damage coverage, as described in Section 660, shall include a child passenger restraint system within the definition of covered property, if the child passenger restraint system was in use by a child during an accident.

(e) Upon the filing of a claim pursuant to a policy described in subdivision (b), (c), or (d), unless otherwise determined, an insurer shall have an obligation to ask whether a child passenger restraint system was in use by a child during an accident that is covered by the policy, and an obligation to replace the child passenger restraint system in accordance with this section if it was in use by a child during the accident or reimburse the claimant for the cost of purchasing a new child passenger restraint system.

(f) An insured, upon acquiring a replacement child passenger restraint system, may surrender the child passenger restraint system that was replaced to the nearest office of the Department of the California Highway Patrol.

SEC. 2. Section 27362.1 is added to the Vehicle Code, to read:

27362.1. (a) No individual may sell or offer for sale a child passenger restraint system that was in use by a child during an accident involving a motor vehicle.

(b) A violation of this section shall be punished by a fine of one hundred dollars ($100).

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.

CHAPTER 704

An act to add Section 14133.16 to the Welfare and Institutions Code, relating to hearing.

[Approved by Governor September 19, 2002. Filed with Secretary of State September 19, 2002.]

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

SECTION 1. Section 14133.16 is added to the Welfare and Institutions Code, to read:

14133.16. (a) Notwithstanding subdivision (*l*) of Section 14132, hearing aids are covered when supplied by a hearing aid dispenser on prescription of an otolaryngologist, or the attending physician where there is no otolaryngologist available in the community, plus an

audiological evaluation, which shall be performed by or under the supervision of the attending physician or by a licensed audiologist.

(b) Prior to prescribing a hearing aid, a physician or otolaryngologist shall perform a complete ear, nose, and throat examination.

(c) Prior to coverage, a hearing aid assessment shall be performed by the dispensing practitioner, either a physician, a licensed audiologist, or a licensed hearing aid dispenser acting within the scope of practice as described in Section 3306 of the Business and Professions Code.

(d) Coverage shall be based on the results of the examination, evaluation, and assessment required by this section.

(e) One hearing aid assessment within a 12-month period is a covered benefit. In the event the beneficiary receives more than one hearing aid assessment within a 12-month period, Medi-Cal shall reimburse the first valid claim received by the program for only one hearing aid assessment unless additional assessments are deemed to be medically necessary.

CHAPTER 705

An act to amend Sections 22445, 22446.5, and 22447 of the Business and Professions Code, relating to immigration consultants.

[Approved by Governor September 19, 2002. Filed with Secretary of State September 19, 2002.]

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

SECTION 1. Section 22445 of the Business and Professions Code is amended to read:

22445. (a) (1) A person who violates this chapter shall be subject to a civil penalty not to exceed one hundred thousand dollars ($100,000) for each violation, to be assessed and collected in a civil action brought by any person injured by the violation or in a civil action brought in the name of the people of the State of California by the Attorney General, a district attorney, or a city attorney. An action brought in the name of the people of the State of California shall not preclude an action being brought by an injured person.

(2) The court shall impose a civil penalty for each violation of this chapter. In assessing the amount of the civil penalty, the court may consider relevant circumstances presented by the parties to the case, including, but not limited to, the following: the nature and seriousness of the misconduct, the number of violations, the persistence of the misconduct, the length of time over which the misconduct occurred, the

willfulness of the defendant's misconduct, and the defendant's assets, liabilities, and net worth.

(3) Any action brought pursuant to this section by the Attorney General, a district attorney, or a city attorney shall also seek relief under subdivision (c) of Section 22446.5.

(4) If the Attorney General brings the action, one-half of the civil penalty collected shall be paid to the treasurer of the county in which the judgment was entered, and one-half to the General Fund. If a district attorney brings the action, the civil penalty collected shall be paid to the treasurer of the county in which the judgment was entered. If a city attorney brings the action, one-half of the civil penalty collected shall be paid to the treasurer of the city in which the judgment was entered, and one-half to the treasurer of the county in which the judgment was entered.

(b) In addition to the provisions of subdivision (a), a violation of this chapter is a misdemeanor punishable by a fine of not less than two thousand dollars ($2,000) or more than ten thousand dollars ($10,000), as to each client with respect to whom a violation occurs, or imprisonment in the county jail for not more than one year, or by both fine and imprisonment. However, payment of restitution to a client shall take precedence over payment of a fine.

(c) A second or subsequent violation of Sections 22442.2, 22442.3, and 22442.4 is a misdemeanor subject to the penalties specified in subdivisions (a) and (b). A second or subsequent violation of any other provision of this chapter is a felony punishable by imprisonment in state prison.

SEC. 2. Section 22446.5 of the Business and Professions Code is amended to read:

22446.5. (a) A person claiming to be aggrieved by a violation of this chapter by an immigration consultant may bring a civil action for injunctive relief or damages, or both. If the court finds that the defendant has violated a provision of this chapter, it shall award actual damages, plus an amount equal to treble the amount of actual damages or one thousand dollars ($1,000) per violation, whichever is greater. The court shall also grant a prevailing plaintiff reasonable attorneys' fees and costs.

(b) Any other party who, upon information and belief, claims a violation of this chapter has been committed by an immigration consultant may bring a civil action for injunctive relief on behalf of the general public and, upon prevailing, shall recover reasonable attorneys' fees and costs.

(c) The Attorney General, a district attorney, or a city attorney who claims a violation of this chapter has been committed by an immigration consultant, may bring a civil action for injunctive relief, restitution, and

other equitable relief against the immigration consultant in the name of the people of the State of California.

(d) An action brought under this chapter shall be set for trial at the earliest possible date, and shall take precedence over all other cases, except older matters of the same character and matters to which special preference may be given by law.

SEC. 3. Section 22447 of the Business and Professions Code is amended to read:

22447. (a) A person who is awarded damages in an action or proceeding for injuries caused by the acts of a person engaged in the business of, or acting in the capacity of, an immigration consultant, in the performance of his or her duties as an immigration consultant, may recover damages from the bond required by Section 22443.1. In an action brought by the Attorney General, a district attorney, or a city attorney, the court may order relief for benefit of the injured parties to be paid from the bond.

(b) When any claim or claims against a bond have been paid so as to reduce the principal amount of the bond remaining available to pay claims below the principal amount required by Section 22443.1, the immigration consultant shall cease to conduct any business unless and until the bond has been reinstated up to the minimum amount required by Section 22443.1.

CHAPTER 706

An act to add Section 65863 to the Government Code, relating to land use.

[Approved by Governor September 19, 2002. Filed with Secretary of State September 19, 2002.]

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

SECTION 1. Section 65863 is added to the Government Code, to read:

65863. (a) Each city, county, or city and county shall ensure that its inventory or programs of adequate sites pursuant to paragraph (3) of subdivision (a) of Section 65583 and paragraph (1) of subdivision (c) of Section 65583 can accommodate its share of the regional housing need pursuant to Section 65584, throughout the planning period.

(b) No city, county, or city and county shall, by administrative, quasi-judicial, or legislative action, reduce, require, or permit the reduction of the residential density for any parcel to a lower residential

density that is below the density that was utilized by the Department of Housing and Community Development in determining compliance with housing element law, Article 10.6 (commencing with Section 65580) of Chapter 3, unless the city, county, or city and county makes written findings supported by substantial evidence of both of the following:

(1) The reduction is consistent with the adopted general plan, including the housing element.

(2) The remaining sites identified in the housing element are adequate to accommodate the jurisdiction's share of the regional housing need pursuant to Section 65584.

(c) If a reduction in residential density for any parcel would result in the remaining sites in the housing element not being adequate to accommodate the jurisdiction's share of the regional housing need pursuant to Section 65584, the jurisdiction may reduce the density on that parcel provided it identifies sufficient additional, adequate, and available sites with an equal or greater residential density in the jurisdiction so that there is no net loss of residential unit capacity.

(d) The requirements of this section shall be in addition to any other law that may restrict or limit the reduction of residential density.

(e) If a court finds that an action of a city, county, or city and county is in violation of this section, the court shall award to the plaintiff or petitioner who proposed the housing development, reasonable attorney's fees and costs of suit, except under extraordinary circumstances in which the court finds that awarding fees would not further the purposes of this section or the court finds that the action was frivolous. This subdivision shall remain operative only until January 1, 2007, and as of that date is no longer operative, unless a later enacted statute that is enacted before January 1, 2007, deletes or extends that date.

CHAPTER 707

An act to add Sections 1551.2, 1568.0652, 1569.512, and 1596.8872 to the Health and Safety Code, relating to minors.

[Approved by Governor September 19, 2002. Filed with Secretary of State September 19, 2002.]

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

SECTION 1. Section 1551.2 is added to the Health and Safety Code, to read:

1551.2. (a) (1) An out-of-court statement made by a minor under 12 years of age who is the subject or victim of an allegation at issue is admissible evidence at an administrative hearing conducted pursuant to this article. The out-of-court statement may be used to support a finding of fact unless an objection is timely made and the objecting party establishes that the statement is unreliable because it was the product of fraud, deceit, or undue influence. However, the out-of-court statement may not be the sole basis for the finding of fact, unless the adjudicator finds that the time, content, and circumstances of the statement provide sufficient indicia of reliability.

(2) The proponent of the statement shall give reasonable notice to all parties of the intended introduction of the statement at the hearing.

(3) For purposes of this subdivision, an objection is timely if it identifies with reasonable specificity the disputed out-of-court statement and it gives the proponent of the evidence a reasonable period of time to prepare a response to the objection prior to the hearing.

(b) This section shall not be construed to limit the right of any party to the administrative hearing to subpoena a witness whose statement is admitted as evidence or to introduce admissible evidence relevant to the weight of the hearsay evidence or the credibility of the hearsay declarant.

SEC. 2. Section 1568.0652 is added to the Health and Safety Code, to read:

1568.0652. (a) (1) An out-of-court statement made by a minor under 12 years of age who is the subject or victim of an allegation at issue is admissible evidence at an administrative hearing conducted pursuant to this article. The out-of-court statement may be used to support a finding of fact unless an objection is timely made and the objecting party establishes that the statement is unreliable because it was the product of fraud, deceit, or undue influence. However, the out-of-court statement may not be the sole basis for the finding of fact, unless the adjudicator finds that the time, content, and circumstances of the statement provide sufficient indicia of reliability.

(2) The proponent of the statement shall give reasonable notice to all parties of the intended introduction of the statement at the hearing.

(3) For purposes of this subdivision, an objection is timely if it identifies with reasonable specificity the disputed out-of-court statement and it gives the proponent of the evidence a reasonable period of time to prepare a response to the objection prior to the hearing.

(b) This section shall not be construed to limit the right of any party to the administrative hearing to subpoena a witness whose statement is admitted as evidence or to introduce admissible evidence relevant to the weight of the hearsay evidence or the credibility of the hearsay declarant.

SEC. 3. Section 1569.512 is added to the Health and Safety Code, to read:

1569.512. (a) (1) An out-of-court statement made by a minor under 12 years of age who is the subject or victim of an allegation at issue is admissible evidence at an administrative hearing conducted pursuant to this article. The out-of-court statement may be used to support a finding of fact unless an objection is timely made and the objecting party establishes that the statement is unreliable because it was the product of fraud, deceit, or undue influence. However, the out-of-court statement may not be the sole basis for the finding of fact, unless the adjudicator finds that the time, content, and circumstances of the statement provide sufficient indicia of reliability.

(2) The proponent of the statement shall give reasonable notice to all parties of the intended introduction of the statement at the hearing.

(3) For purposes of this subdivision, an objection is timely if it identifies with reasonable specificity the disputed out-of-court statement and it gives the proponent of the evidence a reasonable period of time to prepare a response to the objection prior to the hearing.

(b) This section shall not be construed to limit the right of any party to the administrative hearing to subpoena a witness whose statement is admitted as evidence or to introduce admissible evidence relevant to the weight of the hearsay evidence or the credibility of the hearsay declarant.

SEC. 4. Section 1596.8872 is added to the Health and Safety Code, to read:

1596.8872. (a) (1) An out-of-court statement made by a minor under 12 years of age who is the subject or victim of an allegation at issue is admissible evidence at an administrative hearing conducted pursuant to this article. The out-of-court statement may be used to support a finding of fact unless an objection is timely made and the objecting party establishes that the statement is unreliable because it was the product of fraud, deceit, or undue influence. However, the out-of-court statement may not be the sole basis for the finding of fact, unless the adjudicator finds that the time, content, and circumstances of the statement provide sufficient indicia of reliability.

(2) The proponent of the statement shall give reasonable notice to all parties of the intended introduction of the statement at the hearing.

(3) For purposes of this subdivision, an objection is timely if it identifies with reasonable specificity the disputed out-of-court statement and it gives the proponent of the evidence a reasonable period of time to prepare a response to the objection prior to the hearing.

(b) This section shall not be construed to limit the right of any party to the administrative hearing to subpoena a witness whose statement is admitted as evidence or to introduce admissible evidence relevant to the weight of the hearsay evidence or the credibility of the hearsay declarant.

CHAPTER 708

An act to add Section 166.1 to the Code of Civil Procedure, relating to appeals.

[Approved by Governor September 19, 2002. Filed with Secretary of State September 19, 2002.]

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

SECTION 1. Section 166.1 is added to the Code of Civil Procedure, to read:

166.1. Upon the written request of any party or his or her counsel, or at the judge's discretion, a judge may indicate in any interlocutory order a belief that there is a controlling question of law as to which there are substantial grounds for difference of opinion, appellate resolution of which may materially advance the conclusion of the litigation. Neither the denial of a request for, nor the objection of another party or counsel to, such a commentary in the interlocutory order, may be grounds for a writ or appeal.

CHAPTER 709

An act to amend Sections 790.05, 790.06, and 790.07 of, and to add Section 21.5 to, the Insurance Code, relating to insurance.

[Approved by Governor September 19, 2002. Filed with Secretary of State September 19, 2002.]

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

SECTION 1. Section 21.5 is added to the Insurance Code, to read:

21.5. (a) ''Administrative law bureau'' or ''administrative hearing bureau'' means the unit within the Department of Insurance that provides administrative hearings.

(b) An administrative law judge appointed by the commissioner pursuant to civil service rules shall be employed within the administrative law bureau and shall not be supervised directly by the commissioner or supervised directly or indirectly by an employee in the legal branch of the department.

SEC. 2. Section 790.05 of the Insurance Code is amended to read:

790.05. Whenever the commissioner shall have reason to believe that a person has been engaged or is engaging in this state in any unfair method of competition or any unfair or deceptive act or practice defined

in Section 790.03, and that a proceeding by the commissioner in respect thereto would be to the interest of the public, he or she shall issue and serve upon that person an order to show cause containing a statement of the charges in that respect, a statement of that person's potential liability under Section 790.035, and a notice of a hearing thereon to be held at a time and place fixed therein, which shall not be less than 30 days after the service thereof, for the purpose of determining whether the commissioner should issue an order to that person to, pay the penalty imposed by Section 790.035, and to cease and desist those methods, acts, or practices or any of them.

If the charges or any of them are found to be justified the commissioner shall issue and cause to be served upon that person an order requiring that person to pay the penalty imposed by Section 790.035 and to cease and desist from engaging in those methods, acts, or practices found to be unfair or deceptive.

The hearing shall be conducted in accordance with the Administrative Procedure Act, Chapter 5 (commencing at Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, except that the hearings may be conducted by an administrative law judge in the administrative law bureau when the proceedings involve a common question of law or fact with another proceeding arising under other Insurance Code sections that may be conducted by administrative law bureau administrative law judges. The commissioner and the appointed administrative law judge shall have all the powers granted under the Administrative Procedure Act.

The person shall be entitled to have the proceedings and the order reviewed by means of any remedy provided by Section 12940 of this code or by the Administrative Procedure Act.

SEC. 3. Section 790.06 of the Insurance Code is amended to read:

790.06. (a) Whenever the commissioner shall have reason to believe that any person engaged in the business of insurance is engaging in this state in any method of competition or in any act or practice in the conduct of the business that is not defined in Section 790.03, and that the method is unfair or that the act or practice is unfair or deceptive and that a proceeding by him or her in respect thereto would be in the interest of the public, he or she may issue and serve upon that person an order to show cause containing a statement of the methods, acts or practices alleged to be unfair or deceptive and a notice of hearing thereon to be held at a time and place fixed therein, which shall not be less than 30 days after the service thereof, for the purpose of determining whether the alleged methods, acts or practices or any of them should be declared to be unfair or deceptive within the meaning of this article. The order shall specify the reason why the method of competition is alleged to be unfair or the act or practice is alleged to be unfair or deceptive.

The hearings provided by this section shall be conducted in accordance with the Administrative Procedure Act (Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code), except that the hearings may be conducted by an administrative law judge in the administrative law bureau when the proceedings involve a common question of law or fact with another proceeding arising under other Insurance Code sections that may be conducted by administrative law bureau administrative law judges. The commissioner and the appointed administrative law judge shall have all the powers granted under the Administrative Procedure Act. If the alleged methods, acts, or practices or any of them are found to be unfair or deceptive within the meaning of this article the commissioner shall issue and service upon that person his or her written report so declaring.

(b) If the report charges a violation of this article and if the method of competition, act or practice has not been discontinued, the commissioner may, through the Attorney General of this state, at any time after 30 days after the service of the report cause a petition to be filed in the superior court of this state within the county wherein the person resides or has his or her principal place of business, to enjoin and restrain the person from engaging in the method, act or practice. The court shall have jurisdiction of the proceeding and shall have power to make and enter appropriate orders in connection therewith and to issue any writs as are ancillary to its jurisdiction or are necessary in its judgment to prevent injury to the public pendente lite.

(c) A transcript of the proceedings before the commissioner, including all evidence taken and the report and findings shall be filed with the petition. If either party shall apply to the court for leave to adduce additional evidence and shall show, to the satisfaction of the court, that the additional evidence is material and there were reasonable grounds for the failure to adduce the evidence in the proceeding before the commissioner, the court may order the additional evidence to be taken before the commissioner and to be adduced upon the hearing in the manner and upon the terms and conditions as to the court may seem proper. The commissioner may modify his or her findings of fact or make new findings by reason of the additional evidence so taken, and shall file modified or new findings with the return of the additional evidence.

(d) If the court finds that the method of competition complained of is unfair or that the act or practice complained of is unfair or deceptive, that the proceeding by the commissioner with respect thereto is to the interest of the public and that the findings of the commissioner are supported by the weight of the evidence, it shall issue its order enjoining and restraining the continuance of the method of competition, act or practice.

SEC. 4. Section 790.07 of the Insurance Code is amended to read:

790.07. Whenever the commissioner shall have reason to believe that any person has violated a cease and desist order issued pursuant to Section 790.05 or a court order issued pursuant to Section 790.06, after the order has become final, and while the order is still in effect, the commissioner may, after a hearing at which it is determined that the violation was committed, order that person to forfeit and pay to the State of California a sum not to exceed five thousand dollars ($5,000) plus any penalty due under Section 790.05, which may be recovered in a civil action, except that, if the violation is found to be willful, the amount of the penalty may be a sum not to exceed fifty-five thousand dollars ($55,000) plus the penalty due under Section 790.05.

For the purposes of this section, the failure to pay any penalty imposed pursuant to Section 790.035 which has become final shall constitute a violation of the cease and desist order.

For any subsequent violation of the cease and desist order or of the court order or the order to pay the penalty, while the order is still in effect, the commissioner may, after hearing, suspend or revoke the license or certificate of that person for a period not exceeding one year; provided, however, no proceeding shall be based upon the subsequent violation unless the same was committed or continued after the date on which the order imposing the penalty pursuant to the preceding paragraph became final.

The hearings provided by this section shall be conducted in accordance with the Administrative Procedure Act, except that the hearings may be conducted by an administrative law judge in the administrative law bureau when the proceedings involve a common question of law or fact with another proceeding arising under other Insurance Code sections that may be conducted by administrative law bureau administrative law judges. The commissioner and the appointed administrative law judge shall have all the powers granted under the Administrative Procedure Act.

The person shall be entitled to have the proceedings and the order of the commissioner therein reviewed by means of any remedy provided by Section 12940 or by the Administrative Procedure Act.

CHAPTER 710

An act to amend Section 597*l* of the Penal Code, relating to pet shops.

[Approved by Governor September 19, 2002. Filed with
Secretary of State September 19, 2002.]

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

SECTION 1. Section 597*l* of the Penal Code is amended to read:

597*l*. (a) It shall be unlawful for any person who operates a pet shop to fail to do all of the following:

(1) Maintain the facilities used for the keeping of pet animals in a sanitary condition.

(2) Provide proper heating and ventilation for the facilities used for the keeping of pet animals.

(3) Provide adequate nutrition for, and humane care and treatment of, all pet animals under his or her care and control.

(4) Take reasonable care to release for sale, trade, or adoption only those pet animals that are free of disease or injuries.

(5) Provide adequate space appropriate to the size, weight and specie of pet animals.

(b) (1) Sellers of pet animals shall provide buyers of a pet animal with general written recommendations for the generally accepted care of the class of pet animal sold including recommendations as to the housing, equipment, cleaning, environment, and feeding of the animal. This written information shall be in a form determined by the sellers of pet animals and may include references to Web sites, books, pamphlets, videos, and compact discs.

(2) If a seller of pet animals distributes material prepared by a third party, the seller shall not be liable for damages caused by any erroneous information in that material unless a reasonable person exercising ordinary care should have known of the error causing the damage.

(3) This subdivision shall apply to any private or public retail business that sells pet animals to the public and is required to possess a permit pursuant to Section 6066 of the Revenue and Taxation Code.

(4) Charges brought against a seller of pet animals for a first violation of the provisions of this subdivision shall be dismissed if the person charged produces in court satisfactory proof of compliance. A second or subsequent violation is an infraction punishable by a fine not to exceed two hundred fifty dollars ($250).

(c) As used in this section, the following terms have the following meanings:

(1) ''Pet animals'' means dogs, cats, monkeys, and other primates, rabbits, birds, guinea pigs, hamsters, mice, snakes, iguanas, turtles, and any other species of animal sold or retained for the purpose of being kept as a household pet.

(2) ''Pet shop'' means every place or premises where pet animals are kept for the purpose of either wholesale or retail sale. ''Pet shop'' does not include any place or premises where pet animals are occasionally sold.

(d) Any person who violates any provision of subdivision (a) is guilty of a misdemeanor and is punishable by a fine of not to exceed one thousand dollars ($1,000), or by imprisonment in the county jail for not more than 90 days, or by both that fine and imprisonment.

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.

CHAPTER 711

An act to add Section 65585.2 to the Government Code, relating to housing.

[Approved by Governor September 19, 2002. Filed with Secretary of State September 19, 2002.]

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

SECTION 1. Section 65585.2 is added to the Government Code, to read:

65585.2. Notwithstanding any other provision of law, any city or county that has a housing element that has been self-certified pursuant to the requirements of Section 65585.1 shall be considered to be fully eligible to participate in any program created by, or receiving funds through, the Housing and Emergency Shelter Trust Fund Act of 2002 in an identical manner and to the same degree, as those local jurisdictions deemed in substantial compliance with the requirements of this article by the Department of Housing and Community Development pursuant to Section 65585.

CHAPTER 712

An act to amend Section 102230 of, and to add Sections 102231 and 102232 to, the Health and Safety Code, relating to public records.

[Approved by Governor September 19, 2002. Filed with Secretary of State September 19, 2002.]

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

SECTION 1. Section 102230 of the Health and Safety Code is amended to read:

102230. (a) (1) The State Registrar shall arrange and permanently preserve the certificates in a systematic manner and shall prepare and maintain comprehensive and continuous indices of all certificates registered.

(2) The birth and death record indices prepared pursuant to paragraph (1) and all comprehensive birth and death record indices prepared or maintained by local registrars and county recorders shall be kept confidential and shall be exempt from disclosure under the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code).

(3) Notwithstanding paragraph (2), the State Registrar, at his or her discretion, may release comprehensive birth and death record indices to any government agency. Local registrars and county recorders, when requested, shall release their comprehensive birth and death record indices to the State Registrar. A government agency that obtains indices pursuant to this paragraph may not sell or release the index or any portion of its contents to any other person except as necessary for official government business and shall not post the indices or any portion thereof on the Internet.

(b) (1) The State Registrar shall prepare and maintain separate noncomprehensive indices of all California birth and death records for public release.

(2) For purposes of this section, noncomprehensive birth record indices for public release shall be comprised of first, middle, and last name, sex, date of birth, and place of birth.

(3) For purposes of this section, noncomprehensive death record indices for public release shall be comprised of first, middle, and last name, sex, date of birth, place of birth, place of death, date of death, and father's last name.

(4) Requesters of the birth or death record indices prepared pursuant to this subdivision shall provide proof of identity, complete a form, and sign the form under penalty of perjury. The form shall include all of the following:

(A) The proposed use of the birth or death record indices.

(B) A disclaimer crediting any analyses, interpretations, or conclusions reached regarding the birth or death record indices to the author and not to the State Department of Health Services.

(C) Assurance that technical descriptions of the birth or death record indices are consistent with those provided by the State Department of Health Services.

(D) Assurance that the requester shall not sell, assign, or otherwise transfer the birth or death record indices.

(E) Assurance that the requester shall not use the birth or death record indices for fraudulent purposes.

(5) Birth and death record indices obtained pursuant to this subdivision, and any portion thereof, shall not be used for fraudulent purposes.

(c) (1) The State Registrar shall prepare and maintain separate noncomprehensive indices of all California birth and death records for purposes of law enforcement or preventing fraud.

(2) For purposes of this section, noncomprehensive birth record indices for the purpose of preventing fraud shall be comprised of first, middle, and last name, sex, date of birth, place of birth, and mother's maiden name.

(3) For purposes of this section, noncomprehensive death record indices for the purpose of preventing fraud shall be comprised of first, middle, and last name, place of death, mother's maiden name, sex, social security number, date of birth, place of birth, date of death, and father's last name.

(4) The birth and death record indices prepared pursuant to this subdivision shall be made available to financial institutions, as defined in 15 U.S.C. Sec. 6827(4)(A) and (B), its representatives or contractors, consumer credit reporting agencies, as defined in subdivision (d) of Section 1785.3 of the Civil Code, its representatives or contractors, those entities providing information services for purposes of law enforcement or preventing fraud, officers of the court for the sole purpose of verifying a death, and to persons or entities acting on behalf of law enforcement agencies or the court, or pursuant to a court order.

(5) The birth and death record indices prepared pursuant to this subdivision may be released to any government agency.

(6) Requesters of the birth or death record indices prepared pursuant to this subdivision shall provide proof of identity, complete a form, and sign the form under penalty of perjury. The form shall include all of the following:

(A) An agreement not to release or allow public access to the birth or death record indices, and an agreement not to post the indices on the Internet, except as permitted by this subdivision.

(B) The proposed use of the birth or death record indices.

(C) The names of all persons within the organization, if applicable, who will have access to the birth or death record indices.

(D) A disclaimer crediting any analyses, interpretations, or conclusions reached regarding the birth or death record indices to the author and not to the State Department of Health Services.

(E) Assurance that technical descriptions of the birth or death record indices are consistent with those provided by the State Department of Health Services.

(F) Assurance that the requester shall not sell, assign, or otherwise transfer the birth or death record indices, except as permitted by this subdivision.

(G) Assurance that the requester shall not use the birth or death record indices for fraudulent purposes.

(7) (A) Birth and death record indices, and any portion thereof, obtained pursuant to this section, shall not be used for fraudulent purposes and shall not be posted on the Internet.

(B) Notwithstanding subparagraph (A), individual information contained in birth and death record indices may be posted on the Internet if all of the following requirements are met:

(i) The individual information is posted on a Web site that is protected by a password.

(ii) The individual information is posted on a Web site that is available to subscribers only for a fee.

(iii) The individual information is not posted for public display.

(iv) The individual information is available to subscribers pursuant to a contractual agreement.

(v) The individual information is posted for purposes of law enforcement or preventing fraud.

(d) Mail-in requests from nongovernmental agencies for birth and death record indices requested pursuant to subdivisions (b) and (c) shall include a notarized statement attesting to the identity of the requester.

(e) Noncomprehensive birth and death record indices pursuant to subdivisions (b) and (c) shall be updated annually.

(f) All birth and death record indices provided pursuant to this section shall be made available subject to cost recovery provisions of the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code).

(g) Any noncomprehensive birth and death record indices created by local registrars or county recorders shall be subject to the conditions for release required by this section.

(h) A person or entity that obtains a birth or death record index, or any portion thereof, from a requester who has obtained the index in accordance with paragraph (6) of subdivision (c) may not sell, assign, or otherwise transfer that index, or any portion thereof, to any third party.

(i) Paragraphs (2) and (3) of subdivision (a) and subdivisions (b) to (h), inclusive, shall be implemented only to the extent that funds for these purposes are appropriated by the Legislature in the annual Budget Act or other statute.

SEC. 2. Section 102231 is added to the Health and Safety Code, to read:

102231. (a) Notwithstanding any other provision of law, birth data files, birth data files for public release, death data files for public release, and death data files for purposes of law enforcement or preventing fraud prepared and maintained by the State Registrar, local registrars, and county recorders shall only be released as follows:

(1) Birth data files containing personal identifiers shall be subject to the same restrictions as the confidential portion of a birth certificate and shall only be released under the terms and conditions specified in Section 102430.

(2) Birth data files for public release shall not contain the mother's maiden name.

(3) Death data files for public release shall not contain the mother's maiden name and social security number.

(4) Death data files for purposes of law enforcement or preventing fraud shall include the mother's maiden name and social security number. Death data files prepared pursuant to this subdivision may be released to governmental agencies and to those entities described in paragraph (4) of subdivision (c) of Section 102230.

(5) Death data files containing personal identifying information may be released to persons expressing a valid scientific interest, as determined by the appropriate committee constituted for the protection of human subjects that is approved by the United States Department of Health and Human Services and has a general assurance pursuant to Part 46 (commencing with Section 46.101) of Title 45 of the Code of Federal Regulations.

(b) Requesters of birth and death data files pursuant to this section shall provide proof of identity, complete a form, and sign the form under penalty of perjury. The form shall include all of the following:

(1) An agreement not to release the birth or death data files and not to post the files on the Internet, except as permitted by this subdivision.

(2) An agreement not to provide public access to data files obtained pursuant to paragraphs (1) and (4) of subdivision (a).

(3) The proposed use of the data file.

(4) For data files obtained pursuant to paragraphs (1) and (4) of subdivision (a), the names of all persons within the organization, if applicable, who will have access to the data files.

(5) A disclaimer that credits any analyses, interpretations, or conclusions reached regarding the birth or death data files to the author and not to the State Department of Health Services.

(6) Assurance that technical descriptions of the data files are consistent with those provided by the State Department of Health Services.

(7) Assurance that the requester shall not sell, assign, or otherwise transfer the data files, except as permitted by subdivision (e).

(8) Assurance that the requester shall not use the data files for fraudulent purposes.

(c) Mail-in requests for birth and death data files pursuant to this section shall include a notarized statement attesting to the identity of the requester.

(d) Birth and death data files provided pursuant to this section shall be made available subject to cost recovery provisions of the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code).

(e) (1) Birth and death data files, and any portion thereof, obtained pursuant to this section, shall not be used for fraudulent purposes and shall not be posted on the Internet.

(2) Notwithstanding paragraph (1), individual information contained in death data files obtained pursuant to paragraph (4) of subdivision (a) may be posted on the Internet if all of the following requirements are met:

(A) The information is posted on a Web site that is protected by a password.

(B) The information is posted on a Web site that is available to subscribers only for a fee.

(C) The information is not posted for public display.

(D) The information is available to subscribers pursuant to a contractual agreement.

(E) The information is posted for purposes of law enforcement or preventing fraud.

(f) A person or entity that obtains a birth or death data file, or any portion thereof, from a requester who has obtained the data file in accordance with subdivision (b) may not sell, assign, or otherwise transfer that data file, or any portion thereof, to any third party.

(g) This section shall be implemented only to the extent that funds for these purposes are appropriated by the Legislature in the annual Budget Act or other statute.

SEC. 3. Section 102232 is added to the Health and Safety Code, to read:

102232. (a) (1) Any person who violates Section 102230 or 102231 may be denied further access to the indices or data files maintained by the department.

(2) Any person who violates Section 102230 or 102231 is guilty of a misdemeanor and shall be punished by imprisonment in the county jail for a period not to exceed one year, or a fine of one thousand dollars ($1,000), or by both the imprisonment and fine, for each violation.

(3) The penalties described in paragraphs (1) and (2) shall not be construed to limit any other remedies provided by law.

(b) Notwithstanding Section 126 of the Penal Code, the crime of perjury specified in paragraph (4) of subdivision (b) of Section 102230, paragraph (6) of subdivision (c) of Section 102230, and subdivision (b) of Section 102231, shall be punishable as a misdemeanor.

(c) Paragraph (1) of subdivision (a) shall be implemented only to the extent that funds for these purposes are appropriated by the Legislature in the annual Budget Act or other statute.

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.

CHAPTER 713

An act to amend Sections 18021.7, 18029.3, 18029.6, and 18035.2 of the Health and Safety Code, relating to mobilehomes and manufactured homes, and making an appropriation therefor.

[Approved by Governor September 19, 2002. Filed with Secretary of State September 19, 2002.]

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

SECTION 1. Section 18021.7 of the Health and Safety Code is amended to read:

18021.7. (a) (1) In addition to other remedies provided in this part, the Director of Housing and Community Development or his or her designee may issue a citation that assesses a civil penalty payable to the department to any licensee who violates Section 18021.5, 18029.6, or

18030, subdivision (b) of Section 18032, Section 18035, 18035.1, 18035.2, 18035.3, 18036, 18039, 18045, 18045.5, 18045.6, 18046, or 18058, subdivision (a) of Section 18059, subdivision (b) of Section 18059.5, subdivision (c) of Section 18060, subdivision (c) of Section 18060.5, Section 18061, subdivision (d), (i), or (j) of Section 18061.5, subdivision (a), (b), or (e) of Section 18062, subdivision (a), (b), (d), (f), (g), or (h) of Section 18062.2, subdivision (c) of Section 18063, or Section 18080.5.

(2) A violation of subdivision (d) of Section 18060.5 is also cause for citation if both the dealer and the manufacturer receive written notice of a warranty complaint from the complainant, from the department, or another source of information, and, at a minimum, the 90-day period provided for correction of substantial defects pursuant to Section 1797.7 of the Civil Code has expired.

(3) Each citation and related civil penalty assessment shall be issued no later than six months after discovery of the violation.

(b) The amount of any civil penalty assessed pursuant to subdivision (a) shall be one hundred dollars ($100) for each violation, but shall be increased to two hundred fifty dollars ($250) for each subsequent violation of the same prohibition for which a citation for the subsequent violation is issued within one year of the citation for the previous violation. The violation or violations giving cause for the citation shall be corrected if applicable, and payment of the civil penalty shall be remitted to the department within 45 days of the date of issuance of the citation. Civil penalties received by the department pursuant to this section shall be deposited in the Mobilehome-Manufactured Home Revolving Fund.

(c) Any person or entity served a citation pursuant to this section may petition for, and shall be granted, an informal hearing before the director or his or her designee. The petition shall be a written request briefly stating the grounds for the request. Any petition, to be considered, shall be received by the department within 30 days of the date of issuance of the citation.

(d) Upon receipt of a timely and complying petition, the department shall suspend enforcement of the citation and set a time and place for the informal hearing and shall give the licensee written notice thereof. The hearing shall commence no later than 30 days following receipt of the petition or at another time scheduled by the department pursuant to a request by the licensee or department if good and sufficient cause exists. If the licensee fails to appear at the time and place scheduled for the hearing, the department may notify the licensee in writing that the petition is dismissed and that compliance with terms of the citation shall occur within 10 days after receipt of the notification.

(e) The department shall notify the petitioner in writing of its decision and the reasons therefor within 30 days following conclusion of the informal hearing held pursuant to this section. If the decision upholds the citation, in whole or in part, the licensee shall comply with the citation in accordance with the decision within 30 days after the decision is mailed by the department.

(f) Nothing in this section shall be construed to preclude remedies available under other provisions of law.

SEC. 2. Section 18029.3 of the Health and Safety Code is amended to read:

18029.3. (a) Any manufactured home, mobilehome, vehicle, or transportable structure manufactured, remanufactured, altered, used, or converted for use as a commercial coach or special purpose commercial coach shall comply with this part and the regulations adopted pursuant to this part relating to insignia and inspection requirements, construction, fire safety, electrical, heating, mechanical, plumbing, occupancy, and energy conservation.

(b) Special purpose commercial coach mobile food preparation units shall also meet the requirements of Article 12 (commencing with Section 114285) of Chapter 4 of Part 7 of Division 104 and the regulations implementing, interpreting, and clarifying that article, as enforced by the State Department of Health Services, which shall supersede the requirements in this part and the regulations adopted pursuant to this part in the event of a conflict.

SEC. 3. Section 18029.6 of the Health and Safety Code is amended to read:

18029.6. (a) On or after January 1, 1986, all used manufactured homes and used mobilehomes that are sold shall have a smoke detector that is operable on the date of transfer of title.

(b) On or after January 1, 2003, the requirement of subdivision (a) shall be satisfied if, within 45 days prior to the date of transfer of title, the transferor signs a declaration stating that each smoke detector in the manufactured home or mobilehome is operable on the date that the declaration is signed.

(c) The department may adopt regulations to carry out this section.

SEC. 4. Section 18035.2 of the Health and Safety Code is amended to read:

18035.2. (a) For every sale by a dealer of a new or used manufactured home or mobilehome to be installed on a foundation system pursuant to subdivision (a) of Section 18551, the dealer shall execute in writing and obtain the buyer's signature on a purchase order, conditional sale contract, or other document evidencing the purchase, and provide a statement of fact complying with subdivision (b) of Section 18035.1, contemporaneous with or prior to the receipt of any

cash or cash equivalent from the buyer and shall establish an escrow account with an escrow agent. The escrow shall not be subject to Section 18035. The parties shall provide for escrow instructions that identify the fixed amounts of the deposit and balances due prior to closing, consistent with the amounts set forth in the document evidencing the purchase and related services. Escrow disbursements and closing shall be consistent with the mutually agreed terms and conditions of the documents evidencing the purchase and related services. Disbursements of funds from escrow prior to delivery and installation of the unit, any accessory structures, and related services shall only be as mutually agreed upon in writing by the dealer and buyer.

(b) For every sale by a dealer of a new manufactured home or mobilehome installed or to be installed on a foundation system pursuant to subdivision (a) of Section 18551, the escrow instructions shall provide all of the following:

(1) That the original manufacturer's certificate of origin be placed in escrow.

(2) That, in the alternative:

(A) The lien of any inventory creditor on the manufactured home or mobilehome shall be satisfied by payment from the escrow account.

(B) That the inventory creditor shall consent in writing to other than full payment.

For purposes of this paragraph, ''inventory creditor'' includes any person who is identified as a creditor on the manufacturer's certificate of origin or any person who places the original certificate of origin in escrow and claims in writing to the escrow agent to have a purchase money security interest in the manufactured home or mobilehome as contemplated by Section 9103 of the Commercial Code.

(3) That the escrow agent shall obtain from the manufacturer a true and correct facsimile of the copy of the certificate of origin retained by the manufacturer pursuant to Section 18093.

(c) For every sale by a dealer of a new or used manufactured home or mobilehome that is subject to inspection pursuant to subdivision (a) of Section 18551, and for which it is stated, on the face of the document certifying or approving occupancy, that the issuance of the document is conditioned upon the payment of a fee, charge, dedication, or other requirement levied pursuant to Section 17620 of the Education Code, the escrow instructions shall provide that the payment of that fee, charge, dedication, or other requirement be made to the appropriate school district upon the close of escrow.

CHAPTER 714

An act to amend Sections 4928, 4929, 4933, 4934, 4935, 4955, and 4977.2 of, and to add Sections 4934.1, 4934.2, 4955.1, 4955.2, and 4960.2 to, the Business and Professions Code, relating to professional boards, and making an appropriation therefor.

[Approved by Governor September 19, 2002. Filed with Secretary of State September 19, 2002.]

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

SECTION 1. Section 4928 of the Business and Professions Code is amended to read:

4928. The Acupuncture Board, which consists of nine members, shall enforce and administer this chapter.

This section shall become inoperative on July 1, 2005, and, as of January 1, 2006, is repealed, unless a later enacted statute, which becomes effective on or before January 1, 2006, deletes or extends the dates on which it becomes inoperative and is repealed.

The repeal of this section renders the board subject to the review required by Division 1.2 (commencing with Section 473).

SEC. 2. Section 4929 of the Business and Professions Code is amended to read:

4929. Three members of the board shall be acupuncturists with at least five years of experience in acupuncture and not licensed as physicians and surgeons, one member of the board shall be a licensed acupuncturist who is also a faculty member of any board approved acupuncture college, one member of the board shall be a physician and surgeon licensed in this state with two years of experience in acupuncture, and four members shall be public members who do not hold a license or certificate as a physician and surgeon or acupuncturist.

The Governor shall appoint the four acupuncturist members qualified as provided in this section, who shall be appointed to represent a cross section of the cultural backgrounds of licensed members of the acupuncturist profession, two of the public members, and the one licensed physician and surgeon member qualified as provided in this section. All members appointed to the board by the Governor shall be subject to confirmation by the Senate. The Senate Rules Committee and the Speaker of the Assembly shall each appoint a public member. Any member of the board may be removed by the appointing power for neglect of duty, misconduct, or malfeasance in office, after being provided with a written statement of the charges and an opportunity to be heard.

SEC. 3. Section 4933 of the Business and Professions Code is amended to read:

4933. (a) The board shall administer this chapter.

(b) The board may adopt, amend, or repeal, 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), regulations as may be necessary to enable it to carry into effect the provisions of law relating to the practice of acupuncture.

(c) Five members of the board shall constitute a quorum to conduct business.

(d) It shall require an affirmative vote of a majority of those present at a meeting of the board to take any action or pass any motion.

SEC. 4. Section 4934 of the Business and Professions Code is amended to read:

4934. The board shall employ personnel necessary for the administration of this chapter; however, the board may appoint an executive officer who is exempt from the provisions of the Civil Service Act.

This section shall become inoperative on July 1, 2005, and, as of January 1, 2006, is repealed, unless a later enacted statute, which becomes effective on or before January 1, 2006, deletes or extends the dates on which it becomes inoperative and is repealed.

The repeal of this section renders the board subject to the review required by Division 1.2 (commencing with Section 473).

SEC. 5. Section 4934.1 is added to the Business and Professions Code, to read:

4934.1. (a) The Legislature requests the Milton Marks "Little Hoover" Commission on California State Government Organization and Economy to conduct a comprehensive analysis consisting of the following reviews and evaluations and shall report their findings and recommendations to the Legislature by September 1, 2004:

(1) Review and make recommendations on the scope of practice for acupuncturists.

(2) Review and make recommendations on the educational requirements for acupuncturists.

(3) Evaluate the national examination, administered by the National Certification Commission for Acupuncture and Oriental Medicine, and make recommendations as to whether or not the national examination should be offered in California in lieu of, or as part of, the state examination.

(4) Evaluate and make recommendations on the approval process of the Accreditation Commission of Acupuncture and Oriental Medicine, the approval process of the Bureau for Private Postsecondary Education, and the board's approval process.

(b) The board shall pay for all of the costs associated with the comprehensive analysis. An amount to pay for all of the costs associated with the comprehensive analysis, up to two hundred fifty thousand dollars ($250,000), is hereby appropriated to the board from the Acupuncture Fund.

SEC. 6. Section 4934.2 is added to the Business and Professions Code, to read:

4934.2. The board shall conduct the following studies and reviews, and shall report its findings and recommendations to the department and the Joint Legislative Sunset Review Committee no later that September 1, 2004:

(a) The board shall conduct a comprehensive study of the use of unlicensed acupuncture assistants and the need to license and regulate those assistants.

(b) The board shall study and recommend ways to improve the frequency and consistency of their auditing and the quality and relevance of their courses.

SEC. 7. Section 4935 of the Business and Professions Code is amended to read:

4935. (a) (1) It is a misdemeanor, punishable by a fine of not less than one hundred dollars ($100) and not more than two thousand five hundred dollars ($2,500), or by imprisonment in a county jail not exceeding one year, or by both that fine and imprisonment, for any person who does not hold a current and valid license to practice acupuncture under this chapter or to hold himself or herself out as practicing or engaging in the practice of acupuncture.

(2) It is a misdemeanor, punishable by a fine of not less than one hundred dollars ($100) and not more than two thousand five hundred dollars ($2,500), or by imprisonment in a county jail not exceeding one year, or by both that fine and imprisonment, for any person to fraudulently buy, sell, or obtain a license to practice acupuncture, or to violate the provisions of this chapter.

(b) Notwithstanding any other provision of law, any person, other than a physician and surgeon, a dentist, or a podiatrist, who is not licensed under this article but is licensed under Division 2 (commencing with Section 500), who practices acupuncture involving the application of a needle to the human body, performs any acupuncture technique or method involving the application of a needle to the human body, or directs, manages, or supervises another person in performing acupuncture involving the application of a needle to the human body is guilty of a misdemeanor.

(c) A person holds himself or herself out as engaging in the practice of acupuncture by the use of any title or description of services incorporating the words ‘‘acupuncture,’’ ‘‘acupuncturist,’’ ‘‘certified

acupuncturist,'' ''licensed acupuncturist,'' ''oriental medicine,'' or any combination of those words, phrases, or abbreviations of those words or phrases, or by representing that he or she is trained, experienced, or an expert in the field of acupuncture, oriental medicine, or Chinese medicine.

(d) Subdivision (a) shall not prohibit a person from administering acupuncture treatment as part of his or her educational training if he or she:

(1) Is engaged in a course or tutorial program in acupuncture, as provided in this chapter; or

(2) Is a graduate of a school of acupuncture approved by the board and participating in a postgraduate review course that does not exceed one year in duration at a school approved by the board.

SEC. 8. Section 4955 of the Business and Professions Code is amended to read:

4955. The board may deny, suspend, or revoke, or impose probationary conditions upon, the license of any acupuncturist if he or she is guilty of unprofessional conduct.

Unprofessional conduct shall include, but not be limited to, the following:

(a) Using or possessing any controlled substance as defined in Division 10 (commencing with Section 11000) of the Health and Safety Code, or dangerous drug or alcoholic beverage to an extent or in a manner dangerous to himself or herself, or to any other person, or to the public, and to an extent that the use impairs his or her ability to engage in the practice of acupuncture with safety to the public.

(b) Conviction of a crime substantially related to the qualifications, functions, or duties of an acupuncturist, the record of conviction being conclusive evidence thereof.

(c) False or misleading advertising.

(d) Aiding or abetting in, or violating or conspiring in, directly or indirectly, the violation of the terms of this chapter or any regulation adopted by the board pursuant to this chapter.

(e) Except for good cause, the knowing failure to protect patients by failing to follow infection control guidelines of the board, thereby risking transmission of blood-borne infectious diseases from licensee to patient, from patient to patient, and from patient to licensee. In administering this subdivision, the board shall consider referencing the standards, regulations, and guidelines of the State Department of Health Services developed pursuant to Section 1250.11 of the Health and Safety Code and the standards, regulations, and guidelines pursuant to the California Occupational Safety and Health Act of 1973 (Part 1 (commencing with Section 6300) of Division 5 of the Labor Code) for preventing the transmission of HIV, hepatitis B, and other blood-borne

pathogens in health care settings. As necessary, the board shall consult with the Medical Board of California, the California Board of Podiatric Medicine, the Dental Board of California, the Board of Registered Nursing, and the Board of Vocational Nursing and Psychiatric Technicians, to encourage appropriate consistency in the implementation of this subdivision.

The board shall seek to ensure that licensees are informed of the responsibility of licensees and others to follow infection control guidelines, and of the most recent scientifically recognized safeguards for minimizing the risk of transmission of blood-borne infectious diseases.

(f) The use of threats or harassment against any patient or licensee for providing evidence in a disciplinary action, other legal action, or in an investigation contemplating a disciplinary action or other legal action.

(g) Discharging an employee primarily for attempting to comply with the terms of this chapter.

(h) Disciplinary action taken by any public agency for any act substantially related to the qualifications, functions, or duties of an acupuncturist or any professional health care licensee.

(i) Any action or conduct that would have warranted the denial of the acupuncture license.

(j) The violation of any law or local ordinance on an acupuncturist's business premises by an acupuncturist's employee or a person who is working under the acupuncturist's professional license or business permit, that is substantially related to the qualifications, functions, or duties of an acupuncturist. These violations shall subject the acupuncturist who employed the individuals, or under whose acupuncturist license the employee is working, to disciplinary action.

(k) The abandonment of a patient by the licentiate without written notice to the patient that treatment is to be discontinued and before the patient has had a reasonable opportunity to secure the services of another practitioner.

(*l*) the failure to notify the board of the use of any false, assumed, or fictitious name other than the name under which he or she is licensed as an individual to practice acupuncture.

SEC. 9. Section 4955.1 is added to the Business and Professions Code, to read:

4955.1. The board may deny, suspend, revoke, or impose probationary conditions upon the license of any acupuncturist if he or she is guilty of committing a fraudulent act including, but not be limited to, any of the following:

(a) Securing a license by fraud or deceit.

(b) Committing a fraudulent or dishonest act as an acupuncturist.

(c) Committing any act involving dishonesty or corruption with respect to the qualifications, functions, or duties of an acupuncturist.

(d) Altering or modifying the medical record of any person, with fraudulent intent, or creating any false medical record.

(e) Failing to maintain adequate and accurate records relating to the provision of services to their patients.

SEC. 10. Section 4955.2 is added to the Business and Professions Code, to read:

4955.2. The board may deny, suspend, revoke, or impose probationary conditions upon the license of any acupuncturist if he or she is guilty of committing any one of the following:

(a) Gross negligence.

(b) Repeated negligent acts.

(c) Incompetence.

SEC. 11. Section 4960.2 is added to the Business and Professions Code, to read:

4960.2. The board in all cases of revocation shall certify the fact of the revocation, under the seal of the board, to the business licensing entity of the cities or counties in which the license of the acupuncturist has been revoked. The record of the revocation made by the county or city clerk shall be sufficient evidence of the revocation, and of the regularity of all proceedings of the board in the matter of the revocation.

SEC. 12. Section 4977.2 of the Business and Professions Code is amended to read:

4977.2. Except as provided in Section 13403 of the Corporations Code, each director, shareholder, and officer of an acupuncture corporation, except an assistant secretary and an assistant treasurer, shall be a licensed person as defined by Section 13401 of the Corporations Code.

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.

CHAPTER 715

An act to amend Sections 15363.71, 15363.72, and 15363.73 of the Government Code, relating to economic development, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 19, 2002. Filed with Secretary of State September 19, 2002.]

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

SECTION 1. Section 15363.71 of the Government Code is amended to read:

15363.71. (a) The Legislature finds and declares as follows:

(1) The entertainment industry is one of California's leading industries in terms of employment and tax revenue.

(2) While film, television, and commercial production in California has expanded over the years, other states and countries actively compete for California production business. It is generally acknowledged that certain segments of the industry, mainly film and television production, are especially hard hit in California. The Legislature finds that this is due to assertive efforts of other states and countries, offering various incentives for filming outside of California. As a result of increased marketing efforts by other states and countries, unemployment in certain film industry sectors and a reduction of film business has occurred within California.

(3) Recognizing the vital role the entertainment industry plays in California's economy, legislation enacted in 1985 created the California Film Commission within the Technology, Trade, and Commerce Agency to facilitate, retain, and attract filming in California.

(4) In order to stop the decline of California film production, it is necessary and appropriate to assist in the underwriting of actual costs incurred by production companies to film in California and to provide opportunities for production companies and other film industry companies to lease property owned by the State of California at below market rates.

(5) Providing the funds designated under this program, and leasing property owned by the State of California at below market rates is in the public interest and serves a public purpose, and providing incentives to production companies and other film industry companies will promote the prosperity, health, safety, and welfare of the citizens of the State of California.

(b) It is the intent of the Legislature that, commencing with the 2002–03 fiscal year, funding for the program from the General Fund shall not exceed the General Fund funding level for the prior fiscal year.

SEC. 2. Section 15363.72 of the Government Code is amended to read:

15363.72. For purposes of this chapter, the following meanings shall apply:

(a) ''Agency'' means the Technology, Trade, and Commerce Agency, which includes the California Film Commission.

(b) ''Film'' means any commercial production for motion picture, television, commercial, or still photography.

(c) ''Film costs'' means the usual and customary charges by a public agency connected with the production of a film, limited to any of the following:

(1) State employee costs.

(2) Federal employee costs.

(3) Federal, state, University of California, and California State University permits and rental costs.

(4) Local public entity employee costs.

(5) Local property use fees.

(6) Rental costs for equipment owned and operated by a public agency in connection with the film.

(d) ''Fund'' means the Film California First Fund, established pursuant to Section 15363.74.

(e) ''Production company'' means a company, partnership, or corporation, engaged in the production of film.

(f) ''Program'' means the Film California First Program established pursuant to this chapter.

(g) ''Public agency'' means any of the following:

(1) The State of California, and any of its agencies, departments, boards, or commissions.

(2) The federal government, and any of its agencies, departments, boards, or commissions.

(3) The University of California.

(4) The California State University.

(5) California local public entities.

(6) Any nonprofit corporation acting as an agent for the recovery of costs incurred by any of the entities listed in this subdivision.

SEC. 3. Section 15363.73 of the Government Code is amended to read:

15363.73. (a) (1) Except as provided in paragraph (2), the Technology, Trade, and Commerce Agency may pay and reimburse the film costs incurred by a public agency, subject to an audit. The director of the commission shall develop alternate procedures for the reimbursement of public agency costs incurred by the production company. The Technology, Trade, and Commerce Agency shall only

reimburse actual costs incurred and may not reimburse for duplicative costs.

(2) Notwithstanding paragraph (1), the Technology, Trade, and Commerce Agency shall not reimburse costs at rates exceeding those in effect as of January 1, 2002.

(b) Notwithstanding any other provision of law, the Controller shall pay any program invoice received from the agency that contains documentation detailing the film costs, and if the party requesting payment or reimbursement is a public agency, a certification that the invoice is not duplicative cost recovery, and an agreement by the public agency that the Technology, Trade, and Commerce Agency may audit the public agency for invoice compliance with the program requirements.

(c) (1) Not more than three hundred thousand dollars ($300,000) shall be expended to pay or reimburse costs incurred on any one film.

(2) In developing the procedures and guidelines for the program, the commission may, in consultation with interested public agencies, establish limits on per day film costs that the state will reimburse. A consultation and comment period shall begin on January 1, 2001, and shall end 30 days thereafter.

(d) (1) Upon receipt of all necessary film costs documentation from a public agency, the Technology, Trade, and Commerce Agency shall transmit the appropriate information to the Controller for payment of the film costs within 30 days.

(2) Public agencies shall be entitled to reimbursement for certain administrative costs, to be determined by the director of the commission, incurred while participating in the program. The reimbursement for administrative costs shall not exceed 1 percent of the total amount of the invoices submitted. Reimbursement shall have an annual cap imposed of not more than ten thousand dollars ($10,000) per public agency participating in the program. Contracted agents working on behalf of two or more public agencies shall have a cap of not more than twenty thousand dollars ($20,000) annually.

(e) The commission shall prepare annual preliminary reports to be submitted to the Joint Legislative Budget Committee in regard to the program prior to the adoption of the annual Budget Act. The reports shall include a list of all entities that received funds from the program, the amounts they received, and the public services that were reimbursed. The commission shall prepare and submit a final report to the committee no later than January 1, 2004.

(f) The commission shall, in consultation with the Department of Industrial Relations and the Employment Development Department, contract with an independent audit firm or qualified academic expert, to prepare a report to be submitted to the Joint Legislative Budget

Committee no later than January 1, 2004, that identifies the beneficiaries of expenditures from the Film California First Fund, and determines the impact of these expenditures on job retention and job creation in California.

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:

Film industry production and its related jobs and economic stimulus in California are threatened by subsidized competition from other states. In order that the Film California First Program may be broadened to be effective in encouraging film production in California at the earliest possible time, it is necessary that this act take effect immediately.

CHAPTER 716

An act to add Chapter 3.3 (commencing with Section 8255) to Division 1 of Title 2 of the Government Code, relating to Asian and Pacific Islander American affairs.

[Approved by Governor September 20, 2002. Filed with Secretary of State September 20, 2002.]

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

SECTION 1. Chapter 3.3 (commencing with Section 8255) is added to Division 1 of Title 2 of the Government Code, to read:

CHAPTER 3.3. COMMISSION ON ASIAN AND PACIFIC ISLANDER AMERICAN AFFAIRS

8255. The Legislature finds and declares all of the following:

(a) The Asian and Pacific Islander American (APIA) community is the fastest growing community in the State of California. According to the last census, the state's APIA population is over 12 percent of the total state population. California also has the largest population of Pacific Islanders in the contiguous United States.

(b) In the 1990 census, the four largest APIA groups, Chinese, Filipino, Korean, and Japanese, made up 70 percent of the state's APIA population. In the 2000 census, these four groups now make up 66 percent of the new state's APIA population. New emerging APIA communities now make up the other half of the state's APIA population. They bring with them many challenges and assets relative to the

changing face of California. Many of these groups are not immigrants, but refugees. Many are here because of failed foreign policy strategies. All are here and will for the most part not go back to their countries of origin.

(c) The APIA community comprises, and will continue to comprise, a significant population in the State of California, and have unique interests and concerns that must be addressed on a continuing basis in order for APIA communities to flourish in California. It is, therefore, appropriate and beneficial to create a state advisory commission.

8255.5. The following definitions govern this chapter:

(a) ''Commission'' means the Commission on Asian and Pacific Islander American Affairs.

(b) ''APIA'' means Asian and Pacific Islander American.

8256. (a) There is established in state government the Commission on Asian and Pacific Islander American Affairs, which shall be comprised of 13 members appointed in accordance with subdivision (b) and shall conduct its business in accordance with this chapter.

(b) (1) The members of the commission shall be individuals with knowledge or expertise of the APIA community, whether by experience or training, and who are representative of that community in the state, both geographically and demographically.

(2) Commission members shall be appointed as follows:

(A) Four members, appointed by the Senate Committee on Rules.

(B) Four members, appointed by the Speaker of the Assembly.

(C) Five members, appointed by the Governor. The Governor's appointees shall not be subject to confirmation by the Senate.

(3) The Senate Committee on Rules and the Speaker of the Assembly shall make one appointment each from a pool of three nominees selected for each of the respective positions by the Asian and Pacific Islander Legislative Caucus.

(4) Appointments shall be made during the 2003 calendar year. The terms of commission members shall commence on January 1, 2004.

(5) (A) Subject to subparagraph (B), commission members shall serve for terms of four years.

(B) Of the initial appointments by the Governor, four members shall serve four-year terms, and one member shall serve a two-year term. Of the initial appointments by the Senate Committee on Rules and the Speaker of the Assembly, two members appointed by each appointing power shall serve four-year terms, and two members appointed by each appointing power shall serve two-year terms.

(6) Any vacancy in the membership of the commission shall not affect the powers of the commission and shall be filled in the same manner as the original appointment.

(c) The chair of the commission shall be elected by a majority of the appointed members of the commission at the first official meeting of the commission, and shall serve a term of one year or until a successor is elected, whichever occurs later.

8256.5. (a) A majority of the appointed members of the commission shall constitute a quorum to conduct business, but the commission may establish a lesser quorum for conducting meetings scheduled by the commission. The commission may establish by majority vote any other rules for the conduct of the commission's business, if the rules are not inconsistent with this chapter or other provisions of law.

(b) After its first year, the commission shall establish both of the following:

(1) A schedule of meetings to be held four times a year.

(2) Designated meeting places at locations throughout the State of California.

(c) Members of the commission shall serve without compensation, but may be reimbursed for actual and necessary travel expenses.

8257. The commission shall do all of the following:

(a) Advise the Governor, the Legislature, and state agencies, departments, and commissions on issues relating to the social and economic development, and the rights and interests of APIA communities and on how to respond most effectively to the views, needs, and concerns of the state's APIA communities.

(b) Assist the state in maintaining effective liaison and outreach with APIA communities in California by, among other means, disseminating information about Asian American resources to the public and engaging in effective outreach with APIA communities in the state by communicating information to them concerning public and private programs that are beneficial to their interest.

(c) Examine issues of access and cultural and language sensitivity by state agencies, departments, and commissions and compile research about APIA communities relative to the use of state services, including the development and maintenance of data relative to this use.

(d) Provide assistance to policymakers and state agencies on identifying the needs or problems affecting APIA communities and in developing appropriate responses and programs.

(e) Educate the public about hate crimes against APIA communities and other key issue areas identified by the commission.

8258. By December 1 of each year, the commission shall submit an annual report to the Governor and the Legislature detailing activities undertaken by the commission in the preceding 12-month period. The report shall set forth the commission's proposed action plan for the

following year and its recommendations on how to improve the delivery of state services to APIA communities.

8259. With respect to its duties under Section 8257, the commission shall be an advisory commission only, and there shall be no right or obligation on the part of the state, or the parties meeting and conferring, to implement the findings of the commission without further legislation that specifically authorizes that the evaluations, determinations, and findings of the commission be implemented.

8259.5. (a) The commission may apply for and accept grants and receive gifts, donations, and other financial support from public or private sources for purposes of this chapter, subject to the requirements of Sections 11005 and 11005.1 of the Government Code.

(b) The commission may also accept any other funds appropriated by the Legislature expressly for the purposes of this chapter.

CHAPTER 717

An act to amend Sections 103450 and 103490 of, and to add Sections 103451 and 103466 to, the Health and Safety Code, relating to vital records.

[Approved by Governor September 20, 2002. Filed with Secretary of State September 20, 2002.]

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

SECTION 1. Section 103450 of the Health and Safety Code is amended to read:

103450. (a) A verified petition may be filed by any beneficially interested person with the clerk of the superior court in and for (1) the county in which the birth, death, or marriage is alleged to have occurred, (2) the county of residence of the person whose birth or marriage it is sought to establish, or (3) the county in which the person was domiciled at the date of death for an order to judicially establish the fact of, and the time and place of, a birth, death, or marriage that is not registered or for which a certified copy is not obtainable.

(b) In the event of a mass fatalities incident, a verified petition may be filed by a coroner, medical examiner, or any beneficially interested person with the clerk of the superior court in and for (1) the county in which the death is alleged to have occurred, or (2) the county in which the person was domiciled at the date of death for an order to judicially establish the fact of, and the time and place of, a death that is not

registered or for which a certified copy of the death certificate is not obtainable.

(c) In the event of a mass fatalities incident, a single verified petition with respect to all persons who died may be filed by a coroner or medical examiner with the clerk of the superior court in and for the county in which the mass fatalities incident occurred for an order to judicially establish the fact of, and the time and place of, each person's death that is not registered or for which a certified copy of the death certificate is not obtainable.

SEC. 2. Section 103451 is added to the Health and Safety Code, to read:

103451. (a) For purposes of this chapter, "mass fatalities incident" means a situation in which any of the following conditions exist:

(1) There are more dead bodies than can be handled using local resources.

(2) Numerous persons are known to have died, but no bodies were recovered from the site of the incident.

(3) Numerous persons are known to have died, but the recovery and identification of the bodies of those persons is impracticable or impossible.

(b) The county coroner or medical examiner may make the determination that a condition described in subdivision (a) exists.

SEC. 3. Section 103466 is added to the Health and Safety Code, to read:

103466. Notwithstanding Section 103465, upon the filing of a petition for a determination of the fact of death in the event of a mass fatalities incident, the clerk shall set a hearing no later than 15 days from the date the petition was filed. The petitioner shall make a reasonable effort to provide notice of the hearing to the known heirs of the deceased up to the second degree of relationship. Failure to provide the notice specified in this section shall not invalidate the judicial proceedings regarding the determination of the fact of death.

SEC. 4. Section 103490 of the Health and Safety Code is amended to read:

103490. (a) The State Registrar shall send certified copies of the court order delayed certificate to the local registrar and the county recorder within the area in which the event occurred and in whose offices copies of records of the year of occurrence of the event are on file. However, if the event occurred outside the state, a certified copy shall be sent only to the county recorder of the county in which the petitioner resides.

(b) In the event of a mass fatalities incident, the State Registrar, without delay, shall send certified copies of the court order delayed death certificate to the local registrar and the county recorder of the county in

which the incident occurred and in whose offices copies of records of the year of occurrence of the incident are on file. The State Registrar, without delay, also shall send a certified copy of the court order delayed death certificate to the spouse or next of kin of the decedent, if there is no spouse, provided the spouse or next of kin's name and address information are included in the court order or on the application form submitted by the spouse, next of kin, coroner, or medical examiner. However, if the incident occurred outside the state, a certified copy shall be sent only to the county recorder of the county in which the decedent was domiciled at the date of death.

CHAPTER 718

An act to amend Section 1714.21 of the Civil Code, to amend Section 1797.190 of, and to amend, repeal, and add Section 1797.196 of, the Health and Safety Code, relating to liability.

[Approved by Governor September 20, 2002. Filed with Secretary of State September 20, 2002.]

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

SECTION 1. Section 1714.21 of the Civil Code is amended to read:

1714.21. (a) For purposes of this section, the following definitions shall apply:

(1) ''AED'' or ''defibrillator'' means an automated or automatic external defibrillator.

(2) ''CPR'' means cardiopulmonary resuscitation.

(b) Any person who, in good faith and not for compensation, renders emergency care or treatment by the use of an AED at the scene of an emergency is not liable for any civil damages resulting from any acts or omissions in rendering the emergency care.

(c) A person or entity who provides CPR and AED training to a person who renders emergency care pursuant to subdivision (b) is not liable for any civil damages resulting from any acts or omissions of the person rendering the emergency care.

(d) A person or entity that acquires an AED for emergency use pursuant to this section is not liable for any civil damages resulting from any acts or omissions in the rendering of the emergency care by use of an AED, if that person or entity has complied with subdivision (b) of Section 1797.196 of the Health and Safety Code.

(e) A physician who is involved with the placement of an AED and any person or entity responsible for the site where an AED is located is

not liable for any civil damages resulting from any acts or omissions of a person who renders emergency care pursuant to subdivision (b), if that physician, person, or entity has complied with all of the requirements of Section 1797.196 of the Health and Safety Code that apply to that physician, person, or entity.

(f) The protections specified in this section do not apply in the case of personal injury or wrongful death that results from the gross negligence or willful or wanton misconduct of the person who renders emergency care or treatment by the use of an AED.

(g) Nothing in this section shall relieve a manufacturer, designer, developer, distributor, installer, or supplier of an AED or defibrillator of any liability under any applicable statute or rule of law.

SEC. 2. Section 1797.190 of the Health and Safety Code is amended to read:

1797.190. The authority may establish minimum standards for the training and use of automatic external defibrillators.

SEC. 3. Section 1797.196 of the Health and Safety Code is amended to read:

1797.196. (a) For purposes of this section, ''AED'' or ''defibrillator'' means an automated or automatic external defibrillator.

(b) In order to ensure public safety, any person or entity that acquires an AED is not be liable for any civil damages resulting from any acts or omissions in the rendering of the emergency care under subdivision (b) of Section 1714.21 of the Civil Code, if that person or entity does all of the following:

(1) Complies with all regulations governing the placement of an AED.

(2) Ensures all of the following:

(A) That the AED is maintained and regularly tested according to the operation and maintenance guidelines set forth by the manufacturer, the American Heart Association, and the American Red Cross, and according to any applicable rules and regulations set forth by the governmental authority under the federal Food and Drug Administration and any other applicable state and federal authority.

(B) That the AED is checked for readiness after each use and at least once every 30 days if the AED has not been used in the preceding 30 days. Records of these checks shall be maintained.

(C) That any person who renders emergency care or treatment on a person in cardiac arrest by using an AED activates the emergency medical services system as soon as possible, and reports any use of the AED to the licensed physician and to the local EMS agency.

(D) For every AED unit acquired up to five units, no less than one employee per AED unit shall complete a training course in cardiopulmonary resuscitation and AED use that complies with the

regulations adopted by the Emergency Medical Service Authority and the standards of the American Heart Association or the American Red Cross. After the first five AED units are acquired, for each additional five AED units acquired, one employee shall be trained beginning with the first AED unit acquired. Acquirers of AED units shall have trained employees who should be available to respond to an emergency that may involve the use of an AED unit during normal operating hours.

(E) That there is a written plan that describes the procedures to be followed in the event of an emergency that may involve the use of an AED, to ensure compliance with the requirements of this section. The written plan shall include, but not be limited to, immediate notification of 911 and trained office personnel at the start of AED procedures.

(3) Building owners ensure that tenants annually receive a brochure, approved as to content and style by the American Heart Association or American Red Cross, which describes the proper use of an AED, and also ensure that similar information is posted next to any installed AED.

(4) No less than once a year, building owners will notify their tenants as to the location of AED units in the building.

(c) Any person or entity that supplies an AED shall do all of the following:

(1) Notify an agent of the local EMS agency of the existence, location, and type of AED acquired.

(2) Provide to the acquirer of the AED all information governing the use, installation, operation, training, and maintenance of the AED.

(d) A violation of this provision is not subject to penalties pursuant to Section 1798.206.

(e) The protections specified in this section do not apply in the case of personal injury or wrongful death that results from the gross negligence or willful or wanton misconduct of the person who renders emergency care or treatment by the use of an AED.

(f) Nothing in this section or Section 1714.21 shall be construed to require a building owner or a building manager to acquire and have installed an AED in any building.

(g) This section shall remain in effect only until January 1, 2008, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2008, deletes or extends that date.

SEC. 4. Section 1797.196 is added to the Health and Safety Code, to read:

1797.196. (a) For purposes of this section, ''AED'' or ''defibrillator'' means an automated or automatic external defibrillator.

(b) In order to ensure public safety, any person who acquires an AED shall do all of the following:

(1) Comply with all regulations governing the training, use, and placement of an AED.

(2) Notify an agent of the local EMS agency of the existence, location, and type of AED acquired.

(3) Ensure all of the following:

(A) That expected AED users complete a training course in cardiopulmonary resuscitation and AED use that complies with regulations adopted by the Emergency Medical Services (EMS) Authority and the standards of the American Heart Association or the American Red Cross.

(B) That the defibrillator is maintained and regularly tested according to the operation and maintenance guidelines set forth by the manufacturer, the American Heart Association, and the American Red Cross, and according to any applicable rules and regulations set forth by the governmental authority under the federal Food and Drug Administration and any other applicable state and federal authority.

(C) That the AED is checked for readiness after each use and at least once every 30 days if the AED has not been used in the preceding 30 days. Records of these periodic checks shall be maintained.

(D) That any person who renders emergency care or treatment on a person in cardiac arrest by using an AED activates the emergency medical services system as soon as possible, and reports any use of the AED to the licensed physician and to the local EMS agency.

(E) That there is involvement of a licensed physician in developing a program to ensure compliance with regulations and requirements for training, notification, and maintenance.

(c) A violation of this provision is not subject to penalties pursuant to Section 1798.206.

(d) This section shall become operative on January 1, 2008.

CHAPTER 719

An act to amend Sections 14170, 14171, and 14175 of, to amend the heading of Title 11.5 (commencing with Section 14170) of Part 4 of, and to add Section 14174.3 to, the Penal Code, relating to crime prevention, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 20, 2002. Filed with Secretary of State September 20, 2002.]

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

SECTION 1. The heading of Title 11.5 (commencing with Section 14170) of Part 4 of the Penal Code is amended to read:

TITLE 11.5. CENTRAL VALLEY RURAL CRIME PREVENTION PROGRAM

SEC. 2. Section 14170 of the Penal Code is amended to read:

14170. (a) It is the intent of the Legislature in enacting this measure to enhance crime prevention efforts by establishing a pilot program to strengthen the ability of law enforcement agencies in rural areas to detect and monitor agricultural- and rural-based crimes.

(b) The County of Tulare has developed the Rural Crime Demonstration Project administered by the Tulare County District Attorney's office under a joint powers agreement with the Tulare County Sheriff's office entered into pursuant to Chapter 5 (commencing with Section 6500) of Division 7 of Title 1 of the Government Code.

The parties to that agreement formed a task force to include the office of the Tulare County Agricultural Commissioner. The task force is an interactive team working together to develop problem solving and crime control techniques, to encourage timely reporting of crimes, and to evaluate the results of these activities. The task force conducts joint operations in order to facilitate investigative coordination. The task force consults with experts from the United States military, the California Military Department, the Department of Justice, other law enforcement entities, and various other state and private organizations as deemed necessary to maximize the effectiveness of the task force. Media and community support have been solicited to promote the task force.

The Rural Crime Demonstration Project has proven its cost effectiveness. It is appropriate that the project be expanded into a program that will allow the County of Tulare to continue to operate the task force formed under the above described joint powers agreement, and to permit the Counties of Fresno, Kern, Kings, Madera, Merced, San Joaquin, and Stanislaus to establish their own programs, pursuant to the provisions of this title, and to collectively establish a task force for the prevention of rural crime in those counties.

(c) The Legislature finds and declares that California has experienced an escalation in agricultural crimes in general, both property and personal, and that there has been no concentrated effort applied to the prevention of crimes against the agricultural industry. Currently, no national or state agency keeps track of statistics on agricultural and rural crime. According to media reports, this state lost millions of dollars worth of crops, livestock, and equipment in 1994 and 1995. A majority of these crimes occurred in agricultural-based counties. However, there has been no effort on the part of any state or local agency to accurately record these types of crimes.

The Legislature further finds and declares that there are no state or local law enforcement agencies in this state with programs that are specially designed to detect or monitor agricultural- and rural-based criminal activities. In addition, local law enforcement agencies do not possess the jurisdictional authority, investigative facilities, or data systems to coordinate a comprehensive approach to the state's agricultural and rural crime problem.

The Legislature additionally finds and declares that the proliferation of agricultural and rural crime in the various rural counties of this state is a threat to the vitality of our rich agrarian tradition. Agricultural and rural crime, if left unchecked, endangers an entire industry that is vital to America's continued economic role in the world, and therefore requires a proactive response from the Legislature. The intent of the Legislature in authorizing the Central Valley Rural Crime Prevention Program pursuant to this act is to provide for the protection and safety of the state's agriculture industry by creating statewide standards and methods of detecting and tracking agrarian and rural crime.

SEC. 3. Section 14171 of the Penal Code is amended to read:

14171. (a) Each of the Counties of Fresno, Kern, Kings, Madera, Merced, San Joaquin, Stanislaus, and Tulare may develop within its respective jurisdiction a Central Valley Rural Crime Prevention Program, which shall be administered by the county district attorney's office of each respective county under a joint powers agreement with the corresponding county sheriff's office entered into pursuant to Chapter 5 (commencing with Section 6500) of Division 7 of Title 1 of the Government Code.

(b) The parties to each agreement shall form a regional task force that shall be known as the Central Valley Rural Crime Task Force, that includes the respective county office of the county agricultural commissioner, the county district attorney, the county sheriff, and interested property owner groups or associations. The task force shall be an interactive team working together to develop crime prevention, problem solving, and crime control techniques, to encourage timely reporting of crimes, and to evaluate the results of these activities. The task force shall operate from a joint facility in order to facilitate investigative coordination. The task force shall also consult with experts from the United States military, the California Military Department, the Department of Justice, other law enforcement entities, and various other state and private organizations as deemed necessary to maximize the effectiveness of this program. Media and community support shall be solicited to promote this program. Each of the designated counties shall adopt rules and regulations for the implementation and administration of this program.

(1) In order to receive funds for this program, each designated county shall agree to participate in a regional task force, to be known as the Central Valley Rural Crime Task Force, and shall appoint a representative to that task force.

(2) The Central Valley Rural Crime Task Force shall develop rural crime prevention programs containing a system for reporting rural crimes that enables the swift recovery of stolen goods and the apprehension of criminal suspects for prosecution. The task force shall develop computer software and use communication technology to implement the reporting system, although the task force is not limited to the use of these means to achieve the stated goals.

(3) The Central Valley Rural Crime Task Force shall develop a uniform procedure for all participating counties to collect, and each participating county shall collect, data on agricultural crimes. The task force shall also establish a central database for the collection and maintenance of data on agricultural crimes and designate one participating county to maintain the database. State funds the counties receive to operate their rural crime prevention programs may be used to implement the requirements of this paragraph. Participating counties shall comply with this paragraph's requirements by June 30, 2003. This paragraph does not prohibit counties from using their own funds to implement the paragraph's provisions, however, it is the Legislature's intent that this paragraph shall not be construed as creating a state-mandated local program.

(c) The staff for each program shall consist of the personnel designated by the district attorney and sheriff for each county in accordance with the joint powers agreement.

SEC. 4. Section 14174.3 is added to the Penal Code, to read:

14174.3. Funds appropriated for the purposes of this title shall be allocated based on the counties' compliance with paragraph (3) of subdivision (b) of Section 14171.

SEC. 5. Section 14175 of the Penal Code is amended to read:

14175. This title shall become inoperative on July 1, 2005, and is repealed as of January 1, 2006, unless a later enacted statute, which is enacted before January 1, 2006, deletes or extends that date.

SEC. 6. 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 and maintain the strength of the state's rural economy at the earliest possible time, it is necessary that this act take effect immediately.

CHAPTER 720

An act to amend Section 30070 of the Government Code, relating to law enforcement, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 20, 2002. Filed with Secretary of State September 20, 2002.]

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

SECTION 1. Section 30070 of the Government Code is amended to read:

30070. (a) The sum of eighteen million five hundred thousand dollars ($18,500,000) is hereby annually appropriated from the General Fund to the Controller for allocation to county sheriffs' departments to enhance law enforcement efforts in the counties specified in paragraphs (1) to (37), inclusive, according to the following schedule:

(1) Alpine County	500,000
(2) Amador County	500,000
(3) Butte County	500,000
(4) Calaveras County	500,000
(5) Colusa County	500,000
(6) Del Norte County	500,000
(7) El Dorado County	500,000
(8) Glenn County	500,000
(9) Humboldt County	500,000
(10) Imperial County	500,000
(11) Inyo County	500,000
(12) Kings County	500,000
(13) Lake County	500,000
(14) Lassen County	500,000
(15) Madera County	500,000
(16) Marin County	500,000
(17) Mariposa County	500,000
(18) Mendocino County	500,000
(19) Merced County	500,000
(20) Modoc County	500,000
(21) Mono County	500,000
(22) Napa County	500,000
(23) Nevada County	500,000
(24) Placer County	500,000

(25)	Plumas County	500,000
(26)	San Benito County	500,000
(27)	San Luis Obispo County	500,000
(28)	Santa Cruz County	500,000
(29)	Shasta County	500,000
(30)	Sierra County	500,000
(31)	Siskiyou County	500,000
(32)	Sutter County	500,000
(33)	Tehama County	500,000
(34)	Trinity County	500,000
(35)	Tuolumne County	500,000
(36)	Yolo County	500,000
(37)	Yuba County	500,000

(b) Funds allocated pursuant to this section shall be used to supplement rather than supplant existing law enforcement resources.

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 ensure the efficient use of funds allocated to county sheriffs' departments to enhance law enforcement efforts, it is necessary that this act take effect immediately.

CHAPTER 721

An act to add Chapter 5 (commencing with Section 50600) to Part 2 of Division 31 of the Health and Safety Code, relating to housing, and making an appropriation therefor.

[Approved by Governor September 20, 2002. Filed with Secretary of State September 20, 2002.]

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

SECTION 1. Chapter 5 (commencing with Section 50600) is added to Part 2 of Division 31 of the Health and Safety Code, to read:

CHAPTER 5. PRESERVATION INTERIM LOAN PROGRAMS

50600. The Legislature finds and declares all of the following:

(a) The federal Housing and Urban Development Department subsidizes over 147,000 units of California's affordable rental housing. As the owners' obligations expire, more than 19,000 of these units have already been converted to market-rate housing, and an additional 78,000 units are considered at risk of imminent conversion. In addition, more than 7,600 units financed with state and federal low-income housing tax credits will face some risk of conversion as the first generation of tax credit developments reach the expiration of their income and rent restrictions over the next five years. These at-risk units will likely convert to market-rate housing unless they are acquired by organizations that commit to maintaining their affordable rents.

(b) The loss of these assisted units represents not only a loss of precious affordable housing stock and hardship and potential dislocation for tenants, 40 percent of whom are seniors, but also the loss of billions of dollars of federal housing assistance to California each year.

(c) This looming loss of affordable rental housing is exacerbated by California's failure to produce more than 50 percent of the new housing units needed to house the state's population for each of the last eight years. The shortage is most strongly felt in the areas of low-cost housing for working families, people moving from welfare to work, and seniors and disabled people.

(d) Affordable housing organizations that wish to purchase properties at risk of converting to market rate housing often do not have access to the short-term capital needed to purchase the properties quickly. This lack of short-term capital greatly reduces the likelihood that these properties will remain affordable.

(e) The intent of this chapter is to create a short-term capital loan program to ensure that California's supply of affordable housing is not depleted by the conversion of existing government-assisted rental housing to market-rate housing.

50601. (a) The Preservation Opportunity Fund is hereby created in the State Treasury. Notwithstanding Section 13340 of the Government Code, all money in the fund is continuously appropriated to the department without regard to fiscal years for the purposes of this chapter and for costs incurred in administering the program. The combined administrative expenses of the department and the agency shall not exceed 5 percent of the funds deposited in the fund for the purposes of this chapter.

(b) The following shall be paid into the fund:

(1) Any money appropriated and made available by the Legislature for purposes of the fund.

(2) Any money that the department or the agency receives in repayment of loans from the fund, including interest therefrom.

(3) Any other money that may be made available to the department for the purposes of this chapter from any other source.

50602. The definitions contained in Chapter 2 (commencing with Section 50050) of Part 1 shall apply to this chapter, except as follows:

(a) ''Assisted housing development'' has the same meaning as in paragraph (3) of subdivision (a) of Section 65863.10 of the Government Code.

(b) ''Fund'' means the Preservation Opportunity Fund created by Section 50601.

50603. (a) There is hereby created the Preservation Opportunity Program.

(b) The department shall contract with the agency for the administration of this section, and the agency shall establish the terms upon which loans may be made consistent with this section.

(c) A project shall meet all of the following requirements to be eligible for a loan:

(1) It shall be an assisted housing development.

(2) The borrower shall, in conjunction with this loan, receive a loan from the agency's Preservation Acquisition Program for the acquisition of this project.

(3) The borrower shall agree to obligate itself and any successors in interest to maintain the affordability of the assisted housing development for households of very low, low, or moderate income for a term of not less than 30 years. To the extent economically feasible, the development shall be continuously occupied in the approximate percentages that those households have occupied that development as of the date of acquisition by the purchaser or the approximate percentages specified in existing federal, state, or locally imposed use restrictions, whichever is higher. This obligation shall be recorded at the close of escrow in the office of the county recorder of the county in which the development is located. In addition, the regulatory agreement shall contain provisions requiring the renewal of rental subsidies, if they are available and are provided at a level sufficient to maintain the project's fiscal viability. Nothing in this paragraph shall be construed to require the future income restriction of units unrestricted under the new regulatory agreement required by this subdivision.

(d) Projects that meet the requirements of subdivision (c) shall be evaluated for funding based on their ability to address the following priorities:

(1) First priority shall be given to projects whose rent restrictions have expired or are eligible to expire within two years of application for a loan under this program.

(2) Second priority shall be given to projects with rent restrictions expiring within five years.

(e) The loans for assisted housing developments under this section shall include the following terms:

(1) The agency shall determine the term of the loan. A loan may not exceed a term of two years, unless the agency determines, in its discretion, that a longer term is required to do both of the following:

(A) To preserve the affordability of a project.

(B) To ensure the financial viability of a project.

(2) The rate of interest shall not exceed 3 percent per annum on the unpaid balance for that portion of the loan made with General Fund or general obligation bond moneys. The rate of interest for portions of the loan made with non-General Fund, nongeneral obligation bond moneys shall be established by the agency.

(3) Simple interest shall accrue but be deferred until loan maturity or transfer of the property.

(4) Any other terms and provisions that the agency may deem proper.

50604. (a) There is hereby created the Interim Repositioning Program, the purpose of which is to leverage private capital to increase the funding available to preserve at-risk housing.

(b) The department shall administer this program and establish the terms upon which loans may be made consistent with this section.

(c) The department shall select a single sponsor through a competitive process. The sponsor shall meet all of the following criteria:

(1) Be a not-for-profit corporation based in California.

(2) Demonstrate sufficient organizational stability and capacity to carry out the activity for which it is requesting funds, including the capacity to acquire, renovate, or rehabilitate, asset manage and property manage a portfolio of assisted housing developments, and, if applicable, to underwrite, close, and service loans. Capacity may be demonstrated by substantial successful experience performing similar activities, or through other means acceptable to the department.

(3) Demonstrate a feasible strategy to meet the leveraging requirements of subdivision (g) within 60 days after being chosen as the sponsor.

(4) Demonstrate past experience in the cost-effective use of public resources.

(5) Submit a detailed business plan as to how the sponsor intends to meet the requirements of this section. The business plan shall include a description of appropriate financial controls, acquisition procedures, underwriting procedures, and internal controls.

(d) The department shall give bonus points in the rating and ranking process to an applicant who can demonstrate letters of intent from private entities to provide capital to meet the leverage requirement of this section.

(e) The department shall make a loan for a term of not more than five years to the project sponsor for the purposes of subdivision (i).

(f) Principal and accumulated interest is due and payable upon completion of the term of the loan. The loan shall bear simple interest at a rate of 3 percent per annum on the unpaid principal balance.

(g) Before expending any state funds, the sponsor shall raise at least three dollars ($3) of private capital as equity to match every dollar of Interim Repositioning Program loan proceeds. To be considered private capital, outside funds shall be committed for a term at least equal to the term of the loan made pursuant to this section and available to be used for the purposes of this section. If the sponsor is unable to meet these matching requirements within 60 days of selection as the sponsor, the loan shall be repaid with accumulated interest to the department, deposited in the fund, and made available to the next highest rated qualified project sponsor identified pursuant to subdivision (c). If, within 180 days, there is no remaining qualified project sponsor available, any unexpended funds shall be made available for the purposes of Section 50603.

(h) Funds lent to the project sponsor pursuant to this section and the required private matching funds shall be used to finance up to 20 percent of the cost of acquiring an assisted housing development.

(i) The sponsor shall use Interim Repositioning Program loan proceeds and the required private matching funds for the following purposes:

(1) To acquire an assisted housing development in California for which rent restrictions have expired or are eligible to expire within five years of the date that the department chooses the sponsor. First priority shall be given to projects for which rent restrictions have expired or are eligible to expire within two years.

(2) To make loans not to exceed a term of three years to any entity described in subdivision (d) of Section 65863.11 of the Government Code for the acquisition of an assisted housing development for which rent restrictions have expired or are eligible to expire within five years of the date the agency chooses the project sponsor. First priority for loans shall be given to projects for which rent restrictions have expired or are eligible to expire within two years. The rate of interest on loans made pursuant to this paragraph shall be equal to the lowest feasible rate sufficient to cover the cost of capital to the sponsor.

(j) The sponsor, in the event he or she directly acquires an assisted housing development, or the borrower, if he or she has received a loan from the project sponsor pursuant to this section, shall agree to obligate himself or herself and any successors in interest to maintain the affordability of the assisted housing development for households of very low, low, or moderate income for a term of not less than 30 years. To the

extent economically feasible, the development shall be continuously occupied in the approximate percentages that those households who have occupied that development as of the date of acquisition by the purchaser or the approximate percentages specified in existing federal, state, or locally imposed use restrictions, whichever is higher. This obligation shall be recorded at the close of escrow in the office of the county recorder of the county in which the development is located. In addition, the regulatory agreement shall contain provisions requiring the renewal of rental subsidies, if they are available and provided at a level sufficient to maintain the project's fiscal viability. Nothing in this paragraph shall be construed to require the future income restriction of units unrestricted under the new regulatory agreement required by this subdivision.

(k) The department, in its loan agreement with the sponsor, shall establish a schedule for the timely expenditure of funds by the sponsor.

(*l*) The department shall select a sponsor for the purposes of this section within six months of the date funding becomes available.

(m) The department may, upon consultation with interested parties, including potential applicants and housing advocates, administer this program through a notice of funding availability that shall not be subject to Chapter 3.5 (commencing with Section 11340) of Part 1 of Title 2 of the Government Code.

50605. The department shall include in its last annual report submitted to the Legislature, pursuant to Section 50408, on or before December 31, 2005, all of the following:

(a) A general description of activities undertaken pursuant to this chapter.

(b) For each project assisted pursuant to this chapter, a description of the expiration date of the project's rent restrictions; the name and location of the purchaser; the acquisition price; the number of assisted units preserved; and the level of affordability maintained.

(c) If the sponsor for the Interim Repositioning Program subsequently sells any projects, a description of the name and location of the purchaser, the purchase price, and the total transaction costs.

(d) With respect to the Interim Repositioning Program, an evaluation of the sponsor's success in leveraging private capital.

(e) A comparison of the cost of preserving units under the Preservation Opportunity Program versus the Interim Repositioning Program.

(f) If sufficient data exist, a comparison of the cost of preserving units with rent restrictions that have expired or are eligible to expire within two years versus units with rent restrictions that are eligible to expire within three to five years.

(g) An overall assessment of the effectiveness of the Preservation Opportunity Program and the Interim Repositioning Program as tools for preserving affordable housing.

SEC. 2. (a) Ninety percent of any funds appropriated to the Preservation Opportunity Fund by the Housing and Emergency Shelter Trust Fund Act of 2002 shall, if that use is consistent with that act, be used for the purposes of Section 50603 of the Health and Safety Code.

(b) Ten percent of any funds appropriated to the Preservation Opportunity Fund by the Housing and Emergency Shelter Trust Fund Act of 2002 shall, if that use is consistent with that act, be used for the purposes of Section 50604 of the Health and Safety Code.

SEC. 3. This act shall become operative only upon approval by the voters of the Housing and Emergency Shelter Trust Fund Act of 2002.

CHAPTER 722

An act to add Section 43.99 to, and to add Title 7 (commencing with Section 895) to Part 2 of Division 2 of, the Civil Code, relating to construction defects.

[Approved by Governor September 20, 2002. Filed with Secretary of State September 20, 2002.]

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

SECTION 1. The Legislature finds and declares, as follows:

(a) The California system for the administration of civil justice is one of the fairest in the world, but certain procedures and standards should be amended to ensure fairness to all parties.

(b) The prompt and fair resolution of construction defect claims is in the interest of consumers, homeowners, and the builders of homes, and is vital to the state's continuing growth and vitality. However, under current procedures and standards, homeowners and builders alike are not afforded the opportunity for quick and fair resolution of claims. Both need clear standards and mechanisms for the prompt resolution of claims.

(c) It is the intent of the Legislature that this act improve the procedures for the administration of civil justice, including standards and procedures for early disposition of construction defects.

SEC. 2. Section 43.99 is added to the Civil Code, to read:

43.99. (a) There shall be no monetary liability on the part of, and no cause of action for damages shall arise against, any person or other legal entity that is under contract with an applicant for a residential

building permit to provide independent quality review of the plans and specifications provided with the application in order to determine compliance with all applicable requirements imposed pursuant to the State Housing Law (Part 1.5 (commencing with Section 17910) of Division 13 of the Health and Safety Code), or any rules or regulations adopted pursuant to that law, or under contract with that applicant to provide independent quality review of the work of improvement to determine compliance with these plans and specifications, if the person or other legal entity meets the requirements of this section and one of the following applies:

(1) The person, or a person employed by any other legal entity, performing the work as described in this subdivision, has completed not less than five years of verifiable experience in the appropriate field and has obtained certification as a building inspector, combination inspector, or combination dwelling inspector from the International Conference of Building Officials (ICBO) and has successfully passed the technical written examination promulgated by ICBO for those certification categories.

(2) The person, or a person employed by any other legal entity, performing the work as described in this subdivision, has completed not less than five years of verifiable experience in the appropriate field and is a registered professional engineer, licensed general contractor, or a licensed architect rendering independent quality review of the work of improvement or plan examination services within the scope of his or her registration or licensure.

(3) The immunity provided under this section does not apply to any action initiated by the applicant who retained the qualified person.

(4) A "qualified person" for purposes of this section means a person holding a valid certification as one of those inspectors.

(b) Except for qualified persons, this section shall not relieve from, excuse, or lessen in any manner, the responsibility or liability of any person, company, contractor, builder, developer, architect, engineer, designer, or other individual or entity who develops, improves, owns, operates, or manages any residential building for any damages to persons or property caused by construction or design defects. The fact that an inspection by a qualified person has taken place may not be introduced as evidence in a construction defect action, including any reports or other items generated by the qualified person. This subdivision shall not apply in any action initiated by the applicant who retained the qualified person.

(c) Nothing in this section, as it relates to construction inspectors or plans examiners, shall be construed to alter the requirements for licensure, or the jurisdiction, authority, or scope of practice, of architects pursuant to Chapter 3 (commencing with Section 5500) of Division 3 of

the Business and Professions Code, professional engineers pursuant to Chapter 7 (commencing with Section 6700) of Division 3 of the Business and Professions Code, or general contractors pursuant to Chapter 9 (commencing with Section 7000) of Division 3 of the Business and Professions Code.

(d) Nothing in this section shall be construed to alter the immunity of employees of the Department of Housing and Community Development under the Tort Claims Act (Division 3.6 (commencing with Section 810) of Title 1 of the Government Code) when acting pursuant to Section 17965 of the Health and Safety Code.

(e) The qualifying person shall engage in no other construction, design, planning, supervision, or activities of any kind on the work of improvement, nor provide quality review services for any other party on the work of improvement.

(f) The qualifying person, or other legal entity, shall maintain professional errors and omissions insurance coverage in an amount not less than two million dollars ($2,000,000).

(g) The immunity provided by subdivision (a) does not inure to the benefit of the qualified person for damages caused to the applicant solely by the negligence or willful misconduct of the qualified person resulting from the provision of services under the contract with the applicant.

SEC. 3. Title 7 (commencing with Section 895) is added to Part 2 of Division 2 of the Civil Code, to read:

TITLE 7. REQUIREMENTS FOR ACTIONS FOR CONSTRUCTION DEFECTS

CHAPTER 1. DEFINITIONS

895. (a) ''Structure'' means any residential dwelling, other building, or improvement located upon a lot or within a common area.

(b) ''Designed moisture barrier'' means an installed moisture barrier specified in the plans and specifications, contract documents, or manufacturer's recommendations.

(c) ''Actual moisture barrier'' means any component or material, actually installed, that serves to any degree as a barrier against moisture, whether or not intended as such.

(d) ''Unintended water'' means water that passes beyond, around, or through a component or the material that is designed to prevent that passage.

(e) ''Close of escrow'' means the date of the close of escrow between the builder and the original homeowner. With respect to claims by an association, as defined in subdivision (a) of Section 1351, ''close of escrow'' means the date of substantial completion, as defined in Section

337.15 of the Code of Civil Procedure, or the date the builder relinquishes control over the association's ability to decide whether to initiate a claim under this title, whichever is later.

(f) "Claimant" or "homeowner" includes the individual owners of single-family homes, individual unit owners of attached dwellings and, in the case of a common interest development, any association as defined in subdivision (a) of Section 1351.

CHAPTER 2. ACTIONABLE DEFECTS

896. In any action seeking recovery of damages arising out of, or related to deficiencies in, the residential construction, design, specifications, surveying, planning, supervision, testing, or observation of construction, a builder, and to the extent set forth in Chapter 4 (commencing with Section 910), a subcontractor, material supplier, individual product manufacturer, or design professional, shall, except as specifically set forth in this title, be liable for, and the claimant's claims or causes of action shall be limited to violation of, the following standards, except as specifically set forth in this title. This title applies to original construction intended to be sold as an individual dwelling unit. As to condominium conversions, this title does not apply to or does not supersede any other statutory or common law.

(a) With respect to water issues:

(1) A door shall not allow unintended water to pass beyond, around, or through the door or its designed or actual moisture barriers, if any.

(2) Windows, patio doors, deck doors, and their systems shall not allow water to pass beyond, around, or through the window, patio door, or deck door or its designed or actual moisture barriers, including, without limitation, internal barriers within the systems themselves. For purposes of this paragraph, "systems" include, without limitation, windows, window assemblies, framing, substrate, flashings, and trim, if any.

(3) Windows, patio doors, deck doors, and their systems shall not allow excessive condensation to enter the structure and cause damage to another component. For purposes of this paragraph, "systems" include, without limitation, windows, window assemblies, framing, substrate, flashings, and trim, if any.

(4) Roofs, roofing systems, chimney caps, and ventilation components shall not allow water to enter the structure or to pass beyond, around, or through the designed or actual moisture barriers, including, without limitation, internal barriers located within the systems themselves. For purposes of this paragraph, "systems" include, without limitation, framing, substrate, and sheathing, if any.

(5) Decks, deck systems, balconies, balcony systems, exterior stairs, and stair systems shall not allow water to pass into the adjacent structure. For purposes of this paragraph, ''systems'' include, without limitation, framing, substrate, flashing, and sheathing, if any.

(6) Decks, deck systems, balconies, balcony systems, exterior stairs, and stair systems shall not allow unintended water to pass within the systems themselves and cause damage to the systems. For purposes of this paragraph, ''systems'' include, without limitation, framing, substrate, flashing, and sheathing, if any.

(7) Foundation systems and slabs shall not allow water or vapor to enter into the structure so as to cause damage to another building component.

(8) Foundation systems and slabs shall not allow water or vapor to enter into the structure so as to limit the installation of the type of flooring materials typically used for the particular application.

(9) Hardscape, including paths and patios, irrigation systems, landscaping systems, and drainage systems, that are installed as part of the original construction, shall not be installed in such a way as to cause water or soil erosion to enter into or come in contact with the structure so as to cause damage to another building component.

(10) Stucco, exterior siding, exterior walls, including, without limitation, exterior framing, and other exterior wall finishes and fixtures and the systems of those components and fixtures, including, but not limited to, pot shelves, horizontal surfaces, columns, and plant-ons, shall be installed in such a way so as not to allow unintended water to pass into the structure or to pass beyond, around, or through the designed or actual moisture barriers of the system, including any internal barriers located within the system itself. For purposes of this paragraph, ''systems'' include, without limitation, framing, substrate, flashings, trim, wall assemblies, and internal wall cavities, if any.

(11) Stucco, exterior siding, and exterior walls shall not allow excessive condensation to enter the structure and cause damage to another component. For purposes of this paragraph, ''systems'' include, without limitation, framing, substrate, flashings, trim, wall assemblies, and internal wall cavities, if any.

(12) Retaining and site walls and their associated drainage systems shall not allow unintended water to pass beyond, around, or through its designed or actual moisture barriers including, without limitation, any internal barriers, so as to cause damage. This standard does not apply to those portions of any wall or drainage system that are designed to have water flow beyond, around, or through them.

(13) Retaining walls and site walls, and their associated drainage systems, shall only allow water to flow beyond, around, or through the areas designated by design.

(14) The lines and components of the plumbing system, sewer system, and utility systems shall not leak.

(15) Plumbing lines, sewer lines, and utility lines shall not corrode so as to impede the useful life of the systems.

(16) Sewer systems shall be installed in such a way as to allow the designated amount of sewage to flow through the system.

(17) Shower and bath enclosures shall not leak water into the interior of walls, flooring systems, or the interior of other components.

(18) Ceramic tile and tile countertops shall not allow water into the interior of walls, flooring systems, or other components so as to cause damage.

(b) With respect to structural issues:

(1) Foundations, load bearing components, and slabs, shall not contain significant cracks or significant vertical displacement.

(2) Foundations, load bearing components, and slabs shall not cause the structure, in whole or in part, to be structurally unsafe.

(3) Foundations, load bearing components, and slabs, and underlying soils shall be constructed so as to materially comply with the design criteria set by applicable government building codes, regulations, and ordinances for chemical deterioration or corrosion resistance in effect at the time of original construction.

(4) A structure shall be constructed so as to materially comply with the design criteria for earthquake and wind load resistance, as set forth in the applicable government building codes, regulations, and ordinances in effect at the time of original construction.

(c) With respect to soil issues:

(1) Soils and engineered retaining walls shall not cause, in whole or in part, damage to the structure built upon the soil or engineered retaining wall.

(2) Soils and engineered retaining walls shall not cause, in whole or in part, the structure to be structurally unsafe.

(3) Soils shall not cause, in whole or in part, the land upon which no structure is built to become unusable for the purpose represented at the time of original sale by the builder or for the purpose for which that land is commonly used.

(d) With respect to fire protection issues:

(1) A structure shall be constructed so as to materially comply with the design criteria of the applicable government building codes, regulations, and ordinances for fire protection of the occupants in effect at the time of the original construction.

(2) Fireplaces, chimneys, chimney structures, and chimney termination caps shall be constructed and installed in such a way so as not to cause an unreasonable risk of fire outside the fireplace enclosure or chimney.

(3) Electrical and mechanical systems shall be constructed and installed in such a way so as not to cause an unreasonable risk of fire.

(e) With respect to plumbing and sewer issues:

Plumbing and sewer systems shall be installed to operate properly and shall not materially impair the use of the structure by its inhabitants. However, no action may be brought for a violation of this subdivision more than four years after close of escrow.

(f) With respect to electrical system issues:

Electrical systems shall operate properly and shall not materially impair the use of the structure by its inhabitants. However, no action shall be brought pursuant to this subdivision more than four years from close of escrow.

(g) With respect to issues regarding other areas of construction:

(1) Exterior pathways, driveways, hardscape, sidewalls, sidewalks, and patios installed by the original builder shall not contain cracks that display significant vertical displacement or that are excessive. However, no action shall be brought upon a violation of this paragraph more than four years from close of escrow.

(2) Stucco, exterior siding, and other exterior wall finishes and fixtures, including, but not limited to, pot shelves, horizontal surfaces, columns, and plant-ons, shall not contain significant cracks or separations.

(3) (A) To the extent not otherwise covered by these standards, manufactured products, including, but not limited to, windows, doors, roofs, plumbing products and fixtures, fireplaces, electrical fixtures, HVAC units, countertops, cabinets, paint, and appliances shall be installed so as not to interfere with the products' useful life, if any.

(B) For purposes of this paragraph, ''useful life'' means a representation of how long a product is warranted or represented, through its limited warranty or any written representations, to last by its manufacturer, including recommended or required maintenance. If there is no representation by a manufacturer, a builder shall install manufactured products so as not to interfere with the product's utility.

(C) For purposes of this paragraph, ''manufactured product'' means a product that is completely manufactured offsite.

(D) If no useful life representation is made, or if the representation is less than one year, the period shall be no less than one year. If a manufactured product is damaged as a result of a violation of these standards, damage to the product is a recoverable element of damages. This subparagraph does not limit recovery if there has been damage to another building component caused by a manufactured product during the manufactured product's useful life.

(E) This title does not apply in any action seeking recovery solely for a defect in a manufactured product located within or adjacent to a structure.

(4) Heating, if any, shall be installed so as to be capable of maintaining a room temperature of 70 degrees Fahrenheit at a point three feet above the floor in any living space.

(5) Living space air-conditioning, if any, shall be provided in a manner consistent with the size and efficiency design criteria specified in Title 24 of the California Code of Regulations or its successor.

(6) Attached structures shall be constructed to comply with interunit noise transmission standards set by the applicable government building codes, ordinances, or regulations in effect at the time of the original construction. If there is no applicable code, ordinance, or regulation, this paragraph does not apply. However, no action shall be brought pursuant to this paragraph more than one year from the original occupancy of the adjacent unit.

(7) Irrigation systems and drainage shall operate properly so as not to damage landscaping or other external improvements. However, no action shall be brought pursuant to this paragraph more than one year from close of escrow.

(8) Untreated wood posts shall not be installed in contact with soil so as to cause unreasonable decay to the wood based upon the finish grade at the time of original construction. However, no action shall be brought pursuant to this paragraph more than two years from close of escrow.

(9) Untreated steel fences and adjacent components shall be installed so as to prevent unreasonable corrosion. However, no action shall be brought pursuant to this paragraph more than four years from close of escrow.

(10) Paint and stains shall be applied in such a manner so as not to cause deterioration of the building surfaces for the length of time specified by the paint or stain manufacturers' representations, if any. However, no action shall be brought pursuant to this paragraph more than five years from close of escrow.

(11) Roofing materials shall be installed so as to avoid materials falling from the roof.

(12) The landscaping systems shall be installed in such a manner so as to survive for not less than one year. However, no action shall be brought pursuant to this paragraph more than two years from close of escrow.

(13) Ceramic tile and tile backing shall be installed in such a manner that the tile does not detach.

(14) Dryer ducts shall be installed and terminated pursuant to manufacturer installation requirements. However, no action shall be

brought pursuant to this paragraph more than two years from close of escrow.

(15) Structures shall be constructed in such a manner so as not to impair the occupants' safety because they contain public health hazards as determined by a duly authorized public health official, health agency, or governmental entity having jurisdiction. This paragraph does not limit recovery for any damages caused by a violation of any other paragraph of this section on the grounds that the damages do not constitute a health hazard.

897. The standards set forth in this chapter are intended to address every function or component of a structure. To the extent that a function or component of a structure is not addressed by these standards, it shall be actionable if it causes damage.

CHAPTER 3. OBLIGATIONS

900. As to fit and finish items, a builder shall provide a homebuyer with a minimum one-year express written limited warranty covering the fit and finish of the following building components. Except as otherwise provided by the standards specified in Chapter 2 (commencing with Section 896), this warranty shall cover the fit and finish of cabinets, mirrors, flooring, interior and exterior walls, countertops, paint finishes, and trim, but shall not apply to damage to those components caused by defects in other components governed by the other provisions of this title. Any fit and finish matters covered by this warranty are not subject to the provisions of this title. If a builder fails to provide the express warranty required by this section, the warranty for these items shall be for a period of one year.

901. A builder may, but is not required to, offer greater protection or protection for longer time periods in its express contract with the homeowner than that set forth in Chapter 2 (commencing with Section 896). A builder may not limit the application of Chapter 2 (commencing with Section 896) or lower its protection through the express contract with the homeowner. This type of express contract constitutes an "enhanced protection agreement."

902. If a builder offers an enhanced protection agreement, the builder may choose to be subject to its own express contractual provisions in place of the provisions set forth in Chapter 2 (commencing with Section 896). If an enhanced protection agreement is in place, Chapter 2 (commencing with Section 896) no longer applies other than to set forth minimum provisions by which to judge the enforceability of the particular provisions of the enhanced protection agreement.

903. If a builder offers an enhanced protection agreement in place of the provisions set forth in Chapter 2 (commencing with Section 896),

the election to do so shall be made in writing with the homeowner no later than the close of escrow. The builder shall provide the homeowner with a complete copy of Chapter 2 (commencing with Section 896) and advise the homeowner that the builder has elected not to be subject to its provisions. If any provision of an enhanced protection agreement is later found to be unenforceable as not meeting the minimum standards of Chapter 2 (commencing with Section 896), a builder may use this chapter in lieu of those provisions found to be unenforceable.

904. If a builder has elected to use an enhanced protection agreement, and a homeowner disputes that the particular provision or time periods of the enhanced protection agreement are not greater than, or equal to, the provisions of Chapter 2 (commencing with Section 896) as they apply to the particular deficiency alleged by the homeowner, the homeowner may seek to enforce the application of the standards set forth in this chapter as to those claimed deficiencies. If a homeowner seeks to enforce a particular standard in lieu of a provision of the enhanced protection agreement, the homeowner shall give the builder written notice of that intent at the time the homeowner files a notice of claim pursuant to Chapter 4 (commencing with Section 910).

905. If a homeowner seeks to enforce Chapter 2 (commencing with Section 896), in lieu of the enhanced protection agreement in a subsequent litigation or other legal action, the builder shall have the right to have the matter bifurcated, and to have an immediately binding determination of his or her responsive pleading within 60 days after the filing of that pleading, but in no event after the commencement of discovery, as to the application of either Chapter 2 (commencing with Section 896) or the enhanced protection agreement as to the deficiencies claimed by the homeowner. If the builder fails to seek that determination in the timeframe specified, the builder waives the right to do so and the standards set forth in this title shall apply. As to any nonoriginal homeowner, that homeowner shall be deemed in privity for purposes of an enhanced protection agreement only to the extent that the builder has recorded the enhanced protection agreement on title or provided actual notice to the nonoriginal homeowner of the enhanced protection agreement. If the enhanced protection agreement is not recorded on title or no actual notice has been provided, the standards set forth in this title apply to any nonoriginal homeowners' claims.

906. A builder's election to use an enhanced protection agreement addresses only the issues set forth in Chapter 2 (commencing with Section 896) and does not constitute an election to use or not use the provisions of Chapter 4 (commencing with Section 910). The decision to use or not use Chapter 4 (commencing with Section 910) is governed by the provisions of that chapter.

907. A homeowner is obligated to follow all reasonable maintenance obligations and schedules communicated in writing to the homeowner by the builder and product manufacturers, as well as commonly accepted maintenance practices. A failure by a homeowner to follow these obligations, schedules, and practices may subject the homeowner to the affirmative defenses contained in Section 944.

CHAPTER 4. PRELITIGATION PROCEDURE

910. Prior to filing an action against any party alleged to have contributed to a violation of the standards set forth in Chapter 2 (commencing with Section 896), the claimant shall initiate the following prelitigation procedures:

(a) The claimant or his or her legal representative shall provide written notice via certified mail, overnight mail, or personal delivery to the builder, in the manner prescribed in this section, of the claimant's claim that the construction of his or her residence violates any of the standards set forth in Chapter 2 (commencing with Section 896). That notice shall provide the claimant's name, address, and preferred method of contact, and shall state that the claimant alleges a violation pursuant to this part against the builder, and shall describe the claim in reasonable detail sufficient to determine the nature and location, to the extent known, of the claimed violation. In the case of a group of homeowners or an association, the notice may identify the claimants solely by address or other description sufficient to apprise the builder of the locations of the subject residences. That document shall have the same force and effect as a notice of commencement of a legal proceeding.

(b) The notice requirements of this section do not preclude a homeowner from seeking redress through any applicable normal customer service procedure as set forth in any contractual, warranty, or other builder-generated document; and, if a homeowner seeks to do so, that request shall not satisfy the notice requirements of this section.

911. For purposes of this title, ''builder'' means a builder, developer, or original seller and applies to the sale of new residential units on and after January 1, 2003.

912. A builder shall do all of the following:

(a) Within 30 days of a written request by a homeowner or his or her legal representative, the builder shall provide copies of all relevant plans, specifications, mass or rough grading plans, final soils reports, Department of Real Estate public reports, and available engineering calculations, that pertain to a homeowner's residence specifically or as part of a larger development tract. The request shall be honored if it states that it is made relative to structural, fire safety, or soils provisions of this title. However, a builder is not obligated to provide a copying service,

and reasonable copying costs shall be borne by the requesting party. A builder may require that the documents be copied onsite by the requesting party, except that the homeowner may, at his or her option, use his or her own copying service, which may include an offsite copy facility that is bonded and insured. If a builder can show that the builder maintained the documents, but that they later became unavailable due to loss or destruction that was not the fault of the builder, the builder may be excused from the requirements of this subdivision, in which case the builder shall act with reasonable diligence to assist the homeowner in obtaining those documents from any applicable government authority or from the source that generated the document. However, in that case, the time limits specified by this section do not apply.

(b) At the expense of the homeowner, who may opt to use an offsite copy facility that is bonded and insured, the builder shall provide to the homeowner or his or her legal representative copies of all maintenance and preventative maintenance recommendations that pertain to his or her residence within 30 days of service of a written request for those documents. Those documents shall also be provided to the homeowner in conjunction with the initial sale of the residence.

(c) At the expense of the homeowner, who may opt to use an offsite copy facility that is bonded and insured, a builder shall provide to the homeowner or his or her legal representative copies of all manufactured products maintenance, preventive maintenance, and limited warranty information within 30 days of a written request for those documents. These documents shall also be provided to the homeowner in conjunction with the initial sale of the residence.

(d) At the expense of the homeowner, who may opt to use an offsite copy facility that is bonded and insured, a builder shall provide to the homeowner or his or her legal representative copies of all of the builder's limited contractual warranties in accordance with this part in effect at the time of the original sale of the residence within 30 days of a written request for those documents. Those documents shall also be provided to the homeowner in conjunction with the initial sale of the residence.

(e) A builder shall maintain the name and address of an agent for notice pursuant to this chapter with the Secretary of State or, alternatively, elect to use a third party for that notice if the builder has notified the homeowner in writing of the third party's name and address, to whom claims and requests for information under this section may be mailed. The name and address of the agent for notice or third party shall be included with the original sales documentation and shall be initialed and acknowledged by the purchaser and the builder's sales representative.

This subdivision applies to instances in which a builder contracts with a third party to accept claims and act on the builder's behalf. A builder

shall give actual notice to the homeowner that the builder has made such an election, and shall include the name and address of the third party.

(f) A builder shall record on title a notice of the existence of these procedures and a notice that these procedures impact the legal rights of the homeowner. This information shall also be included with the original sales documentation and shall be initialed and acknowledged by the purchaser and the builder's sales representative.

(g) A builder shall provide with the original sales documentation, a written copy of this part which shall be initialed and acknowledged by the purchaser and the builder's sales representative.

(h) As to any documents provided in conjunction with the original sale, the builder shall instruct the original purchaser to provide those documents to any subsequent purchaser.

(i) Any builder who fails to comply with any of these requirements within the time specified is not entitled to the protection of this chapter, and the homeowner is released from the requirements of this chapter and may proceed with the filing of an action, in which case the remaining chapters of this part shall continue to apply to the action.

913. A builder or his or her representative shall acknowledge, in writing, receipt of the notice of the claim within 14 days after receipt of the notice of the claim. If the notice of the claim is served by the claimant's legal representative, or if the builder receives a written representation letter from a homeowner's attorney, the builder shall include the attorney in all subsequent substantive communications, including, without limitation, all written communications occurring pursuant to this chapter, and all substantive and procedural communications, including all written communications, following the commencement of any subsequent complaint or other legal action, except that if the builder has retained or involved legal counsel to assist the builder in this process, all communications by the builder's counsel shall only be with the claimant's legal representative, if any.

914. (a) This chapter establishes a nonadversarial procedure, including the remedies available under this chapter which, if the procedure does not resolve the dispute between the parties, may result in a subsequent action to enforce the other chapters of this title. A builder may attempt to commence nonadversarial contractual provisions other than the nonadversarial procedures and remedies set forth in this chapter, but may not, in addition to its own nonadversarial contractual provisions, require adherence to the nonadversarial procedures and remedies set forth in this chapter, regardless of whether the builder's own alternative nonadversarial contractual provisions are successful in resolving the dispute or ultimately deemed enforceable.

At the time the sales agreement is executed, the builder shall notify the homeowner whether the builder intends to engage in the nonadversarial

procedure of this section or attempt to enforce alternative nonadversarial contractual provisions. If the builder elects to use alternative nonadversarial contractual provisions in lieu of this chapter, the election is binding, regardless of whether the builder's alternative nonadversarial contractual provisions are successful in resolving the ultimate dispute or are ultimately deemed enforceable.

(b) Nothing in this title is intended to affect existing statutory or decisional law pertaining to the applicability, viability, or enforceability of alternative dispute resolution methods, alternative remedies, or contractual arbitration, judicial reference, or similar procedures requiring a binding resolution to enforce the other chapters of this title or any other disputes between homeowners and builders. Nothing in this title is intended to affect the applicability, viability, or enforceability, if any, of contractual arbitration or judicial reference after a nonadversarial procedure or provision has been completed.

915. If a builder fails to acknowledge receipt of the notice of a claim within the time specified, elects not to go through the process set forth in this chapter, or fails to request an inspection within the time specified, or at the conclusion or cessation of an alternative nonadversarial proceeding, this chapter does not apply and the homeowner is released from the requirements of this chapter and may proceed with the filing of an action. However, the standards set forth in the other chapters of this title shall continue to apply to the action.

916. (a) If a builder elects to inspect the claimed unmet standards, the builder shall complete the initial inspection and testing within 14 days after acknowledgment of receipt of the notice of the claim, at a mutually convenient date and time. If the homeowner has retained legal representation, the inspection shall be scheduled with the legal representative's office at a mutually convenient date and time, unless the legal representative is unavailable during the relevant time periods. All costs of builder inspection and testing, including any damage caused by the builder inspection, shall be borne by the builder. The builder shall also provide written proof that the builder has liability insurance to cover any damages or injuries occurring during inspection and testing. The builder shall restore the property to its pretesting condition within 48 hours of the testing. The builder shall, upon request, allow the inspections to be observed and electronically recorded, videotaped, or photographed by the claimant or his or her legal representative.

(b) Nothing that occurs during a builder's or claimant's inspection or testing may be used or introduced as evidence to support a spoilation defense by any potential party in any subsequent litigation.

(c) If a builder deems a second inspection or testing reasonably necessary, and specifies the reasons therefor in writing within three days following the initial inspection, the builder may conduct a second

inspection or testing. A second inspection or testing shall be completed within 40 days of the initial inspection or testing. All requirements concerning the initial inspection or testing shall also apply to the second inspection or testing.

(d) If the builder fails to inspect or test the property within the time specified, the claimant is released from the requirements of this section and may proceed with the filing of an action. However, the standards set forth in the other chapters of this title shall continue to apply to the action.

(e) If a builder intends to hold a subcontractor, design professional, individual product manufacturer, or material supplier, including an insurance carrier, warranty company, or service company, responsible for its contribution to the unmet standard, the builder shall provide notice to that person or entity sufficiently in advance to allow them to attend the initial, or if requested, second inspection of any alleged unmet standard and to participate in the repair process. The claimant and his or her legal representative, if any, shall be advised in a reasonable time prior to the inspection as to the identity of all persons or entities invited to attend. This subdivision shall not apply to the builder's insurance company. Except with respect to any claims involving a repair actually conducted under this chapter, nothing in this subdivision shall be construed to relieve a subcontractor, design professional, individual product manufacturer, or material supplier of any liability under an action brought by a claimant.

917. Within 30 days of the initial or, if requested, second inspection or testing, the builder may offer in writing to repair the violation. The offer to repair shall also compensate the homeowner for all applicable damages recoverable under Section 944, within the timeframe for the repair set forth in this chapter. Any such offer shall be accompanied by a detailed, specific, step-by-step statement identifying the particular violation that is being repaired, explaining the nature, scope, and location of the repair, and setting a reasonable completion date for the repair. The offer shall also include the names, addresses, telephone numbers, and license numbers of the contractors whom the builder intends to have perform the repair. Those contractors shall be fully insured for, and shall be responsible for, all damages or injuries that they may cause to occur during the repair, and evidence of that insurance shall be provided to the homeowner upon request. Upon written request by the homeowner or his or her legal representative, and within the timeframes set forth in this chapter, the builder shall also provide any available technical documentation, including, without limitation, plans and specifications, pertaining to the claimed violation within the particular home or development tract. The offer shall also advise the homeowner

in writing of his or her right to request up to three additional contractors from which to select to do the repair pursuant to this chapter.

918. Upon receipt of the offer to repair, the homeowner shall have 30 days to authorize the builder to proceed with the repair. The homeowner may alternatively request, at the homeowner's sole option and discretion, that the builder provide the names, addresses, telephone numbers, and license numbers for up to three alternative contractors who are not owned or financially controlled by the builder and who regularly conduct business in the county where the structure is located. If the homeowner so elects, the builder is entitled to an additional noninvasive inspection, to occur at a mutually convenient date and time within 20 days of the election, so as to permit the other proposed contractors to review the proposed site of the repair. Within 35 days after the request of the homeowner for alternative contractors, the builder shall present the homeowner with a choice of contractors. Within 20 days after that presentation, the homeowner shall authorize the builder or one of the alternative contractors to perform the repair.

919. The offer to repair shall also be accompanied by an offer to mediate the dispute if the homeowner so chooses. The mediation shall be limited to a four-hour mediation, except as otherwise mutually agreed before a nonaffiliated mediator selected and paid for by the builder. At the homeowner's sole option, the homeowner may agree to split the cost of the mediator, and if he or she does so, the mediator shall be selected jointly. The mediator shall have sufficient availability such that the mediation occurs within 15 days after the request to mediate is received and occurs at a mutually convenient location within the county where the action is pending. If a builder has made an offer to repair a violation, and the mediation has failed to resolve the dispute, the homeowner shall allow the repair to be performed either by the builder, its contractor, or the selected contractor.

920. If the builder fails to make an offer to repair or otherwise strictly comply with this chapter within the times specified, the claimant is released from the requirements of this chapter and may proceed with the filing of an action. If the contractor performing the repair does not complete the repair in the time or manner specified, the claimant may file an action. If this occurs, the standards set forth in the other chapters of this part shall continue to apply to the action.

921. (a) In the event that a resolution under this chapter involves a repair by the builder, the builder shall make an appointment with the claimant, make all appropriate arrangements to effectuate a repair of the claimed unmet standards, and compensate the homeowner for all damages resulting therefrom free of charge to the claimant. The repair shall be scheduled through the claimant's legal representative, if any, unless he or she is unavailable during the relevant time periods. The

repair shall be commenced on a mutually convenient date within 14 days of acceptance or, if an alternative contractor is selected by the homeowner, within 14 days of the selection, or, if a mediation occurs, within seven days of the mediation, or within five days after a permit is obtained if one is required. The builder shall act with reasonable diligence in obtaining any such permit.

(b) The builder shall ensure that work done on the repairs is done with the utmost diligence, and that the repairs are completed as soon as reasonably possible, subject to the nature of the repair or some unforeseen event not caused by the builder or the contractor performing the repair. Every effort shall be made to complete the repair within 120 days.

922. The builder shall, upon request, allow the repair to be observed and electronically recorded, videotaped, or photographed by the claimant or his or her legal representative. Nothing that occurs during the repair process may be used or introduced as evidence to support a spoliation defense by any potential party in any subsequent litigation.

923. The builder shall provide the homeowner or his or her legal representative, upon request, with copies of all correspondence, photographs, and other materials pertaining or relating in any manner to the repairs.

924. If the builder elects to repair some, but not all of, the claimed unmet standards, the builder shall, at the same time it makes its offer, set forth with particularity in writing the reasons, and the support for those reasons, for not repairing all claimed unmet standards.

925. If the builder fails to complete the repair within the time specified in the repair plan, the claimant is released from the requirements of this chapter and may proceed with the filing of an action. If this occurs, the standards set forth in the other chapters of this title shall continue to apply to the action.

926. The builder may not obtain a release or waiver of any kind in exchange for the repair work mandated by this chapter. At the conclusion of the repair, the claimant may proceed with filing an action for violation of the applicable standard or for a claim of inadequate repair, or both, including all applicable damages available under Section 944.

927. If the applicable statute of limitations has otherwise run during this process, the time period for filing a complaint or other legal remedies for violation of any provision of this title, or for a claim of inadequate repair, is extended from the time of the original claim by the claimant to 100 days after the repair is completed, whether or not the particular violation is the one being repaired. If the builder fails to acknowledge the claim within the time specified, elects not to go through this statutory process, or fails to request an inspection within the time specified, the time period for filing a complaint or other legal remedies for violation

of any provision of this title is extended from the time of the original claim by the claimant to 45 days after the time for responding to the notice of claim has expired. If the builder elects to attempt to enforce its own nonadversarial procedure in lieu of the procedure set forth in this chapter, the time period for filing a complaint or other legal remedies for violation of any provision of this part is extended from the time of the original claim by the claimant to 100 days after either the completion of the builder's alternative nonadversarial procedure, or 100 days after the builder's alternative nonadversarial procedure is deemed unenforceable, whichever is later.

928. If the builder has invoked this chapter and completed a repair, prior to filing an action, if there has been no previous mediation between the parties, the homeowner or his or her legal representative shall request mediation in writing. The mediation shall be limited to four hours, except as otherwise mutually agreed before a nonaffiliated mediator selected and paid for by the builder. At the homeowner's sole option, the homeowner may agree to split the cost of the mediator and if he or she does so, the mediator shall be selected jointly. The mediator shall have sufficient availability such that the mediation will occur within 15 days after the request for mediation is received and shall occur at a mutually convenient location within the county where the action is pending. In the event that a mediation is used at this point, any applicable statutes of limitations shall be tolled from the date of the request to mediate until the next court day after the mediation is completed, or the 100-day period, whichever is later.

929. (a) Nothing in this chapter prohibits the builder from making only a cash offer and no repair. In this situation, the homeowner is free to accept the offer, or he or she may reject the offer and proceed with the filing of an action. If the latter occurs, the standards of the other chapters of this title shall continue to apply to the action.

(b) The builder may obtain a reasonable release in exchange for the cash payment. The builder may negotiate the terms and conditions of any reasonable release in terms of scope and consideration in conjunction with a cash payment under this chapter.

930. (a) The time periods and all other requirements in this chapter are to be strictly construed, and, unless extended by the mutual agreement of the parties in accordance with this chapter, shall govern the rights and obligations under this title. If a builder fails to act in accordance with this section within the timeframes mandated, unless extended by the mutual agreement of the parties as evidenced by a postclaim written confirmation by the affected homeowner demonstrating that he or she has knowingly and voluntarily extended the statutory timeframe, the claimant may proceed with filing an action. If

this occurs, the standards of the other chapters of this title shall continue to apply to the action.

(b) If the claimant does not conform with the requirements of this chapter, the builder may bring a motion to stay any subsequent court action or other proceeding until the requirements of this chapter have been satisfied. The court, in its discretion, may award the prevailing party on such a motion, his or her attorney's fees and costs in bringing or opposing the motion.

931. If a claim combines causes of action or damages not covered by this part, including, without limitation, personal injuries, class actions, other statutory remedies, or fraud-based claims, the claimed unmet standards shall be administered according to this part, although evidence of the property in its unrepaired condition may be introduced to support the respective elements of any such cause of action. As to any fraud-based claim, if the fact that the property has been repaired under this chapter is deemed admissible, the trier of fact shall be informed that the repair was not voluntarily accepted by the homeowner. As to any class action claims that address solely the incorporation of a defective component into a residence, the named and unnamed class members need not comply with this chapter.

932. Subsequently discovered claims of unmet standards shall be administered separately under this chapter, unless otherwise agreed to by the parties. However, in the case of a detached single family residence, in the same home, if the subsequently discovered claim is for a violation of the same standard as that which has already been initiated by the same claimant and the subject of a currently pending action, the claimant need not reinitiate the process as to the same standard. In the case of an attached project, if the subsequently discovered claim is for a violation of the same standard for a connected component system in the same building as has already been initiated by the same claimant, and the subject of a currently pending action, the claimant need not reinitiate this process as to that standard.

933. If any enforcement of these standards is commenced, the fact that a repair effort was made may be introduced to the trier of fact. However, the claimant may use the condition of the property prior to the repair as the basis for contending that the repair work was inappropriate, inadequate, or incomplete, or that the violation still exists. The claimant need not show that the repair work resulted in further damage nor that damage has continued to occur as a result of the violation.

934. Evidence of both parties' conduct during this process may be introduced during a subsequent enforcement action, if any, with the exception of any mediation. Any repair efforts undertaken by the builder, shall not be considered settlement communications or offers of settlement and are not inadmissible in evidence on such a basis.

935. To the extent that provisions of this chapter are enforced and those provisions are substantially similar to provisions in Section 1375 of the Civil Code, but an action is subsequently commenced under Section 1375 of the Civil Code, the parties are excused from performing the substantially similar requirements under Section 1375 of the Civil Code.

936. Each and every provision of the other chapters of this title apply to subcontractors, material suppliers, individual product manufacturers, and design professionals to the extent that the subcontractors, material suppliers, individual product manufacturers, and design professionals caused, in whole or in part, a violation of a particular standard as the result of a negligent act or omission or a breach of contract. In addition to the affirmative defenses set forth in Section 945.5, a subcontractor, material supplier, design professional, individual product manufacturer, or other entity may also offer common law and contractual defenses as applicable to any claimed violation of a standard. All actions by a claimant or builder to enforce an express contract, or any provision thereof, against a subcontractor, material supplier, individual product manufacturer, or design professional is preserved. Nothing in this title modifies the law pertaining to joint and several liability for subcontractors, material suppliers, individual product manufacturer, and design professionals that contribute to any specific violation of this title. However, this section does not apply to any subcontractor, material supplier, individual product manufacturer, or design professional to which strict liability would apply.

937. Nothing in this title shall be interpreted to eliminate or abrogate the requirement to comply with Section 411.35 of the Code of Civil Procedure or to affect the liability of design professionals, including architects and architectural firms, for claims and damages not covered by this title.

938. This title applies only to residences originally sold on or after January 1, 2003.

CHAPTER 5. PROCEDURE

941. (a) Except as specifically set forth in this title, no action may be brought to recover under this title more than 10 years after substantial completion of the improvement but not later than the date of recordation of a valid notice of completion.

(b) As used in this section, ‘‘action’’ includes an action for indemnity brought against a person arising out of that person’s performance or furnishing of services or materials referred to in this title, except that a cross-complaint for indemnity may be filed pursuant to subdivision (b)

of Section 428.10 of the Code of Civil Procedure in an action which has been brought within the time period set forth in subdivision (a).

(c) The limitation prescribed by this section shall not be asserted by way of defense by any person in actual possession or the control, as owner, tenant or otherwise, of such an improvement, at the time any deficiency in the improvement constitutes the proximate cause for which it is proposed to make a claim or bring an action.

(d) Sections 337.15 and 337.1 of the Code of Civil Procedure shall not apply to actions under this title.

(e) Existing statutory and decisional law regarding tolling of the statute of limitations shall apply to the time periods for filing an action or making a claim under this title, except that repairs made pursuant to Chapter 4 (commencing with Section 910), with the exception of the tolling provision contained in Section 927, do not extend the period for filing an action, or restart the time limitations contained in subdivisions (a) or (b) if 7091 of the Business and Professions Code. If a builder arranges for a contractor to perform a repair pursuant to Chapter 4 (commencing with Section 910), as to the builder the time period for calculating the statute of limitation in subdivisions (a) or (b) if Section 7091 of the Business and Professions Code shall pertain to the substantial completion of the original construction and not to the date of repairs under this title. The time limitations established by this title do not apply to any action by a claimant for a contract or express contractual provision. Causes of action and damages to which this chapter does not apply are not limited by this section. In order to make a claim for violation of the standards set forth in Chapter 2 (commencing with Section 896), a homeowner need only demonstrate, in accordance with the applicable evidentiary standard, that the home does not meet the applicable standard, subject to the affirmative defenses set forth in Section 945.5. No further showing of causation or damages is required to meet the burden of proof regarding a violation of a standard set forth in Chapter 2 (commencing with Section 896), provided that the violation arises out of, pertains to, or is related to, the original construction.

942. (a) Except as provided in this title, no other cause of action for a claim covered by this title or for damages recoverable under Section 944 is allowed. In addition to the rights under this title, this title does not apply to any action by a claimant to enforce a contract or express contractual provision, or any action for fraud, personal injury, or violation of a statute. Damages awarded for the items set forth in Section 944 in such other cause of action shall be reduced by the amounts recovered pursuant to Section 944 for violation of the standards set forth in this title.

(b) As to any claims involving a detached single-family home, the homeowner's right to the reasonable value of repairing any

nonconformity is limited to the repair costs, or the diminution in current value of the home caused by the nonconformity, whichever is less, subject to the personal use exception as developed under common law.

944. If a claim for damages is made under this title, the homeowner is only entitled to damages for the reasonable value of repairing any violation of the standards set forth in this title, the reasonable cost of repairing any damages caused by the repair efforts, the reasonable cost of repairing and rectifying any damages resulting from the failure of the home to meet the standards, the reasonable cost of removing and replacing any improper repair by the builder, reasonable relocation and storage expenses, lost business income if the home was used as a principal place of a business licensed to be operated from the home, reasonable investigative costs for each established violation, and all other costs or fees recoverable by contract or statute.

945. The provisions, standards, rights, and obligations set forth in this title are binding upon all original purchasers and their successors-in-interest. For purposes of this title, associations and others having the rights set forth in Section 383 of the Code of Civil Procedure shall be considered to be original purchasers and shall have standing to enforce the provisions, standards, rights, and obligations set forth in this title.

945.5. A builder, under the principles of comparative fault pertaining to affirmative defenses, may be excused, in whole or in part, from any obligation, damage, loss, or liability if the builder can demonstrate any of the following affirmative defenses in response to a claimed violation:

(a) To the extent it is caused by an unforeseen act of nature which caused the structure not to meet the standard. For purposes of this section an ''unforeseen act of nature'' means a weather condition, earthquake, or manmade event such as war, terrorism, or vandalism, in excess of the design criteria expressed by the applicable building codes, regulations, and ordinances in effect at the time of original construction.

(b) To the extent it is caused by a homeowner's unreasonable failure to minimize or prevent those damages in a timely manner, including the failure of the homeowner to allow reasonable and timely access for inspections and repairs under this title. This includes the failure to give timely notice to the builder after discovery of a violation, but does not include damages due to the untimely or inadequate response of a builder to the homeowner's claim.

(c) To the extent it is caused by the homeowner or his or her agent, employee, subcontractor, independent contractor, or consultant by virtue of their failure to follow the builder's or manufacturer's recommendations, or commonly accepted homeowner maintenance obligations. In order to rely upon this defense as it relates to a builder's

recommended maintenance schedule, the builder shall show that the homeowner had written notice of these schedules and recommendations and that the recommendations and schedules were reasonable at the time they were issued.

(d) To the extent it is caused by the homeowner or his or her agent's or an independent third party's alterations, ordinary wear and tear, misuse, abuse, or neglect, or by the structure's use for something other than its intended purpose.

(e) To the extent that the time period for filing actions bars the claimed violation.

(f) As to a particular violation for which the builder has obtained a valid release.

(g) To the extent that the builder's repair was successful in correcting the particular violation of the applicable standard.

(h) As to any causes of action to which this statute does not apply, all applicable affirmative defenses are preserved.

CHAPTER 723

An act to amend Sections 17998.1 and 17998.2 of the Health and Safety Code, and to amend Sections 3351 and 3371 of the Revenue and Taxation Code, relating to property.

[Approved by Governor September 20, 2002. Filed with Secretary of State September 20, 2002.]

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

SECTION 1. Section 17998.1 of the Health and Safety Code is amended to read:

17998.1. The Department of Housing and Community Development, upon appropriation by the Legislature for this purpose, shall make funds available as matching grants to cities, counties, and cities and counties to increase staffing or capital expenditures dedicated to local building code enforcement efforts. The funds shall be subject to all of the following provisions:

(a) Grants shall be made to grantees that operate local building code enforcement programs for more than three years.

(b) The city, county, or city and county shall provide a cash or in-kind local match of at least 25 percent in the first year, at least 50 percent in the second year, and at least 75 percent in the third year.

(c) The maximum grant to a single recipient shall not exceed one million dollars ($1,000,000). The department may establish minimum

grant levels and lower maximum grant levels, depending on the amount and uses of funding sources.

(d) Funds may be used to supplement, but shall not supplant, existing local funding for code enforcement related to housing code maintenance. The applicants shall demonstrate an intent to ensure cooperative and effective working relationships between code enforcement officials and local prosecutorial agencies, the local health department, and local government housing rehabilitation financing agencies.

(e) Within six months after completion of each program cycle approved by the department and funded by the Legislature, grant recipients shall submit a report to their local legislative bodies and to the department regarding the results of the expanded housing maintenance code enforcement efforts and recommendations for changes in state or local laws and regulations related to code enforcement. The department shall summarize the results and transmit the reports to the Legislature within six months after the grant recipient's submission date. The department may require submission of interim progress reports.

(f) The department may use up to 5 percent of the funds appropriated by the Legislature for administering the programs authorized by this chapter.

(g) The department shall award the grants on a competitive basis with criteria to be established and specified in a ''Notice of Funding Availability.'' The criteria shall be weighted for local government applicants with neighborhoods populated by high percentages of lower income households, with significant numbers of deteriorating housing stock containing reported or suspected housing code violations and often owned by absentee owners. The criteria shall also be weighted for applications that propose to identify and prosecute owners with habitual, repeated, multiple code violations that have remained unabated beyond the period required for abatement. In addition to those criteria, the department shall attempt to award grants to cities, counties, and cities and counties in order to obtain a wide range of population sizes and compositions and geographical distribution. Eligibility criteria, applications, awards, and other program requirements implementing this chapter shall not be subject to the requirements of Chapter 2.5 (commencing with Section 11340) of Part 1 of Title 2 of the Government Code.

SEC. 2. Section 17998.2 of the Health and Safety Code is amended to read:

17998.2. (a) It is the intent of the Legislature in the enactment of this section to do all of the following:

(1) Initiate a coordinated active community approach to code enforcement.

(2) Create a pilot program in which the department awards grants to communities that develop a code enforcement program pursuant to the criteria established by this section.

(3) Substantially reduce the incidence of substandard housing through the use of creative and coordinated techniques of code enforcement involving an interdepartmental approach at the local government level.

(b) The grant program established pursuant to this section shall be known as the Community Code Enforcement Pilot Program. The Department of Housing and Community Development shall administer the Community Code Enforcement Pilot Program.

(1) The department need not adopt regulations for the program. The department shall publish and distribute a Notice of Funding Availability that contains application forms and instructions, eligibility criteria, criteria for the rating and ranking of applications, outcome evaluation criteria, interim or final reporting requirements, and other information that the department considers necessary or useful for implementation of the program.

(2) The department shall review, rate, and rank applications based on its evaluation of the information provided pursuant to subdivision (e), and their projected program performance as measured by all of the following criteria, considering the size of the applicant community:

(A) The minimum number of housing units affordable to lower income households that will be rehabilitated or otherwise brought into compliance with applicable building and housing codes.

(B) The estimated amount of grants and low interest rehabilitation loan funds, from sources other than this program, that will be made available to the owners of housing units affordable to lower income households that are determined to need rehabilitation or repair pursuant to the program.

(C) The incidence of poverty and deteriorating housing or housing code violations in each target area.

(3) In addition to the other criteria in this subdivision, the department shall attempt to award community code enforcement pilot program grants to cities, counties, and cities and counties with a wide range of population sizes and compositions and geographical distribution.

(c) The department shall award community code enforcement pilot program grants for programs that shall operate for more than three years. The grants shall not exceed four hundred fifty thousand dollars ($450,000), which shall pay for costs incurred over the life of the program. The department may establish minimum grant levels and lower maximum grant levels, depending on the amount and uses of funding sources.

(d) Each city, county, or city and county receiving a grant shall develop a code enforcement team consisting of a least one full-time code enforcement officer and a part-time city planner, health officer, or comparable specialist. Each grantee shall provide, and fund at its own expense, at least one city planner, health officer, or comparable specialist for the duration of the pilot program, for a minimum of 20 hours per week. The grant funds shall be used for the code enforcement officer and related program costs, which may include full-time or part-time personnel, in addition to the grantee's contributions, or for capital expenditures.

(e) Grant proposals shall include all of the following:

(1) Demonstration of serious, current housing code enforcement deficiencies within each target area, whether those code deficiencies are in violation of locally enacted ordinances or state codes.

(2) A plan to have high visibility of code enforcement staff and to create close and frequent communication and interaction with residents and property owners of the target area, including in the evenings and on weekends.

(3) A plan to convene community meetings to inform residents of the pilot program.

(4) A plan to conduct ongoing frequent informal and formal community meetings with the code enforcement team and residents of the community involved in the pilot program.

(5) A plan demonstrating an intent to ensure cooperative and effective working relationships between code enforcement officials, local health department officials, local prosecutorial agencies, and officials operating local programs providing public funds to finance affordable rental housing rehabilitation and repairs.

(6) A plan for timely and effective administrative and judicial enforcement of code violations.

(f) The administrator of each grantee's pilot program shall evaluate the pilot program and report the findings and other criteria requested by the department indicating the effectiveness of the pilot program to the department within six months after completion of each program cycle approved by the department and funded by the Legislature. The department may require submission of interim progress reports. The administrator shall evaluate the pilot program based on criteria including, but not limited to, the following:

(1) Results of a participant survey, including owners, residents, and active community leaders.

(2) Comparison of each targeted area with similar neighborhoods with respect to repeat calls for service and other criteria testing the effectiveness of the pilot program.

(3) The extent of any perceived or actual property value change between the commencement and the completion of the pilot program.

(4) The number of cases opened and the number of cases closed, identifying the nature of code violations, the necessity of formal proceedings, the cost and nature of abatement violations, or other factors influencing the effectiveness of the pilot program.

(g) The department shall review and report to the Legislature within six months after the grant recipient's submission date on the findings of the pilot program administrators.

SEC. 3. Section 3351 of the Revenue and Taxation Code is amended to read:

3351. (a) Annually, on or before June 8, the tax collector shall publish a notice of impending default for failure to pay taxes on real property, except tax-defaulted property and possessory interests, the taxes, assessments, penalties, and costs on which will have not been fully paid by the close of business on the last business day of the fiscal year.

(b) If the tax collector sends reminder notices prior to the close of the fiscal year and annually sends a redemption notice of prior year due taxes, the notice required by subdivision (a) shall only include properties that have been tax-delinquent for three or more years and for which the latest reminder notice or redemption notice was returned to the tax collector as undeliverable.

SEC. 4. Section 3371 of the Revenue and Taxation Code is amended to read:

3371. (a) Annually, on or before September 8, the tax collector shall publish the affidavit that the real property on which the taxes, assessments, penalties, and costs had not been fully paid are in default, together with a list of all that real property. However, in any county that mails delinquent notices to the assessees of record before June 30, the tax collector shall publish the affidavit and list of all that real property on or before September 8 of the year following the date of default.

(b) If the tax collector sends reminder notices prior to the close of the fiscal year and annually sends a redemption notice of prior year due taxes, the delinquent notice described in subdivision (a) may be mailed only for those properties that have been tax-delinquent for three or more years and for which the latest reminder notice or redemption notice was returned to the tax collector as undeliverable.

SEC. 5. (a) The Legislature finds and declares each of the following:

(1) California is currently experiencing a severe shortage of affordable housing. According to the California Department of Housing and Community Development, currently about 2.4 million California households need some form of housing assistance, that is, those

households are low-income and are overpaying for housing costs. According to the California Budget Project, statewide there are approximately 2.3 low-income renter households per affordable unit, or a shortage of 581,000 units.

(2) Given this shortage of affordable housing, the state cannot afford to lose units from the marketplace due to deterioration and condemnation for building code violations.

(3) Prevention of real property deterioration is a legitimate government interest, and funding for local programs that increase efforts to enforce building codes is an important tool in preventing affordable housing from being removed from the market.

(b) The Legislature further finds and declares that there may be a link between real properties that are delinquent in payment of property taxes and building code violations, and that this issue is worthy of study. It is therefore the intent of the Legislature, pursuant to Section 7 of this act, to make available to the University of California data, with respect to tax-delinquent properties, collected by local tax collectors and described in Section 7 of this act.

(c) The Legislature further finds and declares that there are costs incurred by local tax collectors in providing the information required for the study pursuant to Section 7 of this act, and that these costs may be offset by correspondingly eliminating unnecessary costs incurred by local tax collectors in fulfilling the notice requirements pursuant to Sections 3351 and 3371 of the Revenue and Taxation Code. Therefore, it is the intent of the Legislature, in amending Sections 3351 and 3371 of the Revenue and Taxation Code in this act, to offset the costs incurred by local tax collectors in providing the information required for the study pursuant to Section 7 of this act.

SEC. 6. (a) The University of California may need to obtain data in order, to the extent possible, to study the following:

(1) The breakdown of tax-delinquent properties by residential, commercial, and industrial properties.

(2) The breakdown of tax-delinquent properties by length of delinquency.

(3) The potential of tax-delinquent properties to provide affordable housing.

(b) In order to obtain the data necessary to perform this study, the University of California shall notify the Controller, in writing, that it is requesting the data required to be published pursuant to Chapter 1 (commencing with Section 3351) of Part 6 of Division 1 of the Revenue and Taxation Code.

(c) Within 14 days of receipt of the request for data from the University of California, the Controller shall request from county tax collectors for the most recently completed fiscal year and the current

fiscal year the information requested pursuant to subdivision (b). The tax collectors shall provide the requested information for the most recently completed fiscal year within 14 days of receipt of the request and the information for the current fiscal year by the following September 15. The tax collectors shall transmit the requested information in electronic text format if possible. Data fields shall include, if possible, assessor's parcel number, situs address including ZIP Code, duration and amount of tax delinquency for each parcel, and associated zoning designations such as residential, commercial, or industrial. The Controller shall transmit that information to the University of California within 14 days of receipt of the information requested from the county tax collectors.

(d) The University of California may not sell, rent, or exchange information it obtains pursuant to this section.

SEC. 7. 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.

CHAPTER 724

An act to add Chapter 14.5 (commencing with Section 50860) to Part 2 of Division 31 of the Health and Safety Code, relating to housing.

[Approved by Governor September 20, 2002. Filed with Secretary of State September 20, 2002.]

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

SECTION 1. (a) The Legislature finds and declares all of the following:

(1) Home ownership is a vital piece of California's social and economic fabric and remains a top priority for new California families and individuals.

(2) Home ownership has been shown to reduce crime, while increasing school retention and graduation, civic engagement, children's future earning potential, and overall life satisfaction, and promoting neighborhood stability.

(3) Home equity represents two-thirds of all low-income family wealth. The median wealth of nonelderly low-income homeowners is 12 times greater than the median wealth of similar renters with the same income.

(4) Yet, while more Americans (67 percent) own their homes today than in any time in American history, home ownership in California lags well behind the rest of the nation at 56 percent.

(5) The home ownership rate in California is even worse for ethnic minorities. According to the California Budget Project, the rate of home ownership among Latino households is only 42 percent and only 40 percent among African-American households in the state.

(6) The high cost of building homes in California is a key contributor to the state's low home ownership rate. Today, California has nine of the nation's 10 least affordable housing markets.

(7) Home prices are so high in California that the average newly formed household would have to nearly double its income to qualify to buy a median-priced home.

(8) While land prices in California are a key contributor to the state's low housing affordability, permitting and regulatory cost add significant costs to new housing construction. According to a recent study by Northwestern University, permitting and regulatory costs in a San Diego County community add, on average, more than $96,000 to the price of a new home.

(9) According to the National Association of Home Builders (NAHB), even a small cost increase has a significant impact on affordability. An NAHB study shows that every $1,000 added to the price of a moderately priced home disqualifies as many as 49,000 California households from becoming home buyers.

(b) The Legislature further finds and declares that a combination of lowering regulatory costs and increasing purchasing power for low- and moderate-income households, primarily through downpayment assistance, will significantly increase home ownership rates in California.

(c) State housing element law can be complemented by the creation of incentives to promote the elimination of local constraints to the production of affordable housing.

SEC. 2. Chapter 14.5 (commencing with Section 50860) is added to Part 2 of Division 31 of the Health and Safety Code, to read:

CHAPTER 14.5. BUILDING EQUITY AND GROWTH IN NEIGHBORHOODS PROGRAM

50860. (a) The Building Equity and Growth in Neighborhoods (BEGIN) Program and the Building Equity and Growth in Neighborhoods (BEGIN) Fund are hereby created.

(b) Except as otherwise provided in this chapter, moneys in the BEGIN Fund shall be made available upon appropriation by the Legislature to the department and administered by the department

pursuant to the CalHome Program (Chapter 6 (commencing with Section 50650), to make grants to qualifying cities, counties, or cities and counties that provide incentives or reduce or remove regulatory barriers as set forth in this chapter. These grants shall, except as otherwise provided by this chapter, be used for downpayment assistance to qualifying first-time home buyers of low- and moderate-incomes purchasing newly constructed homes in a BEGIN project.

(c) Any loan repayments shall be retained by the qualifying city, county, or city and county and reused for first-time home buyer downpayment assistance, home rehabilitation, home buyer counseling, home acquisition and rehabilitation, or self-help mortgage assistance for persons and families of low- or moderate-income, as defined in Section 50093.

50861. The department shall issue a notice of funding availability to all cities, counties, or cities and counties specifying when funds are available for the BEGIN Program, the terms of the program, and due date for applications. The application shall include a description of the incentives or regulatory barrier reductions or removals established pursuant to Section 50863 and a description of the incentives or barrier reductions or removals that the city, county, or city and county has provided to the identified project.

50862. A city, county, or city and county that receives a grant from the BEGIN Fund shall use the proceeds from the grant for downpayment assistance to a prospective first-time home buyer who enters into an agreement to purchase a newly constructed home, or a newly erected manufactured home placed on a permanent foundation, with the sponsor or developer of the identified newly constructed project within this city, county, or city and county provided the first-time home buyer qualifies as a person or family of low- or moderate-income, as defined in Section 50093. Any residence assisted with downpayment financing provided by the BEGIN Fund shall be continuously occupied by the home buyer as his or her principal residence for at least five years following recordation of the deed of trust. If the home buyer fails to meet this condition, the loan amount shall become immediately due and payable to the grantee city, county, or city and county.

50862.5. Downpayment assistance provided pursuant to this chapter shall be in the form of a second mortgage loan, in an amount not to exceed 20 percent of the sale price of the residence, and in no event to exceed thirty thousand dollars ($30,000). The loan shall accrue simple interest.

50863. Grants shall only be made to a qualifying city, county, or city and county that has demonstrated that it has provided incentives or reduced or removed regulatory barriers to affordable housing for an identified or specified project. The department shall establish the types

of local governmental actions that it determines are appropriate and objectively measurable incentives and regulatory barrier reductions or removals. These actions may include, but are not limited to, any or all of the following measures: standards relating to housing density, project design, parking requirements, permit processing, and fee reductions.

50864. The department shall prioritize and quantify the criteria it establishes pursuant to Section 50863 by assigning points to each of the criteria. Applications of a city, county, or city and county that has a housing element that the department has found substantially complies with the requirements of Article 10.6 (commencing with Section 65580) of Chapter 3 of Division 1 of Title 7 of the Government Code shall receive additional points, not exceeding the points granted for any one of the criteria in Section 50863. Additional points may be given for applications meeting one or more of the following objectives:

(a) The extent to which the project is intended to serve low-income home buyers.

(b) The location of the project on a site designated as ''infill.''

(c) The location of the project in proximity to public transit, public schools, parks, or recreational facilities.

(d) The location of the project in any of the following job centers:

(1) The Los Angeles and Long Beach metropolitan statistical area.

(2) The Orange County metropolitan statistical area.

(3) The San Diego County metropolitan statistical area.

(4) The San Francisco metropolitan statistical area.

(5) The Oakland metropolitan statistical area.

(6) The San Jose metropolitan statistical area.

(7) The Sacramento metropolitan statistical area.

(8) The Fresno metropolitan statistical area.

(9) The Modesto metropolitan statistical area.

50865. The department may administer the BEGIN Program through guidelines that shall not be subject to the requirements of Chapter 3.5 (commencing with Section 11340) of Part 1 of Title 2 of the Government Code, following at least one consultation with the potential beneficiaries of, and participants in, the program, including, but not limited to, representatives of local governments and homebuilders.

50866. No more than 5 percent of the funds deposited in the BEGIN Fund may be used to pay the costs of administration of this chapter.

SEC. 3. Section 2 of this act shall become operative only if the Housing and Emergency Shelter Trust Fund Act of 2002, as proposed by Chapter 26 of the Statutes of 2002 (Senate Bill 1227 of the 2001-02 Regular Session) is enacted by the voters and contains authority to use bond proceeds for the purposes of this act.

CHAPTER 725

An act to add Section 50843 to the Health and Safety Code, relating to housing.

[Approved by Governor September 20, 2002. Filed with Secretary of State September 20, 2002.]

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

SECTION 1. Section 50843 is added to the Health and Safety Code, to read:

50843. (a) The Legislature finds and declares all of the following:

(1) Local housing trusts are locally developed responses to regional housing needs, and are responsive to local control.

(2) Local housing trusts have an excellent record of accomplishment of serving as efficient vehicles for disbursing resources at the local level.

(3) Currently there are 10 city and three county housing trusts throughout California producing thousands of units of affordable housing through the utilization of millions of dollars of locally generated funds, resulting in the leverage of millions more for the development of affordable housing.

(4) Housing trusts are local sources of revenue for affordable housing and very often are a direct result of local constituencies coming together around affordable housing. These relationships are often long term and include a broad set of community players that go beyond the traditional supporter of affordable housing.

(b) There is hereby established the Local Housing Trust Fund Matching Grant Program, to be administered by the department, for the purpose of supporting local housing trust funds dedicated to the creation or preservation of affordable housing as described in this section. Local housing trust funds shall be funded on an ongoing basis from private contributions or governmental sources that are not otherwise restricted in use for housing programs.

(c) For the purposes of this program, the following provisions shall apply:

(1) The department may make matching grants available to cities and counties, or a city and county, that have created, funded, and operated housing trust funds prior to January 1, 2003, and to existing charitable nonprofit organizations described in Section 501(c)(3) of the Internal Revenue Code that have created, funded, and operated housing trust funds prior to January 1, 2003. These funds shall be awarded through the issuance of a Notice of Funding Availability (NOFA). The department may establish competitive criteria consistent with the funding priorities used in the Multifamily Housing Program (Chapter 6.7 (commencing

with Section 50675)) to be used in the event that applications exceed the funds available. Applicants that provide matching funds from a source or sources other than impact fees on residential development shall receive a priority for funding.

(2) The department may make matching grants available to new local housing trusts created by cities and counties, or a city and county, and to fund new housing trusts created by charitable nonprofit organizations described in Section 501(c)(3) of the Internal Revenue Code that provide low-income housing assistance. As used in this section, ''new housing trust'' means a housing trust that was not in existence prior to January 1, 2003. The department may consider grant applications, submitted pursuant to this paragraph, and determine their eligibility for funding, in the order in which they are received.

(3) Housing trusts eligible for funding under this section shall have the following characteristics:

(A) They utilize a public or joint public and private fund established by legislation, ordinance, resolution, or a public-private partnership to receive specific revenue to address local housing needs.

(B) They receive ongoing revenues from dedicated sources of funding such as taxes, fees, loan repayments, or private contributions.

(4) The minimum allocation under this subdivision to an applicant shall be one million dollars ($1,000,000), and no applicant may receive an allocation in excess of two million dollars ($2,000,000). All funds provided pursuant to this section shall be matched on a dollar-for-dollar basis. No application shall be considered unless the department has received adequate documentation of the deposit in the local housing trust fund of the local match and the identity of the source of matching funds. Applicants shall be required to continue funding the local housing trust fund from these identified local sources, and continue the trust in operation, for a period of no less than five years from the date of award. If the funding is not continued for a five-year period, then (A) the amount of the department's grant to the local housing trust fund, to the extent that the trust fund has encumbered funds available, shall be immediately repaid, and (B) any payments from the project funded by the local housing trust fund that would have been paid to the local housing trust fund shall be paid instead to the department and used to fund projects under the Multifamily Housing Program, or its successor. The total amount paid to the department pursuant to (A) and (B), combined, shall not exceed the amount of the department's grant.

(5) Funds shall be used to provide loans for the construction of rental housing projects, or for construction of units within rental housing projects, affordable to, and restricted for, very low income persons and families earning less than 60 percent of the area median income. All assisted units shall be restricted for not less than 55 years. Projects

receiving funds allocated pursuant to this section shall not be eligible for funding through the Multifamily Housing Program. Loan repayments shall accrue to the grantee housing trust, or to the department if the trust is no longer in existence, to support the development of rental housing consistent with the Multifamily Housing Program or a successor program.

(6) In order for a city, county, or city and county to be eligible for funding, the applicant shall have, at the time of application, an adopted housing element that the department has determined, pursuant to Section 65585 of the Government Code, is in substantial compliance with the requirements of Article 10.6 (commencing with Section 65580) of Chapter 3 of Division 1 of Title 7 of the Government Code. In order for a nonprofit organization applicant to be eligible for funding, the applicant shall agree to utilize funds provided under this chapter only for projects located in cities, counties, or a city and county that have, at the time of application, an adopted housing element that the department has determined, pursuant to Section 65585 of the Government Code, to be in substantial compliance with the requirements of Article 10.6 (commencing with Section 65580) of Chapter 3 of Division 1 of Title 7 of the Government Code. For the purposes of this section, eligible local housing trust funds may not include any ongoing restricted fund that is required to be established pursuant to federal or state law.

(7) Recipients shall have held, or shall agree to hold, a public hearing or hearings to discuss and describe the project or projects that will be financed with funds provided pursuant to this section. As a condition of receiving a grant pursuant to this section, any nonprofit organization shall agree that it will hold one public meeting a year to discuss the criteria that will be used to select projects to be funded. That meeting shall be open to the public, and public notice of this meeting shall be provided, except to the extent that any similar meeting of a city or county would be permitted to be held in closed session.

(d) No more than 5 percent of the funds appropriated to the department pursuant to subparagraph (C) of paragraph (1) of subdivision (a) of Section 53533 shall be used to pay the costs of administration of this section.

(e) A local housing trust fund shall encumber funds provided pursuant to this section no later than 30 months after receipt. Any funds not encumbered within that period shall revert to the department for use in the Multifamily Housing Program.

(f) Recipients shall be required to file periodic reports with the department regarding the use of funds provided pursuant to this section. No later than December 31, 2005, the department shall provide a report to the Legislature regarding the number of trust funds created, a

description of the projects supported, the number of units assisted, and the amount of matching funds.

(g) This program shall be operated under guidelines adopted by the department and 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. If the Housing and Emergency Shelter Trust Fund Act of 2002 is approved by the voters:

(a) Fifteen million dollars ($15,000,000) of the funds appropriated to the department pursuant to subparagraph (C) of paragraph (1) of subdivision (a) of Section 53533 of the Health and Safety Code shall be used for the purposes of paragraph (1) of subdivision (c) of Section 50843 of the Health and Safety Code.

(b) Ten million dollars ($10,000,000) of the funds appropriated to the department pursuant to subparagraph (C) of paragraph (1) of subdivision (a) of Section 53533 of the Health and Safety Code shall be used for the purposes of paragraph (2) of subdivision (c) of Section 50843 of the Health and Safety Code, except that any such funds that are not encumbered by the department within 24 months of availability shall be used for the purposes of paragraph (1) of subdivision (c) of Section 50843 of the Health and Safety Code.

SEC. 3. This act shall become operative only if the Housing and Emergency Shelter Trust Fund Act of 2002, as proposed by Senate Bill 1227 of the 2001–02 Regular Session, is enacted by the voters and contains authority to use bond proceeds for the purposes of this act.

CHAPTER 726

An act to amend Section 51.2 of the Civil Code, to add Section 17959 to the Health and Safety Code, and to add Section 9105.1 to the Welfare and Institutions Code, relating to building standards.

[Approved by Governor September 20, 2002. Filed with Secretary of State September 20, 2002.]

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

SECTION 1. The Legislature finds and declares as follows:

(a) California's population is aging, and most aging persons prefer to stay in their homes and neighborhoods as long as possible. In addition, many households share their homes with parents, children, spouses, and other household members who have a range of temporary or permanent mobility disabilities. For all of these persons, the social and financial

costs of residential care settings often are excessive and impose additional costs for government assistance programs.

(b) Many California households are seeking to have their homes constructed or modified to allow for full life cycle use, available for visits or residence by parents, grandparents, and others who have difficulty entering or using these homes due to barriers resulting from traditional construction standards. Adding home modifications after construction far exceeds the cost of including barrier-free standards at the time of construction and often results in temporary displacement until modifications are complete.

(c) Many government and private entities have considered adoption of the principles of universal design to allow for inclusive use of homes. Universal design has several major components: designing products so that they are flexible enough that they can be used by people with a wide range of abilities and circumstances, and designing homes and appliances so that they are compatible with assistive technologies that might be used by those who cannot efficiently use the products directly. Universal design options include, but are not limited to, zero-step entries based on site grading or ramps, wider doorways and doors with lever handles, bathrooms amenable to the addition of assistive facilities, safe passageways and work areas, and use of appropriately installed switches and receptacles, counters, and appliances.

(d) The costs of construction or home modifications using the principles of universal design are increased by inadequate knowledge of the options, benefits, and opportunities, and the lack of consistent standards throughout a jurisdiction or the state. Local governments do not have authority to enact ordinances regulating universal design standards for residences under current state laws.

(e) The development and dissemination of guidelines and model statewide ordinances, and the authority for enactment of these model ordinances by local governments, will provide a variety of social and financial cost benefits to individuals and government agencies serving persons who are aging or frail. They also will maintain building code consistency, and encourage the development of new appliances and assistive devices that encourage inclusive use of homes. They also will permit persons who are aging or frail to remain with their families, in their own homes, for longer periods by encouraging increased development and modification of homes with barrier-free access and use.

SEC. 2. Section 51.2 of the Civil Code is amended to read:

51.2. (a) Section 51 shall be construed to prohibit a business establishment from discriminating in the sale or rental of housing based upon age. Where accommodations are designed to meet the physical and social needs of senior citizens, a business establishment may establish

and preserve that housing for senior citizens, pursuant to Section 51.3, except housing as to which Section 51.3 is preempted by the prohibition in the federal Fair Housing Amendments Act of 1988 (P.L. 100-430) and implementing regulations against discrimination on the basis of familial status. For accommodations constructed before February 8, 1982, that meet all the criteria for senior citizen housing specified in Section 51.3, a business establishment may establish and preserve that housing development for senior citizens without the housing development being designed to meet physical and social needs of senior citizens.

(b) This section is intended to clarify the holdings in Marina Point, Ltd. v. Wolfson (1982) 30 Cal. 3d 72 and O'Connor v. Village Green Owners Association (1983) 33 Cal. 3d 790.

(c) This section shall not apply to the County of Riverside.

(d) A housing development for senior citizens constructed on or after January 1, 2001, shall be presumed to be designed to meet the physical and social needs of senior citizens if it includes all of the following elements:

(1) Entryways, walkways, and hallways in the common areas of the development, and doorways and paths of access to and within the housing units, shall be as wide as required by current laws applicable to new multifamily housing construction for provision of access to persons using a standard-width wheelchair.

(2) Walkways and hallways in the common areas of the development shall be equipped with standard height railings or grab bars to assist persons who have difficulty with walking.

(3) Walkways and hallways in the common areas shall have lighting conditions which are of sufficient brightness to assist persons who have difficulty seeing.

(4) Access to all common areas and housing units within the development shall be provided without use of stairs, either by means of an elevator or sloped walking ramps.

(5) The development shall be designed to encourage social contact by providing at least one common room and at least some common open space.

(6) Refuse collection shall be provided in a manner that requires a minimum of physical exertion by residents.

(7) The development shall comply with all other applicable requirements for access and design imposed by law, including, but not limited to, the Fair Housing Act (42 U.S.C. Sec. 3601 et seq.), the Americans with Disabilities Act (42 U.S.C. Sec. 12101 et seq.), and the regulations promulgated at Title 24 of the California Code of Regulations that relate to access for persons with disabilities or handicaps. Nothing in this section shall be construed to limit or reduce any right or obligation applicable under those laws.

SEC. 3. Section 17959 is added to the Health and Safety Code, to read:

17959. (a) No later than December 31, 2003, the department shall consider proposed universal design guidelines for home construction or home modifications which may be submitted by the California Department of Aging, the California Commission on Aging, the Department of Rehabilitation, the office of the State Architect of the Department of General Services, the office of the State Fire Marshal, the California Building Standards Commission, or other state departments. Thereafter, the department, without significantly impacting housing cost and affordability, shall, in consultation with these agencies, develop guidelines and at least one model ordinance for new construction and home modifications that is consistent with the principles of universal design as promulgated by the Center for Universal Design at North Carolina State University or other similar design guidelines that enhance the full life cycle use of housing without regard to the physical abilities or disabilities of a home's occupants or guests in order to accommodate a wide range of individual preferences and functional abilities. In developing these guidelines and model ordinances, the department also shall meet with, and solicit information from, individuals and organizations representing individuals and entities with interests in construction, local governments, the health and welfare of senior citizens and persons with disabilities, architects, and others with expertise in these design and living issues. The department shall ensure that at least three meetings subject to the Bagley-Keene Open Meeting Act (Article 9 (commencing with Section 11120) of Chapter 1 of Part 1 of Division 3 of the Government Code) shall occur, that shall include opportunities for government agencies, individuals, and organizations identified in this subdivision to participate and comment on proposed guidelines or draft model ordinances.

(b) (1) In addition to the authority granted by Sections 17958.5 and 18941.5, and for the purposes of this section, a city, county, or city and county may, by ordinance, make changes or modifications in addition to or in excess of the requirements contained in the California Building Standards Code adopted pursuant to Sections 17922 and 18928 if the city, county, or city and county makes a finding that the changes and modifications are reasonably necessary and are substantially the same as the guidelines or model ordinances adopted pursuant to subdivision (a). In no case shall the changes or modifications be less restrictive than the requirements published in the California Building Standards Code.

(2) A city, county, or city and county adopting an ordinance pursuant to this subdivision shall file a copy of the ordinance and the findings with the department. No such ordinance shall become effective or operative for any purpose until the findings and the ordinance have been filed with

the department. The department may review the findings and each ordinance to evaluate their consistency with this subdivision, and shall provide written comments to the adopting entity as to any such evaluation.

(c) (1) In a city, county, or city and county where a universal design ordinance has not been adopted pursuant to subdivision (b), developers of housing for senior citizens, persons with disabilities, and other persons and families are encouraged, but not required, to seek information and assistance from the department and the California Department of Aging regarding the principles of universal design specified in subdivision (a) and consider those principles in their construction.

(2) The department, the California Department of Aging, and any other interested state agency also may, to the extent feasible, disseminate information to interested persons and entities in all parts of the state regarding the principles of universal design and their relationship to new construction and home modifications.

(d) Subdivision (b) shall become operative on January 1, 2005.

SEC. 4. Section 9105.1 is added to the Welfare and Institutions Code, to read:

9105.1. The department, in partnership with the area agencies on aging, the Department of Rehabilitation, any independent living centers, any contractor selected to implement the federal Assistive Technology Act of 1998 (Public Law 105-394), and any organization that serves seniors and persons with disabilities, may develop and provide consumer advice regarding home modification for seniors and persons with disabilities.

CHAPTER 727

An act to add Division 20.4 (commencing with Section 30901) to, and to add Chapter 5.5 (commencing with Section 31220) to Division 21 of, the Public Resources Code, relating to coastal resources, and making an appropriation therefor.

[Approved by Governor September 20, 2002. Filed with Secretary of State September 20, 2002.]

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

SECTION 1. Division 20.4 (commencing with Section 30901) is added to the Public Resources Code, to read:

DIVISION 20.4. WATERSHED, CLEAN BEACHES, AND WATER QUALITY ACT

CHAPTER 1. GENERAL PROVISIONS

30901. This act shall be known, and may be cited, as the Watershed, Clean Beaches, and Water Quality Act.

30902. The purpose of this division is to establish a statutory framework for funding water quality, clean beaches, and watershed protection projects from the proceeds derived from the issuance and sale of bonds and other revenue sources, and to specify how the Resources Agency and its constituent departments and boards, including the State Coastal Conservancy, and the California Environmental Protection Agency, and that agency's constituent departments, including the State Water Resources Control Board, will coordinate and integrate programs to fund projects.

30903. The Legislature hereby finds and declares all of the following:

(a) Clean beaches, clean water, and healthy watersheds are necessary to support both human communities and the state's native fish and wildlife, and are part of the legacy of California. Each generation has an obligation to be good stewards of those resources in order to pass them on to their children.

(b) California's 1,100-mile coastline is world-renowned. Coastal-related businesses provide seventeen billion dollars ($17,000,000,000) annually to the state's economy and depend on the restoration and health maintenance of beaches.

(c) Clean water is essential to the state's communities and economy.

(d) Watershed management is a valuable approach to meeting comprehensive resource management and water quality objectives. Watersheds provide a useful, natural unit to integrate and coordinate the many natural resource functions of state agencies.

(e) Multiple state entities within the California Environmental Protection Agency and the Resources Agency are currently administering programs that provide technical assistance or financial support for various aspects of watershed management or restoration. Hundreds of watershed partnerships exist in the state, dedicated to the restoration and management of the state's streams, rivers, and lands, and the use of watershed management principles and practices. Coordinated watershed management implementation is crucial to addressing critical problems and the efficient use of public funds. The California Environmental Protection Agency and the Resources Agency are developing a strategic plan for fully integrated watershed investments.

30904. It is the intent of the Legislature that the purpose of maintaining clean beaches, clean water, and an integrated and coordinated watershed program is to protect beaches, coastal waters, rivers, lakes, and streams from contaminants, pollution, and other environmental threats.

30905. It is the intent of the Legislature to invest in projects that will reduce beach contamination and increase visitor days, including, but not limited to, developing the comprehensive capability to monitor and analyze water quality and pollutant transport in coastal waters. This will be demonstrated by measurable improvements in water quality on and near the state's beaches.

30906. It is the intent of the Legislature to invest in clean water projects that will do all of the following:

(a) Assist small local communities in meeting water pollution control requirements.

(b) Improve agricultural water quality and reduce pollutants in agricultural drainage water.

(c) Implement urban stormwater treatment programs and reduce nonpoint sources of pollution.

(d) Provide comprehensive capability to monitor and analyze water quality in groundwater basins throughout the state.

30907. It is the intent of the Legislature to require state agencies to encourage and support both of the following:

(a) The development of coordinated and complementary strategies and solutions for watershed management across land ownership and agency jurisdictional boundaries.

(b) Coordinated program delivery from state and federal agencies to fit the needs of individual watersheds.

30908. It is the intent of the Legislature that the state should coordinate and integrate its watershed programs and implement those programs by working with diverse interests at the local level. The state's watershed management goals should include, but need not be limited to, maintaining and restoring healthy watersheds that support thriving communities, provide clean water, and sustain natural habitats for future generations.

30909. It is the intent of the Legislature to invest in watershed management partnerships that use a community-based collaborative approach to meeting the state's watershed management goals. Allocation of funding should be balanced among large and small watersheds, coastal and inland watersheds, and effluent reduction and source protection, and should be geographically balanced. Priority should be given to projects and programs that implement programs that have multiple benefits.

CHAPTER 2. DEFINITIONS

30910. Unless the context otherwise requires, the following definitions govern the construction of this chapter:

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

(b) "Local public agency" means any city, county, city and county, or district.

(c) "Nonprofit organization" means any California corporation organized under Section 501(c)(3), 501(c)(4), or 501(c)(5) of the federal Internal Revenue Code.

(d) "Public agency" means a city, county, city and county, district, the state or any agency or department thereof, and applicants eligible for technical assistance under Section 319 of the federal Clean Water Act (33 U.S.C. Sec. 1329) or for grants under Section 320 of the federal Clean Water Act (33 U.S.C. Sec. 1330).

(e) "Regional board" means a regional water quality control board.

CHAPTER 3. CLEAN BEACHES PROGRAM

30915. The purpose of this chapter is to provide authorization for projects that restore and protect the water quality and environment of coastal waters, estuaries, bays, and near shore waters.

30916. (a) Upon appropriation by the Legislature, funds provided under this chapter may be used by the board, in consultation with the State Coastal Conservancy, to award grants not to exceed five million dollars ($5,000,000) per project to public agencies and nonprofit organizations for the purposes of this chapter. Grants may be awarded for any of the following projects:

(1) A project designed to improve water quality at public beaches and to make improvements for the purpose of ensuring that coastal waters adjacent to public beaches meet the bacteriological standards set forth in Article 2 (commencing with Section 115875) of Chapter 5 of Part 10 of Division 104 of the Health and Safety Code.

(2) A project to make improvements to, or upgrades or conversions of, existing sewer collection systems and septic systems for the restoration and protection of coastal water quality.

(3) A project designed to implement stormwater and runoff pollution reduction and prevention programs, or for the implementation of best management practices, for the restoration and protection of coastal water quality.

(b) The projects funded pursuant to this chapter shall be consistent with the state's nonpoint source control program, as revised to meet the requirements of Division 20 (commencing with Section 30000), Section 6217 of the federal Coastal Zone Act Reauthorization Amendments of

1990, Section 319 of the federal Clean Water Act (33 U.S.C. Sec. 1329), Division 7 (commencing with Section 13000) of the Water Code, and the California Coastal Commission.

(c) The projects funded pursuant to this chapter shall demonstrate the capability of contributing to sustained, long-term water quality or environmental restoration or protection benefits for a period of 20 years, address the causes of degradation, rather than the symptoms, and be consistent with water quality and resource protection plans prepared, implemented, or adopted by the board, the applicable regional water quality control board, and the State Coastal Conservancy.

(d) An applicant for funds under this chapter shall be required to submit to the board a monitoring and reporting plan that does all of the following:

(1) Identifies the nonpoint source or sources of pollution to be prevented or reduced by the project.

(2) Describes the baseline water quality or environmental quality to be addressed.

(3) Describes the manner in which the project will be effective in preventing or reducing pollution and in demonstrating the desired environmental results.

(4) Describes the monitoring program, including, but not limited to, the methodology, and the frequency and duration of monitoring.

(e) Upon completion of the project, a recipient of funds under this chapter shall submit a report to the board that summarizes the completed activities and indicates whether the purposes of the project have been met. The report shall include information collected by the recipient in accordance with the project monitoring and reporting plan, including a determination of the effectiveness of the project in preventing or reducing pollution, and the results of the monitoring program. The board shall make the report available to the public, watershed groups, and federal, state, and local agencies.

(f) Not more than 25 percent of a grant may be awarded in advance of actual expenditure.

(g) An applicant for funds under this chapter shall inform the board of any necessary public agency approvals, entitlements, and permits that may be necessary to implement the project. The application shall certify to the board, at the appropriate time, that those approvals, entitlements, and permits have been granted.

(h) Where recovery plans for coho salmon, steelhead trout, or other threatened or endangered aquatic species exist, projects funded under this chapter shall be consistent with those plans and, to the extent feasible, shall seek to implement actions specified in those plans.

(i) The board shall appoint a Clean Beaches Task Force comprised of individuals representing the breadth and diversity of coastal

communities. All proposals for funding shall be reviewed by the task force. The task force may recommend projects to the board for funding consideration.

30917. The board shall provide opportunity for public review and comment in awarding funds pursuant to this chapter, and may, in consultation with the State Coastal Conservancy, adopt regulations to implement this chapter.

CHAPTER 4. INTEGRATED CLEAN WATER PROGRAMS

Article 1. Small Community Wastewater Grant Program

30925. (a) For the purposes of this article, ''small community'' means a municipality with a population of 20,000 persons or less, a rural county, or a reasonably isolated and divisible segment of a larger municipality where the segment of the population is 20,000 persons or less, with a financial hardship, as determined by the board.

(b) The board may award grants under this article to assist small communities in meeting water pollution control requirements.

(c) The board may award grants under this article to projects that meet the definition of ''eligible project'' in Section 79120 of the Water Code.

(d) The board shall give priority to both of the following types of projects:

(1) Projects to install or replace sewer systems in communities that lack adequate sewers.

(2) Projects to assist communities with population growth pressures, to assist in the redesign and expansion of existing wastewater collection and treatment systems.

Article 2. Urban Storm Water Grant Program

30930. The board may award grants under this article to local public agencies for projects designed to implement stormwater runoff pollution reduction and prevention programs, including, but not limited to, diversion of dry weather flows to publicly owned treatment works for treatment, acquisition, and development of constructed wetlands and the implementation of approved best management practices, as required by stormwater permits issued by the state board or a regional board.

Article 3. Nonpoint Source Pollution Control Program

30935. (a) The board may award grants under this article to local public agencies and nonprofit organizations for projects that protect the

beneficial uses of water throughout the state through the control of nonpoint source pollution.

(b) Except as authorized under subdivision (g), grants may be awarded only for projects that are one or more of the following:

(1) Consistent with local watershed management plans and with regional water quality control plans.

(2) Broad-based nonpoint source pollution projects, including, but not limited to, projects identified in the board's ''Initiatives in NPS Management,'' dated September 1995, and in the nonpoint source technical advisory committee reports.

(3) Consistent with the ''Integrated Plan for Implementation of the Watershed Management Initiative'' prepared by the board and the regional boards.

(4) A project that implements watershed best management practices and measures.

(5) Consistent with the requirements of Section 6217(g) of the federal Coastal Zone Act Reauthorization Amendments of 1990 and has been identified as a needed project by the board under the 15-year implementation strategy and five-year implementation plan of the board's nonpoint source pollution control program.

(6) A project that improves the quality of drinking water supplies and addresses contamination by pathogens, organic carbon, or salinity.

(c) Projects funded under this article shall demonstrate a capability of sustaining water quality benefits for a period of not less than 20 years. Categories of nonpoint source pollution addressed by projects may include, but need not be limited to, silviculture, agriculture, urban runoff, mining, hydromodification, grazing, onsite disposal systems, boatyards and marinas, and animal feeding operations.

(d) Projects to address nonpoint source pollution may include, but need not be limited to, wildfire management, installation of vegetative systems to filter or retard pollutant loading, incentive programs or large-scale demonstration programs to reduce commercial reliance on polluting substances or to increase acceptance of alternative methods and materials, and engineered features to minimize impacts of nonpoint source pollution.

(e) Projects funded under this article shall have defined water quality or beneficial use goals.

(f) A local public agency or nonprofit organization that has a project funded under this article shall submit to the board a monitoring and reporting plan that does all of the following:

(1) Identifies one or more nonpoint sources of pollution.

(2) Describes the baseline water quality of the body of water impacted.

(3) Describes the manner in which the proposed practices or measures are implemented.

(4) Determines the effectiveness of the proposed practices or measures in preventing or reducing pollution.

(g) Notwithstanding subdivision (b), the board may award grants for demonstration projects that are intended to prevent, reduce, or treat nonpoint source pollution.

(h) A grant recipient shall submit a report to the board, upon completion of the project, that summarizes completed activities and indicates whether the purposes of the project have been met. The report shall include information collected by the grant recipient in accordance with the project monitoring and reporting plan, including, but not limited to, a determination of the effectiveness of the best management practices or management measures implemented as part of the project in preventing or reducing nonpoint source pollution. The board shall make the report available to watershed groups, and federal, state, and local agencies.

Article 4. Agricultural Water Quality Grant Program

30940. The board may award grants to public agencies or nonprofit organizations for the purposes of improving agricultural water quality through monitoring, demonstration projects, research, construction of agricultural drainage improvements, and for projects to reduce pollutants in agricultural drainage water through reuse, integrated management, or treatment. Grants made pursuant to this section may be used to provide matching funds for federal grant programs. The board, in consultation with the Department of Food and Agriculture, shall develop criteria for evaluating projects considered for grants under this section.

Article 5. Integrated Watershed Management Programs

30945. The purpose of this article is to establish a program for integrated watershed management to improve water quality, protect and restore habitat and fisheries, reduce flooding, control erosion and sedimentation, and improve local water supply reliability through better groundwater monitoring, river corridor recreation, forest land and fuel management, and hydropower management.

30946. The California Environmental Protection Agency shall enter into a memorandum of understanding with the Resources Agency to ensure that the program established under this chapter is coordinated with other programs administered by those agencies, including, but not limited to, the grant process set forth in Section 30947. The

memorandum of understanding shall establish a stakeholder advisory process to assist in setting priorities and allocating funds. The memorandum of understanding shall be completed and executed on or before April 30, 2003.

30947. (a) The Integrated Watershed Management Program is hereby established. Upon appropriation by the Legislature, funds allocated to the program may be used by the board, subject to the terms of the memorandum of understanding executed pursuant to Section 30946 to award grants to public agencies and nonprofit organizations for the development of local watershed management plans that meet the requirements of subdivision (c) of Section 79078 of the Water Code, and for the implementation of watershed protection and water management projects that include one or more of the following elements:

(1) Stormwater capture and treatment.

(2) Nonpoint source pollution reduction, management, and monitoring.

(3) Groundwater recharge and management projects.

(4) Water banking, exchange, and reclamation, and improvement of water quality.

(5) Vegetation management to improve watershed efficiency, aquatic and terrestrial habitat, the creation and enhancement of wetlands, and the acquisition, protection, and restoration of open space.

(6) Planning and implementation of multipurpose flood control programs that protect property and improve water quality and stormwater capture and percolation, and protect or improve wildlife habitat.

(7) Watershed management planning and implementation.

(8) Demonstration projects to develop new water treatment distribution and nonpoint source pollution control methods.

(9) Erosion sediment control and stream enhancement projects, and permit coordination programs to facilitate watershed restoration projects that implement board approved management measures for polluted runoff.

(10) Monitoring, collection, and analysis of water quality and pollutant transport in groundwater and surface water.

(11) Native fisheries enhancement or improvement projects, and projects to restore other threatened species.

(b) Upon completion of the project, the grantee shall submit a report to the board that summarizes the completed activities and indicates whether the purposes of the project have been met. The report shall include information collected by the grantee in accordance with the project monitoring and reporting plan, including, but not limited to, a determination of the effectiveness of the project in preventing or reducing pollution and the results of the monitoring program. The board

shall make the report available to the public, watershed groups, and federal, state, and local agencies.

30948. Consistent with Section 30947, the board shall establish an accelerated selection and contracting procedure for projects that meet all of the following criteria:

(a) The project is part of an approved watershed management plan consistent with Section 30947.

(b) The project is fully permitted and ready to be implemented.

(c) Funding for the project includes matching funds or services donated from nonstate sources.

30949. No more than 50 percent of the funds made available to the board for the purposes of this article shall be used for the purposes of Section 30948.

Article 6. Small Community Groundwater Grant Program

30950. (a) For the purposes of this article, ''small community'' means a municipality with a population of 20,000 persons or less, a rural county, or a reasonably isolated and divisible segment of a larger municipality where the segment of the population is 20,000 persons or less, with a financial hardship, as determined by the board.

(b) The board may award grants under this article to assist small communities in complying with groundwater contaminant level requirements.

(c) The board may award grants under this article to local public agencies and private not-for-profit water companies.

(d) The board shall give priority to both of the following types of projects:

(1) Projects to provide an alternate source of water or to treat water where the existing supply of groundwater exceeds the maximum contaminant level of arsenic.

(2) Projects to provide an alternate source of water or to treat water where the existing supply of groundwater exceeds the maximum contaminant level for nitrate.

(e) The board may make funds available under this article in each fiscal year to provide technical assistance or planning grants, or both, to small communities.

SEC. 2. Chapter 5.5 (commencing with Section 31220) is added to Division 21 of the Public Resources Code, to read:

CHAPTER 5.5. WATERSHED RESTORATION PROJECTS

31220. (a) In order to improve coastal water quality, the conservancy may undertake watershed restoration projects or award

grants for those projects, consistent with this chapter. The conservancy shall consult with the applicable regional water quality control board in the development of the project or grant to ensure consistency with Chapter 3 (commencing with Section 30915) of Division 20.4 of the Public Resources Code.

(b) The conservancy may undertake a project or award a grant to a project only if the project does one or more of the following:

(1) Reduces contamination of waters within the coastal zone, including, but not limited to, coastal and near shore waters.

(2) Protects fish and wildlife habitat within coastal watersheds and coastal waters.

(3) Reduces erosion and sedimentation of coastal watersheds, including, but not limited to, permit coordination projects for watershed restoration.

(4) Provides for the purchase and installation of equipment to monitor and map coastal currents to predict and determine areas of contamination and pollutant transport in coastal waters. Any project considered under this paragraph shall be implemented in consultation with the Department of Fish and Game.

(5) Acquires, protects, and restores coastal wetlands, riparian areas, floodplains, and other sensitive watershed lands for coastal rivers.

(c) The conservancy shall consult with the State Water Resources Control Board on project selection. Projects funded pursuant to this section shall be consistent with local watershed management plans, if available, and water quality control plans adopted by the State Water Resources Control Board and regional water quality control boards, and shall include a monitoring and evaluation component.

SEC. 3. (a) From the funds de posited in the California Clean Water, Clean Air, Safe Neighborhood Parks, and Coastal Protection Fund created pursuant to Section 5096.610 of the Public Resources Code, and which are made available for the purposes specified in paragraph (2) of subdivision (c) of Section 5096.650 of the Public Resources Code, the following amounts are hereby appropriated to the State Water Resources Control Board:

(1) The sum of forty-six million dollars ($46,000,000) for the Clean Beaches Program pursuant to Section 30916 of the Public Resources Code.

(2) The sum of fifteen million dollars ($15,000,000) for the purposes of Section 30925 of the Public Resources Code.

(3) The sum of fifteen million dollars ($15,000,000) for the purposes of Section 30930 of the Public Resources Code.

(4) The sum of twenty million dollars ($20,000,000) for the purposes of Section 30935 of the Public Resources Code.

(5) The sum of twelve million dollars ($12,000,000) for the purposes of Section 30940 of the Public Resources Code.

(6) The sum of ten million dollars ($10,000,000) for the purposes of Section 30950 of the Public Resources Code.

(7) The sum of fifty-seven million dollars ($57,000,000) for the purposes of the Integrated Watershed Management Program established under Section 30947 of the Public Resources Code. Of this amount, seven million dollars ($7,000,000) shall be used for the purposes of groundwater monitoring, collection, and analysis as specified in paragraph (10) of subdivision (a) of Section 30947.

(b) The funds appropriated in this section are available to the State Water Resources Control Board for expenditure in accordance with the provisions governing the programs listed in subdivision (a), and for associated programmatic costs.

SEC. 4. From the funds deposited in the California Clean Water, Clean Air, Safe Neighborhood Parks, and Coastal Protection Fund created pursuant to Section 5096.610 of the Public Resources Code, and which are made available for the purposes specified in paragraph (2) of subdivision (c) of Section 5096.650 of the Public Resources Code, the sum of forty-six million four hundred thousand dollars ($46,400,000) is hereby appropriated to the State Coastal Conservancy for the purpose of funding the coastal watershed protection projects authorized under Section 31220 of the Public Resources Code, and for associated programmatic costs. Of this amount, the conservancy shall allocate seven million dollars ($7,000,000) for the purpose of funding projects that meet the requirements in paragraph (4) of subdivision (b) of Section 31220 of the Public Resources Code.

SEC. 5. From the funds deposited in the California Clean Water, Clean Air, Safe Neighborhood Parks, and Coastal Protection Fund created pursuant to Section 5096.610 of the Public Resources Code, and which are made available for the purposes specified in paragraph (2) of subdivision (c) of Section 5096.650 of the Public Resources Code, the sum of two million dollars ($2,000,000) is hereby appropriated to the Department of Forestry and Fire Protection for forest resource improvement projects under Chapter 1 (commencing with Section 4790) of Part 2.5 of Division 4 of the Public Resources Code and for associated programmatic costs.

SEC. 6. Nothwithstanding any other provision of law, the funds appropriated under this act shall be available for encumbrance until December 31, 2006.

SEC. 7. Eligible projects funded under this act with proceeds from the sale of bonds shall comply with the restrictions specified in Section 16727 of the Government Code.

SEC. 8. Of the total amount derived from the proceeds of bonds and appropriated under this act, not more than 5 percent may be expended for associated programmatic costs.

CHAPTER 728

An act to amend Section 1104.1 of the Military and Veterans Code, relating to veterans, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 20, 2002. Filed with Secretary of State September 20, 2002.]

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

SECTION 1. Section 1104.1 of the Military and Veterans Code, as added by Section 3 of Chapter 216 of the Statutes of 2002, is amended to read:

1104.1. (a) Notwithstanding Section 13340 of the Government Code, the moneys in the Veterans' Home Fund established by Section 1103 are, subject to the limit set forth in subdivision (b), hereby continuously appropriated, without regard to fiscal years, to the Department of Veterans Affairs, subject to the approval of the Department of Finance, for the funding of the state's matching requirement for the construction of all of the following:

(1) The Veterans' Home of California, Lancaster, as described in paragraph (4) of subdivision (b) of Section 1011.

(2) The Veterans' Home of California, Saticoy, as described in paragraph (5) of subdivision (b) of Section 1011.

(3) The Veterans' Home of California, West Los Angeles, as provided for in subdivision (a) of Section 1104.

(b) The total amount appropriated in accordance with subdivision (a) may not exceed the sum of thirty-one million dollars ($31,000,000).

(c) The homes specified in subdivision (a) may care for veterans with substance abuse disorders.

(d) Notwithstanding Section 13340 of the Government Code, in addition to the funds appropriated pursuant to this section, the federal matching funds available pursuant to the State Veterans' Home Assistance Improvement Act of 1977 (38 U.S.C. Sec. 8131 et seq.) are hereby continuously appropriated, without regard to fiscal years, to the Department of Veterans Affairs, subject to the approval of the Department of Finance, for the purpose of design, construction,

renovation of, or expansion or repayment of any loan related to the projects specified in this section.

SEC. 2. It is the intent of the Legislature that the veterans' homes specified in Section 1104.1 of the Military and Veterans Code are built in a manner consistent with Section 1011 of the Military and Veterans Code.

SEC. 3. 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 meet the filing date for the eligibility list to receive matching federal funds from the United States Department of Veterans Affairs for the construction of the veterans' homes at Lancaster, Saticoy, and West Los Angeles, it is necessary that this act take effect immediately.

CHAPTER 729

An act to add Section 20090.1 to the Government Code, relating to the Public Employees' Retirement System.

[Approved by Governor September 20, 2002. Filed with Secretary of State September 20, 2002.]

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

SECTION 1. Section 20090.1 is added to the Government Code, to read:

20090.1. Notwithstanding any other provision of law to the contrary, the member of the board who is an elected official of a contracting agency appointed by the Governor, pursuant to subdivision (e) of Section 20090, may designate a deputy, who is employed under the official's authority, to act in his or her place and stead on the board or any of its committees. The deputy, while sitting on the board or any of its committees, may exercise the same powers that the elected official could exercise if he or she were personally present. The board member shall be responsible for the acts of the deputy acting under this designation.

CHAPTER 730

An act to add Article 1 (commencing with Section 51700) to Chapter 5 of Part 28 of the Education Code, relating to pupil instruction.

[Approved by Governor September 20, 2002. Filed with Secretary of State September 20, 2002.]

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

SECTION 1. The Legislature finds and declares all of the following:

(a) California's reading efforts are based on high expectations for all pupils.

(b) State adopted English language arts content standards, newly adopted instructional programs for reading and language arts, and professional development programs for teachers and principals are centered around the scientific research on how children learn to read.

(c) The Reading First Program established pursuant to this act will assist California in its efforts to target high-need local education agencies to ensure that all pupils in California learn to read by the end of the third grade.

SEC. 2. Article 1 (commencing with Section 51700) of Chapter 5 of Part 28 is added to the Education Code, to read:

Article 1. Reading First Plan

51700. (a) There is hereby established the Reading First Plan to provide reading instruction to pupils in kindergarten and grades 1 to 3, inclusive, and to special education pupils in kindergarten and grades 1 to 12, inclusive.

(b) The plan shall be administered by the State Department of Education and shall be funded from moneys allocated pursuant to Title I of the federal No Child Left Behind Act of 2001 (20 U.S.C. Sec. 6301 et seq.).

(c) The Reading First Plan submitted to the Secretary of Education pursuant to Title I of the federal No Child Left Behind Act of 2001 (20 U.S.C. Sec. 6301 et seq.) shall do all of the following:

(1) Authorize a local educational agency that meets all the requirements of Section 6362(c)(6) of Title 20 of the United States Code to be eligible for Reading First funding if pupils enrolled in kindergarten or any of grades 1 to 3, inclusive, and special education pupils enrolled in kindergarten or any of grades 1 to 12, inclusive, are provided with standards-aligned textbooks or basic instructional materials aligned with the reading/language arts content standards pursuant to Section 60605 by the beginning of the first school term that commences no later

than 24 months after those materials are adopted by the State Board of Education.

(2) Authorize a local educational agency to use scientifically based reading research supplemental instructional materials for pupils enrolled in kindergarten or any of grades 1 to 3, inclusive, and special education pupils enrolled in kindergarten or any of grades 1 to 12, inclusive, that are aligned with the reading/language arts content standards adopted pursuant to Section 60605. The local educational agency shall provide an explanation in its application of how its use of these supplemental instructional materials support the reading/language arts instructional materials adopted by the State Board of Education for pupils enrolled in kindergarten or any of grades 1 to 3, inclusive, and special education pupils enrolled in kindergarten or any of grades 1 to 12, inclusive.

(3) Authorize an eligible local educational agency to receive a grant in the amount of up to six thousand five hundred dollars ($6,500) per teacher in kindergarten or in any of grades 1 to 3, inclusive, unless otherwise required pursuant to Section 6362(c)(2)(A) of Title 20 of the United States Code. In addition, to the extent that a local educational agency needs additional funding consistent with the maximum amount allowable under the federal No Child Left Behind Act (20 U.S.C. 6301 et. seq.), authorize the local educational agency to submit a plan justifying that need to the State Department of Education and the Department of Finance for their joint approval. A grant awarded pursuant to this paragraph shall be used to enhance reading instruction, including, but not limited to, the following purposes:

(A) Purchasing and implementing scientifically based reading research instructional and supplemental materials in reading language arts, pursuant to requirements specified in the Reading First Plan and paragraph (2).

(B) Participating in professional development in reading and language arts, pursuant to requirements specified in the Reading First Plan. A Reading First funded agency may not claim funding for teachers of kindergarten or any of grades 1 to 3, inclusive, or teachers of special education pupils for the Mathematics and Reading Professional Development Program established pursuant to Article 3 (commencing with Section 99230) of Chapter 5 of Part 65.

(C) Hiring reading coaches or reading content experts, or both.

(D) Purchasing reading and language arts assessments.

(E) Other purposes, as specified in Section 6362(c)(7) of Title 20 of the United States Code.

(e) A local educational agency shall submit an expenditure plan as part of its Reading First application include details about how it is going to use its funding.

51702. Of the federal funds appropriated in Item 6110-126-0890 of Section 2.00 of the annual Budget Act for the Reading First Plan, up to six million six hundred thousand dollars ($6,600,000) may be allocated annually in the following manner:

(a) The sum of five million dollars ($5,000,000) to the reading implementation centers, as identified in the Reading First Plan, to provide technical assistance to local educational agencies for the purpose of enhancing reading instruction. The amount of funding that each reading implementation center receives shall be contingent upon an expenditure plan being submitted to, and reviewed by, the State Department of Education, and being approved by the State Board of Education.

(b) The sum of one million three hundred fifty thousand dollars ($1,350,000) to the six regional lead agencies established pursuant to Section 51871 for startup costs and to increase capacity in order to become a reading implementation center. The six regional lead agencies need not be identified in the Reading First Plan.

(c) The sum of two hundred fifty thousand dollars ($250,000) to be used for all of the following in accordance with the Reading First Plan:

(1) Developing materials and assessments for training teachers.

(2) Ensuring that professional development for teachers and instruction for pupils is consistent in quality and delivery.

(3) Providing assistance to local educational agencies to startup reading implementation centers.

CHAPTER 731

An act to add Article 6.6 (commencing with Section 53126) to Chapter 1 of Part 1 of Division 2 of Title 5 of the Government Code, relating to public safety services.

[Approved by Governor September 20, 2002. Filed with Secretary of State September 20, 2002.]

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

SECTION 1. The Legislature hereby finds and declares all of the following:

(a) The "911" emergency response system is inundated by calls from people calling to complain about nonemergency situations.

(b) Estimates of nonemergency calls to the "911" system range from 70 to 90 percent of the total number of calls.

(c) These calls delay the delivery of emergency services.

(d) The availability of a "311" nonemergency telephone number will reduce the number of these calls to the "911" system, thus improving emergency response times.

SEC. 2. Article 6.6 (commencing with Section 53126) is added to Chapter 1 of Part 1 of Division 2 of Title 5 of the Government Code, to read:

Article 6.6. State Nonemergency Telephone System

53126. Every local public agency may establish a nonemergency telephone system as provided in this article. The digits "311" shall be dedicated as the nonemergency telephone number within the system. Nonemergency "311" telephone systems shall be designed to provide a system similar to a "911" selective routing system, whereby the location of the initial call is determined to provide a coordinated uniform delivery system to meet the specified requirements of each local jurisdiction. Every system shall be designed to allow the handling of emergency calls by the "911" emergency telephone system.

53126.5. For purposes of this article, the following definitions apply:

(a) "Division of Telecommunications" means the Division of Telecommunications of the Department of General Services.

(b) "Local public agency" means a city, county, city and county, and joint powers authority that provides a public safety answering point (PSAP).

(c) "Nonemergency telephone system" means a system structured to provide access to only public safety agencies such as police and fire, or a system structured to provide access to public safety agencies and to all other services provided by a local public agency such as street maintenance and animal control.

53127. The Division of Telecommunications may aid local public agencies in the formulation of concepts, methods, and procedures that will improve the operation of systems authorized by this article and increase cooperation among public agencies.

CHAPTER 732

An act to add Section 45004.1 to the Government Code, relating to civil service.

[Approved by Governor September 20, 2002. Filed with Secretary of State September 20, 2002.]

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

SECTION 1. Section 45004.1 is added to the Government Code, to read:

45004.1. (a) Where a hearing is held before a civil service commission or personnel officer pursuant to Section 45004 and where the commission or officer permits an audio or stenographic recording of the hearing, a copy of the recording shall be provided, upon request, to the employee bringing the appeal before the commission or officer.

(b) If a city or its civil service commission or officer orders or makes a transcript of the recording pursuant to subdivision (a), the city shall also do both of the following:

(1) Notify the employee bringing the appeal of the transcription and of the employee's right to obtain a copy of the transcript. The city shall notify the employee within three days of ordering or making the transcript.

(2) Provide a copy of the transcript promptly to the employee at the employee's request.

(c) Notwithstanding any other provision of law, the city may charge fees covering direct duplication costs for recordings or transcripts provided pursuant to this section.

CHAPTER 733

An act to add Section 22821.3 to the Government Code, and to amend Section 13600 of the Probate Code, relating to public employee health benefits, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 20, 2002. Filed with Secretary of State September 20, 2002.]

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

SECTION 1. Section 22821.3 is added to the Government Code, to read:

22821.3. (a) Subject to subdivisions (b) and (c), if the eligible family members of a deceased peace officer or firefighter of a contracting agency, as described in subdivision (a) of Section 22821.2, are validly enrolled under this part on the date of the employee's death, the contracting agency shall continue to pay the employer contribution applicable to active employees for the continued enrollment of those

eligible family members for a period not to exceed 120 days, beginning in the month of the employee's death.

(b) A contracting agency shall remit the amounts required under paragraph (2) of Section 22826 and Section 22831 as well as the total amount of premium required from the employer under this part in accordance with regulations of the board. Enrollment of the eligible family members shall be continuous following the death of the employee.

(c) Notwithstanding subdivision (a), the contracting agency's obligation to pay the employer's contribution pursuant to this section shall terminate upon either of the following:

(1) Enrollment of the eligible family members pursuant to Section 22821.2.

(2) A final determination of the board that the deceased employee's family members are not eligible to enroll or continue enrollment under this part.

(d) During the period that enrollment is continued pursuant to this section, the surviving spouse or eldest eligible family member shall retain the rights and obligations that otherwise would be applicable to the employee under this part.

SEC. 2. Section 13600 of the Probate Code is amended to read:

13600. (a) At any time after a husband or wife dies, the surviving spouse or the guardian or conservator of the estate of the surviving spouse may, without procuring letters of administration or awaiting probate of the will, collect salary or other compensation owed by an employer for personal services of the deceased spouse, including compensation for unused vacation, not in excess of five thousand dollars ($5,000) net.

(b) Not more than five thousand dollars ($5,000) net in the aggregate may be collected by or for the surviving spouse under this chapter from all of the employers of the decedent.

(c) For the purposes of this chapter, a guardian or conservator of the estate of the surviving spouse may act on behalf of the surviving spouse without authorization or approval of the court in which the guardianship or conservatorship proceeding is pending.

(d) The five thousand dollar ($5,000) net limitation set forth in subdivisions (a) and (b) does not apply to the surviving spouse or the guardian or conservator of the estate of the surviving spouse of a firefighter or peace officer described in subdivision (a) of Section 22821.2 of the Government Code.

(e) On January 1, 2003, and on January 1 of each year thereafter, the maximum net amount of salary or compensation payable under subdivisions (a) and (b) to the surviving spouse or the guardian or conservator of the estate of the surviving spouse may be adjusted to

reflect any increase in the cost of living occurring after January 1 of the immediately preceding year. The United States city average of the "Consumer Price Index for all Urban Consumers," as published by the United States Bureau of Labor Statistics, shall be used as the basis for determining the changes in the cost of living. The cost-of-living increase shall equal or exceed 1 percent before any adjustment is made. The net amount payable may not be decreased as a result of the cost-of-living adjustment.

SEC. 3. 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 ensure that the families of specified firefighters and peace officers maintain their health benefits following the death of a firefighter or peace officer, it is necessary that this act take effect immediately.

CHAPTER 734

An act to amend Section 7130 of the Corporations Code and to amend Sections 1909, 14100, 14101, 14101.2, and 14101.4 of, to amend the heading of Article 3 (commencing with Section 14300) of Chapter 3 of Division 5 of, to amend and renumber the headings of Chapters 10 (commencing with Section 16000) and 11 (commencing with Section 16500) of Division 5 of, to add Sections 14001.1, 14001.5, 14002.5, 14101.8, 14102.2, 14102.4, 14102.6, 14211, 14305, 14306, 14307, 14308, 14309, 14310, 14311, 14312, 14313, 14314, 14315, 14316, 14317, 14318, and 14319 to, to repeal Section 14202.5 of, and to repeal and add Sections 14300, 14301, 14302, 14303, and 14304 of, the Financial Code, relating to credit unions, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 20, 2002. Filed with Secretary of State September 20, 2002.]

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

SECTION 1. Section 7130 of the Corporations Code is amended to read:

7130. The articles of incorporation of a corporation formed under this part shall set forth the following:

(a) The name of the corporation.

(b) (1) Except as provided in paragraph (2), the following statement: "This corporation is a nonprofit mutual benefit corporation organized

under the Nonprofit Mutual Benefit Corporation Law. The purpose of this corporation is to engage in any lawful act or activity, other than credit union business, for which a corporation may be organized under such law.''

(2) In the case of a corporation formed under this part that is subject to the California Credit Union Law, the articles shall set forth a statement of purpose that is prescribed in the applicable provisions of the California Credit Union Law.

(3) The articles may include a further definition of the corporation's purposes.

(c) The name and address in this state of the corporation's initial agent for service of process in accordance with subdivision (b) of Section 8210.

SEC. 2. Section 1909 of the Financial Code is amended to read:

1909. (a) In this section, ''governmental agency'' includes, without limitation, any agency of this state, of any other state of the United States, of the United States, or of any foreign nation.

(b) The commissioner may furnish information to a governmental agency that regulates financial institutions.

(c) The commissioner may furnish to a governmental agency that administers a loan guarantee or similar program, information relating to a person who participates in the program.

(d) The commissioner may furnish to a governmental agency that regulates business activities, other than the type described in subdivision (b), information relating to:

(1) A suspected violation of a law administered by the agency.

(2) A person involved in an application to the agency for a license, approval, or other authorization.

(e) The commissioner may furnish to a governmental agency that is a law enforcement agency information relating to a suspected crime.

(f) The commissioner may furnish information to any person who provides share insurance or guaranty of the shares of a credit union in accordance with Section 14858, 16004, or 16503 of the Financial Code.

(g) This section does not prescribe the only circumstances under which the commissioner may furnish information.

SEC. 3. Section 14001.1 is added to the Financial Code, to read:

14001.1. This division is applicable to any person, other than a federal credit union engaging in the business of a credit union in this state. For purposes of this division, ''person'' shall have the meaning set forth in Section 5065 of the Corporations Code.

SEC. 4. Section 14001.5 is added to the Financial Code, to read:

14001.5. If and to the extent that any provision of this division is preempted by federal law, the provision shall not apply and shall not be enforced.

SEC. 5. Section 14002.5 is added to the Financial Code, to read:

14002.5. (a) Except as provided in subdivision (b), all provisions of law applicable to nonprofit mutual benefit corporations generally (including, but not limited to, the Nonprofit Mutual Benefit Corporation Law (Part 3 (commencing with Section 7110) of Division 2 of Title 1 of the Corporations Code)) shall apply to credit unions. However, whenever any provision of this division applicable to credit unions is inconsistent with any provision of law applicable to nonprofit mutual benefit corporations generally, the provision of this division shall apply and the inconsistent provision of law applicable to nonprofit mutual benefit corporations generally shall not apply to a credit union.

(b) Notwithstanding the provisions of subdivision (a), the following provisions of the Corporations Code are not applicable to credit unions:

(1) Section 7131.

(2) Subdivision (a) of Section 7132.

(3) Section 7142.

(4) Subdivision (c) of Section 7223.

(5) Subdivision (c) of Section 7225.

(6) Article 4 (commencing with Section 7240) of Chapter 2 of Part 3 of Title 1.

(7) Chapter 11 (commencing with Section 8110) of Part 3 of Division 2 of Title 1.

(8) Chapter 16 (commencing with Section 8610) of Part 3 of Division 2 of Title 1.

(9) Chapter 17 (commencing with Section 8710) of Part 3 of Division 2 of Title 1.

SEC. 6. Section 14100 of the Financial Code is amended to read:

14100. (a) Credit unions shall be incorporated under the Nonprofit Mutual Benefit Corporation Law of this state.

(b) The Secretary of State shall not file the articles of incorporation of a credit union organized pursuant to subdivision (a) unless the approval of the commissioner is endorsed thereon.

(c) The Secretary of State shall not file articles of incorporation setting forth a name in which ‘‘credit union’’ or related words appear unless the approval of the commissioner is attached. This section shall not apply to the articles of any corporation subject to the California Credit Union Law on which the approval of the commissioner is endorsed.

SEC. 7. Section 14101 of the Financial Code is amended to read:

14101. The articles of incorporation of every credit union shall set forth the following:

(a) The name of the corporation, which shall include the phrase ‘‘credit union.’’

(b) (1) The following statement:

The purpose of the corporation is to engage in credit union business and any other lawful activities which are not prohibited to a credit union by applicable laws or regulations.

(2) By December 31, 2003, each credit union that immediately prior to the enactment of this section was authorized to operate as a credit union shall amend its articles to comply with the provisions of paragraph (1). Notwithstanding Section 7813.5 of the Corporations Code, the amendment of the articles of a credit union as required by paragraph (1) may be adopted by approval of the board alone.

(c) The name and address in this state of the corporation's initial agent for service of process in accordance with subdivision (b) of Section 8210 of the Corporations Code.

(d) The names and addresses of five or more persons appointed to act as initial directors.

SEC. 8. Section 14101.2 of the Financial Code is amended to read:

14101.2. (a) The articles shall be signed by each director named in the articles, acknowledged pursuant to Section 5030 of the Corporations Code and filed in the office of the Secretary of State.

(b) Corporate existence shall begin upon the filing of the articles and shall continue perpetually, unless otherwise expressly provided by law.

SEC. 9. Section 14101.4 of the Financial Code is amended to read:

14101.4. (a) The provisions of Section 14101, except as provided in subdivision (b) of that section, shall not apply to a credit union organized prior to January 1, 1981, but the articles of the credit union shall continue to be governed by the law applicable as of December 31, 1980, until an amendment of its articles pursuant to subdivision (b).

(b) Except as provided in subdivision (b) of Section 14101, a credit union organized prior to January 1, 1981, may amend its articles to conform to Section 14101 except that an initial agent for service of process shall not be set forth and the names and addresses of initial directors shall be deleted. The amendment may be adopted by the board of directors alone.

SEC. 10. Section 14101.8 is added to the Financial Code, to read:

14101.8. (a) No amendment of the articles of a credit union shall become effective unless the certificate of amendment or other instrument setting forth the amendment is filed with the Secretary of State with the commissioner's approval endorsed thereon. The amendment shall become effective upon being filed with the Secretary of State. Promptly after the amendment becomes effective, the credit union shall file with the commissioner a copy of the certificate of amendment or other instrument certified by the Secretary of State.

(b) An amendment of the articles set forth in an agreement of merger that requires the approval of the commissioner shall not be subject to the provisions of subdivision (a). An amendment meeting this criteria shall

become effective at the time the merger becomes effective, pursuant to this division.

SEC. 11. Section 14102.2 is added to the Financial Code, to read:

14102.2. (a) No restated articles of a credit union shall become effective unless the certificate setting forth the restated articles, with the commissioner's approval endorsed thereon, is filed with the Secretary of State. The restated articles shall become effective upon being filed with the Secretary of State.

(b) Promptly after the restated articles become effective, the credit union shall file with the commissioner a copy of the certificate setting forth the restated articles, certified by the Secretary of State.

SEC. 12. Section 14102.4 is added to the Financial Code, to read:

14102.4. (a) No certificate of correction of a credit union shall become effective unless the certificate, with the commissioner's approval endorsed thereon, is filed with the Secretary of State. The certificate of correction shall become effective upon being filed with the Secretary of State.

(b) Promptly after the certificate of correction becomes effective, the credit union shall file with the commissioner a copy of the certificate of correction, certified by the Secretary of State.

SEC. 13. Section 14102.6 is added to the Financial Code, to read:

14102.6. (a) No certificate of revocation by a credit union shall become effective unless the certificate, with the commissioner's approval endorsed thereon, is filed with the Secretary of State. The certificate of revocation shall become effective upon being filed with the Secretary of State.

(b) Promptly after the certificate of revocation becomes effective, the credit union shall file with the commissioner a copy of the certificate of revocation, certified by the Secretary of State.

SEC. 14. Section 14202.5 of the Financial Code is repealed.

SEC. 15. Section 14211 is added to the Financial Code, to read:

14211. In determining for purposes of this division whether the capital of any credit union is adequate, the commissioner shall consider the following:

(a) The nature and volume of the business and the proposed business of the credit union.

(b) The amount, nature, quality, and liquidity of the assets of the credit union.

(c) The amount and nature of the liabilities, including contingent liabilities, of the credit union.

(d) The history of, and prospects for, the credit union to earn and retain income.

(e) The nature and scope of the operations of the credit union.

(f) The performance of the management of the credit union.

(g) Any other factors as are, in the opinion of the commissioner, relevant.

SEC. 16. The heading of Article 3 (commencing with Section 14300) of Chapter 3 of Division 5 of the Financial Code is amended to read:

Article 3. Enforcement

SEC. 17. Section 14300 of the Financial Code is repealed.

SEC. 18. Section 14300 is added to the Financial Code, to read:

14300. For purposes of this chapter, the following terms shall have the following meanings:

(a) ''Officer with a subject institution'' means the position of director, officer, or employee with the subject institution.

(b) ''Subject institution'' means any of the following:

(1) A California credit union.

(2) A subsidiary of a California credit union.

(3) A foreign, whether other state or other nation, credit union, other than a federal credit union, that maintains an office in this state, with respect to the office.

(4) Any other person, other than a federal credit union, conducting business in this state.

(c) ''Subject person,'' when used with respect to a subject institution, means any of the following:

(1) A director, officer, employee, or agent of the subject institution.

(2) A member, consultant, joint venture partner, or other person that participates in the affairs of a subject institution.

(3) An independent contractor, including an appraiser or accountant, who knowingly or recklessly participates in any of the following acts if the act caused or is likely to cause a material financial loss to, or a significant adverse effect on, the subject institution.

(A) A violation of any applicable law, regulation, or order.

(B) A breach of fiduciary duty.

(C) An unsafe or unsound act.

(d) ''Violation'' includes any act done alone or with other persons for or toward causing, bringing about, participating in, counseling, aiding, or abetting a violation of any applicable statute, regulation, provision of a written order issued by the commissioner, or provision of a written operating agreement signed by the commissioner and a subject institution or subject person.

SEC. 19. Section 14301 of the Financial Code is repealed.

SEC. 20. Section 14301 is added to the Financial Code, to read:

14301. Any requirement in this chapter for notice or hearing before the commissioner issues an order may be waived by the person to whom the order is issued.

SEC. 21. Section 14302 of the Financial Code is repealed.

SEC. 22. Section 14302 is added to the Financial Code, to read:

14302. (a) The commissioner may bring an action in the name of the people of this state in the superior court to enjoin any violation of, to enforce compliance with, or to collect any penalty or other liability imposed under, this division or any regulation or order issued under this division. Upon a proper showing, a permanent or preliminary injunction, restraining order, or writ of mandate shall be granted, and a monitor, receiver, conservator, or other designated fiduciary or officer of the court may be appointed for the defendant or the defendant's assets, or other relief may be granted as appropriate.

(b) A receiver, monitor, conservator, or other designated fiduciary officer of the court appointed by the court pursuant to this section may, with the approval of the court, exercise all powers of the defendant's officers, directors, partners, trustees, or persons who exercise similar powers and perform similar duties. No action at law or in equity may be maintained by any party against the commissioner, or a receiver, monitor, conservator, or other designated fiduciary or officer of the court by reason of their exercising these powers or performing these duties pursuant to the order of, or with the approval of, the court.

(c) If the commissioner finds that it is in the public interest, the commissioner may include in an action authorized by subdivision (a) a claim for ancillary relief, including a claim for restitution, disgorgement, or damages on behalf of the person injured by the act or practice constituting the subject matter of the action, and the court shall have jurisdiction to award ancillary relief.

(d) Neither the provision of subdivision (a) that authorizes the appointment of a monitor, receiver, conservator, or other designated fiduciary or officer of the court, nor any provision of subdivision (b) or (c), applies to any of the following:

(1) A California credit union that is authorized by the commissioner to transact credit union business.

(2) A foreign, whether other state or other nation, credit union that maintains an office in this state in accordance with federal law, the law of this state, and the law of the credit union's domicile.

(e) The provisions of this section that authorize the commissioner to bring actions and seek relief are not intended to, and do not, affect any right that another person may have to bring the same or similar actions or to seek the same or similar relief.

SEC. 23. Section 14303 of the Financial Code is repealed.

SEC. 24. Section 14303 is added to the Financial Code, to read:

14303. (a) The commissioner may, without any prior notice or hearing, order a person to cease and desist from violating Section 14150 if either of the following criteria are met:

(1) The commissioner finds that the person has violated Section 14150.

(2) The commissioner finds that there is reasonable cause to believe that the person will imminently violate Section 14150.

(b) (1) (A) Within 30 days after an order is issued pursuant to subdivision (a), the person to whom the order is issued may file with the commissioner an application for a hearing on the order.

(B) If the commissioner fails to commence the hearing within 15 business days after the application is filed with the commissioner, or within any longer period to which the person consents, the order shall be deemed rescinded.

(C) Within 30 days after the hearing, or within any longer period to which the person consents, the commissioner shall affirm, modify, or rescind the order. If the commissioner fails to affirm, modify, or rescind the order within this time limit, the order shall be deemed rescinded.

(2) The right of a person to whom an order is issued under subdivision (a) to petition for judicial review of the order shall not be affected by the failure of the person to apply to the commissioner for a hearing on the order pursuant to paragraph (1).

SEC. 25. Section 14304 of the Financial Code is repealed.

SEC. 26. Section 14304 is added to the Financial Code, to read:

14304. If, after notice and a hearing, the commissioner finds any of the factors set forth in subdivision (a) or (b) with respect to a subject institution or subject person, the commissioner may order the subject institution or subject person to cease and desist from the action or violation:

(a) That the subject institution or subject person has engaged or participated, is engaging or participating, or that there is reasonable cause to believe that the subject institution or subject person will imminently engage or participate in any unsafe or unsound act with respect to the business of the subject institution.

(b) That the subject institution or subject person has violated, is violating, or that there is reasonable cause to believe that the subject institution or subject person will imminently violate, any provision of this division, of any regulation or order issued under this division, of any other applicable law, or of any written agreement with the commissioner.

SEC. 27. Section 14305 is added to the Financial Code, to read:

14305. (a) If the commissioner finds that any of the factors set forth in Section 14304 is true with respect to a subject institution or subject person and that the action or violation is likely to have any of the consequences set forth in paragraphs (1) to (4), inclusive, the

commissioner may, without any prior notice or hearing, order the subject institution or subject person to cease and desist from the action or violation:

(1) To cause the insolvency of the subject institution.

(2) To cause significant dissipation of the assets or earnings of the subject institution.

(3) To weaken the condition of the subject institution.

(4) To otherwise prejudice the interests of the members of the subject institution.

(b) (1) (A) Within 30 days after an order is issued pursuant to subdivision (a), any subject institution or subject person to whom the order is issued may file with the commissioner an application for a hearing on the order.

(B) If the commissioner fails to commence the hearing within 15 business days after the application is filed with the commissioner, or within any longer period to which the subject institution or subject person consents, the order shall be deemed rescinded.

(C) Within 30 days after the hearing, or within any longer period to which the subject institution or subject person consents, the commissioner shall affirm, modify, or rescind the order. If the commissioner fails to affirm, modify, or rescind the order within this time limit, the order shall be deemed rescinded.

(2) The right of any subject institution or subject person to whom an order is issued under subdivision (a) to petition for judicial review of the order shall not be affected by the failure of the subject institution or subject person to apply to the commissioner for a hearing on the order pursuant to paragraph (1).

SEC. 28. Section 14306 is added to the Financial Code, to read:

14306. An order issued pursuant to Sections 14303 to 14305, inclusive, may include any of the following provisions:

(a) Require the subject institution or subject person to take affirmative action to correct any condition resulting from the action or violation, including any of the following actions:

(1) To make restitution or provide reimbursement, indemnification, or guarantee against loss, if the subject institution or subject person was unjustly enriched in connection with the action or violation or if the action or violation involved a reckless disregard for any provision of this division, any regulation or order issued under this division, any other applicable law, or any agreement with the commissioner.

(2) Restrict the growth of the subject institution.

(3) Dispose of any loan or other asset involved.

(4) Correct violations of law.

(5) Employ qualified officers or employees, who may be subject to approval of the commissioner.

(6) Take any other action that the commissioner may find to be necessary or advisable.

(b) Limit the business activities or functions of the subject institution or subject person.

SEC. 29. Section 14307 is added to the Financial Code, to read:

14307. (a) If the commissioner finds that a subject institution's books or records are so incomplete or inaccurate that the commissioner is unable through the normal supervisory process to determine the financial condition of the subject institution or of the details or purpose of any transaction or transactions that may materially affect the financial condition of the subject institution, the commissioner may, without any prior notice or hearing, order the subject institution to do any of the following:

(1) To cease any activity or practice that gave rise, in whole or in part, to the incomplete or inaccurate state of the books or records.

(2) To take affirmative action to restore the books or records to a complete and accurate state.

(b) (1) (A) Within 30 days after an order is issued pursuant to subdivision (a), any subject institution or subject person to whom the order is issued may file with the commissioner an application for a hearing on the order.

(B) If the commissioner fails to commence the hearing within 15 business days after the application is filed with the commissioner, or within any longer period to which the subject institution or subject person consents, the order shall be deemed rescinded.

(C) Within 30 days after the hearing, or within any longer period to which the subject institution or subject person consents, the commissioner shall affirm, modify, or rescind the order. If the commissioner fails to affirm, modify, or rescind the order within this time limit, the order shall be deemed rescinded.

(2) The right of any subject institution or subject person to whom an order is issued under subdivision (a) to petition for judicial review of the order shall not be affected by the failure of the subject institution or subject person to apply to the commissioner for a hearing on the order pursuant to paragraph (1).

SEC. 30. Section 14308 is added to the Financial Code, to read:

14308. If, after notice and a hearing, the commissioner finds that any of the factors set forth in subdivision (a), any of the factors set forth in subdivision (b), and any of the factors set forth in subdivision (c) are true with respect to a subject person of a subject institution, the commissioner may issue an order suspending or removing the subject person from the subject person's office, if any, with the subject institution and prohibiting the subject person from participating in any

manner in the conduct of the affairs of the subject institution without the approval of the commissioner:

(a) (1) That the subject person has, directly or indirectly, violated any provision of this division, of any regulation or order issued under this division, of any other applicable law relating to the business of the licensee, or of any written agreement with the commissioner.

(2) That the subject person has, directly or indirectly, engaged or participated in any unsafe or unsound act in connection with the business of the subject institution or any other business institution.

(3) That the subject person has, directly or indirectly, engaged or participated in any act which constitutes a breach of the subject person's fiduciary duty.

(b) That, by reason of the act, violation, or breach of fiduciary duty described in subdivision (a) the following have occurred:

(1) The subject institution or business institution has suffered or will probably suffer financial loss or other damage.

(2) The interests of the members of the subject institution have been or could be prejudiced.

(3) The subject person has received financial gain or other benefit.

(c) That the act, violation, or breach of fiduciary duty described in subdivision (a) either involves dishonesty on the part of the subject person or demonstrates the subject person's willful or continuing disregard for the safety or soundness of the subject institution or business institution.

SEC. 31. Section 14309 is added to the Financial Code, to read:

14309. (a) If the commissioner finds that any of the factors set forth in subdivision (a) of Section 14308, any of the factors set forth in subdivision (b) of Section 14308, and any of the factors set forth in subdivision (c) of Section 14308 are true with respect to a subject person of a subject institution, and that an action is necessary or advisable for the protection of the subject institution or the interests of the members of the subject institution, the commissioner may, without any prior notice or hearing, issue an order that does both of the following:

(1) Suspends the subject person from the subject person's office, if any, with the subject institution.

(2) Prohibits the subject person from participating in any manner in the conduct of the affairs of the subject institution without the approval of the commissioner.

(b) (1) (A) Within 30 days after an order is issued pursuant to subdivision (a), any subject person to whom the order is issued may file with the commissioner an application for a hearing on the order.

(B) If the commissioner fails to commence the hearing within 15 business days after the application is filed with the commissioner or

within any longer period to which the subject person consents, the order shall be deemed rescinded.

(C) Within 30 days after the hearing or within any longer period to which the subject person consents, the commissioner shall affirm, modify, or rescind the order. If the commissioner fails to affirm, modify, or rescind the order within this time limit, the order shall be deemed rescinded.

(2) The right of any subject person to whom an order is issued under subdivision (a) to petition for judicial review of the order shall not be affected by the failure of the subject person to apply to the commissioner for a hearing on the order pursuant to paragraph (1).

SEC. 32. Section 14310 is added to the Financial Code, to read:

14310. (a) If the commissioner finds that any of the factors set forth in paragraph (1) and the factor set forth in paragraph (2) are true with respect to a subject person or former subject person of a subject institution, the commissioner may, without any prior notice or hearing, issue an order suspending the subject person or former subject person from his or her office, if any, with the subject institution and prohibiting him or her from further participating in any manner in the conduct of the affairs of the subject institution without the approval of the commissioner:

(1) That the subject person or former subject person has been charged in an indictment issued by a grand jury or in an information, complaint, or similar pleading issued by a United States attorney, district attorney, or other governmental official or agency authorized to prosecute crimes, with commission of or participation in any of the following crimes:

(A) A crime that involves dishonesty or breach of trust and that is punishable by imprisonment for a term exceeding one year.

(B) A criminal violation of any provision of this division.

(C) A criminal violation of Section 1956, 1957, or 1960 of Title 18 of, or Section 5322 or 5324 of Title 31 of, the United States Code.

(D) A criminal violation of a law of any jurisdiction other than the United States that is substantially similar to any of the statutes specified in subparagraph (C).

(2) That continued or resumed service or participation by the subject person or former subject person may pose a threat to the interests of the members of the subject institution or may threaten to impair public confidence in the subject institution.

(b) An order issued pursuant to subdivision (a) shall remain in effect until the indictment or the information, complaint, or similar pleading is finally disposed of or, if the order is earlier terminated by the commissioner, until the order is so terminated.

(c) If the commissioner finds that the factors set forth in paragraphs (1) and (2) are true with respect to a subject person or former subject

person of a subject institution, the commissioner may, without any prior notice or hearing, issue an order suspending or removing the subject person or former subject person from his or her office, if any, with the subject institution and prohibiting him or her from further participating in any manner in the conduct of the affairs of the subject institution without the approval of the commissioner:

(1) That the subject person or former subject person has been finally convicted of any crime of the type described in paragraph (1) of subdivision (a). For purposes of this paragraph, an agreement to enter a pretrial diversion or similar program is deemed to be a conviction.

(2) That continued or resumed service or participation by the subject person or former subject person may pose a threat to the interests of the members of the subject institution or may threaten to impair public confidence in the subject institution.

(d) (1) (A) Within 30 days after an order is issued pursuant to subdivision (a) or (c), any subject person or former subject person of a subject institution to whom the order is issued may file with the commissioner an application for a hearing on the order.

(B) If the commissioner fails to commence the hearing within 15 business days after the application is filed with the commissioner or within any longer period to which the subject person or former subject person consents, the order shall be deemed rescinded.

(C) Within 30 days after the hearing or within any longer period to which the subject person or former subject person consents, the commissioner shall affirm, modify, or rescind the order. If the commissioner fails to affirm, modify, or rescind the order within this time limit, the order shall be deemed rescinded.

(2) The right of any subject person or former subject person of a subject institution to whom an order is issued pursuant to subdivision (a) or (c) to petition for judicial review of the order shall not be affected by the failure of the person to apply to the commissioner for a hearing on the order pursuant to paragraph (1).

(e) The fact that any subject person of a subject institution charged with a crime of the type described in paragraph (1) of subdivision (a) is not finally convicted of the crime does not preclude the commissioner from issuing an order regarding the subject person pursuant to any other section of this division.

SEC. 33. Section 14311 is added to the Financial Code, to read:

14311. (a) Any subject institution, subject person of a subject institution, or former subject person of a subject institution to whom an order is issued under Sections 14308 to 14310, inclusive, may apply to the commissioner to modify or rescind the order. In deciding the application, the commissioner shall consider whether it is in the public interest to modify or rescind the order and whether it is reasonable to

believe that the subject person or former subject person will, if and when he or she becomes a subject person of a subject institution, comply with all applicable provisions of this division and of any regulation or order issued under this division.

(b) The right of any subject institution, subject person of a subject institution, or former subject person of a subject institution to whom an order is issued under Sections 14308 to 14310, inclusive, to petition for judicial review of the order shall not be affected by the failure of the subject institution, subject person, or former subject person to apply to the commissioner pursuant to subdivision (a) to modify or rescind the order.

SEC. 34. Section 14312 is added to the Financial Code, to read:

14312. (a) For purposes of this section, ''subject depository institution'' means any of the following:

(1) A credit union that is organized under the laws of this state or that maintains an office in this state.

(2) An affiliate of an institution specified in paragraph (1).

(b) It shall be unlawful for a subject person or former subject person of a subject institution to whom an order is issued under Sections 14308 to 14310, inclusive, willfully to do, directly or indirectly, any of the following without the approval of the commissioner so long as the order is in effect:

(1) To act as a subject person of any subject depository institution.

(2) To vote any shares or other securities having voting rights for the election of any person as a director of a subject depository institution.

(3) To solicit, procure, transfer or attempt to transfer, or vote any proxy, consent, or authorization with respect to any shares or other securities of a subject depository institution having voting rights.

(4) To otherwise participate in any manner in the conduct of the affairs of any subject depository institution.

SEC. 35. Section 14313 is added to the Financial Code, to read:

14313. If the commissioner finds that any of the factors set forth in subdivisions (a) to (g), inclusive, are true with respect to a California credit union, the commissioner may by order, without any prior notice or hearing, take possession of the property and business of the California credit union:

(a) That the California credit union has violated any provision of this division, of another applicable law, of any order issued under this division, or of any written agreement with the commissioner, or has committed a material violation of any regulation of the commissioner.

(b) That the California credit union is conducting its business in an unsafe or unsound manner.

(c) That the California credit union is in such condition that it is unsafe or unsound for it to transact credit union business.

(d) That the California credit union has inadequate capital or is insolvent.

(e) That the California credit union failed to pay any of its obligations as they came due or is reasonably expected to be unable to pay its obligations as they come due.

(f) That the California credit union has ceased to transact credit union business.

(g) That the California credit union has, with the approval of its board, requested the commissioner to take possession of its property and business.

SEC. 36. Section 14314 is added to the Financial Code, to read:

14314. (a) If the commissioner takes possession of the property and business of a California credit union pursuant to Section 14313, the California credit union may, within 10 days, apply to the superior court in the county where its principal executive office is located to enjoin further proceedings. The court may, after citing the commissioner to show cause why further proceedings should not be enjoined and after a hearing, dismiss the application or enjoin the commissioner from further proceedings and order the commissioner to surrender the property and business of the California credit union to the California credit union or make any further order as may be just. The judgment of the court may be appealed by the commissioner or by the California credit union in the manner provided by law for appeals from the judgment of a superior court.

(b) At any time after the commissioner takes possession of the property and business of a California credit union pursuant to Section 14313, the California credit union may, with the approval of the commissioner, resume business upon conditions as the commissioner may prescribe.

SEC. 37. Section 14315 is added to the Financial Code, to read:

14315. (a) On taking possession of the business and assets of any credit union as provided in this chapter, the commissioner may proceed to liquidate the credit union in the manner provided by Article 1 (commencing with Section 3100), except Sections 3100, 3101, and 3102, Article 3 (commencing with Section 3160), and Article 7 (commencing with Section 3240) of Chapter 17 of Division 1, and the provisions of those articles, except Sections 3100, 3101, and 3102, shall apply as if the California credit union were a California state commercial bank, or he or she may appoint a liquidating agent or a liquidating committee of three members of the credit union to liquidate the business and assets of the credit union in the manner provided in Article 2 (commencing with Section 15250) of Chapter 9, except that in lieu of the certificate required under Section 15252 the commissioner shall prepare and file in the office of the Secretary of State a certificate of

commencement of liquidation proceedings upon taking possession of the business and assets, and the commissioner or his authorized deputy shall countersign the certificate referred to in Sections 15257 and 15258 whenever liquidation is involuntary. The commissioner may, however, prepare and file a final certificate whenever he or she retains possession of the assets of any credit union for the purpose of liquidation. The liquidating agent need not be a member of the credit union to be liquidated, and may be a person, firm, or corporation as determined by the commissioner.

(b) If the commissioner takes possession of the property and business of a California credit union pursuant to Section 14313, the commissioner may tender to the National Credit Union Administration an appointment as conservator or receiver of the California credit union. If the National Credit Union Administration accepts the appointment, the National Credit Union Administration shall have, in addition to any powers conferred by federal law, the powers conferred on the commissioner pursuant to subdivision (a).

SEC. 38. Section 14316 is added to the Financial Code, to read:

14316. The commissioner shall supervise the acts of the liquidating agent or the liquidating committee appointed under this article and may remove the liquidating agent or any member of the liquidating committee in his or her discretion.

SEC. 39. Section 14317 is added to the Financial Code, to read:

14317. If required by the commissioner, the liquidating agent or the members of the liquidating committee appointed under this article shall provide proof of bond coverage extending to the liquidating agent or members of the liquidating committee. The bond shall include coverage for fraud, dishonesty, and faithful performance. The premium for that bond shall be paid out of the assets of the credit union.

SEC. 40. Section 14318 is added to the Financial Code, to read:

14318. If the commissioner retains possession of the assets of a credit union for purposes of liquidation, the commissioner shall use the services of civil service employees of the commissioner's office and the attorneys employed by the commissioner or the Department of Justice shall render all necessary legal services, as the commissioner may request.

SEC. 41. Section 14319 is added to the Financial Code, to read:

14319. In any case where the commissioner takes possession of a subject institution pursuant to this article without a prior notice or hearing, or takes action against a subject person without prior notice or hearing, the commissioner shall, upon taking possession or taking the action, concurrently provide to the subject institution or person a written order. The order shall set forth the condition or conditions of the subject institution or action or actions of the subject person that constitute the

basis or bases for the commissioner's action as to the subject institution or subject person. In any case where the commissioner takes possession of a subject institution pursuant to this article, the commissioner shall establish clear evidence upon which he or she is taking action against the subject institution.

SEC. 42. The heading of Chapter 10 (commencing with Section 16000) of Division 5 of the Financial Code is amended and renumbered to read:

CHAPTER 11. FOREIGN (OTHER STATE) CREDIT UNIONS

SEC. 43. The heading of Chapter 11 (commencing with Section 16500) of Division 5 of the Financial Code is amended and renumbered to read:

CHAPTER 12. FOREIGN (OTHER NATION) CREDIT UNIONS

SEC. 44. (a) For purposes of subdivision (b), ''subject credit union'' means a California corporation which, immediately prior to the operative date of this act, was authorized under the California Credit Union Law to operate as a credit union.

(b) The articles of each subject credit union shall, as of the operative date of this act, be deemed to provide that the purpose of the corporation is to engage in credit union business and any other lawful activities that are not, by applicable laws or regulations, prohibited to a credit union.

SEC. 45. 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 a more appropriate regulatory structure and comprehensive regulatory oversight over credit unions at the earliest possible time, it is necessary that this act take effect immediately.

CHAPTER 735

An act to amend Section 35294.1 of the Education Code, relating to schools.

[Approved by Governor September 20, 2002. Filed with Secretary of State September 20, 2002.]

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

SECTION 1. Section 35294.1 of the Education Code is amended to read:

35294.1. (a) Each school district and county office of education is responsible for the overall development of comprehensive school safety plans for its schools operating any kindergarten and any of grades 1 to 12, inclusive.

(b) (1) Except as provided in subdivision (d) with regard to a small school district, the schoolsite council established pursuant to Section 52012 or 52852 shall write and develop a comprehensive school safety plan relevant to the needs and resources of that particular school.

(2) The schoolsite council may delegate this responsibility to a school safety planning committee made up of the following members:

(A) The principal or the principal's designee.

(B) One teacher who is a representative of the recognized certificated employee organization.

(C) One parent whose child attends the school.

(D) One classified employee who is a representative of the recognized classified employee organization.

(E) Other members, if desired.

(3) The schoolsite council shall consult with a representative from a law enforcement agency in the writing and development of the comprehensive school safety plan.

(4) In the absence of a schoolsite council, the members specified in paragraph (2) shall serve as the school safety planning committee.

(c) Nothing in this article shall limit or take away the authority of school boards as guaranteed under this code.

(d) (1) Subdivision (b) shall not apply to a small school district, as defined in paragraph (2), if the small school district develops a districtwide comprehensive school safety plan that is applicable to each schoolsite.

(2) As used in this article, ''small school district'' means a school district that has fewer than 2,501 units of average daily attendance in the 1997–98 fiscal year.

(e) (1) When a principal or his or her designee verifies through local law enforcement officials that a report has been filed of the occurrence of a violent crime on the schoolsite of an elementary or secondary school at which he or she is the principal, the principal or the principal's designee may send to each pupil's parent or legal guardian and each school employee a written notice of the occurrence and general nature of the crime. If the principal or his or her designee chooses to send the written notice, the Legislature encourages the notice be sent no later than the end of business on the second regular work day after the verification.

If, at the time of verification, local law enforcement officials determine that notification of the violent crime would hinder an ongoing investigation, the notification authorized by this subdivision shall be made within a reasonable period of time, to be determined by the local law enforcement agency and the school district. For purposes of this section, an act that is considered a ''violent crime'' shall meet the definition of Section 67381 and be an act for which a pupil could or would be expelled pursuant to Section 48915.

(2) Nothing in this subdivision shall create any liability in a school district or its employees for complying with paragraph (1).

CHAPTER 736

An act to add Section 99315.95 to the Public Utilities Code, relating to transportation, and making an appropriation therefor.

[Approved by Governor September 20, 2002. Filed with Secretary of State September 20, 2002.]

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

SECTION 1. Section 99315.95 is added to the Public Utilities Code, to read:

99315.95. All funds from the Public Transportation Account and the State Highway Account, in the State Transportation Fund, previously allocated by the California Transportation Commission to the City of Seaside for the acquisition of right-of-way for the Fort Ord rail station shall also be available for expenditure by the Transportation Agency for Monterey County for work at the Monterey Bay rail station. The commission shall oversee the timely use of these funds in accordance with the requirements specified in current law.

CHAPTER 737

An act to amend Section 19835.5A of the Business and Professions Code, relating to gaming.

[Approved by Governor September 20, 2002. Filed with Secretary of State September 20, 2002.]

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

SECTION 1. Section 19835.5A of the Business and Professions Code is amended to read:

19835.5A. (a) A licensee may remove from his or her licensed premises any person who, while on the premises:

(1) Is a disorderly person, as defined by Section 647 of the Penal Code.

(2) Interferes with a lawful gambling operation.

(3) Solicits or engages in any act of prostitution.

(4) Begs, is boisterous, or is otherwise offensive to other persons.

(5) Commits any public offense.

(6) Is intoxicated or under the influence of a controlled substance.

(7) Is a person who the commission, by regulation, has determined should be excluded from licensed gambling establishments in the public interest.

(b) This section does not preclude a licensee from exercising the right to deny access to or to remove any person from its premises or property for any reason the licensee deems appropriate.

CHAPTER 738

An act to amend Sections 19804, 19805, and 19807 of, to amend and renumber Sections 19801.2, 19802, 19809, 19810A, 19811A, 19812A, 19813A, 19814A, 19815, 19815.5A, 19815.8A, 19817A, 19818A, 19820A, 19821A, 19822A, 19823A, 19823.5, 19824A, 19825, 19827, 19828, 19829, 19830A, 19834A, 19834.5A, 19834.6A, 19835A, 19835.5A, 19840, 19840.5, 19841A, 19842A, 19844, 19846, 19847A, 19848A, 19848.5, 19850A, 19851A, 19851.5, 19852A, 19852.1, 19853A, 19853.5, 19854A, 19855, 19856A, 19857A, 19858A, 19858.5, 19858.7A, 19859, 19860A, 19861, 19862A, 19862.5, 19863A, 19864A, 19870, 19871A, 19872A, 19873, 19880, 19881, 19882A, 19883A, 19900A, 19901A, 19902A, 19903A, 19904A, 19905A, 19910.4, 19910.5A, 19911A, 19912A, 19913A, 19915A, 19915.5, 19916, 19917, 19918A, 19920A, 19921A, 19922, 19930, 19932, 19933, 19933.5A, 19934, 19940, 19941, 19942A, 19944, 19950, 19950.1, 19950.2, 19950.3, 19951, 19956, 19957, 19958, 19959, 19959.5A, 19960.2A, 19960.4, and 19980 of, to add a heading for Article 10 (commencing with Section 19930) to, Article 11 (commencing with Section 19940) to, Article 12 (commencing with Section 19950) to, Article 13 (commencing with Section 19960) to, Article 14 (commencing with Section 19970) to, Article 15

(commencing with Section 19980) to, and Article 16 (commencing with Section 19984) to, Chapter 5 of Division 8 of, to repeal Sections 19808, 19836A, and 19906A of, and to repeal the headings of Article 9.5 (commencing with Section 19920A) of, Article 10 (commencing with Section 19930) of, Article 11 (commencing with Section 19940) of, Article 12 (commencing with Section 19950) of, Article 13 (commencing with Section 19956) of, and Article 14 (commencing with Section 19959) of, Chapter 5 of Division 8 of, the Business and Professions Code, relating to gambling control.

[Approved by Governor September 20, 2002. Filed with Secretary of State September 20, 2002.]

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

SECTION 1. Section 19801.2 of the Business and Professions Code is amended and renumbered to read:

19802. The Legislature further finds and declares as follows:

Appropriate regulation of banking and percentage games or of gambling devices consistent with public safety and welfare would require, at a minimum, all of the following safeguards:

(a) The creation of an adequately funded gambling control commission with comprehensive powers to establish minimum standards and technical specifications for gambling equipment and devices.

(b) The creation of an adequately funded law enforcement capability within state government to inspect, test, and evaluate gambling equipment and devices and modifications thereto.

(c) An appropriation by the Legislature to sufficiently fund a full-time commission and law enforcement capability with responsibilities commensurate with the expanded scope of gambling.

(d) The enactment of necessary regulations setting forth standards and procedures for the licensing of persons connected with the manufacture, sale, and distribution of equipment and devices in this state.

(e) The enactment of standards related to the trustworthiness and fairness of equipment and devices, upon the commission's recommendation to the Legislature.

(f) The enactment of statutory provisions governing the importation, transportation, sale, and disposal of equipment and devices, upon the commission's recommendation to the Legislature.

(g) The enactment of statutes providing for appropriate inspection and testing of equipment and devices, upon the commission's recommendation to the Legislature.

SEC. 2. Section 19802 of the Business and Professions Code is amended and renumbered to read:

19803. (a) It is the intent of the Legislature, in enacting this chapter, to provide uniform, minimum standards of regulation of permissible gambling activities and the operation of lawful gambling establishments.

(b) Nothing in this chapter shall be construed to preclude any city, county, or city and county from prohibiting any gambling activity, from imposing more stringent local controls or conditions upon gambling than are imposed by this chapter or by the commission, from inspecting gambling premises to enforce applicable state and local laws, or from imposing any local tax or license fee, if the prohibition, control, condition, inspection, tax, or fee is not inconsistent with this chapter. Nothing in this chapter shall be construed to affect the responsibility of local law enforcement agencies to enforce the laws of this state, including this chapter.

SEC. 3. Section 19804 of the Business and Professions Code is amended to read:

19804. (a) In any action for declaratory or injunctive relief, or for relief by way of any extraordinary writ, other than an action initiated pursuant to Section 19932, wherein the construction, application, or enforcement of this chapter, or any regulation adopted pursuant thereto, or any order of the division or the commission issued pursuant thereto, is called into question, a court shall not grant any preliminary or permanent injunction, or any peremptory writ of mandate, certiorari, or prohibition, in connection therewith, except as follows:

(1) Upon proof by clear and convincing evidence that the division or the commission is abusing or threatens to abuse its discretion.

(2) Upon proof by clear and convincing evidence that the division or the commission is exceeding or threatens to exceed its jurisdiction.

(b) No temporary injunction or other provisional order shall issue to restrain, stay, or otherwise interfere with any action by the division or the commission, except upon a finding by the court, based on clear and convincing evidence, that the public interest will not be prejudiced thereby, and no order may be effective for more than 15 calendar days.

(c) This section does not relieve a petitioner's obligation to exhaust administrative remedies.

(d) In an action for relief of any nature wherein the construction, application, or enforcement of this chapter, or any regulation adopted pursuant thereto, or any order of the division or commission issued pursuant thereto, is called into question, the party filing the pleading shall furnish a copy thereof to the division and to the commission. The copy shall be furnished by the party filing the pleading within 10 business days after filing.

SEC. 4. Section 19805 of the Business and Professions Code is amended to read:

19805. As used in this chapter, the following definitions shall apply:

(a) ''Affiliate'' means a person who, directly or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with, a specified person.

(b) ''Applicant'' means any person who has applied for, or is about to apply for, a state gambling license, a key employee license, a registration, a finding of suitability, a work permit, a manufacturer's or distributor's license, or an approval of any act or transaction for which the approval or authorization of the commission or division is required or permitted under this chapter.

(c) ''Banking game'' or ''banked game'' does not include a controlled game if the published rules of the game feature a player-dealer position and provide that this position must be continuously and systematically rotated amongst each of the participants during the play of the game, ensure that the player-dealer is able to win or lose only a fixed and limited wager during the play of the game, and preclude the house, another entity, a player, or an observer from maintaining or operating as a bank during the course of the game. For purposes of this section it is not the intent of the Legislature to mandate acceptance of the deal by every player if the division finds that the rules of the game render the maintenance of or operation of a bank impossible by other means. The house shall not occupy the player-dealer position.

(d) ''Commission'' means the California Gambling Control Commission.

(e) ''Controlled gambling'' means to deal, operate, carry on, conduct, maintain, or expose for play any controlled game.

(f) ''Controlled game'' means any controlled game, as defined by subdivision (e) of Section 337j of the Penal Code.

(g) ''Director,'' when used in connection with a corporation, means any director of a corporation or any person performing similar functions with respect to any organization. In any other case, ''director'' means the Director of the Division of Gambling Control.

(h) ''Division'' means the Division of Gambling Control in the Department of Justice.

(i) ''Finding of suitability'' means a finding that a person meets the qualification criteria described in subdivisions (a) and (b) of Section 19857, and that the person would not be disqualified from holding a state gambling license on any of the grounds specified in subdivision (a) of Section 19859.

(j) ''Game'' and ''gambling game'' means any controlled game.

(k) ''Gambling'' means to deal, operate, carry on, conduct, maintain, or expose for play any controlled game.

(*l*) ''Gambling enterprise employee'' means any natural person employed in the operation of a gambling enterprise, including, without limitation, dealers, floor personnel, security employees, countroom personnel, cage personnel, collection personnel, surveillance personnel, data-processing personnel, appropriate maintenance personnel, waiters and waitresses, and secretaries, or any other natural person whose employment duties require or authorize access to restricted gambling establishment areas.

(m) ''Gambling establishment,'' ''establishment,'' or ''licensed premises'' except as otherwise defined in Section 19812, means one or more rooms where any controlled gambling or activity directly related thereto occurs.

(n) ''Gambling license'' or ''state gambling license'' means any license issued by the state that authorizes the person named therein to conduct a gambling operation.

(o) ''Gambling operation'' means exposing for play one or more controlled games that are dealt, operated, carried on, conducted, or maintained for commercial gain.

(p) ''Gross revenue'' means the total of all compensation received for conducting any controlled game, and includes interest received in payment for credit extended by an owner licensee to a patron for purposes of gambling, except as provided by regulation.

(q) ''House'' means the gambling establishment, and any owner, shareholder, partner, key employee, or landlord thereof.

(r) ''Independent agent,'' except as provided by regulation, means any person who does either of the following:

(1) Collects debt evidenced by a credit instrument.

(2) Contracts with an owner licensee, or an affiliate thereof, to provide services consisting of arranging transportation or lodging for guests at a gambling establishment.

(s) ''Institutional investor'' means any retirement fund administered by a public agency for the exclusive benefit of federal, state, or local public employees, any investment company registered under the Investment Company Act of 1940 (15 U.S.C. Sec. 80a-1 et seq.), any collective investment trust organized by banks under Part Nine of the Rules of the Comptroller of the Currency, any closed-end investment trust, any chartered or licensed life insurance company or property and casualty insurance company, any banking and other chartered or licensed lending institution, any investment advisor registered under the Investment Advisors Act of 1940 (15 U.S.C. Sec. 80b-1 et seq.) acting in that capacity, and other persons as the commission may determine for reasons consistent with the policies of this chapter.

(t) ''Key employee'' means any natural person employed in the operation of a gambling enterprise in a supervisory capacity or

empowered to make discretionary decisions that regulate gambling operations, including, without limitation, pit bosses, shift bosses, credit executives, cashier operations supervisors, gambling operation managers and assistant managers, managers or supervisors of security employees, or any other natural person designated as a key employee by the division for reasons consistent with the policies of this chapter.

(u) ''Key employee license'' means a state license authorizing the holder to be associated with a gambling enterprise as a key employee.

(v) ''Licensed gambling establishment'' means the gambling premises encompassed by a state gambling license.

(w) ''Limited partnership'' means a partnership formed by two or more persons having as members one or more general partners and one or more limited partners.

(x) ''Limited partnership interest'' means the right of a general or limited partner to any of the following:

(1) To receive from a limited partnership any of the following:

(A) A share of the revenue.

(B) Any other compensation by way of income.

(C) A return of any or all of his or her contribution to capital of the limited partnership.

(2) To exercise any of the rights provided under state law.

(y) ''Owner licensee'' means an owner of a gambling enterprise who holds a state gambling license.

(z) ''Person,'' unless otherwise indicated, includes a natural person, corporation, partnership, limited partnership, trust, joint venture, association, or any other business organization.

(aa) ''Player'' means a patron of a gambling establishment who participates in a controlled game.

(bb) ''Player-dealer'' and ''controlled game featuring a player-dealer position'' refer to a position in a controlled game, as defined by the approved rules for that game, in which seated player participants are afforded the temporary opportunity to wager against multiple players at the same table, provided that this position is rotated amongst the other seated players in the game.

(cc) ''Publicly traded racing association'' means a corporation licensed to conduct horse racing and simulcast wagering pursuant to Chapter 4 (commencing with Section 19400) whose stock is publicly traded.

(dd) ''Qualified racing association'' means a corporation licensed to conduct horse racing and simulcast wagering pursuant to Chapter 4 (commencing with Section 19400) that is a wholly owned subsidiary of a corporation whose stock is publicly traded.

(ee) ''Work permit'' means any card, certificate, or permit issued by the commission, or by a county, city, or city and county, whether

denominated as a work permit, registration card, or otherwise, authorizing the holder to be employed as a gambling enterprise employee or to serve as an independent agent. A document issued by any governmental authority for any employment other than gambling is not a valid work permit for the purposes of this chapter.

SEC. 5. Section 19807 of the Business and Professions Code is amended to read:

19807. Except as otherwise provided in this chapter, whenever the division or commission is a defendant or respondent in any proceeding, or when there is any legal challenge to regulations issued by the commission or division, venue for the proceeding shall be in the County of Sacramento, the City and County of San Francisco, the County of Los Angeles, or the County of San Diego.

SEC. 6. Section 19808 of the Business and Professions Code is repealed.

SEC. 7. Section 19809 of the Business and Professions Code is amended and renumbered to read:

19810. There is within the Department of Justice, the Division of Gambling Control as provided in Section 15001 of the Government Code. Except as otherwise provided in this chapter, any power or authority of the division described in this chapter may be exercised by the Attorney General or any other person as the Attorney General may delegate.

SEC. 8. Section 19810A of the Business and Professions Code is amended and renumbered to read:

19811. (a) There is in state government the California Gambling Control Commission, consisting of five members appointed by the Governor, subject to confirmation by the Senate. The California Gambling Control Commission shall succeed to all of the powers of the former California Gambling Control Board.

(b) Jurisdiction, including jurisdiction over operation and concentration, and supervision over gambling establishments in this state and over all persons or things having to do with the operations of gambling establishments is vested in the commission.

SEC. 9. Section 19811A of the Business and Professions Code is amended and renumbered to read:

19812. (a) Each member of the commission shall be a citizen of the United States and a resident of this state.

(b) No Member of the Legislature, no person holding any elective office in state, county, or local government, and no officer or official of any political party is eligible for appointment to the commission.

(c) No more than three of the five members of the commission shall be members of the same political party.

(d) A person is ineligible for appointment to the commission if, within two years prior to appointment, the person, or any partnership or corporation in which the person is a principal, was employed by, retained by, or derived substantial income from, any gambling establishment. For the purposes of this subdivision, ''gambling establishment'' means one or more rooms wherein any gaming within the meaning of Chapter 10 (commencing with Section 330) of Title 9 of Part 1 of the Penal Code, or any controlled game within the meaning of Section 337j of the Penal Code, is conducted, whether or not the activity occurred in California.

(e) One member of the commission shall be a certified public accountant with auditing experience, one member shall be an attorney and a member of the State Bar of California with regulatory law experience, one member shall have a background in law enforcement and criminal investigation, one member shall have a background in business with at least five years of business experience, and one member shall be from the public at large.

SEC. 10. Section 19812A of the Business and Professions Code is amended and renumbered to read:

19813. (a) Of the members initially appointed, two shall be appointed for a term of two years, two shall be appointed for a term of three years, and one shall be appointed for a term of four years. After the initial terms, the term of office of each member of the commission is four years.

(b) The Governor shall appoint the members of the commission, subject to confirmation by the Senate, and shall designate one member to serve as chairperson. The initial appointments shall be made within three months of the operative date of this section. Thereafter, vacancies shall be filled within 60 days of the date of the vacancy by the Governor, subject to confirmation by the Senate.

(c) The Governor may remove any member of the commission for incompetence, neglect of duty, or corruption upon first giving him or her a copy of the charges and an opportunity to be heard.

SEC. 11. Section 19813A of the Business and Professions Code is amended and renumbered to read:

19814. (a) During their terms of office, the members of the commission shall not engage in any other business, vocation, or employment.

(b) Before entering upon the duties of his or her office, the director and each member of the commission shall subscribe to the constitutional oath of office and, in addition, swear that he or she is not, and during his or her term of office shall not be, pecuniarily interested in, or doing business with, any person, business, or organization holding a gambling license.

SEC. 12. Section 19814A of the Business and Professions Code is amended and renumbered to read:

19815. (a) The members of the commission shall receive the salary provided for by Section 11553.5 of the Government Code.

(b) The chairperson of the commission shall receive the salary provided for by Section 11553 of the Government Code.

SEC. 13. Section 19815 of the Business and Professions Code is amended and renumbered to read:

19816. (a) The commission shall have an executive director appointed by the commission. A person is ineligible for appointment as executive director or deputy executive director if, within two years prior to appointment, the person, or any partnership or corporation in which the person is a principal, was employed by, retained by, or derived substantial income from, any gambling establishment, whether or not a controlled gambling establishment.

(b) The executive director shall receive the annual salary established by the commission and approved by the Department of Personnel Administration. The executive director shall be the commission's executive officer and shall carry out and execute the duties as specified by law and by the commission.

(c) The commission may appoint other staff and clerical personnel as necessary to carry out its duties under this chapter.

SEC. 14. Section 19815.5A of the Business and Professions Code is amended and renumbered to read:

19817. The commission shall establish and appoint a Gaming Policy Advisory Committee of 10 members. The committee shall be composed of representatives of controlled gambling licensees and members of the general public in equal numbers. The executive director shall, from time to time, convene the committee for the purpose of discussing matters of controlled gambling regulatory policy and any other relevant gambling-related issue. The recommendations concerning gambling policy made by the committee shall be presented to the commission, but shall be deemed advisory and not binding on the commission in the performance of its duties or functions. The committee may not advise the commission on Indian gaming.

SEC. 15. Section 19815.8A of the Business and Professions Code is amended and renumbered to read:

19818. (a) The commission shall investigate the following matters:

(1) The consequences, benefits, and disadvantages of imposing a state tax on revenue generated by licensed gambling establishments.

(2) Regulation of advertising for the purpose of limiting exposure of children to materials promoting gambling.

(b) The commission shall report its findings to the Legislature and the Governor no later than January 1, 2005.

SEC. 16. Section 19817A of the Business and Professions Code is amended and renumbered to read:

19819. (a) The commission shall establish and maintain a general office for the transaction of its business in Sacramento. The commission may hold meetings at any place within the state when the interests of the public may be better served.

(b) A public record of every vote shall be maintained at the commission's principal office.

(c) A majority of the membership of the commission is a quorum of the commission. The concurring vote of three members of the commission shall be required for any official action of the commission or for the exercise of any of the commission's duties, powers, or functions.

(d) Except as otherwise provided in this chapter, 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 commission. Notwithstanding Section 11125.1 of the Government Code, documents, which are filed with the commission by the division for the purpose of evaluating the qualifications of an applicant, are exempt from disclosure under Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code.

SEC. 17. Section 19818A of the Business and Professions Code is amended and renumbered to read:

19820. The commission may employ not more than eight attorneys. Nothing in this section shall be deemed to exempt the commission from the operation of Section 11040, 11042, or 11043 of the Government Code.

SEC. 18. Section 19820A of the Business and Professions Code is amended and renumbered to read:

19821. (a) The commission shall cause to be made and kept a record of all proceedings at regular and special meetings of the commission. These records shall be open to public inspection.

(b) The commission shall maintain a file of all applications for licenses under this chapter, together with a record of all actions taken with respect to those applications. The file and record shall be open to public inspection.

(c) The division and commission may maintain any other files and records as they deem appropriate. Except as provided in this chapter, the records of the division and commission are exempt from disclosure under Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code.

(d) Except as necessary for the administration of this chapter, no commissioner and no official, employee, or agent of the commission or the division, having obtained access to confidential records or

information in the performance of duties pursuant to this chapter, shall knowingly disclose or furnish the records or information, or any part thereof, to any person who is not authorized by law to receive it. A violation of this subdivision is a misdemeanor.

(e) Notwithstanding subdivision (k) of Section 1798.24 of the Civil Code, a court shall not compel disclosure of personal information in the possession of the division or the commission to any person in any civil proceeding wherein the division or the commission is not a party, except for good cause and upon a showing that the information cannot otherwise be obtained. Nothing herein shall be construed to authorize the disclosure of personal information that would otherwise be exempt from disclosure.

SEC. 19. Section 19821A of the Business and Professions Code is amended and renumbered to read:

19822. (a) All files, records, reports, and other information in possession of any state or local governmental agency that are relevant to an investigation by the division conducted pursuant to this chapter shall be made available to the division as requested. However, any tax information received from a governmental agency shall be used solely for effectuating the purposes of this chapter. To the extent that the files, records, reports, or information described in this section are confidential or otherwise privileged from disclosure under any law or exercise of discretion, they shall not lose that confidential or privileged status for having been disclosed to the division.

(b) All files, records, reports, and other information pertaining to gambling matters in the possession of the division shall be open at all times to inspection by the members of the commission.

SEC. 20. Section 19822A of the Business and Professions Code is amended and renumbered to read:

19823. (a) The responsibilities of the commission include, without limitation, all of the following:

(1) Assuring that licenses, approvals, and permits are not issued to, or held by, unqualified or disqualified persons, or by persons whose operations are conducted in a manner that is inimical to the public health, safety, or welfare.

(2) Assuring that there is no material involvement, directly or indirectly, with a licensed gambling operation, or the ownership or management thereof, by unqualified or disqualified persons, or by persons whose operations are conducted in a manner that is inimical to the public health, safety, or welfare.

(b) For the purposes of this section, ‘‘unqualified person’’ means a person who is found to be unqualified pursuant to the criteria set forth in Section 19857, and ‘‘disqualified person’’ means a person who is

found to be disqualified pursuant to the criteria set forth in Section 19859.

SEC. 21. Section 19823A of the Business and Professions Code is amended and renumbered to read:

19824. The commission shall have all powers necessary and proper to enable it fully and effectually to carry out the policies and purposes of this chapter, including, without limitation, the power to do all of the following:

(a) Require any person to apply for a license, permit, registration, or approval as specified in this chapter, or regulations adopted pursuant to this chapter.

(b) For any cause deemed reasonable by the commission, deny any application for a license, permit, or approval provided for in this chapter or regulations adopted pursuant to this chapter, limit, condition, or restrict any license, permit, or approval, or impose any fine upon any person licensed or approved.

(c) Approve or disapprove transactions, events, and processes as provided in this chapter.

(d) Take actions deemed to be reasonable to ensure that no ineligible, unqualified, disqualified, or unsuitable persons are associated with controlled gambling activities.

(e) Take actions deemed to be reasonable to ensure that gambling activities take place only in suitable locations.

(f) Grant temporary licenses, permits, or approvals on appropriate terms and conditions.

(g) Institute a civil action in any superior court against any person subject to this chapter to restrain a violation of this chapter. An action brought against a person pursuant to this section does not preclude a criminal action or administrative proceeding against that person by the Attorney General or any district attorney or city attorney.

(h) Issue subpoenas to compel attendance of witnesses and production of documents and other material things at a meeting or hearing of the commission or its committees, including advisory committees.

SEC. 22. Section 19823.5 of the Business and Professions Code is amended and renumbered to read:

19825. The commission may require that any matter that the commission is authorized or required to consider in a hearing or meeting of an adjudicative nature regarding the denial, suspension, or revocation of a license, permit, or a finding of suitability, be heard and determined in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.

SEC. 23. Section 19824A of the Business and Professions Code is amended and renumbered to read:

19826. The division shall have all of the following responsibilities:

(a) To investigate the qualifications of applicants before any license, permit, or other approval is issued, and to investigate any request to the commission for any approval that may be required pursuant to this chapter. The division may recommend the denial or the limitation, conditioning, or restriction of any license, permit, or other approval.

(b) To monitor the conduct of all licensees and other persons having a material involvement, directly or indirectly, with a gambling operation or its holding company, for the purpose of ensuring that licenses are not issued or held by, and that there is no direct or indirect material involvement with, a gambling operation or holding company by ineligible, unqualified, disqualified, or unsuitable persons, or persons whose operations are conducted in a manner that is inimical to the public health, safety, or welfare.

(c) To investigate suspected violations of this chapter or laws of this state relating to gambling, including any activity prohibited by Chapter 9 (commencing with Section 319) or Chapter 10 (commencing with Section 330) of Title 9 of Part 1 of the Penal Code.

(d) To investigate complaints that are lodged against licensees, or other persons associated with a gambling operation, by members of the public.

(e) To initiate, where appropriate, disciplinary actions as provided in this chapter. In connection with any disciplinary action, the division may seek restriction, limitation, suspension, or revocation of any license or approval, or the imposition of any fine upon any person licensed or approved.

(f) To adopt regulations reasonably related to its functions and duties as specified in this chapter.

(g) Approve the play of any controlled game, including placing restrictions and limitations on how a controlled game may be played.

SEC. 24. Section 19825 of the Business and Professions Code is amended and renumbered to read:

19827. (a) The division has all powers necessary and proper to enable it to carry out fully and effectually the duties and responsibilities of the division specified in this chapter. The investigatory powers of the division include, but are not limited to, all of the following:

(1) Upon approval of the director, and without notice or warrant, the division may take any of the following actions:

(A) Visit, investigate, and place expert accountants, technicians, and any other person, as it may deem necessary, in all areas of the premises wherein controlled gambling is conducted for the purpose of determining compliance with the rules and regulations adopted pursuant to this chapter.

(B) Visit, inspect, and examine all premises where gambling equipment is manufactured, sold, or distributed.

(C) Inspect all equipment and supplies in any gambling establishment or in any premises where gambling equipment is manufactured, sold, or distributed.

(D) Summarily seize, remove, and impound any equipment, supplies, documents, or records from any licensed premises for the purpose of examination and inspection. However, upon reasonable demand by the licensee or the licensee's authorized representative, a copy of all documents and records seized shall be made and left on the premises.

(E) Demand access to, and inspect, examine, photocopy, and audit all papers, books, and records of an owner licensee on the gambling premises in the presence of the licensee or his or her agent.

(2) Except as provided in paragraph (1), upon obtaining an inspection warrant pursuant to Section 1822.60 of the Code of Civil Procedure, the division may inspect and seize for inspection, examination, or photocopying any property possessed, controlled, bailed, or otherwise held by any applicant, licensee, or any intermediary company, or holding company.

(3) The division may investigate, for purposes of prosecution, any suspected criminal violation of this chapter. However, nothing in this paragraph limits the powers conferred by any other provision of law on agents of the division who are peace officers.

(4) The division may do both of the following:

(A) Issue subpoenas to require the attendance and testimony of witnesses and the production of books, records, documents, and physical materials.

(B) Administer oaths, examine witnesses under oath, take evidence, and take depositions and affidavits or declarations. Notwithstanding Section 11189 of the Government Code, the division, without leave of court, may take the deposition of any applicant or any licensee. Sections 11185 and 11191 of the Government Code do not apply to a witness who is an applicant or a licensee.

(b) (1) Subdivision (a) shall not be construed to limit warrantless inspections except as required by the California Constitution or the United States Constitution.

(2) Subdivision (a) shall not be construed to prevent entries and administrative inspections, including seizures of property, without a warrant in the following circumstances:

(A) With the consent of the owner, operator, or agent in charge of the premises.

(B) In situations presenting imminent danger to health and safety.

(C) In situations involving inspection of conveyances where there is reasonable cause to believe that the mobility of the conveyance makes it impractical to obtain a warrant, or in any other exceptional or emergency circumstance where time or opportunity to apply for a warrant is lacking.

(D) In accordance with this chapter.

(E) In all other situations where a warrant is not constitutionally required.

SEC. 25. Section 19827 of the Business and Professions Code is amended and renumbered to read:

19828. (a) Without limiting any privilege that is otherwise available under law, any communication or publication from, or concerning, an applicant, licensee, or registrant, in oral, written, or any other form, is absolutely privileged and so shall not form a basis for imposing liability for defamation or constitute a ground for recovery in any civil action, under any of the following circumstances:

(1) It was made or published by an agent or employee of the division or commission in the proper discharge of official duties or in the course of any proceeding under this chapter.

(2) It was required to be made or published to the division or commission, or any of their agents or employees, by law, regulation, or subpoena of the division or the commission.

(3) It was, in good faith, made or published to the division or the commission for the purpose of causing, assisting, or aiding an investigation conducted pursuant to this chapter.

(b) If any document or communication provided to the division or the commission contains any information that is privileged pursuant to Division 8 (commencing with Section 900) of the Evidence Code, or any other provision of law, that privilege is not waived or lost because the document or communication is disclosed to the division or the commission or to any of their agents or employees.

(c) The division, the commission, and their agents and employees shall not release or disclose any information, documents, or communications provided by an applicant, licensee, or other person, that are privileged pursuant to Division 8 (commencing with Section 900) of the Evidence Code, or any other provision of law, without the prior written consent of the holder of the privilege, or pursuant to lawful court order after timely notice of the proceedings has been given to the holder of the privilege. An application to a court for an order requiring the division or the commission to release any information declared by law to be confidential shall be made only upon motion made in writing on not less than 10-business days' notice to the division or the commission, and to all persons who may be affected by the entry of the order.

SEC. 26. Section 19828 of the Business and Professions Code is amended and renumbered to read:

19829. Every district attorney, and every state and local law enforcement agency, shall furnish to the division, on forms prepared by the division, all information obtained during the course of any substantial investigation or prosecution of any person, as determined by the division, if it appears that a violation of any law related to gambling has occurred, including any violation of Chapter 9 (commencing with Section 319) or Chapter 10 (commencing with Section 330) of Title 9 of Part 1 of the Penal Code.

SEC. 27. Section 19829 of the Business and Professions Code is amended and renumbered to read:

19830. There is an investigative account within the Gambling Control Fund. All funds received for the purpose of paying expenses incurred by the division for investigation of an application for a license or approval under this chapter shall be deposited in the account. Expenses may be advanced from the investigative account to the division by the director.

SEC. 28. Section 19830A of the Business and Professions Code is amended and renumbered to read:

19840. The commission may adopt regulations for the administration and enforcement of this chapter. To the extent appropriate, regulations of the commission and the division shall take into consideration the operational differences of large and small establishments.

SEC. 29. Section 19834A of the Business and Professions Code is amended and renumbered to read:

19841. The regulations adopted by the commission shall do all of the following:

(a) With respect to applications, registrations, investigations, and fees, the regulations shall include, but not be limited to, provisions that do all of the following:

(1) Prescribe the method and form of application and registration.

(2) Prescribe the information to be furnished by any applicant, licensee, or registrant concerning, as appropriate, the person's personal history, habits, character, associates, criminal record, business activities, organizational structure, and financial affairs, past or present.

(3) Prescribe the information to be furnished by an owner licensee relating to the licensee's gambling employees.

(4) Require fingerprinting or other methods of identification of an applicant, licensee, or employee of a licensee.

(5) Prescribe the manner and method of collection and payment of fees and issuance of licenses.

(b) Provide for the approval of game rules and equipment by the division to ensure fairness to the public and compliance with state laws.

(c) Implement the provisions of this chapter relating to licensing and other approvals.

(d) Require owner licensees to report and keep records of transactions, including transactions as determined by the division, involving cash or credit. The regulations may include, without limitation, regulations requiring owner licensees to file with the division reports similar to those required by Sections 5313 and 5314 of Title 31 of the United States Code, and by Sections 103.22 and 103.23 of Title 31 of the Code of Federal Regulations, and any successor provisions thereto, from financial institutions, as defined in Section 5312 of Title 31 of the United States Code and Section 103.11 of Title 31 of the Code of Federal Regulations, and any successor provisions.

(e) Provide for the receipt of protests and written comments on an application by public agencies, public officials, local governing bodies, or residents of the location of the gambling establishment or future gambling establishment.

(f) Provide for the disapproval of advertising by licensed gambling establishments that is determined by the division to be deceptive to the public. Regulations adopted by the commission for advertising by licensed gambling establishments shall be consistent with the advertising regulations adopted by the California Horse Racing Board and the Lottery Commission. Advertisement that appeals to children or adolescents or that offers gambling as a means of becoming wealthy is presumptively deceptive.

(g) Govern all of the following:

(1) The extension of credit.

(2) The cashing, deposit, and redemption of checks or other negotiable instruments.

(3) The verification of identification in monetary transactions.

(h) Prescribe minimum procedures for adoption by owner licensees to exercise effective control over their internal fiscal and gambling affairs, which shall include, but not be limited to, provisions for all of the following:

(1) The safeguarding of assets and revenues, including the recording of cash and evidences of indebtedness.

(2) Prescribing the manner in which compensation from games and gross revenue shall be computed and reported by an owner licensee.

(3) The provision of reliable records, accounts, and reports of transactions, operations, and events, including reports to the division.

(i) Provide for the adoption and use of internal audits, whether by qualified internal auditors or by certified public accountants. As used in this subdivision, ''internal audit'' means a type of control that operates

through the testing and evaluation of other controls and that is also directed toward observing proper compliance with the minimum standards of control prescribed in subdivision (h).

(j) Require periodic financial reports from each owner licensee.

(k) Specify standard forms for reporting financial conditions, results of operations, and other relevant financial information.

(*l*) Formulate a uniform code of accounts and accounting classifications to ensure consistency, comparability, and effective disclosure of financial information.

(m) Prescribe intervals at which the information in subdivisions (j) and (k) shall be furnished to the division.

(n) Require audits to be conducted, in accordance with generally accepted auditing standards, of the financial statements of all owner licensees whose annual gross revenues equal or exceed a specified sum. However, nothing herein shall be construed to limit the division's authority to require audits of any owner licensee. Audits, compilations, and reviews provided for in this subdivision shall be made by independent certified public accountants licensed to practice in this state.

(o) Restrict, limit, or otherwise regulate any activity that is related to the conduct of controlled gambling, consistent with the purposes of this chapter.

(p) Define and limit the area, games, hours of operation, number of tables, wagering limits, and equipment permitted, or the method of operation of games and equipment, if the commission, upon the recommendation of, or in consultation with, the division, determines that local regulation of these subjects is insufficient to protect the health, safety, or welfare of residents in geographical areas proximate to a gambling establishment.

(q) Prohibit gambling establishments from cashing checks drawn against any federal, state, or county fund, including, but not limited to, social security, unemployment insurance, disability payments, or public assistance payments. However, a gambling establishment shall not be prohibited from cashing any payroll checks or checks for the delivery of goods or services that are drawn against a federal, state, or county fund.

Gambling establishments shall send the division copies of all dishonored or uncollectible checks at the end of each quarter.

(r) Provide for standards, specifications, and procedures governing the manufacture, distribution, including the sale and leasing, inspection, testing, location, operation, repair, and storage of gambling equipment, and for the licensing of persons engaged in the business of manufacturing, distributing, including the sale and leasing, inspection, testing, repair, and storage of gambling equipment.

SEC. 30. Section 19834.5A of the Business and Professions Code is amended and renumbered to read:

19842. (a) The commission shall not prohibit, on a statewide basis, the play of any game or restrict the manner in which any game is played, unless the commission, in a proceeding pursuant to this article, finds that the game, or the manner in which the game is played, violates a law of the United States, a law of this state, or a local ordinance.

(b) Nothing in this section shall be construed to limit the powers of the commission in a proceeding against a licensee pursuant to Article 10 (commencing with Section 19930).

(c) No regulation prohibiting a game or the manner in which a game is played shall be deemed to be an emergency regulation.

SEC. 31. Section 19834.6A of the Business and Professions Code is amended and renumbered to read:

19843. The commission shall not prohibit, on a statewide basis, the placing of a wager on a controlled game by a person at a gaming table, if the person is present at the table and actively participating in the hand with a single-seated player upon whose hand the wagers are placed.

SEC. 32. Section 19835A of the Business and Professions Code is amended and renumbered to read:

19844. (a) The commission shall, by regulation, provide for the formulation of a list of persons who are to be excluded or ejected from any gambling establishment. The list may include any person whose presence in the establishment is determined by the commission to pose a threat to the interests of this state or to controlled gambling, or both.

(b) In making the determination described in subdivision (a), the commission may consider, but is not limited to considering, any of the following:

(1) Prior conviction of a crime that is a felony in this state or under the laws of the United States, a crime involving moral turpitude, or a violation of the gambling laws of this or any other state.

(2) The violation of, or conspiracy to violate, the provisions of this chapter relating to the failure to disclose an interest in a gambling establishment for which the person is required to obtain a license, or the willful evasion of fees.

(3) A notorious or unsavory reputation that would adversely affect public confidence and trust that the gambling industry is free from criminal or corruptive elements.

(4) An order of exclusion or ejection from a racing enclosure issued by the California Horse Racing Board.

(c) The commission shall distribute the list of persons who are to be excluded or ejected from any gambling establishment to all owner licensees and shall provide notice to any persons included on the list.

(d) The commission shall adopt regulations establishing procedures for hearing of petitions by persons who are ejected or excluded from licensed premises pursuant to this section or pursuant to Section 19845.

(e) The commission may revoke, limit, condition, or suspend the license of an owner, or fine an owner licensee, if that licensee knowingly fails to exclude or eject from the gambling establishment of that licensee any person included on the list of persons to be excluded or ejected.

SEC. 33. Section 19835.5A of the Business and Professions Code is amended and renumbered to read:

19845. (a) A licensee may remove from his or her licensed premises any person who, while on the premises:

(1) Is a disorderly person, as defined by Section 647 of the Penal Code.

(2) Interferes with a lawful gambling operation.

(3) Solicits or engages in any act of prostitution.

(4) Begs, is boisterous, or is otherwise offensive to other persons.

(5) Commits any public offense.

(6) Is intoxicated.

(7) Is a person who the commission, pursuant to regulation, has determined should be excluded from licensed gambling establishments in the public interest.

(b) Nothing in this section shall be deemed, expressly or impliedly, to preclude a licensee from exercising the right to deny access to or to remove any person from its premises or property for any reason the licensee deems appropriate.

SEC. 34. Section 19836A of the Business and Professions Code is repealed.

SEC. 35. Section 19840 of the Business and Professions Code is amended and renumbered to read:

19850. Every person who, either as owner, lessee, or employee, whether for hire or not, either solely or in conjunction with others, deals, operates, carries on, conducts, maintains, or exposes for play any controlled game in this state, or who receives, directly or indirectly, any compensation or reward, or any percentage or share of the money or property played, for keeping, running, or carrying on any controlled game in this state, shall apply for and obtain from the commission, and shall thereafter maintain, a valid state gambling license, key employee license, or work permit, as specified in this chapter. In any criminal prosecution for violation of this section, the punishment shall be as provided in Section 337j of the Penal Code.

SEC. 36. Section 19840.5 of the Business and Professions Code is amended and renumbered to read:

19851. (a) The owner of a gambling enterprise shall apply for and obtain a state gambling license.

(b) Other persons who also obtain a state gambling license, or key employee license, as required by this chapter, shall not receive a separate license certificate, but the license of every such person shall be endorsed on the license that is issued to the owner of the gambling enterprise.

SEC. 37. Section 19841A of the Business and Professions Code is amended and renumbered to read:

19852. An owner of a gambling enterprise that is not a natural person shall not be eligible for a state gambling license unless each of the following persons individually applies for and obtains a state gambling license:

(a) If the owner is a corporation, then each officer, director, and shareholder, other than a holding or intermediary company, of the owner. The foregoing does not apply to an owner that is either a publicly traded racing association or a qualified racing association.

(b) If the owner is a publicly traded racing association, then each officer, director, and owner, other than an institutional investor, of 5 percent or more of the outstanding shares of the publicly traded corporation.

(c) If the owner is a qualified racing association, then each officer, director, and shareholder, other than an institutional investor, of the subsidiary corporation and any owner, other than an institutional investor, of 5 percent or more of the outstanding shares of the publicly traded corporation.

(d) If the owner is a partnership, then every general and limited partner of, and every trustee or person, other than a holding or intermediary company, having or acquiring a direct or beneficial interest in, that partnership owner.

(e) If the owner is a trust, then the trustee and, in the discretion of the commission, any beneficiary and the trustor of the trust.

(f) If the owner is a business organization other than a corporation, partnership, or trust, then all those persons as the commission may require, consistent with this chapter.

(g) Each person who receives, or is to receive, any percentage share of the revenue earned by the owner from gambling activities.

(h) Every employee, agent, guardian, personal representative, lender, or holder of indebtedness of the owner who, in the judgment of the commission, has the power to exercise a significant influence over the gambling operation.

SEC. 38. Section 19842A of the Business and Professions Code is amended and renumbered to read:

19853. (a) The commission, by regulation or order, may require that the following persons register with the commission, apply for a finding of suitability as defined in subdivision (i) of 19805, or apply for a gambling license:

(1) Any person who furnishes any services or any property to a gambling enterprise under any arrangement whereby that person receives payments based on earnings, profits, or receipts from controlled gambling.

(2) Any person who owns an interest in the premises of a licensed gambling establishment or in real property used by a licensed gambling establishment.

(3) Any person who does business on the premises of a licensed gambling establishment.

(4) Any person who is an independent agent of, or does business with, a gambling enterprise as a ticket purveyor, a tour operator, the operator of a bus program, or the operator of any other type of travel program or promotion operated with respect to a licensed gambling establishment.

(5) Any person who provides any goods or services to a gambling enterprise for compensation that the commission finds to be grossly disproportionate to the value of the goods or services provided.

(6) Every person who, in the judgment of the commission, has the power to exercise a significant influence over the gambling operation.

(b) The division may conduct any investigation it deems necessary to determine whether a publicly traded corporation is, or has, engaged in activities specified in paragraph (2), (3), or (4) of subdivision (a), and shall report its findings to the commission. If a publicly traded corporation is engaged in activities described in paragraphs (2), (3), or (4) of subdivision (a), the commission may require the corporation and the following other persons to apply for and obtain a license or finding of suitability:

(1) Any officer or director.

(2) Any owner, other than an institutional investor, of 5 percent or more of the outstanding shares of the corporation.

SEC. 39. Section 19844 of the Business and Professions Code is amended and renumbered to read:

19854. (a) Every key employee shall apply for and obtain a key employee license.

(b) Licenses issued to key employees shall be for specified positions only, and those positions shall be enumerated in the endorsement described in subdivision (b) of Section 19851.

(c) No person may be issued a key employee license unless the person would qualify for a state gambling license.

(d) No person may be issued a key employee license unless the person is a resident of this state.

SEC. 40. Section 19846 of the Business and Professions Code is amended and renumbered to read:

19855. Except as otherwise provided by statute or regulation, every person who, by statute or regulation, is required to hold a state license

shall obtain the license prior to engaging in the activity or occupying the position with respect to which the license is required. Every person who, by order of the commission, is required to apply for a gambling license or a finding of suitability shall file the application within 30 calendar days after receipt of the order.

SEC. 41. Section 19847A of the Business and Professions Code is amended and renumbered to read:

19856. (a) Any person who the commission determines is qualified to receive a state license, having due consideration for the proper protection of the health, safety, and general welfare of the residents of the State of California and the declared policy of this state, may be issued a license. The burden of proving his or her qualifications to receive any license is on the applicant.

(b) An application to receive a license constitutes a request for a determination of the applicant's general character, integrity, and ability to participate in, engage in, or be associated with, controlled gambling.

(c) In reviewing an application for any license, the commission shall consider whether issuance of the license is inimical to public health, safety, or welfare, and whether issuance of the license will undermine public trust that the gambling operations with respect to which the license would be issued are free from criminal and dishonest elements and would be conducted honestly.

SEC. 42. Section 19848A of the Business and Professions Code is amended and renumbered to read:

19857. No gambling license shall be issued unless, based on all of the information and documents submitted, the commission is satisfied that the applicant is all of the following:

(a) A person of good character, honesty, and integrity.

(b) A person whose prior activities, criminal record, if any, reputation, habits, and associations do not pose a threat to the public interest of this state, or to the effective regulation and control of controlled gambling, or create or enhance the dangers of unsuitable, unfair, or illegal practices, methods, and activities in the conduct of controlled gambling or in the carrying on of the business and financial arrangements incidental thereto.

(c) A person that is in all other respects qualified to be licensed as provided in this chapter.

SEC. 43. Section 19848.5 of the Business and Professions Code is amended and renumbered to read:

19858. (a) Except as provided in subdivision (b), a person shall be deemed to be unsuitable to hold a state gambling license to own a gambling establishment if the person, or any partner, officer, director, or shareholder of the person, has any financial interest in any business or

organization that is engaged in any form of gambling prohibited by Section 330 of the Penal Code, whether within or without this state.

(b) Subdivision (a) does not apply to a publicly traded racing association, a qualified racing association, or any person who is licensed pursuant to subdivision (b) or (c) of Section 19852.

SEC. 44. Section 19850A of the Business and Professions Code is amended and renumbered to read:

19859. The commission shall deny a license to any applicant who is disqualified for any of the following reasons:

(a) Failure of the applicant to clearly establish eligibility and qualification in accordance with this chapter.

(b) Failure of the applicant to provide information, documentation, and assurances required by this chapter or requested by the director, or failure of the applicant to reveal any fact material to qualification, or the supplying of information that is untrue or misleading as to a material fact pertaining to the qualification criteria.

(c) Conviction of a felony, including a conviction by a federal court or a court in another state for a crime that would constitute a felony if committed in California.

(d) Conviction of the applicant for any misdemeanor involving dishonesty or moral turpitude within the 10-year period immediately preceding the submission of the application, unless the applicant has been granted relief pursuant to Section 1203.4, 1203.4a, or 1203.45 of the Penal Code; provided, however, that the granting of relief pursuant to Section 1203.4, 1203.4a, or 1203.45 of the Penal Code shall not constitute a limitation on the discretion of the commission under Section 19856 or affect the applicant's burden under Section 19857.

(e) Association of the applicant with criminal profiteering activity or organized crime, as defined by Section 186.2 of the Penal Code.

(f) Contumacious defiance by the applicant of any legislative investigatory body, or other official investigatory body of any state or of the United States, when that body is engaged in the investigation of crimes relating to gambling; official corruption related to gambling activities; or criminal profiteering activity or organized crime, as defined by Section 186.2 of the Penal Code.

(g) The applicant is less than 21 years of age.

SEC. 45. Section 19851A of the Business and Professions Code is amended and renumbered to read:

19860. (a) The commission shall deny a gambling license with respect to any gambling establishment that is located in a city, county, or city and county that does not have an ordinance governing all of the following matters:

(1) The hours of operation of gambling establishments.

(2) Patron security and safety in and around the gambling establishments.

(3) The location of gambling establishments.

(4) Wagering limits in gambling establishments.

(5) The number of gambling tables in each gambling establishment and in the jurisdiction.

(b) In any city, county, or city and county in which the local gambling ordinance does not govern the matters specified in subdivision (a), any amendment to the ordinance to govern those matters is not subject to Section 19961, provided that a local election is required to add these matters, and the ordinance only provides for private clubs by vote of the people, and that the ordinance is amended to contain these matters on or before July 1, 2000.

SEC. 46. Section 19851.5 of the Business and Professions Code is amended and renumbered to read:

19861. Notwithstanding subdivision (i) of Section 19801, the commission shall not deny a license to a gambling establishment solely because it is not open to the public, provided that all of the following are true: (a) the gambling establishment is situated in a local jurisdiction that has an ordinance allowing only private clubs, and the gambling establishment was in operation as a private club under that ordinance on December 31, 1997, and met all applicable state and local gaming registration requirements; (b) the gambling establishment consists of no more than five gaming tables; (c) videotaped recordings of the entrance to the gambling room or rooms and all tables situated therein are made during all hours of operation by means of closed circuit television cameras, and these tapes are retained for a period of 30 days and are made available for review by the division or commission upon request; and (d) the gambling establishment is open to members of the private club and their spouses in accordance with membership criteria in effect as of December 31, 1997.

A gambling establishment meeting these criteria, in addition to the other requirements of this chapter, may be licensed to operate as a private club gambling establishment until November 30, 2003, or until the ownership or operation of the gambling establishment changes from the ownership or operation as of January 1, 1998, whichever occurs first. Operation of the gambling establishments after this date shall only be permitted if the local jurisdiction approves an ordinance, pursuant to Sections 19961 and 19962, authorizing the operation of gambling establishments that are open to the public. The commission shall adopt regulations implementing this section. Prior to the commission's issuance of a license to a private club, the division shall ensure that the ownership of the gambling establishment has remained constant since

January 1, 1998, and the operation of the gambling establishment has not been leased to any third party.

SEC. 47. Section 19852A of the Business and Professions Code is amended and renumbered to read:

19862. (a) In addition to other grounds stated in this chapter, the commission may deny a gambling license for any of the following reasons:

(1) If issuance of the license with respect to the proposed gambling establishment or expansion would tend unduly to create law enforcement problems in a city, county, or city and county other than the city, county, or city and county that has regulatory jurisdiction over the applicant's premises.

(2) If an applicant fails to conduct an economic feasibility study that demonstrates to the satisfaction of the commission that the proposed gambling establishment will be economically viable, and that the owners have sufficient resources to make the gambling establishment successful. The commission shall hold a public hearing for the purpose of reviewing the feasibility study. All papers, studies, projections, pro formas, and other materials filed with the commission pursuant to an economic feasibility study are public records and shall be disclosed to all interested parties.

(3) If issuance of the license is sought in respect to a new gambling establishment, or the expansion of an existing gambling establishment, that is to be located or is located near an existing school, an existing building used primarily as a place of worship, an existing playground or other area of juvenile congregation, an existing hospital, convalescence facility, or near another similarly unsuitable area, as determined by regulation of the commission, which is located in a city, county, or city and county other than the city, county, or city and county that has regulatory jurisdiction over the applicant's gambling premises.

(b) For the purposes of this section, ''expansion'' means an increase of 25 percent or more in the number of authorized gambling tables in a gambling establishment, based on the number of gambling tables for which a license was initially issued pursuant to this chapter.

SEC. 48. Section 19852.1 of the Business and Professions Code is amended and renumbered to read:

19863. A publicly traded racing association or a qualified racing association shall be allowed to operate only one gaming establishment, and the gaming establishment shall be located on the same premises as the entity's racetrack.

SEC. 49. Section 19853A of the Business and Professions Code is amended and renumbered to read:

19864. (a) Application for a state license or other commission action shall be made on forms furnished by the commission.

(b) The application for a gambling license shall include all of the following:

(1) The name of the proposed licensee.

(2) The name and location of the proposed gambling establishment.

(3) The gambling games proposed to be conducted.

(4) The names of all persons directly or indirectly interested in the business and the nature of the interest.

(5) A description of the proposed gambling establishment and operation.

(6) Any other information and details the commission may require in order to discharge its duty properly.

SEC. 50. Section 19853.5 of the Business and Professions Code is amended and renumbered to read:

19865. The division shall furnish to the applicant supplemental forms, which the applicant shall complete and file with the division. These supplemental forms shall require, but shall not be limited to requiring, complete information and details with respect to the applicant's personal history, habits, character, criminal record, business activities, financial affairs, and business associates, covering at least a 10-year period immediately preceding the date of filing of the application. Each applicant shall submit two sets of fingerprints, using ''live scan'' or other prevailing, accepted technology, or on forms provided by the division. The division may submit one fingerprint card to the United States Federal Bureau of Investigation.

SEC. 51. Section 19854A of the Business and Professions Code is amended and renumbered to read:

19866. An applicant for licensing or for any approval or consent required by this chapter, shall make full and true disclosure of all information to the division and the commission as necessary to carry out the policies of this state relating to licensing, registration, and control of gambling.

SEC. 52. Section 19855 of the Business and Professions Code is amended and renumbered to read:

19867. (a) An application for a license or a determination of suitability shall be accompanied by the deposit of a sum of money that, in the judgment of the director, will be adequate to pay the anticipated costs and charges incurred in the investigation and processing of the application. The director shall adopt a schedule of costs and charges of investigation for use as guidelines in fixing the amount of any required deposit under this section.

(b) During an investigation, the director may require an applicant to deposit any additional sums as are required by the division to pay final costs and charges of the investigation.

(c) Any money received from an applicant in excess of the costs and charges incurred in the investigation or the processing of the application shall be refunded pursuant to regulations adopted by the division. At the conclusion of the investigation, the director shall provide the applicant a written, itemized accounting of the costs and charges thereby incurred.

SEC. 53. Section 19856A of the Business and Professions Code is amended and renumbered to read:

19868. (a) Within a reasonable time after the filing of an application and any supplemental information the division may require, and the deposit of any fee required pursuant to Section 19867, the division shall commence its investigation of the applicant and, for that purpose, may conduct any proceedings it deems necessary. To the extent practicable, all applications shall be acted upon within 180 calendar days of the date of submission of a completed application. If an investigation has not been concluded within 180 days after the date of submission of a completed application, the division shall inform the applicant in writing of the status of the investigation and shall also provide the applicant with an estimated date on which the investigation may reasonably be expected to be concluded.

(b) If denial of the application is recommended, the director shall prepare and file with the commission his or her written reasons upon which the recommendation is based.

(1) Prior to filing his or her recommendation with the commission, the director shall meet with the applicant, or the applicant's duly authorized representative, and inform him or her generally of the basis for any proposed recommendation that the application be denied, restricted, or conditioned.

(2) Not less than 10 business days prior to the meeting of the commission at which the application is to be considered, the division shall deliver to the applicant a summary of the director's final report and recommendation.

(3) This section neither requires the division to divulge to the applicant any confidential information received from any law enforcement agency or any information received from any person with assurances that the information would be maintained confidential, and nor to divulge any information that might reveal the identity of any informer or jeopardize the safety of any person.

(c) A recommendation of denial of an application shall be without prejudice to a new and different application filed in accordance with applicable regulations.

SEC. 54. Section 19857A of the Business and Professions Code is amended and renumbered to read:

19869. A request for withdrawal of any application may be made at any time prior to final action upon the application by the director by the

filing of a written request to withdraw with the commission. For the purposes of this section, final action by the division means a final determination by the director regarding his or her recommendation on the application to the commission. The commission shall not grant the request unless the applicant has established that withdrawal of the application would be consistent with the public interest and the policies of this chapter. If a request for withdrawal is denied, the division may go forward with its investigation and make a recommendation to the commission upon the application, and the commission may act upon the application as if no request for withdrawal had been made. If a request for withdrawal is granted with prejudice, the applicant thereafter shall be ineligible to renew its application until the expiration of one year from the date of the withdrawal. Unless the commission otherwise directs, no fee or other payment relating to any application is refundable by reason of withdrawal of an application.

SEC. 55. Section 19858A of the Business and Professions Code is amended and renumbered to read:

19870. (a) The commission, after considering the recommendation of the director and any other testimony and written comments as may be presented at the meeting, or as may have been submitted in writing to the commission prior to the meeting, may either deny the application or grant a license to an applicant who it determines to be qualified to hold the license.

(b) When the commission grants an application for a license or approval, the commission may limit or place restrictions thereon as it may deem necessary in the public interest, consistent with the policies described in this chapter.

(c) When an application is denied, the commission shall prepare and file a detailed statement of its reasons for the denial.

(d) All proceedings at a meeting of the commission relating to a license application shall be recorded stenographically or on audiotape or videotape.

(e) A decision of the commission denying a license or approval, or imposing any condition or restriction on the grant of a license or approval may be reviewed by petition pursuant to Section 1085 of the Code of Civil Procedure. Section 1094.5 of the Code of Civil Procedure shall not apply to any judicial proceeding described in the foregoing sentence, and the court may grant the petition only if the court finds that the action of the commission was arbitrary and capricious, or that the action exceeded the commission's jurisdiction.

SEC. 56. Section 19858.5 of the Business and Professions Code is amended and renumbered to read:

19871. (a) The commission meeting described in Section 19870 shall be conducted in accordance with regulations of the commission and as follows:

(1) Oral evidence shall be taken only upon oath or affirmation.

(2) Each party shall have all of the following rights:

(A) To call and examine witnesses.

(B) To introduce exhibits relevant to the issues of the case.

(C) To cross-examine opposing witnesses on any matters relevant to the issues, even though the matter was not covered on direct examination.

(D) To impeach any witness, regardless of which party first called the witness to testify.

(E) To offer rebuttal evidence.

(3) If the applicant does not testify in his or her own behalf, he or she may be called and examined as if under cross-examination.

(4) The meeting need not be conducted according to technical rules relating to evidence and witnesses. Any relevant evidence may be considered, and is sufficient in itself to support a finding, 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 that might make improper the admission of that evidence over objection in a civil action.

(b) Nothing in this section confers upon an applicant a right to discovery of the division's investigative reports or to require disclosure of any document or information the disclosure of which is otherwise prohibited by any other provision of this chapter.

SEC. 57. Section 19858.7A of the Business and Professions Code is amended and renumbered to read:

19872. (a) No member of the commission may communicate ex parte, directly or indirectly, with any applicant, or any agent, representative, or person acting on behalf of an applicant, upon the merits of an application for a license, permit, registration, or approval while the application is pending disposition before the division or the commission.

(b) No applicant, or any agent, representative, or person acting on behalf of an applicant, and no person who has a direct or indirect interest in the outcome of a proceeding to consider an application for a license, permit, registration, or approval may communicate ex parte, directly or indirectly, with any member of the commission, upon the merits of the application while the application is pending disposition before the division.

(c) No employee or agent of the division, applicant, or any agent, representative, or person acting on behalf of an applicant, and no person who has a direct or indirect interest in the outcome of a proceeding to

consider an application for a license, permit, registration, or approval may communicate ex parte, directly or indirectly, with any member of the commission, upon the merits of the application, while the application is pending disposition before the commission.

(d) The receipt by a member of the commission of an ex parte communication prohibited by this section may provide the basis for disqualification of that member or the denial of the application. The commission shall adopt regulations to implement this subdivision.

(e) For the purposes of this subdivision, ''ex parte'' means a communication without notice and opportunity for all parties to participate in the communication.

(f) Nothing in this section precludes a communication made on the record at a public hearing on a properly agendized matter.

SEC. 58. Section 19859 of the Business and Professions Code is amended and renumbered to read:

19873. No license may be assigned or transferred either in whole or in part.

SEC. 59. Section 19860A of the Business and Professions Code is amended and renumbered to read:

19874. Subject to subdivision (b) of Section 19851, the commission shall issue and deliver to the applicant a license entitling the applicant to engage in the activity for which the license is issued, together with an enumeration of any specific terms and conditions of the license if both of the following conditions have been met:

(a) The commission is satisfied that the applicant is eligible and qualified to receive the license.

(b) All license fees required by statute and by regulations of the commission have been paid.

SEC. 60. Section 19861 of the Business and Professions Code is amended and renumbered to read:

19875. An owner's gambling license shall be posted at all times in a conspicuous place in the area where gambling is conducted in the establishment for which the license is issued until it is replaced by a succeeding license.

SEC. 61. Section 19862A of the Business and Professions Code is amended and renumbered to read:

19876. (a) Subject to the power of the commission to deny, revoke, suspend, condition, or limit any license, as provided in this chapter, a license shall be renewed annually by the commission from the date of issuance, upon proper application for renewal and payment of state license fees as required by statute or regulation.

(b) An application for renewal of a gambling license shall be filed by the owner licensee with the commission no later than 120 calendar days prior to the expiration of the current license. The commission shall act

upon any application for renewal prior to the date of expiration of the current license. Upon renewal of any owner license, the commission shall issue an appropriate renewal certificate or validating device or sticker.

(c) Unless the commission determines otherwise, renewal of an owner's gambling license shall be deemed to effectuate the renewal of every other gambling license endorsed thereon.

(d) In addition to the penalties provided by law, any owner licensee who deals, operates, carries on, conducts, maintains, or exposes for play any gambling game after the expiration date of the gambling license is liable to the state for all license fees and penalties that would have been due upon renewal.

(e) If an owner licensee fails to renew the gambling license as provided in this chapter, the commission may order the immediate closure of the premises and a cessation of all gambling activity therein until the license is renewed.

SEC. 62. Section 19862.5 of the Business and Professions Code is amended and renumbered to read:

19877. The failure of an owner licensee to file an application for renewal before the date specified in this chapter may be deemed a surrender of the license. A license has not been renewed within the meaning of this section until all required renewal fees have been paid.

SEC. 63. Section 19863A of the Business and Professions Code is amended and renumbered to read:

19878. (a) Neither an owner licensee, nor a California affiliate of an owner licensee, shall enter into, without prior approval of the commission, any contract or agreement with a person who is denied a license, or whose license is suspended or revoked by the commission, or with any business enterprise under the control of that person, after the date of receipt of notice of the commission's action.

(b) An owner licensee or an affiliate of the owner licensee shall not employ, without prior approval of the commission, any person in any capacity for which he or she is required to be licensed, if the person has been denied a license, or if his or her license has been suspended or revoked after the date of receipt of notice of the action by the commission. Neither an owner licensee, nor a California affiliate of an owner licensee, without prior approval of the commission, shall enter into any contract or agreement with a person whose application has been withdrawn with prejudice, or with any business enterprise under the control of that person, for the period of time during which the person is prohibited from filing a new application for licensure.

(c) (1) If an employee who is required to be licensed pursuant to this chapter fails to apply for a license within the time specified by regulation, is denied a license, or has his or her license revoked by the

commission, the employee shall be terminated in any capacity in which he or she is required to be licensed and he or she shall not be permitted to exercise a significant influence over the gambling operation, or any part thereof, upon being notified of that action.

(2) If an employee who is required to be licensed pursuant to this chapter has his or her license suspended, the employee shall be suspended in any capacity in which he or she is required to be licensed and shall not be permitted to exercise a significant influence over the gambling operation, or any part thereof, during the period of suspension, upon being notified of that action.

(3) If the owner licensee designates another employee to replace the employee whose employment was terminated, the owner licensee shall promptly notify the division and shall require the newly designated employee to apply for a license.

(d) An owner licensee or an affiliate of the owner licensee shall not pay to a person whose employment has been terminated pursuant to subdivision (c) any remuneration for any service performed in any capacity in which the person is required to be licensed except for amounts due for services rendered before the date of receipt of notice of the commission's action. Neither an owner licensee, nor an affiliate thereof, during the period of suspension, shall pay to a person whose employment has been suspended pursuant to subdivision (c), any remuneration for any service performed in any capacity in which the person is required to be licensed, except for amounts due for services rendered before the date of receipt of notice of the commission's action.

(e) Except as provided in subdivision (c), a contract or agreement for the provision of services or property to an owner licensee or an affiliate thereof, or for the conduct of any activity at a gambling establishment, which is to be performed by a person required by this chapter or by regulations adopted pursuant to this chapter, to be licensed, shall be terminated upon a suspension or revocation of the person's license.

(f) In any case in which a contract or agreement for the provision of services or property to an owner licensee or an affiliate thereof, or for the conduct of any activity at a gambling establishment, is to be performed by a person required by this chapter or by regulations adopted by the commission to be licensed, the contract shall be deemed to include a provision for its termination without liability on the part of the owner licensee or its duly registered holding company upon a suspension or revocation of the person's license. In any action brought by the division or commission to terminate a contract pursuant to subdivision (c) or (e), it shall not be a defense that the agreement does not expressly include the provision described in this subdivision, and the lack of express inclusion of the provision in the agreement shall not be a basis for enforcement of the contract by a party thereto.

SEC. 64. Section 19864A of the Business and Professions Code is amended and renumbered to read:

19879. With regard to a person who has had his or her application for a license denied by the commission, all of the following shall apply:

(a) Except as provided in subdivision (c), the person shall not be entitled to profit from his or her investment in any business entity that has applied for or been granted a state license.

(b) The person shall not retain his or her interest in a business entity described in subdivision (a) beyond that period prescribed by the commission.

(c) The person shall not accept more for his or her interest in a business entity described in subdivision (a) than he or she paid for it, or the market value on the date of the denial of the license or registration, whichever is higher.

(d) Nothing in this section shall be construed as a restriction or limitation on the powers of the commission specified in this chapter.

SEC. 65. Section 19870 of the Business and Professions Code is amended and renumbered to read:

19880. In addition to the requirements of Section 19852, in order to be eligible to receive a gambling license as the owner of a gambling enterprise, a corporation shall comply with all of the following requirements:

(a) Maintain an office of the corporation in the gambling establishment.

(b) Comply with all of the requirements of the laws of this state pertaining to corporations.

(c) Maintain, in the corporation's principal office in California or in the gambling establishment, a ledger that meets both of the following conditions:

(1) At all times reflects the ownership of record of every class of security issued by the corporation.

(2) Is available for inspection by the division at all reasonable times without notice.

(d) Register as a corporation with the division and supply the following supplemental information to the division:

(1) The organization, financial structure, and nature of the business to be operated, including the names, personal and criminal history, and fingerprints of all officers, directors, and key employees, and the names, addresses, and number of shares held by all stockholders of record.

(2) The rights and privileges acquired by the holders of different classes of authorized securities, including debentures.

(3) The terms on which securities are to be offered.

(4) The terms and conditions on all outstanding loans, mortgages, trust deeds, pledges, or any other indebtedness or security device.

(5) The extent of the equity security holdings in the corporation of all officers, directors, and underwriters, and their remuneration as compensation for services, in the form of salary, wages, fees, or otherwise.

(6) The amount of remuneration to persons other than directors and officers in excess of fifty thousand dollars ($50,000) per annum.

(7) Bonus and profit-sharing arrangements.

(8) Management and service contracts.

(9) Options existing, or to be created, in respect of their securities or other interests.

(10) Financial statements for at least three fiscal years preceding the year of registration, or, if the corporation has not been in existence for a period of three years, financial statements from the date of its formation. All financial statements shall be prepared in accordance with generally accepted accounting principles and audited by a licensee of the California Board of Accountancy.

(11) Any further financial data that the division, with the approval of the commission, may deem necessary or appropriate for the protection of the state.

(12) An annual profit-and-loss statement and an annual balance sheet, and a copy of its annual federal income tax return, within 30 calendar days after that return is filed with the Internal Revenue Service.

SEC. 66. Section 19871A of the Business and Professions Code is amended and renumbered to read:

19881. (a) No corporation is eligible to receive a license to own a gambling enterprise unless the conduct of controlled gambling is among the purposes stated in its articles of incorporation and the articles of incorporation have been submitted to and approved by the commission.

(b) The Secretary of State shall not accept for filing any articles of incorporation of any corporation that include as a stated purpose the conduct of controlled gambling, or any amendment thereto, or any amendment that adds this purpose to articles of incorporation already filed, unless the articles have, or amendment has, been approved by the commission.

SEC. 67. Section 19872A of the Business and Professions Code is amended and renumbered to read:

19882. (a) If at any time the commission denies a license to an individual owner of any security issued by a corporation that applies for or holds an owner license, the owner of the security shall immediately offer the security to the issuing corporation for purchase. The corporation shall purchase the security so offered, for cash in an amount not greater than fair market value, within 30 calendar days after the date of the offer.

(b) Beginning upon the date when the division serves notice of the denial upon the corporation, it is unlawful for the denied security owner to do any of the following:

(1) Receive any dividend or interest upon any security described in subdivision (a).

(2) Exercise, directly or through any trustee or nominee, any voting right conferred by any security described in subdivision (a).

(3) Receive any remuneration in any form from the corporation for services rendered or for any other purpose.

(c) Every security issued by a corporate owner licensee shall bear a statement, on both sides of the certificate evidencing the security, of the restrictions imposed by this section.

SEC. 68. Section 19873 of the Business and Professions Code is amended and renumbered to read:

19883. (a) To the extent required by this chapter, officers and directors, shareholders, lenders, holders of evidence of indebtedness, underwriters, agents, or employees of a corporate owner licensee shall be licensed individually. The corporation shall require these persons to apply for a gambling license, and shall notify the division of every change of corporate officers, directors, or key employees within 10 business days after the change. An officer, director, or key employee who is required to apply for a license shall apply for the license within 30 calendar days after he or she becomes an officer, director, or key employee.

(b) The corporation shall immediately remove any officer or director required to apply for a license from any office or directorship if any of the following apply to that officer or director:

(1) He or she fails to apply for the license within 30 calendar days after becoming an officer or director.

(2) He or she is denied a license.

(3) His or her license is revoked.

(c) If the license of any officer or director is suspended, the corporation, immediately and for the duration of the suspension, shall suspend that officer or director.

(d) If any shareholder who is required to apply for a gambling license fails to apply for the license within the time required, the shareholder shall be deemed to have been denied a license for purposes of subdivision (b) of Section 19882.

(e) If any person, other than an officer, director, or shareholder, who is required to apply for a gambling license fails to do so, the failure may be deemed to be a failure of the corporate owner licensee to require the application.

SEC. 69. Section 19880 of the Business and Professions Code is amended and renumbered to read:

19890. In addition to the requirements of Section 19852, in order to be eligible to receive a gambling license to own a gambling enterprise, a limited partnership shall comply with all of the following requirements:

(a) Be formed under the laws of this state.

(b) Maintain an office of the limited partnership in the gambling establishment.

(c) Comply with all of the requirements of the laws of this state pertaining to limited partnerships.

(d) Maintain a ledger in the principal office of the limited partnership in California that shall meet both of the following conditions:

(1) At all times reflects the ownership of all interests in the limited partnership.

(2) Be available for inspection by the division at all reasonable times without notice.

(e) Register with the division and supply the following supplemental information to the division:

(1) The organization, financial structure, and nature of the business to be operated, including the names, personal history, and fingerprints of all general partners and key employees, and the name, address, and interest of each limited partner.

(2) The rights, privileges, and relative priorities of limited partners as to the return of contributions to capital, and the right to receive income.

(3) The terms on which limited partnership interests are to be offered.

(4) The terms and conditions on all outstanding loans, mortgages, trust deeds, pledges, or any other indebtedness or security device.

(5) The extent of the holding in the limited partnership of all underwriters, and their remuneration as compensation for services, in the form of salary, wages, fees, or otherwise.

(6) The remuneration to persons other than general partners in excess of fifty thousand dollars ($50,000) per annum.

(7) Bonus and profit-sharing arrangements.

(8) Management and service contracts.

(9) Options existing or to be created.

(10) Financial statements for at least three fiscal years preceding the year of registration, or, if the limited partnership has not been in existence for a period of three years, financial statements from the date of its formation. All financial statements shall be prepared in accordance with generally accepted accounting principles and audited by a licensee of the California Board of Accountancy in accordance with generally accepted auditing standards.

(11) Any further financial data that the division reasonably deems necessary or appropriate for the protection of the state.

(12) An annual profit and loss statement and an annual balance sheet, and a copy of its annual federal income tax return, within 30 calendar days after the return is filed with the Internal Revenue Service.

SEC. 70. Section 19881 of the Business and Professions Code is amended and renumbered to read:

19891. No limited partnership is eligible to receive a license to own a gambling enterprise unless the conduct of gambling is among the purposes stated in the certificate of limited partnership.

SEC. 71. Section 19882A of the Business and Professions Code is amended and renumbered to read:

19892. (a) The purported sale, assignment, transfer, pledge, or other disposition of any interest in a limited partnership that holds a gambling license, or the grant of an option to purchase the interest, is void unless approved in advance by the commission.

(b) If at any time the commission denies a license to an individual owner of any interest described in subdivision (a), the commission shall immediately notify the partnership of that fact. The limited partnership, within 30 calendar days from the date it receives the notice from the commission, shall return to the denied owner of the interest, in cash, the amount of his or her capital account as reflected on the books of the partnership.

(c) Beginning upon the date when the commission serves a notice of denial upon the limited partnership, it is unlawful for the denied owner of the interest to do any of the following:

(1) Receive any share of the revenue or interest upon the limited partnership interest.

(2) Exercise, directly or through any trustee or nominee, any voting right conferred by that interest.

(3) Receive any remuneration in any form from the limited partnership, for services rendered or for any other purpose.

(d) Every certificate of limited partnership of any limited partnership holding a gambling license shall contain a statement of the restrictions imposed by this section.

SEC. 72. Section 19883A of the Business and Professions Code is amended and renumbered to read:

19893. To the extent required by this chapter, general partners, limited partners, lenders, holders of evidence of indebtedness, underwriters, agents, or employees of a limited partnership that holds or applies for a license to own a gambling enterprise shall be licensed individually. The limited partnership shall require these persons to apply for and obtain a gambling license. A person who is required to be licensed by this section as a general or limited partner shall not hold that position until he or she secures the required approval of the commission. A person who is required to be licensed pursuant to a decision of the

commission shall apply for a license within 30 days after the commission requests him or her to do so.

SEC. 73. Section 19900A of the Business and Professions Code is amended and renumbered to read:

19900. (a) Except as may be provided by regulation of the division, the following security interests shall not be enforced without the prior approval of the commission and compliance with regulations adopted pursuant to subdivision (b):

(1) In a security issued by a corporation that is a holder of a gambling license in this state.

(2) In a security issued by a holding company that is not a publicly traded corporation.

(3) In a security issued by a partnership that is a holder of a gambling license in this state.

(b) The division shall adopt regulations establishing the procedure for the enforcement of a security interest. Any remedy provided by the regulations for the enforcement of the security interest is in addition to any other remedy provided by law.

SEC. 74. Section 19901A of the Business and Professions Code is amended and renumbered to read:

19901. It is unlawful for any person to sell, purchase, lease, hypothecate, borrow or loan money, or create a voting trust agreement or any other agreement of any sort to, or with, any licensee in connection with any controlled gambling operation licensed under this chapter or with respect to any portion of the gambling operation, except in accordance with the regulations of the commission.

SEC. 75. Section 19902A of the Business and Professions Code is amended and renumbered to read:

19902. When any person contracts to sell or lease any property or interest in property, real or personal, under circumstances that require the approval or licensing of the purchaser or lessee by the commission pursuant to subdivision (a) of Section 19853, the contract shall not specify a closing date for the transaction that is earlier than the expiration of 90 calendar days after the submission of the completed application for approval for licensing. Any provision of a contract that specifies an earlier closing date is void for all purposes, but the invalidity does not affect the validity of any other provision of the contract.

SEC. 76. Section 19903A of the Business and Professions Code is amended and renumbered to read:

19903. When any person contracts to sell or lease any property or interest in property, real or personal, under circumstances that require the approval or licensing of the purchaser or lessee by the commission pursuant to subdivision (a) of Section 19853, the contract shall contain a provision satisfactory to the commission regarding responsibility for

the payment of any fees due pursuant to any subsequent deficiency determinations made under this chapter that shall encompass any period of time before the closing date of the transaction.

SEC. 77. Section 19904A of the Business and Professions Code is amended and renumbered to read:

19904. The purported sale, assignment, transfer, pledge, or other disposition of any security issued by a corporation that holds a gambling license, or the grant of an option to purchase that security, is void unless approved in advance by the commission.

SEC. 78. Section 19905A of the Business and Professions Code is amended and renumbered to read:

19905. Every owner licensee that is involved in a transaction for the extension or redemption of credit by the licensee, or for the payment, receipt, or transfer of coin, currency, or other monetary instruments, as specified by the commission, in an amount, denomination, or amount and denomination, or under circumstances prescribed by regulations, and any other participant in the transaction, as specified by the commission, shall, if required by regulation, make and retain a record of, or file with the division a report on, the transaction, at the time and in the manner prescribed by regulations.

SEC. 79. Section 19906A of the Business and Professions Code is repealed.

SEC. 80. Section 19910.4 of the Business and Professions Code is amended and renumbered to read:

19911. No person under the age of 21 years shall be eligible for a work permit and no permit shall be issued to a person under the age of 21 years.

SEC. 81. Section 19910.5A of the Business and Professions Code is amended and renumbered to read:

19912. (a) (1) A person shall not be employed as a gambling enterprise employee, or serve as an independent agent, except as provided in paragraph (2), unless he or she is the holder of one of the following:

(A) A valid work permit issued in accordance with the applicable ordinance or regulations of the county, city, or city and county in which his or her duties are performed.

(B) A work permit issued by the commission pursuant to regulations adopted by the commission for the issuance and renewal of work permits. A work permit issued by the commission shall be valid for two years.

(2) An independent agent is not required to hold a work permit if he or she is not a resident of this state and has registered with the division in accordance with regulations.

(b) A work permit shall not be issued by any city, county, or city and county to any person who would be disqualified from holding a state gambling license for the reasons specified in subdivisions (a) to (g), inclusive, of Section 19859.

(c) The division may object to the issuance of a work permit by a city, county, or city and county for any cause deemed reasonable by the division, and if the division objects to issuance of a work permit, the work permit shall be denied.

(1) The commission shall adopt regulations specifying particular grounds for objection to issuance of, or refusal to issue, a work permit.

(2) The ordinance of any city, county, or city and county relating to issuance of work permits shall permit the division to object to the issuance of any permit.

(3) Any person whose application for a work permit has been denied because of an objection by the division may apply to the commission for an evidentiary hearing in accordance with regulations.

(d) Application for a work permit for use in any jurisdiction where a locally issued work permit is not required by the licensing authority of a city, county, or city and county shall be made to the commission, and may be granted or denied for any cause deemed reasonable by the commission. If the commission denies the application, it shall include in its notice of denial a statement of facts upon which it relied in denying the application. Upon receipt of an application for a work permit, the commission may issue a temporary work permit for a period not to exceed 120 days, pending completion of the background investigation by the division and official action by the commission with respect to the work permit application.

(e) An order of the commission denying an application for a work permit, including an order declining to issue a work permit following review pursuant to paragraph (3) of subdivision (c), may be reviewed in accordance with subdivision (e) of Section 19870.

SEC. 82. Section 19911A of the Business and Professions Code is amended and renumbered to read:

19913. (a) The commission may issue an order summarily suspending a person's work permit, whether issued by a city, county, or city and county, or by the commission, upon a finding that the suspension is necessary for the immediate preservation of the public peace, health, safety, or general welfare. The order is effective when served upon the holder of the permit.

(b) The order of summary suspension shall state facts upon which the finding of necessity for the suspension is based. For the purposes of this section, the order of summary suspension shall be deemed an accusation.

(c) An order of summary suspension shall be signed by at least three members of the commission.

(d) The person whose work permit is summarily suspended has a right to a hearing to commence not more than 30 calendar days from the date of service of the suspension.

SEC. 83. Section 19912A of the Business and Professions Code is amended and renumbered to read:

19914. (a) The commission may revoke a work permit or, if issued by the licensing authority of a city, county, or city and county, notify the authority to revoke it, and the licensing authority shall revoke it, if the commission finds, after a hearing, that a gambling enterprise employee or independent agent has failed to disclose, misstated, or otherwise misled the division or the commission with respect to any fact contained in any application for a work permit, or if the commission finds that the employee or independent agent, subsequent to being issued a work permit, has done any of the following:

(1) Committed, attempted, or conspired to do any acts prohibited by this chapter.

(2) Engaged in any dishonest, fraudulent, or unfairly deceptive activities in connection with controlled gambling, or knowingly possessed or permitted to remain in or upon any premises any cards, dice, mechanical devices, or any other cheating device.

(3) Concealed or refused to disclose any material fact in any investigation by the division.

(4) Committed, attempted, or conspired to commit, any embezzlement or larceny against a gambling licensee or upon the premises of a gambling establishment.

(5) Been convicted in any jurisdiction of any offense involving or relating to gambling.

(6) Accepted employment without prior commission approval in a position for which he or she could be required to be licensed under this chapter after having been denied a license or after failing to apply for licensing when requested to do so by the commission.

(7) Been refused the issuance of any license, permit, or approval to engage in or be involved with gambling or parimutuel wagering in any jurisdiction, or had the license, permit, or approval revoked or suspended.

(8) Been prohibited under color of governmental authority from being present upon the premises of any licensed gambling establishment or any establishment where parimutuel wagering is conducted, for any reason relating to improper gambling activities or any illegal act.

(9) Been convicted of any felony.

(b) The commission shall revoke a work permit if it finds, after hearing, that the holder thereof would be disqualified from holding a state gambling license for the reasons specified in subdivision (f) or (g) of Section 19859.

(c) Nothing in this section shall be construed to limit any powers of the commission with respect to licensing.

SEC. 84. Section 19913A of the Business and Professions Code is amended and renumbered to read:

19915. The fee for a work permit issued by the commission shall be not less than twenty-five dollars ($25) or more than two hundred fifty dollars ($250).

SEC. 85. Section 19915A of the Business and Professions Code is amended and renumbered to read:

19920. It is the policy of the State of California to require that all establishments wherein controlled gambling is conducted in this state be operated in a manner suitable to protect the public health, safety, and general welfare of the residents of the state. The responsibility for the employment and maintenance of suitable methods of operation rests with the owner licensee, and willful or persistent use or toleration of methods of operation deemed unsuitable by the commission or by local government shall constitute grounds for license revocation or other disciplinary action.

SEC. 86. Section 19915.5 of the Business and Professions Code is amended and renumbered to read:

19921. No person under the age of 21 years shall be permitted to enter upon the premises of a licensed gambling establishment, or any part thereof, except the following:

(a) An area, physically separated from any gambling area, for the exclusive purpose of dining. For purposes of this subdivision, any place wherein food or beverages are dispensed primarily by vending machines shall not constitute a place for dining.

(b) Restrooms.

(c) A supervised room, as defined by regulation, that is physically separated from any gambling area and used primarily for the purpose of entertainment or recreation.

Any area of a gambling establishment to which a person under the age of 21 years may have access under this subdivision shall have an entrance that shall not require the entrants to enter upon or pass through the gambling floor. All persons under the age of 21 years shall be restricted to the entrance specified in this subdivision.

SEC. 87. Section 19916 of the Business and Professions Code is amended and renumbered to read:

19922. No owner licensee shall operate a gambling enterprise in violation of any provision of this chapter or any regulation adopted pursuant to this chapter.

SEC. 88. Section 19917 of the Business and Professions Code is amended and renumbered to read:

19923. No owner licensee shall operate a gambling enterprise in violation of any governing local ordinance.

SEC. 89. Section 19918A of the Business and Professions Code is amended and renumbered to read:

19924. Each owner licensee shall maintain security controls over the gambling premises and all operations therein related to gambling, and those security controls are subject to the approval of the commission.

SEC. 90. The heading of Article 9.5 (commencing with Section 19920A) of Chapter 5 of Division 8 of the Business and Professions Code is repealed.

SEC. 91. The heading of Article 10 (commencing with Section 19930) is added to Chapter 5 of Division 8 of the Business and Professions Code, to read:

Article 10. Disciplinary Actions

SEC. 92. Section 19920A of the Business and Professions Code is amended and renumbered to read:

19930. (a) The division shall make appropriate investigations as follows:

(1) Determine whether there has been any violation of this chapter or any regulations adopted thereunder.

(2) Determine any facts, conditions, practices, or matters that it may deem necessary or proper to aid in the enforcement of this chapter or any regulation adopted thereunder.

(3) To aid in adopting regulations.

(4) To secure information as a basis for recommending legislation relating to this chapter.

(b) If, after any investigation, the division is satisfied that a license, permit, finding of suitability, or approval should be suspended or revoked, it shall file an accusation with the commission in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.

(c) In addition to any action that the commission may take against a license, permit, finding of suitability, or approval, the commission may also require the payment of fines or penalties. However, no fine imposed shall exceed twenty thousand dollars ($20,000) for each separate violation of any provision of this chapter or any regulation adopted thereunder.

SEC. 93. Section 19921A of the Business and Professions Code is amended and renumbered to read:

19931. (a) The division may issue any emergency orders against an owner licensee or any person involved in a transaction requiring prior

approval that the division deems reasonably necessary for the immediate preservation of the public peace, health, safety, or general welfare.

(b) The emergency order shall set forth the grounds upon which it is based, including a statement of facts constituting the alleged emergency necessitating the action.

(c) The emergency order is effective immediately upon issuance and service upon the owner licensee or any agent of the licensee registered with the division for receipt of service, or, in cases involving prior approval, upon issuance and service upon the person or entity involved, or upon an agent of that person or entity authorized to accept service of process in this state. The emergency order may suspend, limit, condition, or take other action in relation to the license of one or more persons in an operation without affecting other individual licensees, registrants, or the licensed gambling establishment. The emergency order remains effective until further order of the commission or final disposition of any proceeding conducted pursuant to subdivision (d).

(d) Within two calendar days after issuance of an emergency order, the division shall file an accusation with the commission against the person or entity involved. Thereafter, the person or entity against whom the emergency order has been issued and served is entitled to a hearing which, if so requested, shall commence within 10 business days of the date of the request if a gambling operation is closed by the order, and in all other cases, within 30 calendar days of the date of the request. On application of the division, and for good cause shown, a court may extend the time within which a hearing is required to be commenced, upon those terms and conditions that the court deems equitable.

SEC. 94. Section 19922 of the Business and Professions Code is amended and renumbered to read:

19932. (a) Any person aggrieved by a final decision or order of the commission that limits, conditions, suspends, or revokes any previously granted license or approval, made after hearing by the commission, may petition the Superior Court for the County of Sacramento for judicial review pursuant to Section 1094.5 of the Code of Civil Procedure and Section 11523 of the Government Code. Notwithstanding any other provision of law, the standard set forth in paragraph (1) of subdivision (h) of Section 1094.5 of the Code of Civil Procedure shall apply for obtaining a stay of the operation of a final decision or order of the commission. In every case 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 light of the whole record.

(b) The court may summarily deny the petition, or the court may issue an alternative writ directing the commission to certify the whole record of the division in the case to the court within a time specified. No new

or additional evidence shall be introduced in the court, but, if an alternative writ issues, the cause shall be heard on the whole record of the division as certified by the commission.

(c) In determining the cause following issuance of an alternative writ, the court shall enter judgment affirming, modifying, or reversing the order of the commission, or the court may remand the case for further proceedings before, or reconsideration by, the commission.

(d) Except as otherwise provided in Section 19870 and subdivision (e) in Section 19912, this section provides the exclusive means to review adjudicatory decisions of the commission.

SEC. 95. The heading of Article 10 (commencing with Section 19930) of Chapter 5 of Division 8 of the Business and Professions Code is repealed.

SEC. 96. The heading of Article 11 (commencing with Section 19940) is added to Chapter 5 of Division 8 of the Business and Professions Code, to read:

Article 11. Penalties

SEC. 97. Section 19930 of the Business and Professions Code is amended and renumbered to read:

19940. Any person included on the list of persons to be excluded or ejected from a gambling establishment pursuant to this chapter is guilty of a misdemeanor if he or she thereafter knowingly enters the premises of a licensed gambling establishment.

SEC. 98. Section 19932 of the Business and Professions Code is amended and renumbered to read:

19941. (a) A person under the age of 21 years shall not do any of the following:

(1) Play, be allowed to play, place wagers at, or collect winnings from, whether personally or through an agent, any gambling game.

(2) Loiter, or be permitted to loiter, in or about any room wherein any gambling game is operated or conducted.

(3) Be employed as an employee in a licensed gambling establishment except in a parking lot, coffee shop, restaurant, business office, or other similar room, as determined by regulations, wherein no gambling activity or activity directly associated with gambling takes place.

(4) Present or offer to any licensee, or to an agent of a licensee, any written, printed, or photostatic evidence of age and identity that is false, fraudulent, or not actually his or her own for the purpose of doing any of the things described in paragraphs (1) to (3), inclusive.

(b) Any licensee or employee in a gambling establishment who violates or permits the violation of this section, and any person under 21 years of age who violates this section, is guilty of a misdemeanor.

(c) Proof that a licensee, or agent or employee of a licensee, demanded, was shown, and acted in reliance upon bona fide evidence of age and identity shall be a defense to any criminal prosecution under this section or to any proceeding for the suspension or revocation of any license or work permit based thereon. For the purposes of this section, "bona fide evidence of age and identity" means a document issued by a federal, state, county, or municipal government, or subdivision or agency thereof, including, but not limited to, a motor vehicle operator's license or an identification card issued to a member of the armed forces, that contains the name, date of birth, description, and picture of the person.

SEC. 99. Section 19933 of the Business and Professions Code is amended and renumbered to read:

19942. (a) Any person who willfully fails to report, pay, or truthfully account for and pay over any license fee imposed by this chapter, or who willfully attempts in any manner to evade or defeat the license fee or payment thereof, shall be punished by imprisonment in a county jail, by a fine of not more than five thousand dollars ($5,000), or by both that imprisonment and fine.

(b) Any person who willfully violates any of the provisions of this chapter for which a penalty is not expressly provided, is guilty of a misdemeanor.

SEC. 100. Section 19933.5A of the Business and Professions Code is amended and renumbered to read:

19943. (a) Except as specified in subdivision (c), this section applies to any person or business that is engaged in controlled gambling, whether or not licensed to do so.

(b) Any person or business described in subdivision (a), with actual knowledge of the requirements of regulations adopted by the commission pursuant to subdivision (d) of Section 19841, that knowingly and willfully fails to comply with the requirements of those regulations shall be liable for a monetary penalty. The commission may impose a monetary penalty for each violation. However, in the first proceeding that is initiated pursuant to this subdivision, the penalties for all violations shall not exceed a total sum of ten thousand dollars ($10,000). If a penalty was imposed in a prior proceeding before the commission, the penalties for all violations shall not exceed a total sum of twenty-five thousand dollars ($25,000). If a penalty was imposed in two or more prior proceedings before the commission, the penalties for all violations shall not exceed a total sum of one hundred thousand dollars ($100,000).

(c) This section does not apply to any case where the person is criminally prosecuted in federal or state court for conduct related to a violation of Section 14162 of the Penal Code.

SEC. 101. Section 19934 of the Business and Professions Code is amended and renumbered to read:

19944. Any person who willfully resists, prevents, impedes, or interferes with the division or the commission or any of their agents or employees in the performance of duties pursuant to this chapter is guilty of a misdemeanor, punishable by imprisonment in a county jail for not more than six months, by a fine not exceeding one thousand dollars ($1,000), or by both that imprisonment and fine.

SEC. 102. The heading of Article 11 (commencing with Section 19940) of Chapter 5 of Division 8 of the Business and Professions Code is repealed.

SEC. 103. The heading of Article 12 (commencing with Section 19950) is added to Chapter 5 of Division 8 of the Business and Professions Code, to read:

Article 12. Revenues

SEC. 104. Section 19940 of the Business and Professions Code is amended and renumbered to read:

19950. (a) All fines and penalties collected pursuant to this chapter shall be deposited in a special account in the General Fund, and, upon appropriation, may be expended by the Department of Justice to offset costs incurred pursuant to this chapter.

(b) Except as otherwise provided in subdivision (a), all fees and revenue collected pursuant to this chapter shall be deposited in the Gambling Control Fund, which is hereby created in the State Treasury. The funds deposited in the Gambling Control Fund shall be available, upon appropriation by the Legislature, for expenditure by the division and commission exclusively for the support of the division and commission in carrying out their duties and responsibilities under this chapter.

SEC. 105. Section 19941 of the Business and Professions Code is amended and renumbered to read:

19951. (a) Every application for a license or approval shall be accompanied by a nonrefundable fee of five hundred dollars ($500).

(b) The fee for the initial issuance or renewal of a state gambling license, including all licenses issued to key employees and other persons whose names are endorsed upon the license, shall be assessed against the gambling license issued to the owner of the gambling enterprise. The fee for initial issuance of a state gambling license shall be an amount determined by the division pursuant to the schedule in subdivision (c).

The fee for the renewal of a state gambling license shall be determined pursuant to the schedule in subdivision (c) or the schedule in subdivision (d), whichever amount is greater.

(c) The schedule based on the number of tables is as follows:

(1) For a license authorizing one to five tables, inclusive, at which games are played, two hundred fifty dollars ($250) for each table.

(2) For a license authorizing six to eight tables, inclusive, at which games are played, four hundred fifty dollars ($450) for each table.

(3) For a license authorizing 9 to 14 tables, inclusive, at which games are played, one thousand fifty dollars ($1,050) for each table.

(4) For a license authorizing 15 to 25 tables, inclusive, at which games are played, two thousand one hundred fifty dollars ($2,150) for each table.

(5) For a license authorizing 26 to 70 tables, inclusive, at which games are played, three thousand two hundred dollars ($3,200) for each table.

(6) For a license authorizing 71 or more tables at which games are played, three thousand seven hundred dollars ($3,700) for each table.

(d) Without regard to the number of tables at which games may be played pursuant to a gambling license, if, at the time of any license renewal, it is determined that the gross revenues of an owner licensee during the licensee's previous fiscal year fell within the following ranges, the annual fee for renewal of the license shall be as follows:

(1) For a gross revenue of two hundred thousand dollars ($200,000) to four hundred ninety-nine thousand nine hundred ninety-nine dollars ($499,999), inclusive, the amount specified by the division pursuant to paragraph (2) of subdivision (c).

(2) For a gross revenue of five hundred thousand dollars ($500,000) to one million nine hundred ninety-nine thousand nine hundred ninety-nine dollars ($1,999,999), inclusive, the amount specified by the division pursuant to paragraph (3) of subdivision (c).

(3) For a gross revenue of two million dollars ($2,000,000) to nine million nine hundred ninety-nine thousand nine hundred ninety-nine dollars ($9,999,999), inclusive, the amount specified by the division pursuant to paragraph (4) of subdivision (c).

(4) For a gross revenue of ten million dollars ($10,000,000) or more, the amount specified by the division pursuant to paragraph (5) of subdivision (c).

(e) The commission may provide for payment of the annual gambling license fee on an annual or installment basis.

(f) For the purposes of this section, each table at which a game is played constitutes a single game table.

SEC. 106. Section 19942A of the Business and Professions Code is amended and renumbered to read:

19952. The commission, by regulation, shall establish fees for special licenses authorizing irregular operation of tables in excess of the total number of tables otherwise authorized to a licensed gambling establishment, for tournaments and other special events.

SEC. 107. Section 19944 of the Business and Professions Code is amended and renumbered to read:

19953. Nothing contained in this chapter shall be deemed to restrict or limit the power of any city, county, or city and county to fix, impose, and collect a license tax.

SEC. 108. The heading of Article 12 (commencing with Section 19950) of Chapter 5 of Division 8 of the Business and Professions Code is repealed.

SEC. 109. The heading of Article 13 (commencing with Section 19960) is added to Chapter 5 of Division 8 of the Business and Professions Code, to read:

Article 13. Local Governments

SEC. 110. Section 19950 of the Business and Professions Code is amended and renumbered to read:

19960. This chapter shall not prohibit the enactment, amendment, or enforcement of any ordinance by any city, county, or city and county relating to licensed gambling establishments that is not inconsistent with this chapter. No city, county, or city and county shall issue a gambling license with respect to any gambling establishment unless one of the following is true:

(a) The gambling establishment is located in a city, county, or city and county wherein, after January 1, 1984, an ordinance was adopted by the electors of the city, county, or city and county, in an election conducted pursuant to former Section 19819 of the Business and Professions Code, as that section read immediately before its repeal by the act that enacted this chapter.

(b) The gambling establishment is located in a city, county, or city and county wherein, prior to January 1, 1984, there was in effect an ordinance that expressly authorized the operation of one or more cardrooms.

(c) After the effective date of this chapter, a majority of the electors voting thereon affirmatively approve a measure permitting controlled gambling within that city, county, or city and county.

(1) The measure to permit controlled gambling shall appear on the ballot in substantially the following form:

"Shall licensed gambling establishments in which any controlled games permitted by law, such as draw poker, low-ball poker, panguine (pan), seven-card stud, or other lawful card games or tile games, are played, be

allowed in _____? Yes ____ No ____."

(2) In addition, the initial implementing ordinances shall be drafted and appear in full on the sample ballot and shall set forth at least all of the following:

(A) The hours of operation.

(B) The games to be played.

(C) The wagering limits.

(D) The maximum number of gambling establishments permitted by the ordinance.

(E) The maximum number of tables permitted in each gambling establishment.

(d) The authorization of subdivision (c) is subject to Sections 19962 and 19963 until those sections are repealed.

SEC. 111. Section 19950.1 of the Business and Professions Code is amended and renumbered to read:

19961. (a) On or after the effective date of this chapter, any amendment to any ordinance that would result in an expansion of gambling in the city, county, or city and county, shall not be valid unless the amendment is submitted for approval to the voters of the city, county, or city and county, and is approved by a majority of the electors voting thereon. An ordinance may be amended without the approval of the electors one time on or after the effective date of this chapter to expand gambling by a change that results in an increase of less than 25 percent with respect to any of the matters set forth in paragraphs (1), (2), (3), (5), and (6) of subdivision (b). Thereafter, any additional expansion shall be approved by a majority of the electors voting thereon. This subdivision does not apply to a licensed gambling establishment with five or fewer tables.

(b) For the purposes of this section, "expansion of gambling" means, when compared to that authorized on January 1, 1996, or under an ordinance adopted pursuant to subdivision (a) of Section 19960, whichever is the lesser number, a change that results in any of the following:

(1) An increase of 25 percent or more in the number of gambling tables in the city, county, or city and county.

(2) An increase of 25 percent or more in the number of licensed card rooms in the city, county, or city and county.

(3) An increase of 25 percent or more in the number of gambling tables that may be operated in a gambling establishment in the city, county, or city and county.

(4) The authorization of any additional form of gambling, other than card games, that may be legally played in this state, to be played at a gambling establishment in the city, county, or city and county.

(5) An increase of 25 percent or more in the hours of operation of a gambling establishment in the city, county, or city and county.

(6) An increase of 25 percent or more in the maximum amount permitted to be wagered in a game.

(c) The measure to expand gambling shall appear on the ballot in substantially the following form:

"Shall gambling be expanded in ____ beyond that operated or authorized on January 1, 1996, by ____ (describe expansion)? Yes ____ No ____."

(d) The authorization of subdivision (c) is subject to Sections 19962 and 19963 until those sections are repealed.

SEC. 112. Section 19950.2 of the Business and Professions Code is amended and renumbered to read:

19962. (a) On and after the effective date of this chapter, neither the governing body nor the electors of a county, city, or city and county that has not authorized legal gaming within its boundaries prior to January 1, 1996, shall authorize legal gaming.

(b) No ordinance in effect on January 1, 1996, that authorizes legal gaming within a city, county, or city and county may be amended to expand gaming in that jurisdiction beyond that permitted on January 1, 1996.

(c) This section shall remain operative only until January 1, 2007, and as of that date is repealed.

SEC. 113. Section 19950.3 of the Business and Professions Code is amended and renumbered to read:

19963. (a) In addition to any other limitations on the expansion of gambling imposed by Section 19962 or any provision of this chapter, the commission shall not issue a gambling license for a gambling establishment that was not licensed to operate on December 31, 1999, unless an application to operate that establishment was on file with the division prior to September 1, 2000.

(b) This section shall remain in effect only until January 1, 2007, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2007, deletes or extends that date.

SEC. 114. Section 19951 of the Business and Professions Code is amended and renumbered to read:

19964. No city, county, or city and county may grant, or permit to continue in effect, a license to deal, operate, carry on, conduct, maintain, or expose for play any controlled game to any applicant or holder of a local license unless the applicant or local licensee is an owner licensee as defined in this chapter. However, the issuance of a state gambling

license to a person imposes no requirements upon the city, county, or city and county to issue a license to the person.

SEC. 115. The heading of Article 13 (commencing with Section 19956) of Chapter 5 of Division 8 of the Business and Professions Code is repealed.

SEC. 116. The heading of Article 14 (commencing with Section 19970) is added to Chapter 5 of Division 8 of the Business and Professions Code, to read:

Article 14. Miscellaneous Provisions

SEC. 117. Section 19956 of the Business and Professions Code is amended and renumbered to read:

19970. If any clause, sentence, paragraph, or part of this chapter, for any reason, is adjudged by a court of competent jurisdiction to be invalid, that judgment shall not affect, impair, or invalidate the remainder of this chapter and the application thereof to other persons or circumstances, but shall be confined to the operation of the clause, sentence, paragraph, or part thereof directly involved in the controversy in which the judgment was rendered and to the person or circumstances involved.

SEC. 118. Section 19957 of the Business and Professions Code is amended and renumbered to read:

19971. This act is an exercise of the police power of the state for the protection of the health, safety, and welfare of the people of the State of California, and shall be liberally construed to effectuate those purposes.

SEC. 119. Section 19958 of the Business and Professions Code is amended and renumbered to read:

19972. For the purposes of Section 3482 of the Civil Code, the issuance of a state gambling license shall not be construed to authorize any conduct or activity other than the conduct of controlled gambling.

SEC. 120. The heading of Article 14 (commencing with Section 19959) of Chapter 5 of Division 8 of the Business and Professions Code is repealed.

SEC. 121. The heading of Article 15 (commencing with Section 19980) is added to Chapter 5 of Division 8 of the Business and Professions Code, to read:

Article 15. Additional Restrictions Related to Fair Elections and Corruption of Regulators

SEC. 122. Section 19959 of the Business and Professions Code is amended and renumbered to read:

19980. (a) The Legislature finds and declares that there is a compelling governmental interest in ensuring that elections conducted

pursuant to Section 19960 are conducted fairly and that electors in those elections are presented with fair and balanced arguments in support of and in opposition to the existence of gambling establishments. Large contributions by gambling operators or prospective gambling operators who will be financially interested in the outcome of the election often unfairly distort the context in which those elections take place.

(b) In California, in other states, and in other countries, there is ample historical evidence of the potential for revenues derived from gambling to be used to corrupt political officials in the regulation or prosecution of crimes related to gambling activities, embezzlement, and money laundering.

(c) This article is an exercise of the police power of the state for the protection of the health, safety, and welfare of the people of this state.

SEC. 123. Section 19959.5A of the Business and Professions Code is amended and renumbered to read:

19981. (a) A member of the commission, the executive director, the director, and any employee of the commission or division designated by regulation, shall not, for a period of three years after leaving office or terminating employment, for compensation, act as agent or attorney for, or otherwise represent, any other person by making any formal or informal appearance, or by making any oral or written communication, before the commission or the division, or any officer or employee thereof, if the appearance or communication is for the purpose of influencing administrative action, or influencing any action or proceeding involving the issuance, amendment, awarding, or revocation of a permit, license, or approval.

(b) A member of the commission shall not solicit or accept campaign contributions from any person, including any applicant or licensee.

SEC. 124. Section 19960.2A of the Business and Professions Code is amended and renumbered to read:

19982. (a) A license may be denied, suspended, or revoked if the applicant or licensee, within three years prior to the submission of the license or renewal application, or any time thereafter, violates any law or ordinance with respect to campaign finance disclosure or contribution limitations applicable to an election that is conducted pursuant to Section 19960, former Section 19950, or pursuant to former Section 19819, as that section read immediately prior to its repeal by the act that enacted this chapter.

(1) The remedies specified herein are in addition to any other remedy or penalty provided by law.

(2) Any final determination by the Fair Political Practices Commission that the applicant did not violate any provision of state law within its jurisdiction shall be binding on the commission.

(3) Any final determination by a city or county governmental body having ultimate jurisdiction over the matter that the applicant did not violate an ordinance with respect to campaign finance disclosure or contribution limitations applicable to an election conducted pursuant to Section 19960, former Section 19950, or former Section 19819, as that section read immediately prior to its repeal by the act that enacted this chapter, shall be binding on the commission.

(b) Every applicant for a gambling license, or any renewal thereof, shall file with the division, at the time the license application or renewal is filed, the following information:

(1) Any statement or other document required to be filed with the Fair Political Practices Commission relative to an election that is conducted pursuant to Section 19960, former Section 19950, or former Section 19819, as that section read immediately prior to its repeal by the act that enacted this chapter, within three years of the date on which the application is submitted.

(2) Any statement or other document required to be filed with any local jurisdiction respecting campaign finance disclosure or contribution limitations applicable to an election that is conducted pursuant to Section 19960, former Section 19950, or former Section 19819, as that section read immediately prior to its repeal by the act that enacted this chapter, within three years of the date on which the application is submitted.

(3) A report of any contribution of money or thing of value, in excess of one hundred dollars ($100), made to any committee, as defined by Section 82013 of the Government Code, associated with any election that is conducted pursuant to Section 19960, former Section 19950, or former Section 19819, as that section read immediately prior to its repeal by the act that enacted this chapter, within three years of the date on which the application is submitted.

(4) A report of any other significant involvement by the applicant or licensee in an election that is conducted pursuant to Section 19960, former Section 19950, or former Section 19819, as that section read immediately prior to its repeal by the act that enacted this chapter, within three years of the date on which the application is submitted.

(c) The commission shall adopt regulations to implement this section.

SEC. 125. Section 19960.4 of the Business and Professions Code is amended and renumbered to read:

19983. It is the intent of the Legislature that if any provision of this article is adjudged by a court to be invalid because of any conflict or inconsistency with the Political Reform Act of 1974 (Title 9 (commencing with Section 81000) of the Government Code), as amended, that judgment shall not affect, impair, or invalidate any other

provision of this chapter and the application thereof to other persons or circumstances, but shall be confined to the operation of the clause, sentence, paragraph, or part thereof directly involved in the controversy in which the judgment was rendered and to the person or circumstances involved.

SEC. 126. The heading of Article 16 (commencing with Section 19984) is added to Chapter 5 of Division 8 of the Business and Professions Code, to read:

Article 16. Additional Contracts: Proposition Players

SEC. 127. Section 19980 of the Business and Professions Code is amended and renumbered to read:

19984. Notwithstanding any other provision of law, a licensed gambling establishment may contract with a third party for the purpose of providing proposition player services, subject to the following conditions:

(a) Any agreement, contract, or arrangement between a gambling establishment and a third-party provider of proposition player services shall be approved in advance by the division, and in no event shall a gambling establishment or the house have any interest, whether direct or indirect, in funds wagered, lost, or won.

(b) The commission shall establish reasonable criteria for, and require the licensure and registration of, any person or entity that provides proposition player services to gambling establishments pursuant to this section, including owners, supervisors, and players. Those employed by a third-party provider of proposition player services, including owners, supervisors, observers, and players, shall wear a badge which clearly identifies them as proposition players whenever they are present within a gambling establishment. The commission may impose licensing requirements, disclosures, approvals, conditions, or limitations as it deems necessary to protect the integrity of controlled gambling in this state, and may assess and collect reasonable fees and deposits as necessary to defray the costs of providing this regulation and oversight.

(c) The division, pursuant to regulations of the commission, is empowered to perform background checks, financial audits, and other investigatory services as needed to assist the commission in regulating third party providers of proposition player services, and may assess and collect reasonable fees and deposits as necessary to defray the costs of providing this regulation and oversight. The division may adopt emergency regulations in order to implement this subdivision.

(d) No agreement or contract between a licensed gambling establishment and a third party concerning the provision of proposition

player services shall be invalidated or prohibited by the division pursuant to this section until the commission establishes criteria for, and makes determinations regarding the licensure or registration of, the provision of these services pursuant to subdivision (b).

CHAPTER 739

An act to add Section 51221.3 to the Education Code, relating to curriculum.

[Approved by Governor September 20, 2002. Filed with Secretary of State September 20, 2002.]

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

SECTION 1. Section 51221.3 is added to the Education Code, to read:

51221.3. (a) Instruction in the area of social sciences, as required pursuant to subdivision (b) of Section 51220, shall include instruction on World War II and the American role in that war. The Legislature encourages that this instruction include, but not be limited to, a component drawn from personal testimony, especially in the form of oral or video history, if available, of American soldiers who were involved in World War II and those men and women who contributed to the war effort on the homefront. The oral histories used as part of the instruction regarding World War II shall exemplify the personal sacrifice and courage of the wide range of ordinary citizens who were called upon to participate. The oral histories shall contain the views and comments of their subjects regarding the reasons for American participation in the war and the actions taken to end the war in the Pacific. These oral histories shall also solicit comments from their subjects regarding the aftermath of the war in Eastern Europe and the former Soviet Union.

(b) This section shall be carried out in a manner that does not result in any new duties or programs being imposed on the school district. In that regard, the Legislature finds and declares that this section does not mandate costs to local agencies or school districts and materials used to comply with this section shall be part of normal curriculum materials purchased by school districts in their normal course of business and purchasing cycles.

CHAPTER 740

An act to amend Sections 40194 and 40201 of, and to add Sections 40117 and 40507.1 to, the Public Resources Code, relating to solid waste and making an appropriation therefor.

[Approved by Governor September 20, 2002. Filed with Secretary of State September 20, 2002.]

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

SECTION 1. Section 40117 is added to the Public Resources Code, to read:

40117. "Gasification" means a technology that uses a noncombustion thermal process to convert solid waste to a clean burning fuel for the purpose of generating electricity, and that, at minimum, meets all of the following criteria:

(a) The technology does not use air or oxygen in the conversion process, except ambient air to maintain temperature control.

(b) The technology produces no discharges of air contaminants or emissions, including greenhouse gases, as defined in subdivision (g) of Section 42801.1 of the Health and Safety Code.

(c) The technology produces no discharges to surface or groundwaters of the state.

(d) The technology produces no hazardous waste.

(e) To the maximum extent feasible, the technology removes all recyclable materials and marketable green waste compostable materials from the solid waste stream prior to the conversion process and the owner or operator of the facility certifies that those materials will be recycled or composted.

(f) The facility where the technology is used is in compliance with all applicable laws, regulations, and ordinances.

(g) The facility certifies to the board that any local agency sending solid waste to the facility is in compliance with this division and has reduced, recycled, or composted solid waste to the maximum extent feasible, and the board makes a finding that the local agency has diverted at least 30 percent of all solid waste through source reduction, recycling, and composting.

SEC. 2. Section 40194 of the Public Resources Code is amended to read:

40194. "Solid waste facility" includes a solid waste transfer or processing station, a composting facility, a gasification facility, a transformation facility, and a disposal facility.

SEC. 3. Section 40201 of the Public Resources Code is amended to read:

40201. "Transformation" means incineration, pyrolysis, distillation, or biological conversion other than composting. "Transformation" does not include composting, gasification, or biomass conversion.

SEC. 4. Section 40507.1 is added to the Public Resources Code, to read:

40507.1. (a) As part of the annual report required to be submitted by the board to the Legislature pursuant to Section 40507 on or before March 1, 2003, the board shall include a report on new and emerging conversion technologies, including, but not limited to, noncombustion thermal technologies, including gasification and pyrolysis, chemical technologies such as acid hydrolysis or distillation, and biological technologies, other than composting, such as enzyme hydrolysis. The board shall only evaluate those conversion technologies that provide demonstrated environmental benefits over the transformation and disposal of solid waste.

(b) The report required by subdivision (a) shall contain all of the following:

(1) Specific and discrete definitions and descriptions of each conversion technology evaluated.

(2) A description and evaluation of the life-cycle environmental and public health impacts of each conversion technology in comparison to those environmental and public health impacts from the transformation and disposal of solid waste.

(3) A description and evaluation of the technical performance characteristics, feedstocks, emissions, and residues used by each conversion technology and identification of the cleanest, least polluting conversion technologies.

(4) A description and evaluation of the impacts on the recycling and composting markets as a result of each conversion technology.

(c) The board shall require that the report be subject to an external scientific peer review process conducted pursuant to Section 57004 of the Health and Safety Code.

(d) The board shall consult with the State Energy Resources Conservation and Development Commission and other state, federal, or international governmental agencies in preparing the report required by this section.

SEC. 5. The sum of one million five hundred thousand dollars ($1,500,000) is hereby appropriated from the Integrated Waste Management Account to the California Integrated Waste Management Board for purposes of preparing the report required by Section 40507.1 of the Health and Safety Code.

CHAPTER 741

An act to amend Sections 6047.4, 6047.5, and 6047.6 of, and to add Section 6047.35 to, the Food and Agricultural Code, relating to pests, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 20, 2002. Filed with Secretary of State September 20, 2002.]

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

SECTION 1. Section 6047.35 is added to the Food and Agricultural Code, to read:

6047.35. Notwithstanding any other provision of law, the secretary, upon the recommendation of the board, may contract with any nonprofit authoritative scientific body with expertise in agricultural issues in order to expedite research relating to the eradication of Pierce's disease.

SEC. 2. Section 6047.4 of the Food and Agricultural Code is amended to read:

6047.4. (a) The powers of the board shall be the following:

(1) Submit recommendations to the secretary on, but not limited to, the following:

(A) Selection of officers.

(B) Terms of office for board members.

(C) Annual assessment rate.

(D) Annual budget.

(E) Expenditures authorized under Section 6047.5.

(2) Receive money from the assessment and other sources.

(3) Adopt, amend, and rescind all proper and necessary bylaws and procedures.

(4) Coordinate its activities with the secretary's science advisory board and agricultural/govermental advisory task force.

(b) A majority of the members of the board shall constitute a quorum of the board. The vote of a majority of the members present at a meeting at which there is a quorum constitutes an act of the board, except for actions taken pursuant to subdivision (a) of Section 6047.7, which shall require a majority of the vote of the board. The board may continue to transact business at a meeting where a quorum is initially present, notwithstanding the withdrawal of members, provided any action is approved by the requisite majority of the required quorum.

(c) As authorized by the board, members of the board may receive per diem and mileage in accordance with the rules of the Department of Personnel Administration for attendance at meetings and other approved board activities.

SEC. 3. Section 6047.5 of the Food and Agricultural Code is amended to read:

6047.5. (a) Expenditure of the funds pursuant to this article shall be restricted to the following:

(1) Reasonable administrative expenses of the board and the department, subject to the limitation in Section 6047.12.

(2) The collection, enforcement, deposit, and handling of the assessments.

(3) Subject to subdivision (d) of Section 6047.1, research and other activities related to the transmittal of the plant killing Pierce's disease bacteria, and its vectors, particularly the Glassy-winged Sharpshooter, including, but not limited to, research of integrated pest management and other sustainable industry practices. The disbursement of research funds collected pursuant to Section 6047.7 shall be on a competitive bid basis and shall be exempt from the requirements of Sections 12798 and 12798.6.

(b) Except as provided in subdivision (c), data and related information and materials produced during the course of research conducted pursuant to this article that are in the possession of the department, the board, or any entity engaged in research funded pursuant to this article, shall be confidential and shall not be released for any purpose, except to the extent that they are included in any final publication of research, or except when required by a court order after a hearing in a judicial proceeding involving this article.

(c) The restrictions in this section shall not apply to research conducted by the University of California or by other public agencies or public institutions that are subject to interagency agreements, except to the extent that they are consistent with policies of the entity engaged in research funded pursuant to this article on sponsored research and publication, which may allow for, among other things, a short period of review by the board in advance of publication.

(d) Processors subject to this article and expenditure of the funds collected pursuant to this article are subject to audit by the department.

SEC. 4. Section 6047.6 of the Food and Agricultural Code is amended to read:

6047.6. The secretary shall accept the recommendations of the board unless he or she determines that the recommendations are not practicable or in the interest of the industry or the public. The secretary shall provide the board with the reasons for his or her decision within 15 days if the secretary does not accept a recommendation of the board.

SEC. 5. 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 speed up research of the plant killing Pierce's disease bacteria that has threatened to spread destruction to grapes and other important crops throughout the state, it is necessary that this act take effect immediately.

CHAPTER 742

An act to amend Sections 11629.71, 11629.72, 11629.73, 11629.76, 11629.84, 11629.91, 11629.92, 11629.93, 11629.96, and 11629.995 of, and to add Sections 11629.745, 11629.85, 11629.945, and 11629.999 to, the Insurance Code, and to amend Section 16056.1 of the Vehicle Code, relating to insurance.

[Approved by Governor September 20, 2002. Filed with Secretary of State September 20, 2002.]

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

SECTION 1. Section 11629.71 of the Insurance Code is amended to read:

11629.71. A low-cost automobile insurance policy for purposes of the pilot program established under this article shall have all of the following attributes:

(a) The policy shall offer coverage in the amount of ten thousand dollars ($10,000) for bodily injury to, or death of, each person as a result of any one accident and, subject to that limit as to one person, the amount of twenty thousand dollars ($20,000) for bodily injury to, or death of all persons as a result of any one accident, and the amount of three thousand dollars ($3,000) for damage to property of others as a result of any one accident.

(b) The coverage required by Section 11580.2 shall be made available to the consumer. However, an insurer may charge a premium for that coverage in addition to the premium set forth in Section 11629.72. Notwithstanding the coverage amounts required by Section 11580.2 and Section 16056 of the Vehicle Code, uninsured motorist coverage issued in conjunction with a low-cost automobile policy under the pilot program, with coverage limits at least equal to the limits of liability in the underlying low-cost automobile policy, shall satisfy the requirements of Section 11580.2 and the financial responsibility requirements of Sections 4000.37, 16021, and 16431 of the Vehicle Code.

(c) Medical payments coverage shall be made available to the consumer. However, an insurer may charge a premium for that coverage in addition to the premium set forth in Section 11629.72.

(d) The policy shall have an initial term of one year, renewable on an annual basis thereafter.

(e) The policy shall cover the person named in the policy, and to the same extent that insurance is provided to the named insured, any other person using the automobile, provided the use is with his or her permission, express or implied, and within the scope of that permission, except that the policy shall not cover members of the named insured's household who do not satisfy the requirements of subdivisions (b) to (e), inclusive, of Section 11629.73.

(f) The policy shall provide coverage for an automobile with a value, at the time of purchase by the insured, of twelve thousand dollars ($12,000) or less, as evidenced by the value given to the automobile by the Department of Motor Vehicles in assessing vehicle license fees.

SEC. 2. Section 11629.72 of the Insurance Code is amended to read:

11629.72. (a) The annual rate offered initially under the pilot program for the low-cost automobile insurance policy, until the time that the rate is adjusted, shall be four hundred fifty dollars ($450) per covered vehicle. Effective March 1, 2003, the annual rate offered under the pilot program for the low-cost automobile policy, unless and until the time that the rate is adjusted, shall be three hundred forty-seven dollars ($347) per covered vehicle, unless the commissioner establishes that rate or a different rate prior to that time. A surcharge, as a percentage of the base rate, shall be added to the base rate and that percentage shall be set at the discretion of the commissioner, if the named insured is an unmarried male between the ages of 19 and 24, inclusive, or if an unmarried male between the ages of 19 and 24, inclusive, resides in the household of the named insured and will be a driver of the automobile covered under the low-cost policy.

(b) In addition to existing premium installment options offered by the California Automobile Assigned Risk Plan under Article 4 (commencing with Section 11620), the plan shall also make available to an insured under the pilot program, a premium installment option pursuant to which an insured is required to pay not more than 15 percent of the total policy cost upon issuance of the low-cost policy, followed thereafter by six other payments. No other premium financing arrangement shall be permitted.

(c) Rates for policies issued under the pilot program shall be reviewed and revised as follows:

(1) Rates shall be sufficient to cover (A) losses incurred under policies issued under the pilot program, and (B) expenses, including, but not limited to, all reasonable and necessary expenses such as the costs

of administration, underwriting, taxes, commissions, and claims adjusting, that are incurred due to participation in this pilot program. For purposes of this paragraph, ''losses incurred'' means claims paid, claims incurred and reported, and claims incurred but not yet reported. In assessing loss reserves, the commissioner shall only allow loss reserves that are estimated from actual losses in the pilot program or comparable data by a licensed statistical agent, as adjusted to reflect coverage provided under this pilot program.

(2) Rates shall be set so as to result in no projected subsidy of the pilot program by those policyholders of insurers issuing policies under the pilot program who are not participants in the pilot program.

(3) Rates shall be set with respect to this pilot program, and the pilot program established in Article 5.6 (commencing with Section 11629.9), so as to result in no projected subsidy by policyholders in one pilot program of policyholders in the other pilot program.

(4) Commencing on January 1, 2001, and annually thereafter, the California Automobile Assigned Risk Plan shall submit the loss and expense data, together with a proposed rate and the surcharge authorized by subdivision (a) for the low-cost automobile policy for the pilot program, to the commissioner for approval in accordance with this chapter. The commissioner shall act on the recommendation within 90 days.

SEC. 3. Section 11629.73 of the Insurance Code is amended to read:

11629.73. A low-cost automobile insurance policy under the pilot program shall only be available for purchase by persons who satisfy the following eligibility requirements:

(a) The person shall be in a household with a gross annual household income that does not exceed 250 percent of the federal poverty level, as defined in Part 6.2 (commencing with Section 12693) or as defined in an equivalent manner that is approved by the commissioner.

(b) The person shall be no less than 19 years of age and have been continuously licensed to drive an automobile for the previous three years.

(c) The person shall have not more than one of either, but not both, of the following within the previous three years:

(1) A property damage only accident in which the driver was principally at fault.

(2) A point for a moving violation.

(d) The person shall not have on record within the previous three years, an at-fault accident involving bodily injury or death.

(e) The person shall not have a felony or misdemeanor conviction for a violation of the Vehicle Code on his or her motor vehicle record.

(f) The person shall not be a college student claimed as a dependent of another person for federal or state income tax purposes.

SEC. 4. Section 11629.745 is added to the Insurance Code, to read:

11629.745. (a) An agent or broker (hereafter referred to as a producer) who conducts business in a county in which a low-cost automobile insurance policy is available pursuant to this article shall inform every new prospective automobile insurance policyholder who requests a minimum limits or basic limits insurance policy, or coverage to meet California's minimum limits automobile insurance requirements, that the low-cost automobile insurance policy may be available for qualifying motorists. The information may be provided verbally if the producer has been contacted by telephone, or in writing, but shall be communicated to the policyholder prior to the application for automobile insurance coverage in the language in which the producer has otherwise communicated with the consumer.

(b) If the consumer requests more information about the low-cost program the producer shall do either of the following:

(1) If the producer is California Automobile Assigned Risk Plan certified, provide the consumer with an explanation in an information pamphlet produced by the California Automobile Assigned Risk Plan and approved and provided by the Department of Insurance of the qualifications, cost and coverage provided by the policy. If the consumer qualifies for the low-cost policy and wishes to purchase the policy, the California Automobile Assigned Risk Plan certified producer shall provide the application and, upon completion, submit the application, supporting documents, and the applicant's certification to the California Automobile Assigned Risk Plan. The submittal of the California Automobile Assigned Risk Plan application may be in addition to any other coverage offered or applied for through the producer.

(2) If the producer is not California Automobile Assigned Risk Plan certified, the producer shall provide the consumer with the toll-free telephone number for the California Automobile Assigned Risk Plan as an option to coverage offered by the producer.

SEC. 5. Section 11629.76 of the Insurance Code is amended to read:

11629.76. (a) For a low-cost automobile insurance policy issued pursuant to the pilot program, certified producers shall be entitled to the same commission rate as is paid by the California Automobile Assigned Risk Plan for private passenger, nonfleet risks under Article 4 (commencing with Section 11620).

(b) Notwithstanding subdivision (a), the commissioner may at any time establish a commission for a low-cost automobile insurance policy issued pursuant to the pilot program and may make the commission effective on any policy originated within an entire year, or any portion of a year, as is needed to provide an incentive to certified producers to sell low-cost automobile insurance to eligible applicants. The commissioner shall not establish a commission pursuant to this

subdivision if the commissioner determines that setting the commission rate will result in a lower commission percentage than would exist pursuant to subdivision (a).

(c) No other fees of any kind may be charged or collected pursuant to this section and the sale of a low-cost policy under this article shall not be conditioned on the purchase of any other product or service.

SEC. 6. Section 11629.84 of the Insurance Code is amended to read:

11629.84. This article shall remain in effect only until January 1, 2007, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2007, deletes or extends that date.

SEC. 7. Section 11629.85 is added to the Insurance Code, to read:

11629.85. (a) On or before February 1 of each year, the commissioner shall prepare and propose a plan to the Senate and Assembly Committees on Insurance setting forth the methods the commissioner intends to implement to inform households eligible for the pilot program about the availability of low-cost automobile insurance. To be eligible for funding through the budget process, the plan shall be reviewed by the Senate and Assembly Committees on Insurance. The plan shall include, at a minimum, a brief description of methods proposed to be used, anticipated costs, sources of revenue, goals, targets, objectives, and a justification of the proposed methods. The plan shall also explain how the department proposes to work in cooperation with the California Automobile Assigned Risk Plan, the social service departments of the Counties of Los Angeles and San Francisco, the Department of Motor Vehicles, and community-based organizations in order to inform eligible households of the existence of the pilot program.

(b) Any written or oral advertisements, including, but not limited to, paid or unpaid commercial or noncommercial advertising, by the department with reference to the low-cost automobile insurance pilot program shall reference the department and shall not reference the commissioner by name or office, or include the commissioner's voice, image, or likeness. The department shall not participate with any nongovernmental entity that produces or intends to produce advertisements or educational material that include the name of the commissioner or his or her voice, image or likeness, and that are intended to make eligible households aware of the existence of low-cost automobile insurance.

SEC. 8. Section 11629.91 of the Insurance Code is amended to read:

11629.91. A low-cost automobile insurance policy for purposes of the pilot program established under this article shall have all of the following attributes:

(a) The policy shall offer coverage in the amount of ten thousand dollars ($10,000) for bodily injury to, or death of, each person as a result

of any one accident and, subject to that limit as to one person, the amount of twenty thousand dollars ($20,000) for bodily injury to, or death of all persons as a result of any one accident, and the amount of three thousand dollars ($3,000) for damage to property of others as a result of any one accident.

(b) The coverage required by Section 11580.2 shall be made available to the consumer. However, an insurer may charge a premium for that coverage in addition to the premium set forth in Section 11629.92. Notwithstanding the coverage amounts required by Section 11580.2 and Section 16056 of the Vehicle Code, uninsured motorist coverage issued in conjunction with a low-cost automobile policy under the pilot program, with coverage limits at least equal to the limits of liability in the underlying low-cost automobile policy, shall satisfy the requirements of Section 11580.2 and the financial responsibility requirements of Sections 4000.37, 16021, and 16431 of the Vehicle Code.

(c) Medical payments coverage shall be made available to the consumer. However, an insurer may charge a premium for that coverage in addition to the premium set forth in Section 11629.92.

(d) The policy shall have an initial term of one year, renewable on an annual basis thereafter.

(e) The policy shall cover the person named in the policy, and to the same extent that insurance is provided to the named insured, any other person using the automobile, provided the use is with his or her permission, express or implied, and within the scope of that permission, except that the policy shall not cover members of the named insured's household who do not satisfy the requirements of subdivisions (b) to (e), inclusive, of Section 11629.93.

(f) The policy shall provide coverage for an automobile with a value, at the time of purchase by the insured, of twelve thousand dollars ($12,000) or less, as evidenced by the value given to the automobile by the Department of Motor Vehicles in assessing vehicle license fees.

SEC. 9. Section 11629.92 of the Insurance Code is amended to read:

11629.92. (a) The annual rate offered initially under the pilot program for the low-cost automobile insurance policy, until the time that the rate is adjusted, shall be four hundred ten dollars ($410) per covered vehicle. Effective March 1, 2003, the annual rate offered under the pilot program for the low-cost automobile policy, unless and until the time that the rate is adjusted, shall be three hundred fourteen dollars ($314) per covered vehicle, unless the commissioner establishes that rate or a different rate prior to that time. A surcharge, as a percentage of the base rate shall be added to the base rate and that percentage shall be set at the discretion of the commissioner, if the named insured is an unmarried male between the ages of 19 and 24, inclusive, or if an unmarried male

between the ages 19 and 24, inclusive, resides in the household of the named insured and will be a driver of the automobile covered under the low-cost policy.

(b) In addition to existing premium installment options offered by the California Automobile Assigned Risk Plan under Article 4 (commencing with Section 11620), the plan shall also make available to insureds under the pilot program, a premium installment option pursuant to which an insured is required to pay not more than 15 percent of the total policy cost upon issuance of the low-cost policy, followed thereafter by six other payments. No other premium financing arrangement shall be permitted.

(c) Rates for policies issued under the pilot program shall be reviewed and revised as follows:

(1) Rates shall be sufficient to cover (A) losses incurred under policies issued under the pilot program, and (B) expenses, including, but not limited to, all reasonable and necessary expenses such as the costs of administration, underwriting, taxes, commissions, and claims adjusting, that are incurred due to participation in this pilot program. For purposes of this paragraph, ''losses incurred'' means claims paid, claims incurred and reported, and claims incurred but not yet reported. In assessing loss reserves, the commissioner shall only allow loss reserves that are estimated from actual losses in the pilot program or comparable data by a licensed statistical agent, as adjusted to reflect coverage provided in this pilot program.

(2) Rates shall be set so as to result in no projected subsidy of the pilot program by those policyholders of insurers issuing policies under the pilot program who are not participants in the pilot program.

(3) Rates shall be set with respect to this pilot program, and the pilot program established in Article 5.5 (commencing with Section 11629.7), so as to result in no projected subsidy by policyholders in one pilot program of policyholders in the other pilot program.

(4) Commencing on January 1, 2001, and annually thereafter, the California Automobile Assigned Risk Plan shall submit the loss and expense data, together with a proposed rate and the surcharge authorized by subdivision (a) for the low-cost automobile policy for the pilot program, to the commissioner for approval in accordance with this chapter. The commissioner shall act on the recommendation within 90 days.

SEC. 10. Section 11629.93 of the Insurance Code is amended to read:

11629.93. A low-cost automobile insurance policy under the pilot program shall only be available for purchase by persons who satisfy the following eligibility requirements:

(a) The person shall be in a household with a gross annual household income that does not exceed 250 percent of the federal poverty level, as defined in Part 6.2 (commencing with Section 12693) or as defined in an equivalent manner that is approved by the commissioner.

(b) The person shall be no less than 19 years of age and have been continuously licensed to drive an automobile for the previous three years.

(c) The person shall have not more than one of either, but not both, of the following within the previous three years:

(1) A property damage only accident in which the driver was principally at fault.

(2) A point for a moving violation.

(d) The person shall not have on record within the previous three years, an at-fault accident involving bodily injury or death.

(e) The person shall not have a felony or misdemeanor conviction for a violation of the Vehicle Code on his or her motor vehicle record.

(f) The person shall not be a college student claimed as a dependent of another person for federal or state income tax purposes.

SEC. 11. Section 11629.945 is added to the Insurance Code, to read:

11629.945. (a) An agent or broker (hereafter referred to as a producer) conducting business in a county in which a low-cost automobile insurance policy is available pursuant to this article shall inform every new prospective automobile insurance policyholder who requests a minimum limits or basic limits insurance policy, or coverage to meet California's minimum limits automobile insurance requirements, that the low-cost automobile insurance policy may be available for qualifying motorists. The information may be provided verbally if the producer has been contacted by phone, or in writing, but shall be communicated to the policyholder prior to the application for automobile insurance coverage in the language in which the producer has otherwise communicated with the consumer.

(b) If the consumer requests more information about the low-cost program the producer shall do either of the following:

(1) If the producer is California Automobile Assigned Risk Plan certified, provide the consumer with an explanation in an information pamphlet produced by the California Automobile Assigned Risk Plan and approved and provided by the Department of Insurance, of the qualifications, cost and coverage provided by the policy. If the consumer qualifies for the low-cost policy and wishes to purchase the policy, the California Automobile Assigned Risk Plan certified producer shall provide the application and, upon completion, submit the application, supporting documents, and the applicant's certification to the California Automobile Assigned Risk Plan. The submittal of the California

Automobile Assigned Risk Plan application may be in addition to any other coverage offered or applied for through the producer.

(2) If the producer is not California Automobile Assigned Risk Plan certified, the producer shall provide the consumer with the toll-free telephone number for the California Automobile Assigned Risk Plan as an option to coverage offered by the producer.

SEC. 12. Section 11629.96 of the Insurance Code is amended to read:

11629.96. (a) For a low-cost automobile insurance policy issued pursuant to the pilot program, certified producers shall be entitled to the same commission rate as is paid by the California Automobile Assigned Risk Plan for private passenger, nonfleet risks under Article 4 (commencing with Section 11620).

(b) Notwithstanding subdivision (a), the commissioner may at any time establish a commission for a low-cost automobile insurance policy issued pursuant to the pilot program and may make the commission effective on any policy originated within an entire year, or any portion of a year, as is needed to provide an incentive to certified producers to sell low-cost automobile insurance to eligible applicants. The commissioner shall not establish a commission pursuant to this subdivision if the commissioner determines that setting the commission rate will result in a lower commission percentage than would exist pursuant to subdivision (a).

(c) No other fees of any kind may be charged or collected pursuant to this section and the sale of a low-cost policy under this article shall not be conditioned on the purchase of any other product or service.

SEC. 13. Section 11629.995 of the Insurance Code is amended to read:

11629.995. This article shall remain in effect only until January 1, 2007, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2007, deletes or extends that date.

SEC. 14. Section 11629.999 is added to the Insurance Code, to read:

11629.999. (a) On or before February 1 of each year, the commissioner shall prepare and propose a plan to the Senate and Assembly Committees on Insurance setting forth the methods the commissioner intends to implement to inform households eligible for the pilot programs set forth in Article 5.5 (commencing with Section 11629.7) and Article 5.6 (commencing with Section 11629.9) about the availability of low-cost automobile insurance. To be eligible for funding through the budget process, the plan shall be reviewed by the Senate and Assembly Committees on Insurance. The plan shall include, at a minimum, a brief description of methods proposed to be used, anticipated costs, sources of revenue, goals, targets, objectives, and a justification of the proposed methods. The plan shall also explain how

the department proposes to work in cooperation with the California Automobile Assigned Risk Plan, the social service departments of the Counties of Los Angeles and San Francisco, the Department of Motor Vehicles, and community-based organizations in order to inform eligible households of the existence of the pilot program.

(b) Any written or oral advertisements, including, but not limited to, paid or unpaid commercial or noncommercial advertising, by the department with reference to the low-cost automobile insurance pilot program shall reference the department and shall not reference the commissioner by name or office, or include the commissioner's voice, image, or likeness. The department shall not participate with any nongovernmental entity that produces or intends to produce advertisements or educational material that include the name of the commissioner or his or her voice, image or likeness, and that are intended to make eligible households aware of the existence of low-cost automobile insurance.

SEC. 15. Section 16056.1 of the Vehicle Code is amended to read:

16056.1. (a) Notwithstanding the coverage limits specified in Section 16056, an automobile insurance policy described in Sections 11629.71 and 11629.91 of the Insurance Code shall be effective under Section 16054 when issued by an insurance company admitted to do business in this state by the Insurance Commissioner and the policy is subject, if the accident has resulted in bodily injury or death, to a limit, exclusive of interest and costs, of not less than ten thousand dollars ($10,000) because of bodily injury to or death of one person in any one accident and, subject to that limit for one person, to a limit of not less than twenty thousand dollars ($20,000) because of bodily injury to or death of two or more persons in any one accident, and if the accident has resulted in injury to, or destruction of property, to a limit of not less than three thousand dollars ($3,000) because of injury to or destruction of property of others in any one accident.

(b) This section shall remain in effect only until January 1, 2007, and as of that date is repealed, unless a later enacted statute, which is enacted on or before January 1, 2007, deletes or extends that date.

SEC. 16. This bill shall become operative only if Senate Bill 180 of the 2001–02 Regular Session is enacted and becomes effective.

CHAPTER 743

An act to amend Section 29532.1 of the Government Code, and to amend Section 99233.5 of, and to add Chapter 3 (commencing with

Section 132350) to Division 12.7 of, the Public Utilities Code, relating to transportation.

[Approved by Governor September 20, 2002. Filed with Secretary of State September 20, 2002.]

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

SECTION 1. The Legislature hereby finds and declares that this act is an incremental step toward establishing a regional agency having authority over a range of regional issues. There is a clear need for a regional agency having sufficient land-use authority to implement an efficient regional transportation system and develop a comprehensive plan coordinated with the regional transportation plan. The goals should include reducing traffic congestion, limiting sprawl, and improving the quality of life for San Diegans. To accomplish this, future legislation must assure an effective form of governance that includes, but is not limited to, public participation, accountability, and proportional representation, which would be approved by the voters of San Diego County.

SEC. 2. Section 29532.1 of the Government Code is amended to read:

29532.1. Pursuant to subdivision (a) of Section 29532, each of the following entities is designated the transportation planning agency for its respective area:

(a) The Metropolitan Transportation Commission created by Title 7.1 (commencing with Section 66500).

(b) The Tahoe Regional Planning Agency created by interstate compact and ratified by Title 7.4 (commencing with Section 66800).

(c) The Placer County Transportation Planning Agency created by Title 7.91 (commencing with Section 67910).

(d) The Nevada County Transportation Planning Agency created by Title 7.92 (commencing with Section 67920).

(e) The Transportation Agency of Monterey County created pursuant to Title 7.93 (commencing with Section 67930).

(f) The Santa Cruz County Regional Transportation Commission created by Title 7.94 (commencing with Section 67940).

(g) The El Dorado County Transportation Planning Agency created by Title 7.95 (commencing with Section 67950).

(h) The consolidated agency created by Chapter 3 (commencing with Section 132350) of Division 12.7 of the Public Utilities Code.

SEC. 3. Section 99233.5 of the Public Utilities Code is amended to read:

99233.5. Up to 10 percent of the remaining money for the area under the jurisdiction of a transit development board created pursuant to

Division 11 (commencing with Section 120000) shall be allocated to the transit development board and the transportation planning agency to carry out administrative and planning powers, duties, and functions and construction and acquisition programs in accordance with Article 4 (commencing with Section 132353) of Chapter 3 of Division 12.7.

Thereafter, the remaining money for allocation in that area shall be allocated by the transportation planning agency to claimants.

SEC. 4. Chapter 3 (commencing with Section 132350) is added to Division 12.7 of the Public Utilities Code, to read:

CHAPTER 3. TRANSPORTATION CONSOLIDATION FOR SAN DIEGO

Article 1. General Provisions, Findings, and Definitions

132350. This chapter shall be known and may be cited as the San Diego Regional Transportation Consolidation Act. The purpose of this act is to provide for the consolidation of transportation responsibilities in the San Diego region which can only be provided for by and through enactment of state law.

132350.1. The Legislature hereby finds and declares all of the following:

(a) There is an imperative need for comprehensive planning and implementation of regional transportation projects in the San Diego region. Diminution of congestion on the streets and highways in the San Diego region will facilitate passage of all Californians traveling through San Diego, and especially benefit persons who live or work in San Diego County who must commute to points within and outside the San Diego region on a daily basis.

(b) Several separate limited-purpose transportation agencies have been established in the San Diego region, however, the San Diego region would benefit from coordinated and comprehensive planning by these agencies.

(c) In view of the limited powers of the San Diego Association of Governments (SANDAG), to provide the needed comprehensive transportation planning and implementation without consolidation of certain responsibilities of the transit boards, the Legislature finds that consolidation of the planning, programming, project development, and construction activities of various transportation agencies in the San Diego region will improve the efficiency and effectiveness of implementing needed transportation infrastructure and services and provide for a focus on meeting the mobility needs of the region.

(d) It is, therefore, the intent of the Legislature in enacting this chapter to consolidate SANDAG and certain responsibilities of the transit boards to provide for sufficient power and authority to solve the

transportation problems in the San Diego region and the needed comprehensive transportation system.

132350.2. For purposes of this chapter, the definitions contained in this section have the following meanings:

(a) ''Consolidated agency'' means the authority resulting from the consolidation of SANDAG and the transit boards' responsibilities as set forth herein.

(b) ''Consolidated entities'' means SANDAG and the transit boards as set forth in Article 4 (commencing with Section 132353).

(c) ''Population'' means that population of any agency last determined for the agency as certified by the Department of Finance as of April 1 of each year, or if no certification has been made, the last Federal Decennial Census, except that the population of San Diego County shall be that population determined in the same manner for the unincorporated area of the county. The population of the region shall be that population determined by adding the population of each agency.

(d) ''North county coastal'' means the Cities of Del Mar, Solana Beach, Encinitas, Carlsbad, and Oceanside.

(e) ''North county inland'' means the Cities of Vista, San Marcos, Escondido, and Poway.

(f) ''South county'' means the Cities of Chula Vista, National City, Imperial Beach, and Coronado.

(g) ''East county'' means the Cities of El Cajon, Santee, La Mesa, and Lemon Grove.

(h) ''San Diego region'' means the territory located within the boundaries of San Diego County.

(i) ''Transit boards'' means the San Diego Metropolitan Transit Development Board (MTDB) and the North San Diego County Transit Development Board (NCTD).

Article 2. Organization and Governance

132351. The consolidation of SANDAG and the transit boards will consolidate responsibilities under the organization and governance structure and with the powers, duties, functions, and authority as set forth herein.

132351.1. (a) A board of directors consisting of 20 members shall govern the consolidated agency.

(b) All powers, privileges, and duties vested in or imposed upon the consolidated agency shall be exercised and performed by and through a board of directors provided, however, that the exercise of all executive, administrative, and ministerial power may be delegated and redelegated by the board, to any of the offices, officers, or committees created

pursuant to this chapter or created by the board acting pursuant to this chapter.

(c) The board shall be composed of one primary representative selected by the governing body of each city in the county and a member of the San Diego County Board of Supervisors to serve until recalled by the governing body of the city or county. The City of San Diego shall have two primary representatives. Each director shall be a mayor, councilperson, or supervisor of the governing body which selected him or her. Vacancies shall be filled in the same manner as originally selected. Each city or county shall also select in the same manner as the primary representative one alternate to serve on the board when the primary representative is not available. The alternate shall be subject to the same restrictions and have the same powers, when serving on the board, as the primary representative.

(d) At its discretion, each city and county may select a second alternate, in the same manner as the primary representative, to serve on the board in the event that neither the primary representative nor the regular alternate is able to attend a meeting of the board. This alternate shall be subject to the same restrictions and have the same powers, when serving on the board, as the primary representative.

(e) The board may allow for the appointment of advisory representatives to sit with the board but in no event shall said representatives be allowed a vote. The current advisory representatives to the San Diego Association of Governments may continue his or her advisory representation on the consolidated agency at their discretion. The County of Imperial and the cities in that county may collectively designate an advisory representative to sit with the board.

132351.2. (a) A majority of the member agencies constitute a quorum for the transaction of business. In order to act on any item, except consent items which only require the vote specified in paragraph (1), the following voting formula in both paragraphs (1) and (2) shall apply:

(1) A majority vote of the members present on the basis of one vote per agency.

(2) A majority of the weighted vote of the member agencies present.

(b) The City of San Diego shall determine how to allocate its single agency vote and its weighted votes between its two members.

(c) For the weighted vote, there shall be a total of 100 votes, except additional votes shall be allowed pursuant to subdivision (f). Each representative shall have that number of votes determined by the following apportionment formula, provided that each agency shall have at least one vote, no agency shall have more than 40 votes, and there shall be no fractional votes:

(1) If any agency has 40 percent or more of the total population of the San Diego County region, allocate 40 votes to that agency and follow paragraph (2), if not, follow paragraph (3).

(2) Total the population of the remaining agencies determined in paragraph (1) and compute the percentage of this total that each agency has.

(A) Multiply each percentage derived above by 60 to determine fractional shares.

(B) Boost fractions that are less than one, to one and add the whole numbers.

(C) If the answer to subparagraph (B) is 60, drop all fractions and the whole numbers are the votes for each agency.

(D) If the answer to subparagraph (B) is less than 60, the remaining vote(s) is allocated one each to that agency(s) having the highest fraction(s) excepting those whose vote was increased to one in subparagraph (B) above.

(E) If the answer to subparagraph (B) is more than 60, the excess vote(s) is taken one each from the agency(s) with the lowest fraction(s). In no case shall a vote be reduced to less than one.

(3) Total the population determined in paragraph (1) and compute the percentage of this total that each agency has.

(A) Boost fractions that are less than one, to one and add the whole numbers.

(B) If the answer to subparagraph (A) is 100, drop all fractions and the whole numbers are the votes for each agency.

(C) If the answer to subparagraph (A) is less than 100, the remaining vote(s) is allocated one each to that agency(s) having the highest fraction(s) excepting those whose vote was increased to one in subparagraph (A) above.

(D) If the answer to subparagraph (A) is more than 100, the excess vote(s) is taken one each from that agency(s) with the lowest fraction(s). In no case shall a vote be reduced to less than one.

(d) When a weighted vote is taken on any item that requires more than a majority vote of the board, it shall also require the supermajority percentage of the weighted vote.

(e) The weighted vote shall be recomputed in the above manner every July 1.

(f) Any other newly incorporated city shall receive one vote under the single vote procedure and one vote under the weighted vote procedure specified above until the next recomputation of the weighted vote, at which time the new agency shall receive votes in accordance with the formula specified in subdivision (b). Until this recomputation, the total weighted vote may exceed 100.

132351.3. The consolidated agency is the successor agency to the San Diego Association of Governments (SANDAG) and those entities set forth in Article 4 (commencing with Section 132353). The consolidated agency is a statutorily created regional transportation planning agency under Section 29532.1 of the Government Code. As the successor to SANDAG, the consolidated agency succeeds to, continues, and maintains SANDAG's federal, state and local designations, including, but not limited to, designation as the Metropolitan Planning Organization, is the San Diego County Regional Transportation Commission pursuant to Section 132005, is the congestion management agency, and is the council of governments for the San Diego region.

132351.4. (a) The consolidated agency shall have four standing policy advisory committees named the executive, transportation, regional planning, and borders committees. The responsibilities of the committees shall be established by the board. Committee membership may be expanded by the consolidated agency, and shall be selected in accordance with a process established by the consolidated agency. The membership shall be as follows:

(1) The executive committee shall consist of six voting members with board members representing east county, north county coastal, north county inland, south county, and the representative, or the representative's alternate in their absence, from the City of San Diego and the county. The chairperson of the consolidated agency shall be one of the six voting members. The vice chairperson of the consolidated agency shall be one of the six voting members if the vice chairperson represents an area of the region that is different from the area of the region represented by the chairperson, as those areas are described in subdivisions (d) to (g), inclusive, of Section 132350.2.

(2) (A) The transportation committee shall consist of nine voting members with board members or alternates representing east county, north county coastal, north county inland, south county and the mayor or a council member from the City of San Diego, a supervisor from the County of San Diego, a member of the board of the MTDB appointed by the board of the MTDB, a member of the board of the NCTD appointed by the board of the NCTD, and a member of the San Diego County Regional Airport Authority appointed by the airport authority.

(B) Among its transportation responsibilities, the transportation committee shall provide a strong focus and commitment to meeting the public transit needs of the San Diego region, set transit funding criteria and recommend transit funding levels, and undertake transit responsibilities resulting from consolidation, as delegated by the board.

(3) The regional planning committee shall consist of six voting members with board members or alternates representing east county, north county coastal, north county inland, south county, and the mayor

or a council member from the City of San Diego, and a supervisor from the County of San Diego.

(4) The borders committee shall consist of seven voting members with board members or alternates representing east county, north county coastal, north county inland, south county, the mayor or a council member from the City of San Diego, a supervisor from the County of San Diego, and a mayor, council member, or supervisor from the County of Imperial.

(b) The board may appoint other standing and ad hoc working groups to advise it in carrying out its responsibilities.

(c) No board member may serve as a member of more than two standing policy advisory committees at any one time.

132351.5. (a) Each member of the consolidated agency, including alternate members when serving in the absence of a regular member at board meetings, and members, including alternates, of the policy advisory committees of the consolidated agency, shall be compensated as determined by the board, and for his or her necessary and reasonable expenses in performing his or her duties as a consolidated agency or policy advisory committee member.

(b) The chairperson shall receive additional monthly compensation in an amount established from time to time by the board.

132351.6. District 11 of the Department of Transportation shall coordinate with the consolidated agency on transportation planning for all projects within the jurisdiction of the consolidated agency in which the department and the consolidated agency have common planning or programming responsibilities.

Article 3. Administration

132352. The consolidated agency may adopt bylaws and other rules necessary to carry out its responsibilities.

132352.1. All meetings of the consolidated agency, including, but not limited to, adjourned regular and special meetings of the board, shall be called, noticed, held, and conducted in accordance with the provisions of the Ralph M. Brown Act (Chapter 9 (commencing with Section 54950) of Part 1 of Division 2 of Title 5 of the Government Code). Ten members of the board shall constitute a quorum for transaction of the business of the board.

132352.2. Acts of the board shall be expressed by motion, resolution, or ordinance.

132352.3. The officers of the board are the chairperson and the vice chairperson. The board may create additional officers and elect members to those positions. However, no member may hold more than one office.

The term of office for the officers of the board shall be established by the board.

132352.4. (a) The Legislature finds and declares that there is a compelling interest in ensuring that all federal, state, local, and private funds available to the consolidated agency are captured and used in a timely manner. In order to maximize the use of federal, state, local, and private funds and to maintain a competitive posture in seeking supplemental federal funds, the consolidated agency shall have the authority to establish and use a flexible contracting process to maximize efficient use of public funds.

(b) The consolidated agency shall have the following powers with regard to contracting:

(1) The consolidated agency may make contracts and enter into stipulations of any nature whatsoever, either in connection with eminent domain proceedings or otherwise, including, without limiting the generality of the foregoing, contracts and stipulations to indemnify and hold harmless, and to do all acts necessary for, incidental to, or convenient for the full exercise of the powers granted in this chapter.

(2) The consolidated agency may contract with any department or agency of the United States or the State of California, local governmental authorities within or outside of the region, including those in Mexico, any city, county, public district, public corporation, or joint powers authority formed pursuant to the provisions of the Joint Exercise of Powers Act, Chapter 5 (commencing with Section 6500) of Division 7 of Title 1 of the Government Code upon those terms and conditions as the consolidated agency finds are for the best interests of the consolidated agency.

(3) If the estimated total cost of any construction project or public works project will exceed fifty thousand dollars ($50,000), the consolidated agency shall solicit bids in writing and shall award the work to the lowest responsible bidder or reject all bids. The consolidated agency shall establish rules for procurement of construction of public works projects.

(4) Notwithstanding any provision of the Public Contract Code or any other provision of law, the consolidated agency may contract for the construction of buildings, structures, roads, bridges, and related facilities in accordance with Article 6.8 (commencing with Section 20209.5) of Chapter 1 of Part 3 of Division 2 of the Public Contract Code.

(5) Except in cases when an article of a specified brand or trade name is the only article that will properly meet the needs of the consolidated agency, all contracts for the acquisition or lease of materials, supplies, or equipment in an amount of fifty thousand dollars ($50,000) or a higher amount as may be authorized by the board, shall be made or entered into

with the lowest responsible bidder meeting specifications. For purposes of determining the lowest bid, the amount of sales tax shall be excluded from the total amount of the bid.

(6) If the estimated total cost of required services exceeds one hundred thousand dollars ($100,000), the services will not be performed by an entity described in paragraph (2) of subdivision (b) of Section 132352.4, and the services are not within the category of services defined in Section 4525 of the Government Code, the consolidated agency shall solicit bids in writing and shall award the work in a competitive procurement process that is in the best interest of the consolidated agency.

(7) Contracts for architectural, landscape architectural, engineering, environmental, land surveying services, and construction project management services in excess of fifty thousand dollars ($50,000) shall be let in accordance with the provisions of Chapter 10 (commencing with Section 4525) of Division 5 of Title 1 of the Government Code.

(8) Notwithstanding any other provisions of this chapter, the consolidated agency is authorized to use any procurement method authorized for state or local agencies by state or federal law, including, but not limited to, use of a competitive negotiation process in accordance with the provisions of Article 7.5 (commencing with Section 20216) of Chapter 1 of Part 3 of Division 2 of the Public Contract Code. The consolidated agency shall maintain acquisition and contracting guidelines to be followed by the consolidated agency with respect to procurement of goods and services. These guidelines may be in the form of standard formats or model formats.

132352.5. (a) All of the privileges and immunities from liability, exemptions from laws, ordinances and rules, all pension, relief, disability, workers' compensation, and other benefits that apply to the activity of officers, agents, or employees of a public agency when performing their respective functions shall apply to employees of the consolidated agency.

(b) All claims for money or damages against the consolidated agency or its employees shall be governed by Part 1 (commencing with Section 810), Part 2 (commencing with Section 814), Part 3 (commencing with Section 900), and Part 4 (commencing with Section 940) of Division 3.6 of Title 1 of the Government Code applicable to public agencies and their employees, or by other statutes or regulations expressly applicable thereto.

132352.6. (a) The consolidated agency shall submit a report to the Governor and Legislature by December 31 of odd numbered years beginning in 2005, regarding progress in carrying out the provisions of this act.

(b) By December 31, 2004, the Legislative Analyst Office (LAO) shall prepare a report to the Governor and the Legislature which shall evaluate and make recommendations on the consolidated agency in the following areas:

(1) The effectiveness of the current governance structure within the region including, but not limited to, public participation, accountability, proportional representation and to examine various alternative governance structures.

(2) The effectiveness in addressing the transportation needs of the region, including coordination and efficiences in transportation planning and implementation as a result of the consolidation.

(3) The effectiveness of addressing quality of life indicators including, but not limited to, land use patterns, a viable and sustainable economy, affordable public transportation, affordable housing, transportation mobility options, air and water quality, and open space and natural habitat preservation, including, but not limited to, the agency created by the act, the county board of supervisors.

(4) The adequacy of the scope and authority for regional decisionmaking.

(c) The consolidated agency shall pay for the costs of the study which shall be capped at an amount not to exceed one hundred fifty thousand dollars ($150,000).

Article 4. Consolidation

132353. Definitions. The following definitions contained in this article shall govern the construction of this article.

(a) ''Construction'' shall mean the final design, permitting and building of all transit projects including, but not limited to, commuter and freight rail, light rail, general rail infrastructure, regional bus facilities, paratransit, and other regional transit projects. Construction shall exclude the Oceanside to Escondido Rail Project and the Mission Valley East Extension Light Rail Project, and other projects or those portions of projects which have a construction contract in place at the time of the subsequent transfer defined in Section 132353.2. The aforementioned construction contracts may be assigned to the consolidated agency with mutual agreement of the consolidated agency and the respective transit board. Construction projects shall exclude local and minor improvement projects as defined in the transition plan.

(b) ''Planning'' shall include, but not be limited to, conceptual development of transit projects and services and integration and coordination of all modes of transportation.

(c) ''Programming'' shall mean the, acquisition, prioritization and allocation of funding of transit projects and services.

(d) "Project development" shall mean alternative analysis, environmental review and clearance, preliminary engineering, and any other activities necessary to prepare for the construction of a transit project, as defined in the transition plans.

132353.1. Notwithstanding any other provision of law and except as provided in this chapter, the San Diego Association of Governments shall be consolidated into a public agency known as the consolidated agency. In addition, upon adoption of the 2030 Regional Transportation Plan by the consolidated agency, and not later than July 1, 2003, all public transit and other transportation planning and programming responsibilities, including, but not limited to, short and near-term operational and financial planning and program development of the San Diego Metropolitan Transit Development Board (MTDB) and the North San Diego County Transit Development Board (NCTD), except as set forth in subdivision (c) of Section 132353.2 shall be consolidated into the consolidated agency. This consolidation shall be referred to as the initial transfer. A transition plan for the initial transfer of transit functions and responsibilities shall be developed by February 28, 2003, by the consolidated agency in consultation with the transit boards to ensure the efficient and timely transfer of the transit boards' functions and responsibilities. All local, state, federal, and other funding available to carry out these responsibilities and those set forth in Section 132353.2, upon any consolidation, shall be deemed to be funding of the consolidated agency.

132353.2. (a) A transition plan for the transfer of project development and construction responsibilities of the transit boards and the financial resources therefore to the consolidated agency shall be developed by the consolidated agency in consultation with the transit boards to ensure the efficient and timely transfer of the transit boards' project development and construction functions and responsibilities to the consolidated agency no later than September 30, 2003. The transfer and consolidation of project development and construction functions and responsibilities and the funding therefore shall occur no later than January 30, 2004, and shall be referred to as the subsequent transfer.

(b) The transition plans should define the functional roles and responsibilities of the consolidated agency and the transit boards and should define, in the applicable transition plan, service and operational planning; programming; project development and construction. The transition plans should acknowledge a strong linkage between service planning and operations scheduling.

(c) Local route planning and scheduling and local financial planning therefore, would continue to be the responsibility of the transit boards in accordance with guidelines provided by the consolidated agency. The

initial transition plan would include the development of guidelines, and would define local route planning.

(d) Notwithstanding the provisions of Section 132353.2, at any time after the initial transfer, the consolidated agency may enter into individual agreements with MTDB or NCTD for the transfer and consolidation of any or all functions, personnel and funding of either agency, except those functions set forth in Section 132354.5, to the consolidated agency on such terms and conditions as may be mutually agreed upon.

(e) MTDB and NCTD shall continue to be a claimant, applicant and grantee of local, state and federal grants until the transfer and consolidation of functions or responsibilities to the consolidated agency pursuant to a transition plan at which time the consolidated agency shall become the claimant, applicant and grantee for such funds. Except for funds which are transferred to the consolidated agency pursuant to a transition plan, MTDB and NCTD shall continue to receive funding pursuant to Transportation Development Act Articles 4.0 and 4.5 and the State Transportation Assistance fund in accordance with state law. Except for funds which are transferred to the consolidated agency pursuant to a transition plan, MTDB and NCTD shall continue to receive the Federal Section 5307 Urbanized Area Formula funds pursuant to federal statute. These funds should be allocated in a manner which will help to enable the transit boards to meet their obligations and responsibilities recognizing the methodology and historic funding levels that have previously guided these funding decisions. The consolidated agency shall conduct periodic review of the allocation and methodology for all formula-based funding.

(f) The consolidated agency and MTDB and NCTD shall work together to obtain funds for transit projects and services.

(g) It is the intent of the Legislature that future consolidation of transit operations of MTDB and NCTD into the consolidated agency should be comprehensively evaluated by the consolidated agency. Such a consolidation shall be referred to as a complete consolidation and shall be implemented only if it is considered to be appropriate by the consolidated agency and approved by a statute enacted by the Legislature.

132353.3. In the event of complete consolidation of MTDB with the consolidated agency, any corporation that is a wholly owned subsidiary of MTDB shall become a subsidiary of the consolidated agency.

132353.4. Upon the transfer of responsibilities and obligations from the consolidated entities into the consolidated agency, the consolidated agency, shall by operation of law, and in accordance with transition plans, succeed to all of the rights and obligations of the consolidated entities, including MTDB and NCTD, which enable the consolidated

agency to perform the responsibility and obligations transferred, as provided in this section. This shall include, but not be limited to:

(a) The rights and property of the consolidated entities, including MTDB and NCTD, pertaining to the responsibilities and obligations transferred.

(b) The legally enforceable debts and liabilities of the consolidated entities, including MTDB and NCTD, pertaining to the responsibilities and obligations transferred in the same manner as if the consolidated agency had itself incurred them.

(c) The rights of creditors and all liens upon the property of the consolidated entities or of their responsibilities shall be preserved unimpaired, limited in lien to the property affected by the liens immediately prior to the transfer of related responsibilities and obligations.

(d) An action or proceeding pending by or against a consolidated entity, including MTDB and NCTD, may be prosecuted to judgment, and the judgment shall be binding on the consolidated agency, or the consolidated agency may be proceeded against or substituted in the place of a consolidated entity, if the action or proceeding pertains to a transferred responsibility or obligation.

(e) In order to protect the holders of outstanding, unmatured bonds and other evidences of indebtedness of the consolidated entities, including MTDB and NCTD pertaining to the responsibilities and obligations transferred, the consolidated agency shall have the power to take all actions and do all things necessary or required for the protection of those holders and for compliance with the terms of those bonds and other evidences of indebtedness. The consolidated agency shall have the power to continue all services that the consolidated entities, including MTDB and NCTD are furnishing pertaining to the responsibilities and obligations transferred on the date of the transfer.

Article 5. Powers and Functions

132354. The consolidated agency shall have and may exercise all rights and powers, expressed or implied, that are necessary to carry out the purposes and intent of this chapter, including, but not limited to, the power to do all of the following:

(a) Sue and be sued.

(b) (1) To acquire any property by any means, and to hold, manage, occupy, develop, jointly develop, dispose of, convey, or encumber property.

(2) To create a leasehold interest in property for the benefit of the consolidated agency.

(c) To acquire, by eminent domain, any property necessary to carry out any of its powers or functions.

(d) To merge or split parcels, adjust boundary lines, or take similar actions as part of the acquisition of land or as needed in order to carry out its functions.

(e) To construct, acquire, develop, jointly develop, maintain, operate, lease, and dispose of work, property, rights-of-way, and facilities.

(f) To appoint necessary employees, including counsel, and to define their qualifications and duties.

(g) To enter into and perform all necessary contracts.

(h) To fix and collect fees for any services rendered by it.

(i) To adopt a seal and alter it at the consolidated agency's pleasure.

(j) To adopt an annual budget and to fix the compensation of its officers, board members, and employees.

(k) To establish and enforce rules and regulations for the administration, operation, and maintenance of facilities and services.

(*l*) To enter joint powers arrangements with other entities.

(m) To provide insurance.

(n) To issue bonds.

(o) To do any other things necessary to carry out the purposes of this chapter.

132354.1. The board shall arrange for a post audit of the financial transactions and records of the consolidated agency to be made at least annually by a certified public accountant.

132354.2. This chapter is necessary for the public health, safety, and welfare, and shall be liberally construed to carry out the objects and purposes of this chapter and the declared policy of the state as set forth in this chapter.

132354.3. It is the intent of the Legislature that the federal government, the state, and local agencies within the jurisdictional area of the consolidated agency will participate in support of the consolidated agency. It is further the intent of the Legislature that financial support for the activities of the consolidated agency will be made available from federal, state, and local sources normally available for transportation and other planning purposes in the region and for those functions consolidated within the consolidated agency.

132354.4. The consolidated agency shall be excluded from the requirements of a "local agency" set forth in Section 53091 of the Government Code.

132354.5. Nothing in this chapter authorizes the consolidated agency to operate public transit systems.

132354.6. Except as otherwise provided by law, the consolidated agency shall not have any authority over local land use decisions affecting permitting or zoning of public or private development projects.

Article 6. Staffing, Labor, and Retirement Benefits

132355. Administrative authority for the consolidated agency shall be vested in the office of the executive director, subject to the direction and policies of the consolidated agency as approved by the board. The executive director shall serve at the pleasure of the board and may appoint employees as may be necessary to carry out the functions of the consolidated agency.

132355.1. The employees of the consolidated entities affected by this chapter shall become employees of the consolidated agency and shall suffer no loss of employment or reduction in wages, health and welfare and other benefits, seniority, retirement benefits or contributions made to retirement plans, or any other term or condition of employment as a result of the enactment of this chapter.

132355.2. (a) Upon succession of the consolidated agency under Section 132351.3, and in accordance with Article 4 (commencing with Section 132353), all affected employees of the consolidated entities shall become employees of the consolidated agency at their existing or substantially equivalent classifications, salaries, and benefits. All consolidated entity employees who become employees of the consolidated agency shall be given sick leave, seniority, and vacation credits in accordance with the records of the consolidated entity that previously employed them.

(b) On the effective date of succession of the consolidated agency:

(1) Regular employees of the consolidated entities shall be deemed qualified, and no other qualifications shall be required for employment or retention by the consolidated agency.

(2) Probationary employees of consolidated entities shall retain their probationary status and rights, and shall not be deemed to have transferred so as to require serving a new probationary period.

(c) Upon transfer of any public benefit corporation owned solely by the MTDB pursuant to Section 132353.3, any reference to the board or to the San Diego Metropolitan Transit Development Board in Article 1 (commencing with Section 120500), Article 2 (commencing with Section 120520), and Article 3 (commencing with Section 120540) of Chapter 5 of Division 11 shall be deemed to refer to the consolidated agency.

132355.3. (a) Members and beneficiaries of any pension or retirement system or other benefits established by the consolidated entities shall continue to have comparable rights, privileges, benefits, obligations, and status with respect to the established systems.

(b) The consolidated agency and the Public Employees' Retirement System (PERS) shall enter into an agreement to provide comparable benefits to those persons who were employees, retirees, or beneficiaries

of the consolidated entities' pension and retirement plans at the time of consolidation. Any expense related to this agreement between the consolidated agency and PERS, including retiree coverage, shall be borne by the consolidated agency. The agreement shall be effective as of the date of succession by the consolidated agency.

(c) Those retired employees of the consolidated entities, including their eligible dependents, who are (1) retired on the effective date of the succession; or (2) an eligible beneficiary of a retired employee on the effective date of succession, and (3) who were eligible for benefits through PERS as provided and paid for by a consolidated entity, shall continue to be eligible for comparable benefits, including health care insurance, under the terms of the contracts between the consolidated entities and PERS in effect on the day prior to the succession. These benefits shall be provided at no cost to the retired employee or eligible beneficiary, except for normal copayments as otherwise provided for in the terms of the contracts between the consolidated entities and PERS in effect on the day prior to the succession.

(d) Allowances of persons retired from the consolidated entities as of the consolidation date and their beneficiaries and of beneficiaries of deceased members or retired persons who are receiving allowances as of the succession date, shall be continued in at least the amount provided under the contracts between the consolidated entities and PERS in effect on the day prior to the succession. The succession shall not affect the contribution rate of any employee, retiree, or beneficiary or any retirement allowance or other benefit based on service to a consolidated entity being paid on the day prior to succession.

(e) Notwithstanding Section 20511 of the Government Code, time of service by consolidated entity employees shall be credited as services rendered for the consolidated agency for purposes of calculating retirement benefits. The time of service by consolidated entity employees shall create prior service liabilities against the consolidated agency. Service rendered by consolidated entity employees who become employees of the consolidated agency on the date of succession shall be combined with service rendered by the employee as an employee of the consolidated agency for purposes of calculating retirement benefits. The consolidated agency's contract with PERS shall contain a provision to bring this section into effect.

132355.4. (a) Whenever a majority of the employees employed by the consolidated agency in a unit appropriate for collective bargaining indicate a desire to be represented by a labor organization, and upon determining that the labor organization represents at least a majority of the employees in the appropriate unit, the determination of questions concerning employee representation and the conduct of employee-employer relations for the consolidated agency shall be

governed by the Meyers-Milias-Brown Act (Chapter 10 (commencing with Section 3500) of Division 4 of Title 1 of the Government Code).

(b) For the purposes of the wage orders of the Industrial Welfare Commission, the consolidated agency shall be considered a special district.

Article 7. Voter Approval

132632. In addition to the authority set forth in Article 5 (commencing with Section 132300) and Article 6 (commencing with Section 132320) of Chapter 2 of Division 12.7, if the consolidated agency provides compensation to San Diego County for the cost of including an ordinance or measure on the ballot, the consolidated agency may call an election, including an advisory election, in San Diego County on any ordinance or measure regarding the governance of or matters related to the powers, privileges, or duties of the consolidated agency, including, but not limited to, merger or complete consolidation of the transit boards.

132634. The county shall conduct an election, including an advisory election, called by the consolidated agency in the same manner as provided by law for the conduct of elections by a county.

Article 8. Bonds, Equipment, and Leases

132370. The consolidated agency may issue bonds, payable from revenue of any facility or enterprise to be acquired or constructed by the consolidated agency, in the manner provided by the Revenue Bond Law of 1941 (Chapter 6 (commencing with Section 54300) of Part 1 of Division 2 of Title 5 of the Government Code), and all of the provisions of that law are applicable to the consolidated agency.

132370.1. (a) The consolidated agency may issue revenue bonds under the Revenue Bond Law of 1941 for any one or more transit facilities authorized to be acquired, constructed, or completed by the consolidated agency or for transit equipment described in Section 132372 below authorized to be acquired by the consolidated agency or, in the alternative, the consolidated agency may issue revenue bonds under the Revenue Bond Law of 1941 for the acquisition, construction, and completion of any one of those transit facilities or for transit equipment described in Section 132372 below authorized to be acquired by the consolidated agency.

(b) Nothing in this article prohibits the consolidated agency from availing itself of, or making use of, any procedure provided in this chapter for the issuance of bonds of any type or character for any of the transit facilities authorized hereunder, and all proceedings may be

carried on simultaneously or, in the alternative, as the consolidated agency may determine.

(c) Article 3 (commencing with Section 54380) of Chapter 6 of Part 1 of Division 2 of Title 5 of the Government Code does not apply to the issuance and sale of bonds pursuant to this chapter and the consolidated agency shall authorize the issuance of such bonds by resolution of its governing board.

132370.2. The Improvement Act of 1911 (Division 7 (commencing with Section 5000) of the Streets and Highways Code), the Improvement Bond Act of 1915 (Division 10 (commencing with Section 8500) of the Streets and Highways Code), and the Municipal Improvement Act of 1913 (Division 12 (commencing with Section 10000) of the Streets and Highways Code), are applicable to the consolidated agency.

132370.3. Chapter 1 (commencing with Section 99000) of Part 11 of Division 10 of the Public Utilities Code is applicable to the consolidated agency.

132370.4. The consolidated agency shall be considered to be a ''local agency'' as defined in subdivision (h) of Section 53317 of the Government Code and the provisions of Chapter 2.5 (commencing with Section 53311) of Part 1 of Division 2 of Title 5 of the Government Code are applicable to the consolidated agency.

132370.5. The consolidated agency shall be considered to be a ''local agency'' as defined in subdivision (f) of Section 6585 of the Government Code and the provisions of Article 4 of Chapter 5 of Division 7 of Title 1 of the Government Code are applicable to the consolidated agency.

132370.6. The consolidated agency may borrow money in accordance with Article 7 (commencing with Section 53820), Article 7.6 (commencing with Section 53580), or Article 7.7 (commencing with Section 53859) of Chapter 4 of Part 1 of Division 2 of Title 5 of the Government Code.

132370.7. (a) The consolidated agency may borrow money in anticipation of the sale of bonds which have been authorized to be issued, but which have not been sold and delivered, and may issue negotiable bond anticipation notes therefor and may renew the bond anticipation notes from time to time, but the maximum maturity of any bond application notes, including the renewals thereof, shall not exceed five years from the date of delivery of the original bond anticipation notes.

(b) The bond anticipation notes may be paid from any money of the consolidated agency available therefor and not otherwise pledged. If not previously otherwise paid, the bond anticipation notes shall be paid from the proceeds of the next sale of the bonds of the consolidated agency in anticipation of which they were issued. The bond anticipation notes shall not be issued in any amount in excess of the aggregate amount of bonds

which the consolidated agency has not been authorized to issue, less the amount of any bonds of the authorized issue previously sold, and also less the amount of other bond anticipation notes therefor issued and then outstanding.

(c) The bond anticipation notes shall be issued and sold in the same manner as the bonds. The bond anticipation notes and the resolution or resolutions authorizing them may contain any provisions, conditions, or limitations which a resolution of the consolidated agency authorizing the issuance of bonds may contain.

132370.8. The consolidated agency may bring an action to determine the validity of any of its bonds, equipment trust certificates, warrants, notes, or other evidences of indebtedness pursuant to Chapter 9 (commencing with Section 860) of Title 10 of Part 2 of the Code of Civil Procedure.

132370.9. All bonds and other evidences of indebtedness issued by the consolidated agency under this chapter, and the interest thereon, are free and exempt from all taxation within the state, except for transfer, franchise, inheritance and estate taxes.

132370.10. (a) Notwithstanding any other provisions of this article or any other law, the provisions of all ordinances, resolutions, and other proceedings in the issuance by the consolidated agency of any bonds, bonds with a pledge of revenues, bonds for any and all evidences of indebtedness or liability constitute a contract between the consolidated agency and the holders of the bonds, equipment trust certificates, notes, or evidences of indebtedness or liability, and the provisions thereof are enforceable against the consolidated agency or any or all of its successors or assigns, by mandamus or any other appropriate suit, action, proceeding in law or in equity in any court of competent jurisdiction.

(b) Nothing in this article or in any other law shall be held to relieve the consolidated agency or the territory included within it from any bonded or other debt or liability contracted by the consolidated agency. Upon dissolution of the consolidated agency or upon withdrawal of territory therefrom, that territory formerly included within the consolidated agency, or withdrawn therefrom, shall continue to be liable for the payment of all bonded and other indebtedness or liabilities outstanding at the time of the dissolution or withdrawal as if the consolidated agency had not been so dissolved or the territory withdrawn therefrom, and it shall be the duty of the successors or assigns to provide for the payment of the bonded and other indebtedness and liabilities.

(c) Except as may be otherwise provided in the proceedings for the authorization, issuance, and sale of any revenue bonds, bonds secured by a pledge of revenues, or bonds for improvement districts secured by a pledge of revenues, revenues of any kind or nature derived from any

revenue-producing improvements, works, facilities, or property owned, operated, or controlled by the consolidated agency shall be pledged, charged, assigned, and have a lien thereon for the payment of the bonds as long as they are outstanding, regardless of any changes in ownership, operation, or control of the revenue-producing improvements, works, facilities or property and it shall, in any later event or events, be the duty of the successors or assigns to continue to maintain and operate the revenue-producing improvements, works, facilities, and property as long as bonds are outstanding.

132372. (a) The consolidated agency may purchase transit equipment such as cars, trolley buses, motorbuses, light rail vehicles, or rolling equipment, and may execute agreements, leases, and equipment trust certificates in the forms customarily used by private corporations engaged in the transit business appropriate to effect the purchase and leasing of transit equipment, and may dispose of the equipment trust certificates upon the terms and conditions that the consolidated agency may deem appropriate.

(b) Payment for transit equipment, or rentals therefor, may be made in installments, and the deferred installments may be evidenced by equipment trust certificates that are or will be legally available to the consolidated agency. Title to the equipment shall not vest in the consolidated agency until the equipment trust certificates are paid.

132372.1. The agreement to purchase or lease transit equipment may direct the vendor or lessor to sell and assign or lease the transit equipment to a bank or trust company duly authorized to transact business in the state as trustee for the benefit and security of the equipment trust certificates, and may direct the trustee to deliver the transit equipment to one or more designated officers of the consolidated agency and may authorize the consolidated agency to simultaneously therewith execute and deliver an installment purchase agreement or a lease of such equipment to the consolidated agency.

132372.2. (a) The agreements and leases shall be duly acknowledged before a person authorized by law to take acknowledgments of deeds and in the form required for acknowledgment of deeds.

(b) The agreements, leases and equipment trust certificates shall be authorized by resolution of the consolidated agency and shall contain covenants, conditions, and provisions which may be deemed necessary or appropriate to ensure the payment of the equipment trust certificates from such legally available source or sources of funds as may be specified in the certificates.

132372.3. The covenants, conditions, and provisions of the agreements, leases and equipment trust certificates shall not conflict with any of the provisions of any trust agreement or similar document

securing the payment of bonds, notes, or certificates of the consolidated agency.

132372.4. (a) An executed copy of each agreement and lease shall be filed in the office of the Secretary of State, who shall be entitled to receive one dollar ($1) for each copy filed.

(b) The filing constitutes notice to any subsequent judgment creditor or any subsequent purchaser.

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 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.

CHAPTER 744

An act to amend Sections 144, 7000.5, 7011, 7069, 7092, 7137, 7138.1, and 7153.1 of, and to add Sections 7000.6 and 7017.3 to, the Business and Professions Code, and to amend Section 1095 of the Unemployment Insurance Code, relating to contractors, and making an appropriation therefor.

[Approved by Governor September 20, 2002. Filed with Secretary of State September 20, 2002.]

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

SECTION 1. Section 144 of the Business and Professions Code is amended to read:

144. (a) Notwithstanding any other provision of law, an agency designated in subdivision (b) shall require an applicant to furnish to the agency a full set of fingerprints for purposes of conducting criminal history record checks. Any agency designated in subdivision (b) may obtain and receive, at its discretion, criminal history information from the Department of Justice and the United States Federal Bureau of Investigation.

(b) Subdivision (a) applies to the following boards or committees:

(1) California Board of Accountancy.

(2) State Athletic Commission.

(3) Board of Behavioral Sciences.

(4) Court Reporters Board of California.

(5) State Board of Guide Dogs for the Blind.

(6) California State Board of Pharmacy.
(7) Board of Registered Nursing.
(8) Veterinary Medical Board.
(9) Registered Veterinary Technician Committee.
(10) Board of Vocational Nursing and Psychiatric Technicians.
(11) Respiratory Care Board of California.
(12) Hearing Aid Dispensers Advisory Commission.
(13) Physical Therapy Board of California.
(14) Physician Assistant Committee of the Medical Board of California.
(15) Speech-Language Pathology and Audiology Board.
(16) Medical Board of California.
(17) State Board of Optometry.
(18) Acupuncture Board.
(19) Cemetery and Funeral Programs.
(20) Bureau of Security and Investigative Services.
(21) Division of Investigation.
(22) Board of Psychology.
(23) The California Board of Occupational Therapy.
(24) Contractors' State License Board.

SEC. 1.5. Section 144 of the Business and Professions Code is amended to read:

144. (a) Notwithstanding any other provision of law, an agency designated in subdivision (b) shall require an applicant to furnish to the agency a full set of fingerprints for purposes of conducting criminal history record checks. Any agency designated in subdivision (b) may obtain and receive, at its discretion, criminal history information from the Department of Justice and the United States Federal Bureau of Investigation.

(b) Subdivision (a) applies to the following boards or committees:
(1) California Board of Accountancy.
(2) State Athletic Commission.
(3) Board of Behavioral Sciences.
(4) Court Reporters Board of California.
(5) State Board of Guide Dogs for the Blind.
(6) California State Board of Pharmacy.
(7) Board of Registered Nursing.
(8) Veterinary Medical Board.
(9) Registered Veterinary Technician Committee.
(10) Board of Vocational Nursing and Psychiatric Technicians.
(11) Respiratory Care Board of California.
(12) Hearing Aid Dispensers Advisory Commission.
(13) Physical Therapy Board of California.

(14) Physician Assistant Committee of the Medical Board of California.

(15) Speech-Language Pathology and Audiology Board.

(16) Medical Board of California.

(17) State Board of Optometry.

(18) Acupuncture Board.

(19) Cemetery and Funeral Bureau.

(20) Bureau of Security and Investigative Services.

(21) Division of Investigation.

(22) Board of Psychology.

(23) The California Board of Occupational Therapy.

(24) Contractors' State License Board.

SEC. 2. Section 7000.5 of the Business and Professions Code is amended to read:

7000.5. (a) There is in the Department of Consumer Affairs a Contractors' State License Board, which consists of 15 members.

(b) The repeal of this section renders the board subject to the review required by Division 1.2 (commencing with Section 473). However, the review of this board by the department shall be limited to only those unresolved issues identified by the Joint Legislative Sunset Review Committee.

(c) This section shall become inoperative on July 1, 2007, and, as of January 1, 2008, is repealed, unless a later enacted statute, which becomes effective on or before January 1, 2008, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 3. Section 7000.6 is added to the Business and Professions Code, to read:

7000.6. Protection of the public shall be the highest priority for the Contractors' State License Board in exercising its licensing, regulatory, and disciplinary functions. Whenever the protection of the public is inconsistent with other interests sought to be promoted, the protection of the public shall be paramount.

SEC. 4. Section 7011 of the Business and Professions Code is amended to read:

7011. The board by and with the approval of the director shall appoint a registrar of contractors and fix his or her compensation.

The registrar shall be the executive officer and secretary of the board and shall carry out all of the administrative duties as provided in this chapter and as delegated to him or her by the board.

For the purpose of administration of this chapter, there may be appointed a deputy registrar, a chief reviewing and hearing officer and, subject to Section 159.5, other assistants and subordinates as may be necessary.

Appointments shall be made in accordance with the provisions of civil service laws.

This section shall become inoperative on July 1, 2007, and, as of January 1, 2008, is repealed, unless a later enacted statute, which becomes effective on or before January 1, 2008, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 5. Section 7017.3 is added to the Business and Professions Code, to read:

7017.3. The Contractors' State License Board shall report annually to the Legislature, not later than October 1 of each year, the following statistical information for the prior fiscal year. The following data shall be reported on complaints filed with the board against licensed contractors, registered home improvement salespersons, and unlicensed persons acting as licensees or registrants:

(a) The number of complaints received by the board categorized by source, such as public, trade, profession, government agency, or board-initiated, and by type of complaint, such as licensee or nonlicensee.

(b) The number of complaints closed prior to referral for field investigation, categorized by the reason for the closure, such as settled, referred for mandatory arbitration, or referred for voluntary arbitration.

(c) The number of complaints referred for field investigation categorized by the type of complaint such as licensee or nonlicensee.

(d) The number of complaints closed after referral for field investigation categorized by the reason for the closure such as settled, referred for mandatory arbitration, or referred for voluntary arbitration.

(e) For the board's Intake/Mediation Center and the board's Investigation Center closures, respectively, the total number of complaints closed prior to a field investigation per consumer services representative, and the total number of complaints closed after referral for a field investigation per enforcement representative. Additionally, the board shall report the total number of complaints closed by other board staff during the year.

(f) The number of complaints pending at the end of the fiscal year grouped in 90-day increments, and the percentage of total complaints pending, represented by the number of complaints in each grouping.

(g) The number of citations issued to licensees categorized by the type of citation such as order of correction only or order of correction and fine and the number of citations issued to licensees that were vacated or withdrawn.

(h) The number of citations issued to nonlicensees and the number of these citations that were vacated or withdrawn.

(i) The number of complaints referred to a local prosecutor for criminal investigation or prosecution, the number of complaints referred

to the Attorney General for the filing of an accusation, and the number of complaints referred to both a local prosecutor and the Attorney General, categorized by type of complaint, such as licensee and nonlicensee.

(j) Actions taken by the board, including, but not limited to, the following:

(1) The number of disciplinary actions categorized by type, such as revocations or suspensions, categorized by whether the disciplinary action resulted from an accusation, failure to comply with a citation, or failure to comply with an arbitration award.

(2) The number of accusations dismissed or withdrawn.

(k) For subdivisions (g) and (j), the number of cases containing violations of Section 7121, 7121.5, and subdivision (e) of Section 7159 categorized by section.

(*l*) The number of interim suspension orders sought, the number of interim suspension orders granted, the number of temporary restraining orders sought, and the number of temporary restraining orders granted.

(m) The amount of cost recovery ordered and the amount collected.

(n) Case aging data, including data for each major stage of the enforcement process, including the following:

(1) The average number of days from the filing of a complaint to its closure by the board's Intake/Mediation Center prior to the referral for an investigation categorized by the type of complaint, such as licensee or nonlicensee.

(2) The average number of days from the referral of a complaint for an investigation to its closure by the Investigation Center categorized by the type of complaint, such as licensee or nonlicensee.

(3) The average number of days from the filing of a complaint to the referral of the completed investigation to the Attorney General.

(4) The average number of days from the referral of a completed investigation to the Attorney General to the filing of an accusation by the Attorney General.

(5) The average number of days from the filing of an accusation to the first hearing date or date of a stipulated settlement.

(6) The average number of days from the receipt of the Administrative Law Judge's proposed decision to the registrar's final decision.

SEC. 6. Section 7069 of the Business and Professions Code is amended to read:

7069. (a) An applicant, and each officer, director, partner, associate and responsible managing employee thereof, shall not have committed acts or crimes which are grounds for denial of licensure under Section 480.

(b) As part of an application for a contractor's license, the board shall require an applicant to furnish a full set of fingerprints for purposes of conducting a criminal history record check. Fingerprints furnished pursuant to this subdivision shall be submitted in an electronic format where readily available. Requests for alternative methods of furnishing fingerprints are subject to the approval of the registrar. The board shall use the fingerprints furnished by an applicant to obtain criminal history information on the applicant from the Department of Justice and the United States Federal Bureau of Investigation, including any subsequent arrest information available. This subdivision shall become operative on January 1, 2004.

SEC. 7. Section 7092 of the Business and Professions Code is amended to read:

7092. (a) (1) The director shall appoint a Contractors' State License Board Enforcement Program Monitor no later than January 31, 2001. The director may retain a person for this position by a personal services contract, the Legislature finding, pursuant to Section 19130 of the Government Code, that this is a new state function.

(2) The director shall supervise the enforcement program monitor and may terminate or dismiss him or her from this position.

(b) The director shall advertise the availability of this position. The requirements for this position include experience in conducting investigations and familiarity with state laws, rules, and procedures pertaining to the board and familiarity with relevant administrative procedures.

(c) (1) The enforcement program monitor shall monitor and evaluate the Contractors' State License Board disciplinary system and procedures, making as his or her highest priority the reform and reengineering of the board's enforcement program and operations, and the improvement of the overall efficiency of the board's disciplinary system.

(2) This monitoring duty shall be on a continuing basis for a period of no more than two years from the date of the enforcement program monitor's appointment and shall include, but not be limited to, improving the quality and consistency of complaint processing and investigation and reducing the timeframes for each, reducing any complaint backlog, assuring consistency in the application of sanctions or discipline imposed on licensees, and shall include the following areas: the accurate and consistent implementation of the laws and rules affecting discipline, staff concerns regarding disciplinary matters or procedures, appropriate utilization of licensed professionals to investigate complaints, and the board's cooperation with other governmental entities charged with enforcing related laws and regulations regarding contractors.

(3) The enforcement program monitor shall exercise no authority over the board's discipline operations or staff; however, the board and its staff shall cooperate with him or her, and the board shall provide data, information, and case files as requested by the enforcement program monitor to perform all of his or her duties.

(4) The director shall assist the enforcement program monitor in the performance of his or her duties, and the enforcement program monitor shall have the same investigative authority as the director.

(d) The enforcement program monitor shall submit an initial written report of his or her findings and conclusions to the board, the department, and the Legislature no later than October 1, 2001, and every six months thereafter, and be available to make oral reports to each, if requested to do so. The enforcement program monitor may also provide additional information to either the department or the Legislature at his or her discretion or at the request of either the department or the Legislature. The enforcement program monitor shall make his or her reports available to the public or the media. The enforcement program monitor shall make every effort to provide the board with an opportunity to reply to any facts, findings, issues, or conclusions in his or her reports with which the board may disagree.

(e) The board shall reimburse the department for all of the costs associated with the employment of an enforcement program monitor.

(f) This section shall remain in effect only until April 1, 2003, and as of that date is repealed, unless a later enacted statute, that is enacted before April 1, 2003, deletes or extends that date.

SEC. 8. Section 7137 of the Business and Professions Code is amended to read:

7137. The board shall set fees by regulation. These fees shall not exceed the following schedule:

(a) The application fee for an original license in a single classification shall not be more than three hundred dollars ($300).

The application fee for each additional classification applied for in connection with an original license shall not be more than seventy-five dollars ($75).

The application fee for each additional classification pursuant to Section 7059 shall not be more than seventy-five dollars ($75).

The application fee to replace a responsible managing officer or employee pursuant to Section 7068.2 shall not be more than seventy-five dollars ($75).

(b) The fee for rescheduling an examination for an applicant who has applied for an original license, additional classification, a change of responsible managing officer or responsible managing employee, or for an asbestos certification or hazardous substance removal certification, shall not be more than sixty dollars ($60).

(c) The fee for scheduling or rescheduling an examination for a licensee who is required to take the examination as a condition of probation shall not be more than sixty dollars ($60).

(d) The initial license fee for an active or inactive license shall not be more than one hundred eighty dollars ($180).

(e) The renewal fee for an active license shall not be more than three hundred sixty dollars ($360).

The renewal fee for an inactive license shall not be more than one hundred eighty dollars ($180).

(f) The delinquency fee is an amount equal to 50 percent of the renewal fee, if the license is renewed more than 30 days after its expiration.

(g) The registration fee for a home improvement salesperson shall not be more than seventy-five dollars ($75).

(h) The renewal fee for a home improvement salesperson registration shall not be more than seventy-five dollars ($75).

(i) The application fee for an asbestos certification examination shall not be more than seventy-five dollars ($75).

(j) The application fee for a hazardous substance removal or remedial action certification examination shall not be more than seventy-five dollars ($75).

SEC. 9. Section 7138.1 of the Business and Professions Code is amended to read:

7138.1. Notwithstanding Section 7137, the board shall fix fees to be collected pursuant to that section in order to generate revenues sufficient to maintain the board's reserve fund at a level not to exceed approximately six months of annual authorized board expenditures.

SEC. 10. Section 7153.1 of the Business and Professions Code is amended to read:

7153.1. (a) The home improvement salesperson shall submit to the registrar an application in writing containing the statement that he or she desires the issuance of a registration under the terms of this article.

The application shall be made on a form prescribed by the registrar and shall be accompanied by the fee fixed by this chapter.

(b) The registrar may refuse to register the applicant under the grounds specified in Section 480.

(c) As part of an application for a home improvement salesperson, the board shall require an applicant to furnish a full set of fingerprints for purposes of conducting criminal history record checks. Fingerprints furnished pursuant to this subdivision shall be submitted in an electronic format where readily available. Requests for alternative methods of furnishing fingerprints are subject to the approval of the registrar. The board shall use the fingerprints furnished by an applicant to obtain criminal history information on the applicant from the Department of

Justice and the United States Federal Bureau of Investigation, including any subsequent arrest information available. This subdivision shall become operative on January 1, 2004.

SEC. 11. Section 1095 of the Unemployment Insurance Code is amended to read:

1095. The director shall permit the use of any information in his or her possession to the extent necessary for any of the following purposes and may require reimbursement for all direct costs incurred in providing any and all information specified in this section, except information specified in subdivisions (a) to (e), inclusive:

(a) To enable the director or his or her representative to carry out his or her responsibilities under this code.

(b) To properly present a claim for benefits.

(c) To acquaint a worker or his or her authorized agent with his or her existing or prospective right to benefits.

(d) To furnish an employer or his or her authorized agent with information to enable him or her to fully discharge his or her obligations or safeguard his or her rights under this division or Division 3 (commencing with Section 9000).

(e) To enable an employer to receive a reduction in contribution rate.

(f) To enable federal, state, or local government departments or agencies, subject to federal law, to verify or determine the eligibility or entitlement of an applicant for, or a recipient of, public social services provided pursuant to Division 9 (commencing with Section 10000) of the Welfare and Institutions Code, or Part A of Title IV of the Social Security Act, where the verification or determination is directly connected with, and limited to, the administration of public social services.

(g) To enable county administrators of general relief or assistance, or their representatives, to determine entitlement to locally provided general relief or assistance, where the determination is directly connected with, and limited to, the administration of general relief or assistance.

(h) To enable state or local governmental departments or agencies to seek criminal, civil, or administrative remedies in connection with the unlawful application for, or receipt of, relief provided under Division 9 (commencing with Section 10000) of the Welfare and Institutions Code or to enable the collection of expenditures for medical assistance services pursuant to Part 5 (commencing with Section 17000) of Division 9 of the Welfare and Institutions Code.

(i) To provide any law enforcement agency with the name, address, telephone number, birth date, social security number, physical description, and names and addresses of present and past employers, of any victim, suspect, missing person, potential witness, or person for

whom a felony arrest warrant has been issued, when a request for this information is made by any investigator or peace officer as defined by Sections 830.1 and 830.2 of the Penal Code, or by any federal law enforcement officer to whom the Attorney General has delegated authority to enforce federal search warrants, as defined under Sections 60.2 and 60.3 of Title 28 of the Code of Federal Regulations, as amended, and when the requesting officer has been designated by the head of the law enforcement agency and requests this information in the course of and as a part of an investigation into the commission of a crime when there is a reasonable suspicion that the crime is a felony and that the information would lead to relevant evidence. The information provided pursuant to this subdivision shall be provided to the extent permitted by federal law and regulations, and to the extent the information is available and accessible within the constraints and configurations of existing department records. Any person who receives any information under this subdivision shall make a written report of the information to the law enforcement agency that employs him or her, for filing under the normal procedures of that agency.

(1) This subdivision shall not be construed to authorize the release to any law enforcement agency of a general list identifying individuals applying for or receiving benefits.

(2) The department shall maintain records pursuant to this subdivision only for periods required under regulations or statutes enacted for the administration of its programs.

(3) This subdivision shall not be construed as limiting the information provided to law enforcement agencies to that pertaining only to applicants for, or recipients of, benefits.

(4) The department shall notify all applicants for benefits that release of confidential information from their records will not be protected should there be a felony arrest warrant issued against the applicant or in the event of an investigation by a law enforcement agency into the commission of a felony.

(j) To provide public employee retirement systems in California with information relating to the earnings of any person who has applied for or is receiving a disability income, disability allowance, or disability retirement allowance, from a public employee retirement system. The earnings information shall be released only upon written request from the governing board specifying that the person has applied for or is receiving a disability allowance or disability retirement allowance from its retirement system. The request may be made by the chief executive officer of the system or by an employee of the system so authorized and identified by name and title by the chief executive officer in writing.

(k) To enable the Division of Labor Standards Enforcement in the Department of Industrial Relations to seek criminal, civil, or

administrative remedies in connection with the failure to pay, or the unlawful payment of, wages pursuant to Chapter 1 (commencing with Section 200) of Part 1 of Division 2 of, and Chapter 1 (commencing with Section 1720) of Part 7 of Division 2 of, the Labor Code.

(*l*) To enable federal, state, or local governmental departments or agencies to administer child support enforcement programs under Title IV of the Social Security Act (42 U.S.C. Sec. 651 et seq.).

(m) To provide federal, state, or local governmental departments or agencies with wage and claim information in its possession that will assist those departments and agencies in the administration of the victims of crime program or in the location of victims of crime who, by state mandate or court order, are entitled to restitution that has been or can be recovered.

(n) To provide federal, state, or local governmental departments or agencies with information concerning any individuals who are or have been:

(1) Directed by state mandate or court order to pay restitution, fines, penalties, assessments, or fees as a result of a violation of law.

(2) Delinquent or in default on guaranteed student loans or who owe repayment of funds received through other financial assistance programs administered by those agencies. The information released by the director for the purposes of this paragraph shall not include unemployment insurance benefit information.

(o) To provide an authorized governmental agency with any or all relevant information that relates to any specific workers' compensation insurance fraud investigation. The information shall be provided to the extent permitted by federal law and regulations. For the purposes of this subdivision, ''authorized governmental agency'' means the district attorney of any county, the office of the Attorney General, the Department of Industrial Relations, and the Department of Insurance. An authorized governmental agency may disclose this information to the State Bar, the Medical Board of California, or any other licensing board or department whose licensee is the subject of a workers' compensation insurance fraud investigation. This subdivision shall not prevent any authorized governmental agency from reporting to any board or department the suspected misconduct of any licensee of that body.

(p) To enable the Director of the Bureau for Private Postsecondary and Vocational Education, or his or her representatives, to access unemployment insurance quarterly wage data on a case-by-case basis to verify information on school administrators, school staff, and students provided by those schools who are being investigated for possible violations of Chapter 7 (commencing with Section 94700) of Part 59 of the Education Code.

(q) To provide employment tax information to the tax officials of Mexico, if a reciprocal agreement exists. For purposes of this subdivision, ''reciprocal agreement'' means a formal agreement to exchange information between national taxing officials of Mexico and taxing authorities of the State Board of Equalization, the Franchise Tax Board, and the Employment Development Department. Furthermore, the reciprocal agreement shall be limited to the exchange of information that is essential for tax administration purposes only. Taxing authorities of the State of California shall be granted tax information only on California residents. Taxing authorities of Mexico shall be granted tax information only on Mexican nationals.

(r) To enable city and county planning agencies to develop economic forecasts for planning purposes. The information shall be limited to businesses within the jurisdiction of the city or county whose planning agency is requesting the information, and shall not include information regarding individual employees.

(s) To provide the State Department of Developmental Services with wage and employer information that will assist in the collection of moneys owed by the recipient, parent, or any other legally liable individual for services and supports provided pursuant to Chapter 9 (commencing with Section 4775) of Division 4.5 of, and Chapter 2 (commencing with Section 7200) and Chapter 3 (commencing with Section 7500) of Division 7 of, the Welfare and Institutions Code.

(t) Nothing in this section shall be construed to authorize or permit the use of information obtained in the administration of this code by any private collection agency.

(u) The disclosure of the name and address of an individual or business entity that was issued an assessment that included penalties under Section 1128 or 1128.1 shall not be in violation of Section 1094 if the assessment is final. The disclosure may also include any of the following:

(1) The total amount of the assessment.

(2) The amount of the penalty imposed under Section 1128 or 1128.1 that is included in the assessment.

(3) The facts that resulted in the charging of the penalty under Section 1128 or 1128.1.

(v) To enable the Contractors' State License Board to verify the employment history of an individual applying for licensure pursuant to Section 7068 of the Business and Professions Code.

SEC. 12. Section 1.5 of this bill incorporates amendments to Section 144 of the Business and Professions Code proposed by both this bill and SB 1952. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2003, (2) each bill amends Section 144 of the Business and Professions Code, and (3) this

bill is enacted after SB 1952, in which case Section 1 of this bill shall not become operative.

CHAPTER 745

An act relating to transportation.

[Approved by Governor September 20, 2002. Filed with Secretary of State September 21, 2002.]

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

SECTION 1. (a) The Legislative Analyst, in consultation with transit operators, providers of community transit services, and the Department of Transportation, shall conduct an analysis of changes in operating costs experienced by transit operators and providers in relation to the applicable requirements of the Transportation Development Act for the maintenance of ratios of fare revenues to operating costs (farebox ratios) under Article 4 (commencing with Section 99260) of Chapter 4 of Part 11 of Division 10 of the Public Utilities Code (Local Transportation Funds) and for compliance with the applicable efficiency standards and qualifying criteria under Article 6.5 (commencing with Section 99310) of Chapter 4 of Part 11 of Division 10 of the Public Utilities Code (State Transit Assistance). The findings shall be included in the analysis of the 2003–04 Budget Bill.

(b) In conducting the analysis, the Legislative Analyst shall examine, at a minimum, the impact of any extraordinary increases in operating costs that are beyond the control of transit operators and providers or other purchasers of those items or services, the effect of those increases in cost on the ability to comply with the farebox ratios and efficiency standards of the Transportation Development Act, the extent to which any cost changes or conditions are likely to persist, and whether there exists any basis to temporarily suspend or exclude particular costs relative to the farebox ratio and other efficiency requirements of the Transportation Development Act.

(c) The California Transit Association and the California Association for Coordinated Transportation shall cooperate with the Legislative Analyst in collecting and providing data necessary to support the analysis.

SEC. 2. This act does not constitute a state-mandated local program because it does not impose requirements on any local agency.

CHAPTER 746

An act to add Section 11011.14 to the Government Code, relating to state property.

[Approved by Governor September 20, 2002. Filed with Secretary of State September 21, 2002.]

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

SECTION 1. Section 11011.14 is added to the Government Code, to read:

11011.14. (a) Notwithstanding any other provision of law, the Director of General Services shall transfer title of state Building 101, the former Lake Norconian Club Hotel in Norco and previously operated by the Department of Corrections as a minimum security facility, to the City of Norco.

(b) The transfer shall be completed at no cost to the City of Norco, other than costs incurred related to the actual transfer, including, but not limited to, any survey costs, title transfer fees, and staff time of department employees, which shall be paid by the City of Norco.

(c) As a condition of the transfer, the City of Norco shall do both of the following:

(1) No later than January 1, 2006, present to, and obtain approval of, the Department of Corrections, in consultation with the Department of General Services, a final plan for the future use of state Building 101. The plan shall include a financial plan and specific benchmarks that the city will be required to meet at the end of each year of ownership, commencing with the date that is one year after the date of transfer.

(2) Accept the property in its current condition as is and release and discharge the state from any future liability associated with the property.

(d) As a condition of the transfer, the Department of General Services shall be transmitted a copy of a resolution adopted by the City Council of Norco and the Board of Supervisors of Riverside County in support of the final plan.

(e) Title to state Building 101 shall revert to the state at no cost if the Department of Corrections, in consultation with the Department of General Services, determines that the City of Norco has not complied with its final plan for the use of state Building 101.

(f) In maintaining state Building 101, the City of Norco shall agree to comply with all statutes and regulations pertaining to maintenance and ownership of structures registered with the National Register of Historic Places and the California Register of Historic Resources.

CHAPTER 747

An act to add Sections 14105.95 and 14105.96 to the Welfare and Institutions Code, relating to Medi-Cal, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 20, 2002. Filed with Secretary of State September 21, 2002.]

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

SECTION 1. Section 14105.95 is added to the Welfare and Institutions Code, to read:

14105.95. (a) Each eligible facility, as described in subdivision (b), may, in addition to the rate of payment that the facility would otherwise receive for adult day health services, receive supplemental Medi-Cal reimbursement to the extent provided in this section.

(b) A facility shall be eligible for supplemental reimbursement only if the facility has all of the following characteristics continuously during a state fiscal year commencing with the 2002 fiscal year, and thereafter:

(1) Provides services to Medi-Cal beneficiaries.

(2) Is an adult day health center, licensed pursuant to Chapter 3.3 (commencing with Section 1570) of Division 2 of the Health and Safety Code.

(3) Is owned or operated by a county, city, city or county, or health care district organized pursuant to Chapter 1 (commencing with Section 32000) of Division 23 of the Health and Safety Code.

(c) An eligible facility's supplemental reimbursement pursuant to this section shall be calculated and paid as follows:

(1) The supplemental reimbursement to an eligible facility, as described in subdivision (b), shall be equal to the amount of federal financial participation received as a result of the claims submitted pursuant to paragraph (2) of subdivision (g).

(2) In no instance shall the amount certified pursuant to paragraph (1) of subdivision (e), when combined with the amount received from all other sources of reimbursement from the Medi-Cal program, exceed 100 percent of projected costs, as determined pursuant to the Medi-Cal State Plan, for adult day health services at each facility.

(3) The supplemental Medi-Cal reimbursement provided by this section shall be distributed under a payment methodology based on adult day health services provided to Medi-Cal patients at the eligible facility, either on a per-visit basis or any other federally permissible basis. The department shall seek approval from the federal Centers for Medicare and Medicaid Services for the payment methodology to be utilized, and

may not make any payment pursuant to this section prior to obtaining that approval.

(d) (1) It is the Legislature's intent in enacting this section to provide the supplemental reimbursement described in this section without any expenditure from the General Fund.

(2) The state share of the supplemental reimbursement submitted to the federal Centers for Medicare and Medicaid Services for purposes of claiming federal financial participation shall be paid only with funds from the governmental entities described in paragraph (3) of subdivision (b) and certified to the state as provided in subdivision (e).

(e) A particular governmental entity described in paragraph (3) of subdivision (b), on behalf of any eligible facility owned or operated by the entity shall do all of the following:

(1) Certify, in conformity with the requirements of Section 433.51 of Title 42 of the Code of Federal Regulations, that the claimed expenditures for outpatient services are eligible for federal financial participation.

(2) Provide evidence supporting the certification as specified by the department.

(3) Submit data as specified by the department to determine the appropriate amounts to claim as expenditures qualifying for federal financial participation.

(4) Keep, maintain, and have readily retrievable, any records specified by the department to fully disclose reimbursement amounts to which the eligible facility is entitled, and any other records required by the federal Centers for Medicare and Medicaid Services.

(f) An eligible facility as described in subdivision (b), as a condition of receiving supplemental reimbursement under this section, shall enter into, and maintain, a contract with the department for the purpose of implementing this section, and to reimburse the department for its administrative costs of implementing this section.

(g) (1) The department shall promptly seek any necessary federal approvals for the implementation of this section. If necessary to obtain federal approval, the department may limit the program to those costs that are allowable expenditures under Title XIX of the federal Social Security Act (Subchapter 19 (commencing with Section 1396) of Chapter 7 of Title 42 of the United States Code). If federal approval is not obtained for implementation of this section, this section shall become inoperative.

(2) The department shall submit claims for federal financial participation for the expenditures for the services described in subdivision (e) that are allowable expenditures under federal law.

(3) The department shall, on an annual basis, submit any necessary materials to the federal government to provide assurances that claims for

federal financial participation will include only those expenditures that are allowable under federal law.

(h) All funds expended pursuant to this section are subject to review and audit by the department.

(i) This section shall become inoperative in the event, and on the date, of a final judicial determination by any court of appellate jurisdiction or a final determination by the administrator of the federal Centers for Medicare and Medicaid Services that the supplemental reimbursement provided in this section must be made to any facility not described in this section.

SEC. 2. Section 14105.96 is added to the Welfare and Institutions Code, to read:

14105.96. (a) Each eligible facility, as described in subdivision (b), may, in addition to the rate of payment that the facility would otherwise receive for Medi-Cal outpatient services, receive supplemental Medi-Cal reimbursement to the extent provided in this section.

(b) A facility shall be eligible for supplemental reimbursement only if the facility has all of the following characteristics continuously during a state fiscal year commencing with the 2002 fiscal year, and thereafter:

(1) Provides services to Medi-Cal beneficiaries.

(2) Is an acute care hospital providing outpatient hospital services. For purposes of this paragraph, ''acute care hospital'' means the facilities described by subdivision (a) or (b), or both, of Section 1250 of the Health and Safety Code.

(3) Is owned or operated by a county, city, city and county, the University of California, or health care district organized pursuant to Division 23 (commencing with Section 32000) of the Health and Safety Code.

(c) An eligible facility's supplemental reimbursement pursuant to this section shall be calculated and paid as follows:

(1) The supplemental reimbursement to an eligible facility, as described in subdivision (b), shall be equal to the amount of federal financial participation received as a result of the claims submitted pursuant to paragraph (2) of subdivision (g).

(2) In no instance shall the amount certified pursuant to paragraph (1) of subdivision (e), when combined with the amount received from all other sources of reimbursement from the Medi-Cal program, exceed 100 percent of projected costs, as determined pursuant to the Medi-Cal State Plan, for outpatient services at each facility.

(3) The supplemental Medi-Cal reimbursement provided by this section shall be distributed under a payment methodology based on outpatient services provided to Medi-Cal patients at the eligible facility, either on a per-visit basis, per-procedure basis, or any other federally permissible basis. The department shall seek approval from the federal

Centers for Medicare and Medicaid Services for the payment methodology to be utilized, and may not make any payment pursuant to this section prior to obtaining that approval.

(d) (1) It is the Legislature's intent in enacting this section to provide the supplemental reimbursement described in this section without any expenditure from the General Fund.

(2) The state share of the supplemental reimbursement submitted to the federal Centers for Medicare and Medicaid Services for purposes of claiming federal financial participation shall be paid only with funds from the governmental entities described in paragraph (3) of subdivision (b) and certified to the state as provided in subdivision (e).

(e) A particular governmental entity, described in paragraph (3) of subdivision (b), on behalf of any eligible facility owned or operated by the entity, shall do all of the following:

(1) Certify, in conformity with the requirements of Section 433.51 of Title 42 of the Code of Federal Regulations, that the claimed expenditures for the outpatient services are eligible for federal financial participation.

(2) Provide evidence supporting the certification as specified by the department.

(3) Submit data as specified by the department to determine the appropriate amounts to claim as expenditures qualifying for federal financial participation.

(4) Keep, maintain, and have readily retrievable, any records specified by the department to fully disclose reimbursement amounts to which the eligible facility is entitled, and any other records required by the federal Centers for Medicare and Medicaid Services.

(f) An eligible facility as described in subdivision (b), as a condition of receiving supplemental reimbursement under this section, shall enter into, and maintain, a contract with the department for the purpose of implementing this section, and to reimburse the department for its administrative costs of operating this program.

(g) (1) The department shall promptly seek any necessary federal approvals for the implementation of this section. If necessary to obtain federal approval, the department may limit the program to those costs that are allowable expenditures under Title XIX of the federal Social Security Act (Subchapter 19 (commencing with Section 1396) of Chapter 7 of Title 42 of the United States Code). If federal approval is not obtained for implementation of this section, this section shall become inoperative.

(2) The department shall submit claims for federal financial participation for the expenditures for the services described in subdivision (e) that are allowable expenditures under federal law.

(3) The department shall, on an annual basis, submit any necessary materials to the federal government to provide assurances that claims for federal financial participation will include only those expenditures that are allowable under federal law.

(h) This section shall become inoperative in the event, and on the date, of a final judicial determination by any court of appellate jurisdiction or a final determination by the administrator of the federal Centers for Medicare and Medicaid Services that the supplemental reimbursement provided in this section must be made to any facility not described in this section.

SEC. 3. 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 that public health facilities are able to use funds made available pursuant to this act at the earliest possible time, it is necessary for this act to take effect immediately.

CHAPTER 748

An act to add Chapter 6.5 (commencing with Section 20600) to Division 8 of the Business and Professions Code, relating to video arcades.

[Approved by Governor September 20, 2002. Filed with Secretary of State September 21, 2002.]

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

SECTION 1. Chapter 6.5 (commencing with Section 20600) is added to Division 8 of the Business and Professions Code, to read:

CHAPTER 6.5. VIDEO ARCADES

20600. A video arcade shall post a sign that notifies consumers that a video arcade game rating system, created by the video arcade gaming industry, is available to aid in the selection of a game. This sign shall be posted on the wall of the arcade in a prominent area such as the arcade entrance, the money exchange machine, or the token counter. The lettering of each sign shall be printed, at a minimum, in 36-point type and shall be in black ink against a light colored background, with dimensions no less than 18 by 24 inches.

20601. A video arcade shall make available upon request a brochure to consumers that explains the rating system described in Section 20600.

20602. For the purposes of this chapter, ''video arcade'' means any premises where all of the following exist:

(a) Minors are legally permitted to conduct business.

(b) Ten or more video game machines or devices are operated.

(c) One or more of the video game machines or devices are rated ''red'' or five or more of the video game machines or devices are rated ''yellow'' under the rating system created by the video arcade gaming industry.

CHAPTER 749

An act to add Section 116.6 to the Insurance Code, relating to insurance.

[Approved by Governor September 20, 2002. Filed with Secretary of State September 21, 2002.]

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

SECTION 1. Section 116.6 is added to the Insurance Code, to read:

116.6. (a) Notwithstanding Section 116, a warranty issued by the warrantor of a vehicle protection product shall constitute an express warranty, as defined in Section 1791.2 of the Civil Code, and shall not constitute automobile insurance if the warrantor complies with all of the following requirements:

(1) The warrantor maintains an insurance policy with an admitted insurer providing coverage for 100 percent of the warrantor's obligations under the warranty. The insurance policy shall allow the warrantyholder to make a direct claim for payment from the insurer upon the failure of the warrantor to pay any covered claim within 60 days after a complete proof-of-loss has been filed with the party designated in the warranty. In addition, all of the following shall apply:

(A) The warrantor shall file with the commissioner a copy of the insurance policy. At any time, a warrantor may have on file with the commissioner only one active policy from one insurer.

(B) The insurer's liability under the policy shall not be negated by a failure of the warrantor, for any reason, to report the issuance of a warranty to the insurer or to remit moneys owed to the insurer.

(C) No policy cancellation by an insurer shall be valid unless a notice of the intent to cancel the policy is filed with the commissioner not less than 30 days prior to the effective date of the cancellation, or, in the event

that the cancellation is due to fraud, material misrepresentation, or defalcation by the warrantor, not less than 10 days prior to that date.

(D) In the event an insurer cancels a policy that a warrantor has filed with the commissioner, the warrantor shall do either of the following:

(i) File a copy of a new policy with the commissioner, before the termination of the prior policy, providing no lapse in coverage following the termination of the prior policy.

(ii) Discontinue acting as a warrantor as of the termination date of the policy until a new policy becomes effective and is accepted by the commissioner.

(2) The warrantor does not use the words insurance, casualty, surety, mutual, or any other words descriptive of the casualty, insurance, or surety business or deceptively similar to the name or description of any insurance company or casualty or surety company in the vehicle protection product name or warranty or in any advertising or other materials provided to prospective purchasers.

(3) The warranty has been issued to a customer that is insured under a comprehensive vehicle insurance policy for the vehicle covered by the warranty agreement.

(4) The warranty is in writing and provides all of the following:

(A) The benefits are limited to the difference between the actual cash value of the stolen vehicle and the vehicle's replacement cost, temporary vehicle rental expenses, reimbursement for insurance policy deductible, and registration fees and taxes on a replacement vehicle or a fixed amount for those benefits.

(B) A statement that the warrantyholder shall be entitled to make a direct claim against the insurer covering the obligations of the warranty upon the failure of the warrantor to pay any covered claim within 60 days after a complete proof-of-loss has been filed with the party designated in the warranty.

(C) A disclosure stating clearly the name, address, and telephone number of the insurer covering the obligations of the warrantor.

(D) A toll-free telephone number established and operated by the warrantor for the warrantyholder to call for questions about the warranty or the procedures to file a claim.

(E) A statement that clearly indicates the terms of the warranty, whether new or used cars are eligible for the vehicle protection product, the method for calculating the benefits paid and provided to the warrantyholder, and the procedure for filing a claim under the warranty.

(F) A disclosure in 10-point type or larger that reads as follows: "This agreement is a product warranty and is not insurance. It is not subject to state insurance laws but is subject to state law concerning warranties."

(G) A disclosure in 10-point type or larger that reads as follows: "To be eligible for this warranty, the warrantyholder must have

comprehensive insurance coverage on the vehicle that is protected by the antitheft device.''

(5) The benefit is payable upon the theft of the vehicle, as defined in the warranty, and subject to the satisfaction of the procedural proof of claim requirements of the warranty.

(b) For purposes of this section, the following definitions shall apply:

(1) ''Warrantor'' means the manufacturer or provider of a vehicle protection product who, under the terms of a vehicle protection product warranty, is the contractual obligor to the purchaser of a vehicle protection product.

(2) (A) ''Vehicle protection product'' means a vehicle protection device, system, or service that is installed on, or applied to, a vehicle, is designed to deter the theft of a vehicle, and includes a written warranty that provides if the product fails to deter the theft of the vehicle, that the warrantyholder shall be paid specified incidental costs by the warrantor as a result of the failure of the device, system, or service to perform pursuant to the terms of the warranty.

(B) For purposes of this section, ''vehicle protection product'' shall also include alarm systems, window etch products, body part marking products, steering locks, pedal and ignition locks, fuel and ignition kill switches, and electronic, radio, and satellite tracking devices.

(c) The commissioner may issue a stop order pursuant to Section 12921.8 to a warrantor who is in violation of the requirements of this section.

(d) A warrantor shall have the burden of proving that a claim filed in compliance with the terms and conditions of the warranty is not covered by the warranty. A warrantor shall have the burden of proving that a claim settlement amount fulfills the promises contained in the warranty.

(e) The requirements of this section shall not apply under either of the following conditions:

(1) The warrantor is a manufacturer of motor vehicles, as defined pursuant to Section 672 of the Vehicle Code, or a distributor of motor vehicles, as defined pursuant to Section 296 of the Vehicle Code.

(2) The warranty only provides for the repair or replacement of the vehicle protection product subsequent to a mechanical or electrical breakdown of the vehicle protection product.

(f) Nothing in this section is intended to affect any pending litigation.

CHAPTER 750

An act to amend Section 6527 of the Government Code, relating to joint powers authorities, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 20, 2002. Filed with Secretary of State September 21, 2002.]

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

SECTION 1. Section 6527 of the Government Code is amended to read:

6527. (a) Notwithstanding any other provision of law, where two or more health care districts have joined together to pool their self-insurance claims or losses, a nonprofit corporation that provides health care services that may be carried out by a health care district may participate in the pool, provided that its participation in an existing joint powers agreement, as authorized by this section, shall be permitted only after the public agency members, or public agency representatives on the governing body of the joint powers entity make a finding, at a public meeting, that the agreement provides both of the following:

(1) The primary activities conducted under the joint powers agreement will be substantially related to and in furtherance of the governmental purposes of the public agency.

(2) The public agency participants will maintain control over the activities conducted under the joint powers agreement through public agency control over governance, management, or ownership of the joint powers authority.

(b) Any public agency or private entity entering into a joint powers agreement under this section shall establish or maintain a reserve fund to be used to pay losses incurred under the agreement. The reserve fund shall contain sufficient moneys to maintain the fund on an actuarially sound basis.

(c) In any risk pooling arrangement created under this section, the aggregate payments made under each program shall not exceed the amount available in the pool established for that program.

(d) A public meeting shall be held prior to the dissolution or termination of any enterprise operating under this section to consider the disposition, division, or distribution of any property acquired as a result of exercise of the joint exercise of powers.

(e) Nothing in this section shall be construed to do any of the following:

(1) Relieve a public benefit corporation that is a health facility from charitable trust obligations.

(2) Exempt such a public benefit corporation from existing law governing joint ventures, or the sale, transfer, lease, exchange, option, conveyance, or other disposition of assets.

(3) Grant any power to any private, nonprofit hospital that participates in an agreement authorized under this section to levy any tax or assessment.

(4) Permit any entity, other than a private, nonprofit hospital corporation or a public agency, to participate as a party to an agreement authorized under this section.

(5) Permit an agency or entity created pursuant to a joint powers agreement entered into pursuant to this section to act in a manner inconsistent with the laws that apply to public agencies, including, but not limited to, the California Public Records Act (Chapter 3.5 (commencing with Section 6250)), the Ralph M. Brown Act (Chapter 9 (commencing with Section 54950) of Part 1 of Division 2 of Title 5), and the Political Reform Act of 1974 (Title 9 (commencing with Section 81000)).

(f) Notwithstanding any other provision of law, the Self-Insurers' Security Fund established pursuant to Article 2.5 (commencing with Section 3740) of Chapter 4 of Part 1 of Division 4 of the Labor Code shall owe no duties or obligations to any entity that participates as a party to an agreement authorized pursuant to this section, or to its employees, and shall not be required, under any circumstances, to assume the worker's compensation liabilities of this entity if it becomes insolvent or otherwise unable to pay those liabilities.

(g) For purposes of this section, ''self-insurance claims or losses'' includes, but is not limited to, claims or losses incurred pursuant to Chapter 4 (commencing with Section 3700) of Division 4 of the Labor Code.

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 prevent the imminent closure of emergency departments and the elimination of other critical patient services at two key rural hospitals and the imminent reduction in health services at several rural clinics serving migrant populations, it is necessary that this act take effect immediately.

CHAPTER 751

An act to add Section 14100.95 to the Welfare and Institutions Code, relating to Medi-Cal.

[Approved by Governor September 20, 2002. Filed with Secretary of State September 21, 2002.]

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

SECTION 1. It is the intent of the Legislature that the implementation of this act by the State Department of Health Services shall be cost-neutral and shall not result in increased costs to the department.

SEC. 2. Section 14100.95 is added to the Welfare and Institutions Code, to read:

14100.95. (a) The department shall enter into demonstration contracts with manufacturers of medical supplies for four items of its own selection of medical supplies existing on the pharmacy claims processing system, for the purpose of establishing rebates or other cost-saving mechanisms and demonstrating cost savings in the purchase of these medical supplies. The department shall maintain a list of the supplies for which contracts have been executed.

(b) Nothing in this section shall prevent a small retail business from continuing to supply medical supplies for use by Medi-Cal beneficiaries.

(c) In establishing these demonstration contracts, the department shall preserve reasonable access to these supplies by beneficiaries.

(d) The department shall report the outcomes of these demonstration contracts to the Legislature no later than January 1, 2007.

CHAPTER 752

An act to add Section 1250.7 to the Health and Safety Code, relating to health facilities.

[Approved by Governor September 20, 2002. Filed with Secretary of State September 21, 2002.]

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

SECTION 1. The Legislature finds and declares all of the following:

(a) The federal Medicare Rural Hospital Flexibility Program was established by the Balanced Budget Act of 1997 to help rural communities maintain access to primary care and emergency health care

services, to provide health care services that meet community needs, and to help ensure the financial viability of program participants through improved Medicare reimbursement and flexible operating requirements.

(b) California has established a state Medicare Rural Hospital Flexibility Program pursuant to the federal program and enacted Section 14105.17 of the Welfare and Institutions Code to make rural "critical access hospitals" designated pursuant to the state and federal programs eligible for supplemental payments for Medi-Cal outpatient services.

(c) It is essential to ensure the intent of the state to maintain access to health care services by providing for improved Medicare and Medi-Cal reimbursement and flexible operating requirements for critical access hospitals by explicitly authorizing the State Department of Health Services to waive state licensing regulations that are in conflict with the requirements under the federal program.

SEC. 2. Section 1250.7 is added to the Health and Safety Code, to read:

1250.7. (a) (1) With respect to each hospital designated by the department as a critical access hospital, and certified as such by the Secretary of the United States Department of Health and Human Services under the federal Medicare Rural Hospital Flexibility Program, the department may develop criteria to waive any requirements of Division 5 (commencing with Section 70001) of Title 22 of the California Code of Regulations that are in conflict with the federal requirements for designation in the federal program, if the department finds that it is in the public interest to do so, and the department determines that the waiver would not negatively affect the quality of patient care.

(2) The criteria established pursuant to this subdivision shall not be considered regulations within the meaning of Section 11342 of the Government Code, and shall not be subject to adoption as regulations pursuant to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

(b) Nothing in this section shall be construed to mean that a critical access hospital is not a general acute care hospital. Every hospital designated by the department as a critical access hospital and certified as such by the United States Department of Health and Human Services shall be deemed to be a general acute care hospital, as defined in subdivision (a) of Section 1250, even if the department waives regulatory requirements otherwise applicable to general acute care hospitals pursuant to this section.

CHAPTER 753

An act to amend Sections 3001 and 3008 of, and to add Sections 3007.5, 3007.7, and 18107.5 to, the Elections Code, relating to absentee ballots.

[Approved by Governor September 20, 2002. Filed with Secretary of State September 21, 2002.]

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

SECTION 1. The Legislature hereby finds and declares the following:

(a) It is the policy of this state that all election laws and procedures are established and construed to assist the elector in the exercise of his or her right to vote. It is the further policy of the state that this goal be accomplished in an economical manner that prevents fraud and encourages electors to vote.

(b) California's system of elections can be improved by the use of current and emerging technologies to increase voter participation.

(c) Greater electoral participation may be achieved by allowing all voters to submit absentee ballot requests electronically.

(d) It is the intent of the Legislature that the electronic application process for an absent voter's ballot utilize current Internet technology security.

(e) It is the intent of the Legislature to provide voters with a web page secure Internet format that is completed manually by the voter and submitted over the Internet as a single, secure document.

SEC. 2. Section 3001 of the Elections Code is amended to read:

3001. Except as provided in Chapter 3 (commencing with Section 3200) and Sections 3007.5 and 3007.7, application for an absent voter's ballot shall be made in writing to the elections official having jurisdiction over the election between the 29th and the 7th day prior to the election. The application shall be signed by the applicant and shall show his or her place of residence. Any applications received by the elections official prior to the 29th day shall be kept and processed during the application period.

SEC. 3. Section 3007.5 is added to the Elections Code, to read:

3007.5. (a) The Secretary of State shall prepare and distribute to appropriate elections officials a uniform electronic application format for an absent voter's ballot that conforms to this section.

(b) The uniform electronic application shall contain spaces for at least the following information:

(1) The name and residence address of the registered voter as it appears on the affidavit of registration.

(2) The address to which the ballot is to be mailed.

(3) The name and date of the election for which the request is made.

(4) The date the application must be received by the elections official.

(5) The date of birth of the registered voter.

(c) The uniform electronic application shall inform the voter that if he or she is not affiliated with a political party, the voter may request an absentee ballot for a particular political party for the primary election, if that political party has adopted a party rule, duly noticed to the Secretary of State, authorizing that vote. The application shall contain a toll-free telephone number, established by the Secretary of State, that the voter may call to access information regarding which political parties have adopted such a rule. The application shall list the parties that have notified the Secretary of State of the adoption of such a rule. The application shall contain a checkoff box with a conspicuously printed statement that reads, as follows: ''I am not presently affiliated with any political party. However, for this primary election only, I request an absentee ballot for the ____ Party.'' The name of the political party shall be personally affixed by the voter.

(d) The uniform electronic application shall contain a conspicuously printed statement, as follows: ''Only the registered voter himself or herself may apply for an absentee ballot. An application for an absentee ballot made by a person other than the registered voter is a criminal offense.''

(e) The uniform electronic application shall include the following statement: ''A ballot will not be sent to you if this application is incomplete or inaccurate.''

(f) The uniform electronic application format shall not permit the form to be electronically submitted unless all of the information required to complete the application is contained in the appropriate fields.

SEC. 4. Section 3007.7 is added to the Elections Code, to read:

3007.7. (a) The local elections official may offer a voter the ability to electronically apply for an absent voter's ballot. If the local elections official offers the uniform electronic application, the electronic application shall be in an interactive Internet format to be completed through the local elections official's secure Internet site and may not be a downloadable form. The nondownloadable form shall be of a format that would allow the registered voter making an application for an absent voter's ballot to enter the required information and submit the single form directly to the elections official's secure Internet site. The local elections official shall make every effort to ensure the security of the submitted information.

(b) Upon receiving an electronic absentee ballot application that contains the required information within the proper time, the elections official shall check the information provided against the voter's

information on file. If the elections official deems the applicant entitled to an absent voter's ballot, the elections official shall deliver the appropriate absent voter's ballot by mail or in person.

(c) If the elections official determines that an electronic absentee ballot application does not contain all of the required information, or for any other reason is defective, and the elections official is able to ascertain the voter's address, the elections official may not mail the voter an absent voter's ballot, but shall mail the voter a notice of defect. The notice of defect shall do both of the following:

(1) Specifically inform the voter of the information that is required or the reason for the defect in the application.

(2) State the procedure necessary to remedy the defective application.

(d) An address, as required by paragraph (2) of subdivision (b) of Section 3007.5, may not be the address of any political party, a political campaign headquarters, or a candidate's residence. However, a candidate, his or her spouse, immediate family members, and any other voter who shares the same residence address as the candidate may request that an absentee ballot be mailed to the candidate's residence address.

(e) Except as provided in Section 3007.5 and this section, all other sections of this code pertaining to absentee voter application, submission, deadlines, and canvassing shall apply to electronic absentee ballot applications and applicants.

SEC. 5. Section 3008 of the Elections Code is amended to read:

3008. (a) Any individual, organization, or group that distributes applications for absent voter ballots and receives completed application forms shall return the forms to the appropriate elections official within 36 hours of receiving the completed forms, or before the deadline for application, whichever is sooner. The name, address, and telephone number of any organization that authorizes the distribution of the applications shall be included on the application.

(b) Any application for an absent voter's ballot that is sent by an individual, group, or organization to a voter shall be nonforwardable. Any absent voter's ballot that is returned to an elections official as undeliverable shall not be forwarded by the elections official.

(c) A person may not submit an absentee ballot application electronically for another registered voter.

SEC. 6. Section 18107.5 is added to the Elections Code, to read:

18107.5. Every person who willfully violates subdivision (c) of Section 3008 is guilty of an infraction, punishable by a fine not to exceed two hundred dollars ($200) per application.

SEC. 7. The Secretary of State shall report to the Legislature, within one year of the first statewide election following implementation of this act, on the impact, if any, of permitting electronic application for

absentee ballots, including the impact of the electronic applications on voter participation.

SEC. 8. 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.

CHAPTER 754

An act to amend Section 21683.1 of the Public Utilities Code, relating to aviation, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 20, 2002. Filed with Secretary of State September 21, 2002.]

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

SECTION 1. Section 21683.1 of the Public Utilities Code is amended to read:

21683.1. (a) At the discretion of the commission, any balance remaining in the Aeronautics Account, after the payments made under Section 21682, may be used to provide a portion of the local match for federal Airport Improvement Program grants. Matching shall be provided only for grants at general aviation airports, or at airports that have been designated by the Federal Aviation Administration as reliever airports, as defined in Section 503(a)(19) of the federal Airport and Airway Improvement Act of 1982, as amended.

(b) Funds shall not be allocated by the commission until the federal grant offer is accepted by the public entity. Upon allocation by the commission, the department may pay a public entity an amount equal to 5 percent of the amount of a federal Airport Improvement Program grant. These funds are excluded from the requirements of Section 21684.

(c) Funds shall not be allocated by the commission until the federal grant offer is accepted by the public entity. Upon allocation by the commission, the department may, until December 31, 2006, pay a public entity an amount equal to the 10 percent local match required for a federal Airport Improvement Program grant for security projects at small general aviation airports. For purposes of this section, a "security

project'' means a project to install or maintain fencing, gates, security lighting, access controls systems, and surveillance systems. For purposes of this section a ''small general aviation airport'' means an airport with fewer than 80,000 annual landings and take-offs of aircraft.

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 enable small general aviation airports to increase security at the earliest possible time, it is necessary for this act to take effect immediately.

CHAPTER 755

An act to add Chapter 5.7 (commencing with Section 51940) to Part 28 of the Education Code, relating to pupil curriculum.

[Approved by Governor September 20, 2002. Filed with Secretary of State September 21, 2002.]

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

SECTION 1. (a) It is the intent of the Legislature in enacting this measure, to encourage physical fitness and to recognize that physical activity is important to healthy physical and mental development.

(b) It is also the intent of the Legislature that safety equipment mentioned in the approved curriculum should address the importance of that equipment being properly sized and fitted for the user.

(c) It is also the intent of the Legislature that the curriculum include information about how to properly handle any injured person so as not to further injure that person.

SEC. 2. Chapter 5.7 (commencing with Section 51940) is added to Part 28 of the Education Code, to read:

CHAPTER 5.7. PREVENTION OF BRAIN AND SPINAL CORD INJURIES

51940. (a) The California Healthy Kids Resource Center, in consultation with the State Department of Education, shall review, acquire, and circulate curricula focused on the prevention of brain and spinal cord injuries for use, on a voluntary basis, by school districts maintaining kindergarten and any of grades 1 to 12, inclusive.

(b) The curricula shall contain, at a minimum, age-appropriate components concerning all of the following:

(1) Critical thinking related to learned behavioral patterns, including, but not limited to, strategies and behavioral patterns for avoiding common risk factors or situations.

(2) Acceptance of individual responsibility for avoiding or controlling the risk of injury in activities of daily life, and awareness of the possible consequences of injury, especially the effects of serious brain or spinal cord injuries.

(3) Recognition, avoidance, and management of high-risk situations, such as the following:

(A) Use of automobiles or motorcycles as either a driver or passenger.

(B) Consumption of intoxicating or consciousness-altering substances.

(C) Participation in recreational activities that involve risk of significant physical injury. These activities include skiing, skydiving, hunting, mountain climbing, skateboarding, equestrian events, and other physically challenging pursuits or sports.

(D) Presence as a spectator at events or a witness in circumstances where there is potential for physical injury.

(c) The California Healthy Kids Resource Center shall notify school districts regarding the availability of the curricula.

(d) The review, acquisition, and circulation of curricula pursuant to this section shall be contingent upon the California Healthy Kids Resource Center receiving funds to review, acquire, and circulate the brain and spinal cord injury prevention curricula. All funds necessary to implement this chapter shall be provided by nonstate sources.

CHAPTER 756

An act to amend Sections 14087.325 and 14105 of the Welfare and Institutions Code, relating to Medi-Cal.

[Approved by Governor September 20, 2002. Filed with Secretary of State September 21, 2002.]

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

SECTION 1. Section 14087.325 of the Welfare and Institutions Code is amended to read:

14087.325. (a) The department shall require, as a condition of obtaining a contract with the department, that any local initiative, as defined in subdivision (v) of Section 53810 of Title 22 of the California Code of Regulations, offer a subcontract to any entity defined in Section 1396d(*l*)(2)(B) of Title 42 of the United States Code providing services

as defined in Section 1396d(a)(2)(C) of Title 42 of the United States Code and operating in the service area covered by the local initiative's contract with the department. These entities are also known as federally qualified health centers.

(b) Except as otherwise provided in this section, managed care subcontracts offered to a federally qualified health center or a rural health clinic, as defined in Section 1396d(*l*)(1) of Title 42 of the United States Code, by a local initiative, county organized health system, as defined in Section 12693.05 of the Insurance Code, commercial plan, as defined in subdivision (h) of Section 53810 of Title 22 of the California Code of Regulations, or a health plan contracting with a geographic managed care program, as defined in subdivision (g) of Section 53902 of Title 22 of the California Code of Regulations, shall be on the same terms and conditions offered to other subcontractors providing a similar scope of service. Any beneficiary, subscriber, or enrollee of a program or plan who affirmatively selects, or is assigned by default to, a federally qualified health center or rural health clinic under the terms of a contract between a plan, government program, or any subcontractor of a plan or program, and a federally qualified health center or rural health clinic, shall be assigned directly to the federally qualified health center or rural health clinic, and not to any individual provider performing services on behalf of the federally qualified health center or rural health clinic.

(c) The department shall provide incentives in the competitive application process described in paragraph (1) of subdivision (b) of Section 53800 of Title 22 of the California Code of Regulations, to encourage potential commercial plans as defined in subdivision (h) of Section 53810 of Title 22 of the California Code of Regulations to offer subcontracts to these federally qualified health centers.

(d) Reimbursement to federally qualified health centers and rural health centers for services provided pursuant to a subcontract with a local initiative, a commercial plan, geographic managed care program health plan, or a county organized health system, shall be paid in a manner that is not less than the level and amount of payment that the plan would make for the same scope of services if the services were furnished by a provider that is not a federally qualified health center or rural health clinic.

(e) (1) The department shall administer a program to ensure that total payments to federally qualified health centers and rural health clinics operating as managed care subcontractors pursuant to subdivision (d) comply with applicable federal law pursuant to Sections 1902(aa) and 1903(m)(2)(A)(ix) of the Social Security Act (42 U.S.C.A. Secs. 1396a(aa) and 1396b(m)(2)(A)(ix)). Under the department's program, federally qualified health centers and rural health clinics subcontracting with local initiatives, commercial plans, county organized health

systems, and geographic managed care program health plans shall seek supplemental reimbursement from the department through a per visit fee-for-service billing system utilizing the state's Medi-Cal fee-for-service claims processing system contractor. To carry out this per visit payment process, each federally qualified health system and rural health clinic shall submit to the department for approval a rate differential calculated to reflect the amount necessary to reimburse the federally qualified health center or rural health clinic for the difference between the payment the center or clinic received from the managed care health plan and either the interim rate established by the department based on the center's or clinic's reasonable cost or the center's or clinic's prospective payment rate. The department shall adjust the computed rate differential as it deems necessary to minimize the difference between the center's or clinic's revenue from the plan and the center's or clinic's cost-based reimbursement or the center's or clinic's prospective payment rate.

(2) In addition, to the extent feasible, within six months of the end of the center's or clinic's fiscal year, the department shall perform an annual reconciliation to reasonable cost, and make payments to, or obtain a recovery from, the center or clinic.

(f) In calculating the capitation rates to be paid to local initiatives, commercial plans, geographic managed care program health plans, and county organized health systems, the department shall not include the additional dollar amount applicable to cost-based reimbursement that would otherwise be paid, absent cost-based reimbursement, to federally qualified health centers and rural health clinics in the Medi-Cal fee-for-service program.

(g) On or before September 30, 2002, the director shall conduct a study of the actual and projected impact of the transition from a cost-based reimbursement system to a prospective payment system for federally qualified health centers and rural health clinics. In conducting the study, the director shall evaluate the extent to which the prospective payment system stimulates expansion of services, including new facilities to expand capacity of the centers, and the extent to which actual and estimated prospective payment rates of federally qualified health centers and rural health clinics for the first five years of the prospective payment system are reflective of the cost of providing services to Medi-Cal beneficiaries. Clinics may submit cost reporting information to the department to provide data for the study.

(h) The department shall approve all contracts between federally qualified health centers or rural health clinics and any local initiative, commercial plan, geographic managed care program health plan, or county organized health system in order to ensure compliance with this section.

(i) This section shall not preclude the department from establishing pilot programs pursuant to Section 14087.329.

SEC. 1.5. Section 14087.325 of the Welfare and Institutions Code is amended to read:

14087.325. (a) The department shall require, as a condition of obtaining a contract with the department, that any local initiative, as defined in subdivision (v) of Section 53810 of Title 22 of the California Code of Regulations, offer a subcontract to any entity defined in Section 1396d(*l*)(2)(B) of Title 42 of the United States Code providing services as defined in Section 1396d(a)(2)(C) of Title 42 of the United States Code and operating in the service area covered by the local initiative's contract with the department. These entities are also known as federally qualified health centers.

(b) Except as otherwise provided in this section, managed care subcontracts offered to a federally qualified health center or a rural health clinic, as defined in Section 1396d(*l*)(1) of Title 42 of the United States Code, by a local initiative, county organized health system, as defined in Section 12693.05 of the Insurance Code, commercial plan, as defined in subdivision (h) of Section 53810 of Title 22 of the California Code of Regulations, or a health plan contracting with a geographic managed care program, as defined in subdivision (g) of Section 53902 of Title 22 of the California Code of Regulations, shall be on the same terms and conditions offered to other subcontractors providing a similar scope of service. Any beneficiary, subscriber, or enrollee of a program or plan who affirmatively selects, or is assigned by default to, a federally qualified health center or rural health clinic under the terms of a contract between a plan, government program, or any subcontractor of a plan or program, and a federally qualified health center or rural health clinic, shall be assigned directly to the federally qualified health center or rural health clinic, and not to any individual provider performing services on behalf of the federally qualified health center or rural health clinic.

(c) The department shall provide incentives in the competitive application process described in paragraph (1) of subdivision (b) of Section 53800 of Title 22 of the California Code of Regulations, to encourage potential commercial plans as defined in subdivision (h) of Section 53810 of Title 22 of the California Code of Regulations to offer subcontracts to these federally qualified health centers.

(d) Reimbursement to federally qualified health centers and rural health centers for services provided pursuant to a subcontract with a local initiative, a commercial plan, geographic managed care program health plan, or a county organized health system, shall be paid in a manner that is not less than the level and amount of payment that the plan would make for the same scope of services if the services were furnished by a

provider that is not a federally qualified health center or rural health clinic.

(e) (1) The department shall administer a program to ensure that total payments to federally qualified health centers and rural health clinics operating as managed care subcontractors pursuant to subdivision (d) comply with applicable federal law pursuant to Sections 1902(aa) and 1903(m)(2)(A)(ix) of the Social Security Act (42 U.S.C.A. Secs. 1396a(aa) and 1396b(m)(2)(A)(ix)). Under the department's program, federally qualified health centers and rural health clinics subcontracting with local initiatives, commercial plans, county organized health systems, and geographic managed care program health plans shall seek supplemental reimbursement from the department through a per visit fee-for-service billing system utilizing the state's Medi-Cal fee-for-service claims processing system contractor. To carry out this per visit payment process, each federally qualified health center and rural health clinic shall submit to the department for approval a rate differential calculated to reflect the amount necessary to reimburse the federally qualified health center or rural health clinic for the difference between the payment the center or clinic received from the managed care health plan and either the interim rate established by the department based on the center's or clinic's reasonable cost or the center's or clinic's prospective payment rate. The department shall adjust the computed rate differential as it deems necessary to minimize the difference between the center's or clinic's revenue from the plan and the center's or clinic's cost-based reimbursement or the center's or clinic's prospective payment rate.

(2) In addition, to the extent feasible, within six months of the end of the center's or clinic's fiscal year, the department shall perform an annual reconciliation to reasonable cost, and make payments to, or obtain a recovery from, the center or clinic.

(f) In calculating the capitation rates to be paid to local initiatives, commercial plans, geographic managed care program health plans, and county organized health systems, the department shall not include the additional dollar amount applicable to cost-based or prospective payment reimbursement that would otherwise be paid, absent cost-based or prospective payment reimbursement, to federally qualified health centers and rural health clinics in the Medi-Cal fee-for-service program.

(g) On or before September 30, 2002, the director shall conduct a study of the actual and projected impact of the transition from a cost-based reimbursement system to a prospective payment system for federally qualified health centers and rural health clinics. In conducting the study, the director shall evaluate the extent to which the prospective payment system stimulates expansion of services, including new facilities to expand capacity of the centers, and the extent to which actual

and estimated prospective payment rates of federally qualified health centers and rural health clinics for the first five years of the prospective payment system are reflective of the cost of providing services to Medi-Cal beneficiaries. Clinics may submit cost reporting information to the department to provide data for the study.

(h) The department shall approve all contracts between federally qualified health centers or rural health clinics and any local initiative, commercial plan, geographic managed care program health plan, or county organized health system, in order to ensure compliance with this section.

(i) This section shall not preclude the department from establishing pilot programs pursuant to Section 14087.329.

SEC. 2. Section 14105 of the Welfare and Institutions Code is amended to read:

14105. (a) The director shall prescribe the policies to be followed in the administration of this chapter, may limit the rates of payment for health care services, and shall adopt any rules and regulations as are necessary for carrying out, but are not inconsistent with, the provisions thereof.

The policies and regulations shall include rates for payment for services not rendered under a contract pursuant to Chapter 8 (commencing with Section 14200). In order to implement expeditiously the budgeting decisions of the Legislature, the director shall, to the extent permitted by federal law, adopt regulations setting rates that reflect these budgeting decisions within one month after the enactment of the Budget Act and of any other appropriation that changes the level of funding for Medi-Cal services. The proposed regulations shall be submitted to the Department of Finance no later than five days prior to the date of adoption. With the written approval of the Department of Finance, the director shall adopt the regulations as emergency regulations in accordance with the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340), Part 1, Division 3, Title 2 of the Government Code). For purposes of that act, 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.

(b) (1) Insofar as practical, consistent with the efficient and economical administration of this part, the department shall afford recipients of public assistance a choice of managed care arrangements under which they shall receive health care benefits and a choice of primary care providers under each managed care arrangement.

(2) Notwithstanding any other provision of law, Medi-Cal beneficiaries shall be entitled to affirmatively select, or to be assigned

by default to, any primary care provider as defined in paragraph (1) of subdivision (b) of Section 14088.

(3) Notwithstanding any other provision of law, when a Medi-Cal beneficiary is assigned, from any source, to a primary care physician, as defined in Section 14254, and that primary care physician is an employee of a primary care provider, as defined in paragraph (1) of subdivision (b) of Section 14088, the assignment shall constitute an assignment to the primary care provider.

(c) If, in the judgment of the director, the actions taken by the director under subdivision (c) of Section 14120 will not be sufficient to operate the Medi-Cal program within the limits of appropriated funds, he or she may limit the scope and kinds of health care services, except for minimum coverage as defined in Section 14056, available to persons who are not eligible under Section 14005.1. When and if necessary, that action shall be taken by the director in ways consistent with the requirements of the federal Social Security Act.

(d) The director shall adopt regulations implementing regulatory changes required to initially implement, and annually update, the United States Health Care Financing Administration's common procedure coding system as emergency regulations in accordance with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code. For the purposes of the Administrative Procedure Act, the adoption of the regulations shall be deemed to be an emergency and necessary for the immediate preservation of the public peace, health and safety, or general welfare. These regulations shall become effective immediately upon filing with the Secretary of State.

(e) Notwithstanding any other provision of law, prospective reimbursement for any services provided to a Medi-Cal beneficiary in a nursing facility that is a distinct part of an acute care hospital shall not exceed the audited costs of the facility providing the services.

(f) Notwithstanding any other provision of law, reimbursement for anesthesiology, surgical services, and the professional component of radiology procedures except for comprehensive perinatal and obstetrical services shall be reduced by 9.5 percent of the amount of reimbursement provided for any of those services prior to the operative date of this subdivision. The director may exclude emergency surgical services performed in the emergency department of a general acute care hospital. To be excluded, emergency surgical services must be performed by an emergency room physician or a physician on the emergency department's on-call list.

(g) (1) It is the intent of the Legislature in enacting this subdivision to enable the department to obtain Medicare cost reports for the purpose of evaluating its Medi-Cal reimbursement rate methodology for nursing facilities.

(2) Skilled nursing facilities licensed pursuant to Chapter 2 (commencing with Section 1250) of Division 2 of the Health and Safety Code shall submit copies of all Medicare cost reports to the department by October 1, 1995, for reporting periods that ended between July 1, 1993, and June 30, 1995.

On or after July 1, 1995, those facilities shall submit the copies to the department on the date that the Medicare cost reports are submitted to the Medicare fiscal intermediary.

(3) Hospitals providing skilled nursing care licensed pursuant to Chapter 2 (commencing with Section 1250) of Division 2 of the Health and Safety Code shall submit a copy of all Medicare cost reports for reporting periods ended:

(A) January 1, 1993, through June 30, 1995, to the department by October 1, 1995.

(B) On or after July 1, 1995, to the department when the Medicare cost reports are submitted to the Medicare fiscal intermediary.

SEC. 3. Section 1.5 of this bill incorporates amendments to Section 14087.325 of the Welfare and Institutions Code proposed by both this bill and SB 1413. It shall become operative only if (1) both bills are enacted and become effective on or before January 1, 2003, (2) each bill amends Section 14087.325 of the Welfare and Institutions Code, and (3) this bill is enacted after SB 1413, in which case Section 1 of this bill shall not become operative.

CHAPTER 757

An act to amend Section 17052.6 of the Revenue and Taxation Code, relating to taxation, making an appropriation therefor, to take effect immediately, tax levy.

[Approved by Governor September 20, 2002. Filed with Secretary of State September 21, 2002.]

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

SECTION 1. Section 17052.6 of the Revenue and Taxation Code is amended to read:

17052.6. (a) For each taxable year beginning on or after January 1, 2000, there shall be allowed as a credit against the ''net tax'' (as defined in Section 17039) an amount determined in accordance with Section 21 of the Internal Revenue Code, except that the amount of the credit shall be a percentage, as provided in subdivision (b), of the allowable federal credit without taking into account whether there is a federal tax liability.

(b) For the purposes of subdivision (a), the percentage of the allowable federal credit shall be determined as follows:

If the California adjusted gross income is:	The percentage of credit is:
$40,000 or less	63%
Over $40,000 but not over $70,000	53%
Over $70,000 but not over $100,000	42%
Over $100,000	0%

(c) In the case of a taxpayer whose credits provided under this section exceed the taxpayer's tax liability computed under this part, the excess shall be credited against other amounts due, if any, from the taxpayer and the balance, if any, shall be paid from the Tax Relief and Refund Account and refunded to the taxpayer.

(d) For purposes of this section, California adjusted gross income means California adjusted gross income as computed for purposes of Section 17041.

(e) The credit authorized by this section shall be limited to those taxpayers who, during the taxable year, maintain a household, within the meaning of Section 21(e)(1) of the Internal Revenue Code, that is located within this state.

(f) For purposes of this section, Section 21(b)(1) of the Internal Revenue Code, relating to a qualifying individual, is modified to additionally provide that a child (as defined in Section 151(c)(3) of the Internal Revenue Code) shall be treated, for purposes of Section 152 of the Internal Revenue Code (as applicable for purposes of this section), as receiving over one-half of his or her support during the calendar year from the parent having custody for a greater portion of the calendar year, that parent shall be treated as a ''custodial parent'' (within the meaning of Section 152(e) of the Internal Revenue Code, as applicable for purposes of this section), and the child shall be treated as a qualifying individual under Section 21(b)(1) of the Internal Revenue Code, as applicable for purposes of this section, if both of the following apply:

(1) The child receives over one-half of his or her support during the calendar year from his or her parents who never married each other and who lived apart at all times during the last six months of the calendar year.

(2) The child is in the custody of one or both of his or her parents for more than one-half of the calendar year.

(g) The amendments to this section made by the act adding this subdivision shall apply only to taxable years beginning on or after January 1, 2002.

SEC. 1.5. Section 17052.6 of the Revenue and Taxation Code is amended to read:

17052.6. (a) For each taxable year beginning on or after January 1, 2000, there shall be allowed as a credit against the "net tax" (as defined in Section 17039) an amount determined in accordance with Section 21 of the Internal Revenue Code, as modified by the Economic Growth and Tax Relief Reconciliation Act of 2001 (Public Law 107-16), except that the amount of the credit shall be a percentage, as provided in subdivision (b) of the allowable federal credit without taking into account whether there is a federal tax liability.

(b) For the purposes of subdivision (a), the percentage of the allowable federal credit shall be determined as follows:

(1) For taxable years beginning before January 1, 2003:

If the California adjusted gross income is:	The percentage of credit is:
$40,000 or less	63%
Over $40,000 but not over $70,000	53%
Over $70,000 but not over $100,000	42%
Over $100,000	0%

(2) For taxable years beginning on or after January 1, 2003:

If the California adjusted gross income is:	The percentage of credit is:
$40,000 or less	50%
Over $40,000 but not over $70,000	43%
Over $70,000 but not over $100,000	34%
Over $100,000	0%

(c) In the case of a taxpayer whose credits provided under this section exceed the taxpayer's tax liability computed under this part, the excess shall be credited against other amounts due, if any, from the taxpayer and the balance, if any, shall be paid from the Tax Relief and Refund Account and refunded to the taxpayer.

(d) For purposes of this section, California adjusted gross income means California adjusted gross income as computed for purposes of Section 17041.

(e) The credit authorized by this section shall be limited to those taxpayers who, during the taxable year, maintain a household, within the meaning of Section 21(e)(1) of the Internal Revenue Code, that is located within this state.

(f) For purposes of this section, Section 21(b)(1) of the Internal Revenue Code, relating to a qualifying individual, is modified to additionally provide that a child (as defined in Section 151(c)(3) of the Internal Revenue Code) shall be treated, for purposes of Section 152 of the Internal Revenue Code (as applicable for purposes of this section), as receiving over one-half of his or her support during the calendar year from the parent having custody for a greater portion of the calendar year, that parent shall be treated as a ''custodial parent'' (within the meaning of Section 152(e) of the Internal Revenue Code, as applicable for purposes of this section), and the child shall be treated as a qualifying individual under Section 21(b)(1) of the Internal Revenue Code, as applicable for purposes of this section, if both of the following apply:

(1) The child receives over one-half of his or her support during the calendar year from his or her parents who never married each other and who live apart at all times during the last six months of the calendar year.

(2) The child is in the custody of one or both of his or her parents for more than one-half of the calendar year.

(g) The amendments to this section made by the act adding this subdivision shall apply only to taxable years beginning on or after January 1, 2002.

SEC. 2. Section 1.5 of this bill incorporates amendments to Section 17052.6 of the Revenue and Taxation Code proposed by both this bill and SB 1724. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2003, (2) each bill amends Section 17052.6 of the Revenue and Taxation Code, and (3) this bill is enacted after SB 1724, in which case Section 1 of this bill shall not become operative.

SEC. 3. This act provides for a tax levy within the meaning of Article IV of the Constitution and shall go into immediate effect.

CHAPTER 758

An act to amend Section 12805 of the Government Code, to amend Section 21019 of the Public Utilities Code, to amend Sections 286, 8057, 8058, 8201, 9255, 11701, 11803, 12509, 12810, 12814.6, 15278, and 34631 of, and to add Section 9553.5 to, the Vehicle Code, relating to transportation.

[Approved by Governor September 20, 2002. Filed with Secretary of State September 21, 2002.]

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

SECTION 1. Section 12805 of the Government Code is amended to read:

12805. The Resources Agency consists of the State Air Resources Board, the Colorado River Board, the State Energy Resources Conservation and Development Commission, the State Water Resources Control Board and each California regional water quality control board, the State Lands Commission, the Division of State Lands, the San Joaquin River Conservancy, and the following departments: Conservation; Fish and Game; Forestry and Fire Protection; Boating and Waterways; Parks and Recreation; and Water Resources.

SEC. 1.5. Section 12805 of the Government Code is amended to read:

12805. The Resources Agency consists of the State Air Resources Board, the Colorado River Board, the State Energy Resources Conservation and Development Commission, the State Water Resources Control Board and each California regional water quality control board, the State Lands Commission, the Division of State Lands, the San Joaquin River Conservancy, and the following departments: Conservation; Fish and Game; Boating and Waterways; Parks and Recreation; and Water Resources.

SEC. 2. Section 21019 of the Public Utilities Code is amended to read:

21019. Any person violating any of the provisions of this part, other than Section 21407.1, or any of the rules or orders issued under this part, is punishable by a fine of not more than one thousand dollars ($1,000) or by imprisonment of not more than six months, or both.

SEC. 3. Section 286 of the Vehicle Code is amended to read:

286. The term ''dealer'' does not include any of the following:

(a) Insurance companies, banks, finance companies, public officials, or any other person coming into possession of vehicles in the regular course of business, who sells vehicles under a contractual right or obligation, in performance of an official duty, or in authority of any court of law, if the sale is for the purpose of saving the seller from loss or pursuant to the authority of a court.

(b) Persons who sell or distribute vehicles of a type subject to registration or trailers subject to identification pursuant to Section 5014.1 for a manufacturer to vehicle dealers licensed under this code, or who are employed by manufacturers or distributors to promote the sale of vehicles dealt in by those manufacturers or distributors. However, any of those persons who also sell vehicles at retail are vehicle dealers and are subject to this code.

(c) Persons regularly employed as salespersons by vehicle dealers licensed under this code while acting within the scope of that employment.

(d) Persons engaged exclusively in the bona fide business of exporting vehicles or of soliciting orders for the sale and delivery of vehicles outside the territorial limits of the United States, if no federal excise tax is legally payable or refundable on any of the transactions. Persons not engaged exclusively in the bona fide business of exporting vehicles, but who are engaged in the business of soliciting orders for the sale and delivery of vehicles, outside the territorial limits of the United States are exempt from licensure as dealers only if their sales of vehicles produce less than 10 percent of their total gross revenue from all business transacted.

(e) Persons not engaged in the purchase or sale of vehicles as a business, who dispose of any vehicle acquired and used in good faith, for their own personal use, or for use in their business, and not for the purpose of avoiding the provisions of this code.

(f) Persons who are engaged in the purchase, sale, or exchange of vehicles, other than motorcycles or trailers subject to identification under this code, which are not intended for use on the highways.

(g) Persons temporarily retained as auctioneers solely for the purpose of disposing of vehicle stock inventories by means of public auction on behalf of the owners at the owners' place of business, or as otherwise approved by the department, if intermediate physical possession or control of, or an ownership interest in, the inventory is not conveyed to the persons so retained.

(h) Persons who are engaged exclusively in the business of purchasing, selling, servicing, or exchanging racing vehicles, parts for racing vehicles, and trailers designed and intended by the manufacturer to be used exclusively for carrying racing vehicles. For purposes of this subdivision, ''racing vehicle'' means a motor vehicle of a type used exclusively in a contest of speed or in a competitive trial of speed which is not intended for use on the highways.

(i) Any person who is a lessor.

(j) Any person who is a renter.

(k) Any salvage pool.

(*l*) Any yacht broker who is subject to the Yacht and Ship Brokers Act (Article 2 (commencing with Section 700) of Chapter 5 of Division 3 of the Harbors and Navigation Code) and who sells used boat trailers in conjunction with the sale of a vessel.

(m) Any licensed automobile dismantler who sells vehicles that have been reported for dismantling as provided in Section 11520.

(n) The Director of Corrections when selling vehicles pursuant to Section 2813.5 of the Penal Code.

(o) (1) Any public or private nonprofit charitable, religious, or educational institution or organization that sells vehicles if all of the following conditions are met:

(A) The institution or organization qualifies for state tax-exempt status under Section 23701d of the Revenue and Taxation Code, and tax-exempt status under Section 501(c)(3) of the federal Internal Revenue Code.

(B) The vehicles sold were donated to the nonprofit charitable, religious, or educational institution or organization.

(C) The vehicles subject to retail sale meet all of the applicable equipment requirements of Division 12 (commencing with Section 24000) and are in compliance with emission control requirements as evidenced by the issuance of a certificate pursuant to subdivision (b) of Section 44015 of the Health and Safety Code. Under no circumstances may any institution or organization transfer the responsibility of obtaining a smog inspection certificate to the buyer of the vehicle.

(D) The proceeds of the sale of the vehicles are retained by that institution or organization for its charitable, religious, or educational purposes.

(2) An institution or organization described in paragraph (1) may sell vehicles on behalf of another institution or organization under the following conditions:

(A) The nonselling institution or organization meets the requirements of paragraph (1).

(B) The selling and nonselling institutions or organizations enter into a signed, written agreement pursuant to subparagraph (A) of paragraph (3) of subdivision (a) of Section 1660.

(C) The selling institution or organization transfers the proceeds from the sale of each vehicle to the nonselling institution or organization within 45 days of the sale. All net proceeds transferred to the nonselling institution or organization shall clearly be identifiable to the sale of a specific vehicle. The selling institution or organization may retain a percentage of the proceeds from the sale of a particular vehicle. However, any retained proceeds shall be used by the selling institution or organization for its charitable, religious, or educational purposes.

(D) At the time of transferring the proceeds, the selling institution or organization shall provide to the nonselling institution or organization, an itemized listing of the vehicles sold and the amount for which each vehicle was sold.

(E) In the event the selling institution or organization cannot complete a retail sale of a particular vehicle, or if the vehicle cannot be transferred as a wholesale transaction to a dealer licensed under this code, the vehicle shall be returned to the nonselling institution or organization and the written agreement revised to reflect that return.

Under no circumstances may a selling institution or organization transfer or donate the vehicle to a third party that is excluded from the definition of a dealer under this section.

(3) An institution or organization described in this subdivision shall retain all records required to be retained pursuant to Section 1660.

(p) Any motor club, as defined in Section 12142 of the Insurance Code, that does not arrange or negotiate individual motor vehicle purchase transactions on behalf of its members but refers members to a new motor vehicle dealer for the purchase of a new motor vehicle and does not receive a fee from the dealer contingent upon the sale of the vehicle.

SEC. 3.5. Section 286 of the Vehicle Code is amended to read:

286. The term ''dealer'' does not include any of the following:

(a) Insurance companies, banks, finance companies, public officials, or any other person coming into possession of vehicles in the regular course of business, who sells vehicles under a contractual right or obligation, in performance of an official duty, or in authority of any court of law, if the sale is for the purpose of saving the seller from loss or pursuant to the authority of a court.

(b) Persons who sell or distribute vehicles of a type subject to registration or trailers subject to identification pursuant to Section 5014.1 for a manufacturer to vehicle dealers licensed under this code, or who are employed by manufacturers or distributors to promote the sale of vehicles dealt in by those manufacturers or distributors. However, any of those persons who also sell vehicles at retail are vehicle dealers and are subject to this code.

(c) Persons regularly employed as salespersons by vehicle dealers licensed under this code while acting within the scope of that employment.

(d) Persons engaged exclusively in the bona fide business of exporting vehicles or of soliciting orders for the sale and delivery of vehicles outside the territorial limits of the United States, if no federal excise tax is legally payable or refundable on any of the transactions. Persons not engaged exclusively in the bona fide business of exporting vehicles, but who are engaged in the business of soliciting orders for the sale and delivery of vehicles, outside the territorial limits of the United States are exempt from licensure as dealers only if their sales of vehicles produce less than 10 percent of their total gross revenue from all business transacted.

(e) Persons not engaged in the purchase or sale of vehicles as a business, who dispose of any vehicle acquired and used in good faith, for their own personal use, or for use in their business, and not for the purpose of avoiding the provisions of this code.

(f) Persons who are engaged in the purchase, sale, or exchange of vehicles, other than motorcycles or trailers subject to identification under this code, which are not intended for use on the highways.

(g) Persons temporarily retained as auctioneers solely for the purpose of disposing of vehicle stock inventories by means of public auction on behalf of the owners at the owners' place of business, or as otherwise approved by the department, if intermediate physical possession or control of, or an ownership interest in, the inventory is not conveyed to the persons so retained.

(h) Persons who are engaged exclusively in the business of purchasing, selling, servicing, or exchanging racing vehicles, parts for racing vehicles, and trailers designed and intended by the manufacturer to be used exclusively for carrying racing vehicles. For purposes of this subdivision, ''racing vehicle'' means a motor vehicle of a type used exclusively in a contest of speed or in a competitive trial of speed which is not intended for use on the highways.

(i) Any person who is a lessor.

(j) Any person who is a renter.

(k) Any licensed salvage pool.

(*l*) Any yacht broker who is subject to the Yacht and Ship Brokers Act (Article 2 (commencing with Section 700) of Chapter 5 of Division 3 of the Harbors and Navigation Code) and who sells used boat trailers in conjunction with the sale of a vessel.

(m) Any licensed automobile dismantler who sells vehicles that have been reported for dismantling as provided in Section 11520.

(n) The Director of Corrections when selling vehicles pursuant to Section 2813.5 of the Penal Code.

(o) (1) Any public or private nonprofit charitable, religious, or educational institution or organization that sells vehicles if all of the following conditions are met:

(A) The institution or organization qualifies for state tax-exempt status under Section 23701d of the Revenue and Taxation Code, and tax-exempt status under Section 501(c)(3) of the federal Internal Revenue Code.

(B) The vehicles sold were donated to the nonprofit charitable, religious, or educational institution or organization.

(C) The vehicles subject to retail sale meet all of the applicable equipment requirements of Division 12 (commencing with Section 24000) and are in compliance with emission control requirements as evidenced by the issuance of a certificate pursuant to subdivision (b) of Section 44015 of the Health and Safety Code. Under no circumstances may any institution or organization transfer the responsibility of obtaining a smog inspection certificate to the buyer of the vehicle.

(D) The proceeds of the sale of the vehicles are retained by that institution or organization for its charitable, religious, or educational purposes.

(2) An institution or organization described in paragraph (1) may sell vehicles on behalf of another institution or organization under the following conditions:

(A) The nonselling institution or organization meets the requirements of paragraph (1).

(B) The selling and nonselling institutions or organizations enter into a signed, written agreement pursuant to subparagraph (A) of paragraph (3) of subdivision (a) of Section 1660.

(C) The selling institution or organization transfers the proceeds from the sale of each vehicle to the nonselling institution or organization within 45 days of the sale. All net proceeds transferred to the nonselling institution or organization shall clearly be identifiable to the sale of a specific vehicle. The selling institution or organization may retain a percentage of the proceeds from the sale of a particular vehicle. However, any retained proceeds shall be used by the selling institution or organization for its charitable, religious, or educational purposes.

(D) At the time of transferring the proceeds, the selling institution or organization shall provide to the nonselling institution or organization, an itemized listing of the vehicles sold and the amount for which each vehicle was sold.

(E) In the event the selling institution or organization cannot complete a retail sale of a particular vehicle, or if the vehicle cannot be transferred as a wholesale transaction to a dealer licensed under this code, the vehicle shall be returned to the nonselling institution or organization and the written agreement revised to reflect that return. Under no circumstances may a selling institution or organization transfer or donate the vehicle to a third party that is excluded from the definition of a dealer under this section.

(3) An institution or organization described in this subdivision shall retain all records required to be retained pursuant to Section 1660.

(p) Any motor club, as defined in Section 12142 of the Insurance Code, that does not arrange or negotiate individual motor vehicle purchase transactions on behalf of its members but refers members to a new motor vehicle dealer for the purchase of a new motor vehicle and does not receive a fee from the dealer contingent upon the sale of the vehicle.

SEC. 4. Section 8057 of the Vehicle Code is amended to read:

8057. Any person issued fleet registration pursuant to Article 9.5 (commencing with Section 5301) of Chapter 1 or this article shall:

(a) Maintain fleet records that support the reported mileage, cost, and declared gross or combined gross vehicle weight of all vehicles. Any

registrant whose application for apportioned registration has been accepted shall preserve the mileage records on which the application is based, including copies of all permits, for a period of three years after the close of the registration year. Vehicle cost and declared gross or combined gross weight records shall be retained for four years after the close of the registration year in which the vehicle was deleted.

(b) Make fleet records available to the department at its request for audit to verify the accuracy of the records. In the event the records are not made available within 30 days of the request, the department may assess full California fees and penalties and may suspend or cancel apportioned registration privileges. The registrant may be required to reimburse the department auditor per diem and travel expenses under certain conditions as determined by the director.

SEC. 5. Section 8058 of the Vehicle Code is amended to read:

8058. (a) The department shall charge interest on any underpaid fees due under this article, at the rate of 1 percent per month of the underpaid portion of the fees, commencing on the date the underpaid portion of the fees were originally due and accruing monthly until paid.

(b) Interest charged under subdivision (a) shall continue to accumulate during any disputation of the underpaid fees or any hearing regarding the underpaid fees. During any disputation or hearing, the registrant may pay the underpaid fees and other charges to avoid additional interest charges and may request a refund of any overpaid fees after final review.

(c) For any underpaid fees, the department may impose a penalty of fifty dollars ($50) or 10 percent of the underpaid fees, whichever is greater, commencing on the date the underpaid fees were determined to be due.

(d) For the purposes of this section, ‘‘underpaid fees’’ include additional vehicle registration, weight, and license fees found to be due to this state.

(e) The director shall have discretion to apply subdivision (b) of Section 9562 instead of subdivision (c) of this section.

(f) The penalty structure set forth in Sections 9554 and 9554.5 shall apply in place of the provisions of this section in those cases where there is a violation of Section 4000, 4000.4, 4002, 4003, 4004, 4004.5, or 4156 for commercial registration that is not apportioned pursuant to Section 8050.

SEC. 6. Section 8201 of the Vehicle Code is amended to read:

8201. (a) Fees determined to be due, including penalties and service fees, for the operation of a fleet apportionately registered vehicle shall be a lien upon all vehicles operated as part of the fleet and on any other fleet vehicles operated by the registrant. The department may collect the amount of the lien, plus costs, not to exceed two hundred fifty

dollars ($250), in an appropriate civil action and by seizure and sale of the vehicle.

(b) Liens arising as the result of an audit expire four years from the date the registration fees first become due unless the lien is perfected pursuant to subdivision (d).

(c) Any lien arising under this section that is not subject to subdivision (b) expires three years from the date the fee or penalty first became due unless the lien is perfected pursuant to subdivision (d).

(d) A lien shall be perfected when a notice is mailed to the registrant at the address shown on the department's records and the lien is recorded on the electronic vehicle registration records of the department. A perfected lien shall expire five years from the date of perfection.

(e) Prior to the expiration of the statute of limitations, the registrant may consent to a waiver which would allow the assessment of fees and penalties past the statute of limitations.

SEC. 7. Section 9255 of the Vehicle Code is amended to read:

9255. Upon application for the transfer of the title or any interest of an owner or legal owner in or to a vehicle registered under this code, or for which a certificate of ownership has been issued without registration under Section 4452, other than upon a transfer to a chattel mortgagee and other than upon a transfer to a transferee not required under this code to obtain the issuance to the owner of a new certificate of ownership and registration card, there shall be paid the following fees:

(1) For a transfer by the owner of an automobile or motorcycle	$15
(2) For a transfer by the owner of a trailer coach or commercial vehicle	$15
(3) For a transfer by the legal owner	$15
(4) When an application is presented showing a transfer by both the owner and legal owner of an automobile or motorcycle	$15
(5) When an application is presented showing a transfer by both the owner and legal owner of a trailer coach or commercial vehicle	$15

SEC. 8. Section 9553.5 is added to the Vehicle Code, to read:

9553.5. (a) Whenever the total registration, weight, and vehicle license fees have not been paid in full for an application for registration of vehicles registered pursuant to Article 4 (commencing with Section 8050) of Chapter 4, the registrant shall have 20 days from the date of notice by the department to pay the balance of the fees due.

(b) Failure to pay the balance of the fees due within 20 days shall subject the application to penalties, as defined in Sections 9554 and 9554.5, on the unpaid portion of the California fees due.

SEC. 9. Section 11701 of the Vehicle Code is amended to read:

11701. Every manufacturer of, and manufacturer branch, remanufacturer of, and remanufacturer branch, distributor of, and distributor branch, transporter of, or dealer in vehicles of a type subject to registration, or snowmobiles, motorcycles, or trailers of a type subject to identification, shall make application to the department for a license containing a general distinguishing number. The applicant shall submit proof of his or her status as a bona fide manufacturer, manufacturer branch, remanufacturer, remanufacturer branch, distributor, distributor branch, transporter, or dealer as may reasonably be required by the department.

SEC. 10. Section 11803 of the Vehicle Code is amended to read:

11803. Pending the satisfaction of the department that the applicant has met the requirements of this chapter, it may issue a temporary permit to any person applying for a vehicle salesperson's license. The temporary permit shall permit the operation by the salesperson for a period of not more than 120 days while the department is completing its investigation of the applicant for the license. If the department determines to its satisfaction that the temporary permit was issued upon a fraudulent application or determines or has reasonable cause to believe that the application is incorrect or incomplete or the temporary permit was issued in error, the department may cancel the temporary permit, effective immediately. The temporary permit shall become invalid when canceled or when the applicant's license has been issued or refused.

SEC. 11. Section 12509 of the Vehicle Code is amended to read:

12509. (a) Except as otherwise provided in subdivision (f) of Section 12514, the department, for good cause, may issue an instruction permit to any physically and mentally qualified person who meets one of the following requirements and who applies to the department for an instruction permit:

(1) Is age 15 years and 6 months or over and has successfully completed approved courses in automobile driver education and driver training as provided in paragraph (3) of subdivision (a) of Section 12814.6.

(2) Is age 15 years and 6 months or over and has successfully completed an approved course in automobile driver education and is taking driver training as provided in paragraph (3) of subdivision (a) of Section 12814.6.

(3) Is age 15 years or over and is enrolled in an approved driver education course and is at the same time or during the same semester enrolled in an approved driver training course.

(4) Is over the age of 17 years and 6 months.

(b) The applicant shall qualify for and be issued an instruction permit within 12 months from the date of the application.

(c) An instruction permit issued pursuant to subdivision (a) shall entitle the applicant to operate a vehicle, subject to the limitations imposed by this section and any other provisions of law, upon the highways for a period not exceeding 24 months from the date of the application.

(d) Except as provided in Section 12814.6, any person, while having in his or her immediate possession a valid permit issued pursuant to subdivision (a), may operate a motor vehicle, other than a motorcycle or a motorized bicycle, when accompanied by, and under the immediate supervision of, a California licensed driver with a valid license of the appropriate class, 18 years of age or over whose driving privilege is not on probation. Except as provided in subdivision (e), an accompanying licensed driver at all times shall occupy a position within the driver's compartment that would enable the accompanying licensed driver to assist the person in controlling the vehicle as may be necessary to avoid a collision and to provide immediate guidance in the safe operation of the vehicle.

(e) Any person while having in his or her immediate possession a valid permit issued pursuant to subdivision (a), who is age 15 years and 6 months or over and who has successfully completed approved courses in automobile education and driver training as provided in paragraph (3) of subdivision (a) of Section 12814.6, and any person while having in his or her immediate possession a valid permit issued pursuant to subdivision (a) who is age 17 years and 6 months or over, may, in addition to operating a motor vehicle pursuant to subdivision (d), also operate a motorcycle or a motorized bicycle, except that the person shall not operate a motorcycle or a motorized bicycle during hours of darkness, shall stay off any freeways that have full control of access and no crossings at grade and shall not carry any passenger except an instructor licensed under Chapter 1 (commencing with Section 11100) of Division 5 of this code or a qualified instructor as defined in Section 18252.2 of the Education Code.

(f) The department may also issue an instruction permit to a person who has been issued a valid driver's license to authorize the person to obtain driver training instruction and to practice that instruction in order to obtain another class of driver's license or an endorsement.

(g) The department may further restrict permits issued under subdivision (a) as it may determine to be appropriate to assure the safe operation of a motor vehicle by the permittee.

SEC. 11.5. Section 12509 of the Vehicle Code is amended to read:

12509. (a) Except as otherwise provided in subdivision (f) of Section 12514, the department, for good cause, may issue an instruction permit to any physically and mentally qualified person who meets one of the following requirements and who applies to the department for an instruction permit:

(1) Is age 15 years and 6 months or over and has successfully completed approved courses in automobile driver education and driver training as provided in paragraph (3) of subdivision (a) of Section 12814.6.

(2) Is age 15 years and 6 months or over and has successfully completed an approved course in automobile driver education and is taking driver training as provided in paragraph (3) of subdivision (a) of Section 12814.6.

(3) Is age 15 years or over and is enrolled in an approved driver education course and is at the same time or during the same semester enrolled in an approved driver training course.

(4) Is over the age of 17 years and 6 months.

(5) Is over the age of 16 years and is applying for a restricted driver's license pursuant to Section 12814.7.

(b) The applicant shall qualify for and be issued an instruction permit within 12 months from the date of the application.

(c) An instruction permit issued pursuant to subdivision (a) shall entitle the applicant to operate a vehicle, subject to the limitations imposed by this section and any other provisions of law, upon the highways for a period not exceeding 24 months from the date of the application.

(d) Except as provided in Section 12814.6, any person, while having in his or her immediate possession a valid permit issued pursuant to paragraphs (1) to (4), inclusive, of subdivision (a), may operate a motor vehicle, other than a motorcycle or a motorized bicycle, when accompanied by, and under the immediate supervision of, a California licensed driver with a valid license of the appropriate class, 18 years of age or over whose driving privilege is not on probation. Except as provided in subdivision (e), an accompanying licensed driver at all times shall occupy a position within the driver's compartment that would enable the accompanying licensed driver to assist the person in controlling the vehicle as may be necessary to avoid a collision and to provide immediate guidance in the safe operation of the vehicle.

(e) Any person while having in his or her immediate possession a valid permit issued pursuant to paragraphs (1) to (4), inclusive, of subdivision (a), who is age 15 years and 6 months or over and who has successfully completed approved courses in automobile education and driver training as provided in paragraph (3) of subdivision (a) of Section 12814.6, and any person while having in his or her immediate possession

a valid permit issued pursuant to subdivision (a) who is age 17 years and 6 months or over, may, in addition to operating a motor vehicle pursuant to subdivision (d), also operate a motorcycle or a motorized bicycle, except that the person shall not operate a motorcycle or a motorized bicycle during hours of darkness, shall stay off any freeways that have full control of access and no crossings at grade and shall not carry any passenger except an instructor licensed under Chapter 1 (commencing with Section 11100) of Division 5 of this code or a qualified instructor as defined in Section 18252.2 of the Education Code.

(f) Any person while having in his or her immediate possession a valid permit issued pursuant to paragraph (5) of subdivision (a), may only operate a government-owned motor vehicle, other than a motorcycle or a motorized bicycle, when taking the driver training instruction administered by the California National Guard as required by paragraph (2) of subdivision (a) of Section 21814.7.

(g) The department may also issue an instruction permit to a person who has been issued a valid driver's license to authorize the person to obtain driver training instruction and to practice that instruction in order to obtain another class of driver's license or an endorsement.

(h) The department may further restrict permits issued under subdivision (a) as it may determine to be appropriate to assure the safe operation of a motor vehicle by the permittee.

SEC. 12. Section 12810 of the Vehicle Code is amended to read:

12810. In determining the violation point count, the following shall apply:

(a) Any conviction of failure to stop in the event of an accident in violation of Section 20001 or 20002 shall be given a value of two points.

(b) Any conviction of a violation of Section 23152 or 23153 shall be given a value of two points.

(c) Any conviction of reckless driving shall be given a value of two points.

(d) (1) Any conviction of a violation of subdivision (c) of Section 192 of the Penal Code, or of Section 2800.2 or 2800.3, subdivision (b) of Section 21651, subdivision (b) of Section 22348, subdivision (a) of Section 23109, subdivision (c) of Section 23109, or Section 31602 of this code, shall be given a value of two points.

(2) Any conviction of a violation of subdivision (a) or (b) of Section 23140 shall be given a value of two points.

(e) Except as provided in subdivision (g), any other traffic conviction involving the safe operation of a motor vehicle upon the highway shall be given a value of one point.

(f) Any traffic accident in which the operator is deemed by the department to be responsible shall be given a value of one point.

(g) (1) A violation of paragraph (1), (2), (3), or (5) of subdivision (b) of Section 40001 shall not result in a violation point count being given to the driver if the driver is not the owner of the vehicle.

(2) Any conviction of a violation of paragraph (1) or (2) of subdivision (b) of Section 12814.6, subdivision (a) of Section 21116, Section 21207.5, 21708, 21710, 21716, 23120, 24800, or 26707 shall not be given a violation point count.

(3) A violation of Section 23136 shall not result in a violation point count.

(h) A conviction for only one violation arising from one occasion of arrest or citation shall be counted in determining the violation point count for the purposes of this section.

(i) Any conviction of a violation of Section 14601, 14601.1, 14601.2, 14601.3, or 14601.5 shall be given a value of two points.

(j) Any conviction of a violation of Section 27360 or 27360.5 shall be given a value of one point.

SEC. 13. Section 12814.6 of the Vehicle Code is amended to read:

12814.6. (a) Notwithstanding any other provision of law, any driver's license issued to a person at least 16 years of age but under 18 years of age shall be issued pursuant to the provisional licensing program contained in this section. The program shall consist of all of the following components:

(1) Upon application for an original license, the applicant shall be issued an instruction permit pursuant to Section 12509. A person who has in his or her immediate possession a valid permit issued pursuant to Section 12509 may operate a motor vehicle, other than a motorcycle or motorized bicycle, only when the person is either taking the driver training instruction of a kind referred to in paragraph (3) or practicing that instruction, provided the person is accompanied by, and is under the immediate supervision of, a California licensed driver 25 years of age or older whose driving privilege is not on probation. The age requirement of this paragraph does not apply if the licensed driver is the parent, spouse, or guardian of the permitholder or is a licensed or certified driving instructor.

(2) The person shall hold an instruction permit for not less than six months prior to applying for a provisional driver's license.

(3) The person shall have complied with one of the following:

(A) Satisfactory completion of approved courses in automobile driver education and driver training maintained pursuant to provisions of the Education Code in any secondary school of California, or equivalent instruction in a secondary school of another state.

(B) Satisfactory completion of six hours or more of behind-the-wheel instruction by a driving school or an independent driving instructor licensed under Chapter 1 (commencing with Section 11100) of Division

5 and either an accredited course in automobile driver education in any secondary school of California pursuant to provisions of the Education Code or satisfactory completion of equivalent professional instruction acceptable to the department. To be acceptable to the department, the professional instruction shall meet minimum standards to be prescribed by the department, which standards shall be at least equal to the requirements for driver education and driver training contained in the rules and regulations adopted by the State Board of Education pursuant to the Education Code. A person who has complied with this subdivision shall not be required by the governing board of a school district to comply with subparagraph (A) in order to graduate from high school.

(C) No student shall take driver training instruction, unless he or she is at the same time taking driver education instruction or has successfully completed driver education.

(4) The person shall complete 50 hours of supervised driving practice prior to the issuance of a provisional license, which is in addition to any other driver training instruction required by law. Not less than 10 of the required practice hours shall include driving during darkness, as defined in Section 280. Upon application for a provisional license, the person shall submit to the department the certification of a parent, spouse, guardian, or licensed or certified driving instructor that the applicant has completed the required amount of driving practice and is prepared to take the department's driving test. A person without a parent, spouse, guardian, or who is an emancipated minor, may have a licensed driver 25 years of age or older or a licensed or certified driving instructor complete the certification. This requirement does not apply to motorcycle practice.

(5) The person shall successfully complete an examination required by the department. Before retaking a test, the person shall wait for not less than one week after failure of the written test and for not less than two weeks after failure of the driving test.

(b) Commencing July 1, 1998, the provisional driver's license shall be subject to all of the following restrictions:

(1) Except as specified in paragraph (3), during the first six months after issuance of a provisional license the licensee shall not do any of the following unless accompanied and supervised by a licensed driver who is the licensee's parent or guardian, a licensed driver who is 25 years of age or older, or a licensed or certified driving instructor:

(A) Drive between the hours of 12 midnight and 5 a.m.

(B) Transport passengers who are under 20 years of age.

(2) During the second six months after issuance of a provisional license the licensee may transport passengers under the age of 20 years between the hours of 5 a.m. and 12 midnight without supervision. This driving time restriction shall not modify or alter any local ordinance that

restricts or prohibits cruising during specified proscribed hours. However, the restriction imposed under subparagraph (A) of paragraph (1) shall continue to apply during this period.

(3) A licensee may drive between the hours of 12 midnight and 5 a.m. or transport an immediate family member without being accompanied and supervised by a licensed driver who is the licensee's parent or guardian, a licensed driver who is 25 years of age or older, or a licensed or certified driving instructor, in the following circumstances:

(A) Medical necessity of the licensee when reasonable transportation facilities are inadequate and operation of a vehicle by a minor is necessary. The licensee shall keep in his or her possession a signed statement from a physician familiar with the condition, containing a diagnosis and probable date when sufficient recovery will have been made to terminate the necessity.

(B) Schooling or school-authorized activities of the licensee when reasonable transportation facilities are inadequate and operation of a vehicle by a minor is necessary. The licensee shall keep in his or her possession a signed statement from the school principal, dean, or school staff member designated by the principal or dean, containing a probable date that the schooling or school-authorized activity will have been completed.

(C) Employment necessity of the licensee when reasonable transportation facilities are inadequate and operation of a vehicle by a minor is necessary. The licensee shall keep in his or her possession a signed statement from the employer, verifying employment and containing a probable date that the employment will have been completed.

(D) Necessity of the licensee or the licensee's immediate family member when reasonable transportation facilities are inadequate and operation of a vehicle by a minor is necessary to transport the licensee or the licensee's immediate family member. The licensee shall keep in his or her possession a signed statement from a parent or legal guardian verifying the reason and containing a probable date that the necessity will have ceased.

(E) The licensee is an emancipated minor.

(c) A law enforcement officer shall not stop a vehicle for the sole purpose of determining whether the driver is in violation of the restrictions imposed under subdivision (b).

(d) (1) Upon a finding that any licensee has violated paragraph (1) or (2) of subdivision (b), the court shall impose one of the following:

(A) Not less than eight hours nor more than 16 hours of community service for a first offense and not less than 16 hours nor more than 24 hours of community service for a second or subsequent offense.

(B) A fine of not more than thirty-five dollars ($35) for a first offense and a fine of not more than fifty dollars ($50) for a second or subsequent offense.

(2) If the court orders community service, the court shall retain jurisdiction until the hours of community service have been completed.

(3) If the hours of community service have not been completed within 90 days, the court shall impose a fine of not more than thirty-five dollars ($35) for a first offense and not more than fifty dollars ($50) for a second or subsequent offense.

(e) No conviction of paragraph (1) or (2) of subdivision (b), when reported to the department, shall be disclosed as otherwise specified in Section 1808 or constitute a violation point count value pursuant to Section 12810.

(f) Any term of restriction or suspension of the driving privilege imposed on a person pursuant to this subdivision shall remain in effect until the end of the term even though the person becomes 18 years of age before the term ends.

(1) The driving privilege shall be suspended when the record of the person shows one or more notifications issued pursuant to Section 40509 or 40509.5. The suspension shall continue until any notification issued pursuant to Section 40509 or 40509.5 has been cleared.

(2) A 30-day restriction shall be imposed when a driver's record shows a violation point count of two or more points in 12 months, as determined in accordance with Section 12810. The restriction shall require the licensee to be accompanied by a licensed parent, spouse, guardian, or other licensed driver 25 years of age or older, except when operating a class M vehicle, or so licensed, with no passengers aboard.

(3) A six-month suspension of the driving privilege and a one-year term of probation shall be imposed whenever a licensee's record shows a violation point count of three or more points in 12 months, as determined in accordance with Section 12810. The terms and conditions of probation shall include, but not be limited to, both of the following:

(A) The person shall violate no law which, if resulting in conviction, is reportable to the department under Section 1803.

(B) The person shall remain free from accident responsibility.

(g) Whenever action by the department under subdivision (f) arises as a result of a motor vehicle accident, the person may, in writing and within 10 days, demand a hearing to present evidence that he or she was not responsible for the accident upon which the action is based. Whenever action by the department is based upon a conviction reportable to the department under Section 1803, the person has no right to a hearing pursuant to Article 3 (commencing with Section 14100) of Chapter 3.

(h) The department shall require any person whose driving privilege is suspended or revoked pursuant to subdivision (f) to submit proof of financial responsibility as defined in Section 16430. The proof of financial responsibility shall be filed on or before the date of reinstatement following the suspension or revocation. The proof of financial responsibility shall be maintained with the department for three years following the date of reinstatement.

(i) Notwithstanding any other provision of this code, the department may issue a distinctive driver's license, which displays a distinctive color or a distinctively colored stripe or other distinguishing characteristic, to persons at least 16 years of age and older but under 18 years of age, and to persons 18 years of age and older but under 21 years of age, so that the distinctive license feature is immediately recognizable. The features shall clearly differentiate between drivers' licenses issued to persons at least 16 years of age or older but under 18 years of age and to persons 18 years of age or older but under 21 years of age.

If changes in the format or appearance of drivers' licenses are adopted pursuant to this subdivision, those changes may be implemented under any new contract for the production of driver's licenses entered into after the adoption of those changes.

(j) The department shall include, on the face of the provisional driver's license, the original issuance date of the provisional driver's license in addition to any other issuance date.

(k) This section shall be known and may be cited as the Brady-Jared Teen Driver Safety Act of 1997.

SEC. 13.5. Section 12814.6 of the Vehicle Code is amended to read:

12814.6. (a) Except as provided in Section 12814.7, any driver's license issued to a person at least 16 years of age but under 18 years of age shall be issued pursuant to the provisional licensing program contained in this section. The program shall consist of all of the following components:

(1) Upon application for an original license, the applicant shall be issued an instruction permit pursuant to Section 12509. A person who has in his or her immediate possession a valid permit issued pursuant to Section 12509 may operate a motor vehicle, other than a motorcycle or motorized bicycle, only when the person is either taking the driver training instruction referred to in paragraph (3) or practicing that instruction, provided the person is accompanied by, and is under the immediate supervision of, a California licensed driver 25 years of age or older whose driving privilege is not on probation. The age requirement of this paragraph does not apply if the licensed driver is the parent, spouse, or guardian of the permitholder or is a licensed or certified driving instructor.

(2) The person shall hold an instruction permit for not less than six months prior to applying for a provisional driver's license.

(3) The person shall have complied with one of the following:

(A) Satisfactory completion of approved courses in automobile driver education and driver training maintained pursuant to provisions of the Education Code in any secondary school of California, or equivalent instruction in a secondary school of another state.

(B) Satisfactory completion of six hours or more of behind-the-wheel instruction by a driving school or an independent driving instructor licensed under Chapter 1 (commencing with Section 11100) of Division 5 and either an accredited course in automobile driver education in any secondary school of California pursuant to provisions of the Education Code or satisfactory completion of equivalent professional instruction acceptable to the department. To be acceptable to the department, the professional instruction shall meet minimum standards to be prescribed by the department, which standards shall be at least equal to the requirements for driver education and driver training contained in the rules and regulations adopted by the State Board of Education pursuant to the Education Code. A person who has complied with this subdivision shall not be required by the governing board of a school district to comply with subparagraph (A) in order to graduate from high school.

(C) No student shall take driver training instruction, unless he or she is taking driver education at the same time or has successfully completed driver education.

(4) The person shall complete 50 hours of supervised driving practice prior to the issuance of a provisional license, which is in addition to any other driver training instruction required by law. Not less than 10 of the required practice hours shall include driving during darkness, as defined in Section 280. Upon application for a provisional license, the person shall submit to the department the certification of a parent, spouse, guardian, or licensed or certified driving instructor that the applicant has completed the required amount of driving practice and is prepared to take the department's driving test. A person without a parent, spouse, guardian, or who is an emancipated minor, may have a licensed driver 25 years of age or older or a licensed or certified driving instructor complete the certification. This requirement does not apply to motorcycle practice.

(5) The person shall successfully complete an examination required by the department. Before retaking a test, the person shall wait for not less than one week after failure of the written test and for not less than two weeks after failure of the driving test.

(b) Except as provided in Section 12814.7, the provisional driver's license shall be subject to all of the following restrictions:

(1) Except as specified in paragraph (3), during the first six months after issuance of a provisional license the licensee shall not do any of the following unless accompanied and supervised by a licensed driver who is the licensee's parent or guardian, a licensed driver who is 25 years of age or older, or a licensed or certified driving instructor:

(A) Drive between the hours of 12 midnight and 5 a.m.

(B) Transport passengers who are under 20 years of age.

(2) During the second six months after issuance of a provisional license the licensee may transport passengers under the age of 20 years between the hours of 5 a.m. and 12 midnight without supervision. This driving time restriction shall not modify or alter any local ordinance that restricts or prohibits cruising during specified proscribed hours. However, the restriction imposed under subparagraph (A) of paragraph (1) shall continue to apply during this period.

(3) A licensee may drive between the hours of 12 midnight and 5 a.m. or transport an immediate family member without being accompanied and supervised by a licensed driver who is the licensee's parent or guardian, a licensed driver who is 25 years of age or older, or a licensed or certified driving instructor, in the following circumstances:

(A) Medical necessity of the licensee when reasonable transportation facilities are inadequate and operation of a vehicle by a minor is necessary. The licensee shall keep in his or her possession a signed statement from a physician familiar with the condition, containing a diagnosis and probable date when sufficient recovery will have been made to terminate the necessity.

(B) Schooling or school-authorized activities of the licensee when reasonable transportation facilities are inadequate and operation of a vehicle by a minor is necessary. The licensee shall keep in his or her possession a signed statement from the school principal, dean, or school staff member designated by the principal or dean, containing a probable date that the schooling or school-authorized activity will have been completed.

(C) Employment necessity of the licensee when reasonable transportation facilities are inadequate and operation of a vehicle by a minor is necessary. The licensee shall keep in his or her possession a signed statement from the employer, verifying employment and containing a probable date that the employment will have been completed.

(D) Necessity of the licensee or the licensee's immediate family member when reasonable transportation facilities are inadequate and operation of a vehicle by a minor is necessary to transport the licensee or the licensee's immediate family member. The licensee shall keep in his or her possession a signed statement from a parent or legal guardian

verifying the reason and containing a probable date that the necessity will have ceased.

(E) The licensee is an emancipated minor.

(c) A law enforcement officer shall not stop a vehicle for the sole purpose of determining whether the driver is in violation of the restrictions imposed under subdivision (b).

(d) (1) Upon a finding that any licensee has violated paragraph (1) or (2) of subdivision (b), the court shall impose one of the following:

(A) Not less than eight hours nor more than 16 hours of community service for a first offense and not less than 16 hours nor more than 24 hours of community service for a second or subsequent offense.

(B) A fine of not more than thirty-five dollars ($35) for a first offense and a fine of not more than fifty dollars ($50) for a second or subsequent offense.

(2) If the court orders community service, the court shall retain jurisdiction until the hours of community service have been completed.

(3) If the hours of community service have not been completed within 90 days, the court shall impose a fine of not more than thirty-five dollars ($35) for a first offense and not more than fifty dollars ($50) for a second or subsequent offense.

(e) No conviction of paragraph (1) or (2) of subdivision (b), when reported to the department, shall be disclosed as otherwise specified in Section 1808 or constitute a violation point count value pursuant to Section 12810.

(f) Any term of restriction or suspension of the driving privilege imposed on a person pursuant to this subdivision shall remain in effect until the end of the term even though the person becomes 18 years of age before the term ends.

(1) The driving privilege shall be suspended when the record of the person shows one or more notifications issued pursuant to Section 40509 or 40509.5. The suspension shall continue until any notification issued pursuant to Section 40509 or 40509.5 has been cleared.

(2) A 30-day restriction shall be imposed when a driver's record shows a violation point count of two or more points in 12 months, as determined in accordance with Section 12810. The restriction shall require the licensee to be accompanied by a licensed parent, spouse, guardian, or other licensed driver 25 years of age or older, except when operating a class M vehicle, or so licensed, with no passengers aboard.

(3) A six-month suspension of the driving privilege and a one-year term of probation shall be imposed whenever a licensee's record shows a violation point count of three or more points in 12 months, as determined in accordance with Section 12810. The terms and conditions of probation shall include, but not be limited to, both of the following:

(A) The person shall violate no law which, if resulting in conviction, is reportable to the department under Section 1803.

(B) The person shall remain free from accident responsibility.

(g) Whenever action by the department under subdivision (f) arises as a result of a motor vehicle accident, the person may, in writing and within 10 days, demand a hearing to present evidence that he or she was not responsible for the accident upon which the action is based. Whenever action by the department is based upon a conviction reportable to the department under Section 1803, the person has no right to a hearing pursuant to Article 3 (commencing with Section 14100) of Chapter 3.

(h) The department shall require any person whose driving privilege is suspended or revoked pursuant to subdivision (f) to submit proof of financial responsibility as defined in Section 16430. The proof of financial responsibility shall be filed on or before the date of reinstatement following the suspension or revocation. The proof of financial responsibility shall be maintained with the department for three years following the date of reinstatement.

(i) Notwithstanding any other provision of this code, the department may issue a distinctive driver's license, which displays a distinctive color or a distinctively colored stripe or other distinguishing characteristic, to persons at least 16 years of age and older but under 18 years of age, and to persons 18 years of age and older but under 21 years of age, so that the distinctive license feature is immediately recognizable. The features shall clearly differentiate between drivers' licenses issued to persons at least 16 years of age or older but under 18 years of age and to persons 18 years of age or older but under 21 years of age.

If changes in the format or appearance of drivers' licenses are adopted pursuant to this subdivision, those changes may be implemented under any new contract for the production of drivers' licenses entered into after the adoption of those changes.

(j) The department shall include, on the face of the provisional driver's license, the original issuance date of the provisional driver's license in addition to any other issuance date.

(k) This section shall be known and may be cited as the Brady-Jared Teen Driver Safety Act of 1997.

SEC. 14. Section 15278 of the Vehicle Code is amended to read:

15278. (a) A driver is required to obtain an endorsement issued by the department to operate any commercial motor vehicle that is any of the following:

(1) A double trailer.

(2) A passenger transportation vehicle, which includes, but is not limited to, a bus, farm labor vehicle, or general public paratransit vehicle

when designed, used, or maintained to carry more than 10 persons including the driver.

(3) A tank vehicle.

(4) A vehicle carrying hazardous materials, as defined in Section 353, that is required to display placards pursuant to Section 27903, unless the driver is exempt from the endorsement requirement as provided in subdivision (b). This paragraph does not apply to any person operating an implement of husbandry who is not required to obtain a driver's license under this code.

(b) This section does not apply to any person operating a vehicle in an emergency situation at the direction of a peace officer pursuant to Section 2800, or to a driver issued a restricted firefighter's license and driving a vehicle operated for the purpose of hauling compressed air tanks for breathing apparatus that do not exceed 2,500 pounds.

SEC. 15. Section 34631 of the Vehicle Code is amended to read:

34631. The proof of financial responsibility required under Section 34630 shall be evidenced by the deposit with the department, covering each vehicle used or to be used under the motor carrier permit applied for, of one of the following:

(a) A certificate of insurance, issued by a company licensed to write insurance in this state, or by a nonadmitted insurer subject to Section 1763 of the Insurance Code, if the policies represented by the certificate comply with Section 34630 and the rules promulgated by the department pursuant to Section 34604.

(b) A bond of a surety company licensed to write surety bonds in the state.

(c) Evidence of qualification of the carrier as a self-insurer as provided for in subdivision (a) of Section 34630. However, any certificate of self-insurance granted to a motor carrier of property shall be limited to serve as proof of financial responsibility under paragraphs (1) and (2) of subdivision (a) of Section 34631.5 minimum limits only and shall not be acceptable as proof of financial responsibility for the coverage required pursuant to paragraph (3) or (4) of subdivision (a) of Section 34631.5.

(d) Evidence on a form that indicates that coverage is provided by a charitable risk pool operating under Section 5005.1 of the Corporations Code, if the registered owner of the vehicle is a nonprofit organization that is exempt from taxation under paragraph (3) of subsection (c) of Section 501 of the United States Internal Revenue Code. The form shall include all of the following:

(1) The name and address of the motor carrier.

(2) The name and address of the charitable risk pool providing the policy for the motor carrier.

(3) The policy number, effective date, and liability limits of the policy.

(4) A statement from the charitable risk pool that the policy meets the requirements of Section 34631.5.

SEC. 16. Section 1.5 of this bill incorporates amendments to Section 12805 of the Government Code proposed by both this bill and AB 103. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2003, (2) each bill amends Section 12805 of the Government Code, and (3) this bill is enacted after AB 103, in which case Section 1 of this bill shall not become operative.

SEC. 17. Section 3.5 of this bill incorporates amendments to Section 286 of the Vehicle Code proposed by both this bill and SB 1743. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2003, (2) each bill amends Section 286 of the Vehicle Code, and (3) this bill is enacted after SB 1743, in which case Section 3 of this bill shall not become operative.

SEC. 18. Section 11.5 of this bill incorporates amendments to Section 12509 of the Vehicle Code proposed by both this bill and AB 2273. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2003, (2) each bill amends Section 12509 of the Vehicle Code, and (3) this bill is enacted after AB 2273, in which case Section 11 of this bill shall not become operative.

SEC. 19. Section 13.5 of this bill incorporates amendments to Section 12814.6 of the Vehicle Code proposed by both this bill and AB 2273. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2003, (2) each bill amends Section 12814.6 of the Vehicle Code, and (3) this bill is enacted after AB 2273, in which case Section 13 of this bill shall not become operative.

SEC. 20. 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.

CHAPTER 759

An act to amend Sections 3600 and 17506 of the Family Code, and to amend Section 408 of the Revenue and Taxation Code, relating to family law.

[Approved by Governor September 20, 2002. Filed with
Secretary of State September 21, 2002.]

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

SECTION 1. Section 3600 of the Family Code is amended to read:

3600. During the pendency of any proceeding for dissolution of marriage or for legal separation of the parties or under Division 8 (commencing with Section 3000) (custody of children) or in any proceeding where there is at issue the support of a minor child or a child for whom support is authorized under Section 3901 or 3910, the court may order (a) the husband or wife to pay any amount that is necessary for the support of the wife or husband, consistent with the requirements of subdivisions (i) and (m) of Section 4320 and Section 4325, or (b) either or both parents to pay any amount necessary for the support of the child, as the case may be.

SEC. 2. Section 17506 of the Family Code is amended to read:

17506. (a) There is in the Department of Justice the California Parent Locator Service and Central Registry that shall collect and disseminate all of the following, with respect to any parent, putative parent, spouse, or former spouse:

(1) The full and true name of the parent together with any known aliases.

(2) Date and place of birth.

(3) Physical description.

(4) Social security number.

(5) Employment history and earnings.

(6) Military status and Veterans Administration or military service serial number.

(7) Last known address, telephone number, and date thereof.

(8) Driver's license number, driving record, and vehicle registration information.

(9) Criminal, licensing, and applicant records and information.

(10) (A) Any additional location, asset, and income information, including income tax return information obtained pursuant to Section 19285.1 of the Revenue and Taxation Code, and to the extent permitted by federal law, the address, telephone number, and social security information obtained from a public utility, cable television corporation, a provider of electronic digital pager communication, or a provider of cellular telephone services that may be of assistance in locating the parent, putative parent, abducting, concealing, or detaining parent, spouse, or former spouse, in establishing a parent and child relationship, in enforcing the child support liability of the absent parent, or enforcing

the spousal support liability of the spouse or former spouse to the extent required by the state plan pursuant to Section 17604.

(B) For purposes of this subdivision, ''income tax return information'' means all of the following regarding the taxpayer:

(i) Assets.

(ii) Credits.

(iii) Deductions.

(iv) Exemptions.

(v) Identity.

(vi) Liabilities.

(vii) Nature, source, and amount of income.

(viii) Net worth.

(ix) Payments.

(x) Receipts.

(xi) Address.

(xii) Social security number.

(b) Pursuant to a letter of agreement entered into between the Department of Child Support Services and the Department of Justice, the Department of Child Support Services shall assume responsibility for the California Parent Locator Service and Central Registry. The letter of agreement shall, at a minimum, set forth all of the following:

(1) Contingent upon funding in the Budget Act, the Department of Child Support Services shall assume responsibility for leadership and staff of the California Parent Locator Service and Central Registry commencing July 1, 2003.

(2) All employees and other personnel who staff or provide support for the California Parent Locator Service and Central Registry shall, at the time of the transition, at their option, become the employees of the Department of Child Support Services at their existing or equivalent classification, salaries, and benefits.

(3) Until the department's automation system for the California Parent Locator Service and Central Registry functions is fully operational, the department shall use the automation system operated by the Department of Justice.

(4) Any other provisions necessary to ensure continuity of function and meet or exceed existing levels of service.

(c) To effectuate the purposes of this section, the California Child Support Automation System, the California Parent Locator Service and Central Registry, and the Franchise Tax Board shall utilize the federal Parent Locator Service to the extent necessary, and may request and shall receive from all departments, boards, bureaus, or other agencies of the state, or any of its political subdivisions, and those entities shall provide, that assistance and data that will enable the Department of Child Support Services and other public agencies to carry out their powers and duties

to locate parents, spouses, and former spouses, and to identify their assets, to establish parent-child relationships, and to enforce liability for child or spousal support, and for any other obligations incurred on behalf of children, and shall also provide that information to any local child support agency in fulfilling the duties prescribed in Section 270 of the Penal Code, and in Chapter 8 (commencing with Section 3130) of Part 2 of Division 8 of this code, relating to abducted, concealed, or detained children. The California Child Support Automation System shall be entitled to the same cooperation and information as the California Parent Locator Service, and Central Registry to the extent allowed by law. The California Child Support Automation System shall be allowed access to criminal record information only to the extent that access is allowed by state and federal law.

(d) (1) To effectuate the purposes of this section, and notwithstanding any other provision of California law, regulation, or tariff, and to the extent permitted by federal law, the California Parent Locator Service and Central Registry and the California Child Support Automation System may request and shall receive from public utilities, as defined in Section 216 of the Public Utilities Code, customer service information, including the full name, address, telephone number, date of birth, employer name and address, and social security number of customers of the public utility, to the extent that this information is stored within the computer database of the public utility.

(2) To effectuate the purposes of this section, and notwithstanding any other provision of California law, regulation, or tariff, and to the extent permitted by federal law, the California Parent Locator Service and Central Registry and the California Child Support Automation System shall request and shall receive from cable television corporations, as defined in Section 215.5 of the Public Utilities Code, the providers of electronic digital pager communication, as defined in Section 629.51 of the Penal Code, and the providers of cellular telephone services, as defined in Section 17538.9 of the Business and Professions Code, customer service information, including the full name, address, telephone number, date of birth, employer name and address, and social security number of customers of the cable television corporation, customers of the providers of electronic digital pager communication, and customers of the providers of cellular telephone services.

(3) In order to protect the privacy of utility, cable television, electronic digital pager communication, and cellular telephone customers, a request to a public utility, cable television corporation, provider of electronic digital pager communication, or provider of cellular telephone services for customer service information pursuant to this section shall meet the following requirements:

(A) Be submitted to the public utility, cable television corporation, provider of electronic digital pager communication, or provider of cellular telephone services in writing, on a transmittal document prepared by the California Parent Locator Service and Central Registry or the California Child Support Automation System and approved by all of the public utilities, cable television corporations, providers of electronic digital pager communication, and providers of cellular telephone services. The transmittal shall be deemed to be an administrative subpoena for customer service information.

(B) Have the signature of a representative authorized by the California Parent Locator Service and Central Registry or the California Child Support Automation System.

(C) Contain at least three of the following data elements regarding the person sought:

(i) First and last name, and middle initial, if known.

(ii) Social security number.

(iii) Driver's license number.

(iv) Birth date.

(v) Last known address.

(vi) Spouse's name.

(D) The California Parent Locator Service and Central Registry and the California Child Support Automation System shall ensure that each public utility, cable television corporation, provider of electronic digital pager communication services, and provider of cellular telephone services has at all times a current list of the names of persons authorized to request customer service information.

(E) The California Child Support Automation System and the California Parent Locator Service and Central Registry shall ensure that customer service information supplied by a public utility, cable television corporation, providers of electronic digital pager communication, or provider of cellular telephone services is applicable to the person who is being sought before releasing the information pursuant to subdivision (d).

(4) The public utility, cable television corporation, electronic digital pager communication provider, or cellular telephone service provider may charge a fee to the California Parent Locator Service and Central Registry or the California Child Support Automation System for each search performed pursuant to this subdivision to cover the actual costs to the public utility, cable television corporation, electronic digital pager communication provider, or cellular telephone service provider for providing this information.

(5) No public utility, cable television corporation, electronic digital pager communication provider, or cellular telephone service provider or official or employee thereof, shall be subject to criminal or civil liability

for the release of customer service information as authorized by this subdivision.

(e) Notwithstanding Section 14202 of the Penal Code, any records established pursuant to this section shall be disseminated only to the Department of Child Support Services, the California Child Support Automation System, the California Parent Locator Service and Central Registry, the parent locator services and central registries of other states as defined by federal statutes and regulations, a local child support agency of any county in this state, and the federal Parent Locator Service. The California Child Support Automation System shall be allowed access to criminal offender record information only to the extent that access is allowed by law.

(f) (1) At no time shall any information received by the California Parent Locator Service and Central Registry or by the California Child Support Automation System be disclosed to any person, agency, or other entity, other than those persons, agencies, and entities specified pursuant to Section 17505, this section, or any other provision of law.

(2) This subdivision shall not otherwise affect discovery between parties in any action to establish, modify, or enforce child, family, or spousal support, that relates to custody or visitation.

(g) (1) The Department of Justice, in consultation with the Department of Child Support Services, shall promulgate rules and regulations to facilitate maximum and efficient use of the California Parent Locator Service and Central Registry. Upon implementation of the California Child Support Automation System, the Department of Child Support Services shall assume all responsibility for promulgating rules and regulations for use of the California Parent Locator Service and Central Registry.

(2) The Department of Child Support Services, the Public Utilities Commission, the cable television corporations, providers of electronic digital pager communication, and the providers of cellular telephone services shall develop procedures for obtaining the information described in subdivision (c) from public utilities, cable television corporations, providers of electronic digital pager communication, and providers of cellular telephone services and for compensating the public utilities, cable television corporations, providers of electronic digital pager communication, and providers of cellular telephone services for providing that information.

(h) The California Parent Locator Service and Central Registry may charge a fee not to exceed eighteen dollars ($18) for any service it provides pursuant to this section that is not performed or funded pursuant to Part D (commencing with Section 651) of Subchapter IV of Chapter 7 of Title 42 of the United States Code.

(i) This section shall be construed in a manner consistent with the other provisions of this article.

SEC. 3. Section 408 of the Revenue and Taxation Code is amended to read:

408. (a) Except as otherwise provided in subdivisions (b), (c), (d), and (e) any information and records in the assessor's office that are not required by law to be kept or prepared by the assessor, and homeowners' exemption claims, are not public documents and shall not be open to public inspection. Property receiving the homeowners' exemption shall be clearly identified on the assessment roll. The assessor shall maintain records which shall be open to public inspection to identify those claimants who have been granted the homeowners' exemption.

(b) The assessor may provide any appraisal data in his or her possession to the assessor of any county.

The assessor shall disclose information, furnish abstracts, or permit access to all records in his or her office to law enforcement agencies, the county grand jury, the board of supervisors or their duly authorized agents, employees or representatives when conducting an investigation of the assessor's office pursuant to Section 25303 of the Government Code, the Controller, employees of the Controller for property tax postponement purposes, probate referees, employees of the Franchise Tax Board for tax administration purposes only, staff appraisers of the Department of Financial Institutions, the Department of Transportation, the Department of General Services, the State Board of Equalization, the State Lands Commission, the State Department of Social Services, The Department of Child Support Services, the Department of Water Resources, and other duly authorized legislative or administrative bodies of the state pursuant to their authorization to examine the records. Whenever the assessor discloses information, furnishes abstracts, or permits access to records in his or her office to staff appraisers of the Department of Financial Institutions, the Department of Transportation, the Department of General Services, the State Lands Commission, or the Department of Water Resources pursuant to this section, the department shall reimburse the assessor for any costs incurred as a result thereof.

(c) Upon the request of the tax collector, the assessor shall disclose and provide to the tax collector information used in the preparation of that portion of the unsecured roll for which the taxes thereon are delinquent. The tax collector shall certify to the assessor that he or she needs the information requested for the enforcement of the tax lien in collecting those delinquent taxes. Information requested by the tax collector may include social security numbers, and the assessor shall recover from the tax collector his or her actual and reasonable costs for providing the information. The tax collector shall add the costs described

in the preceding sentence to the assessee's delinquent tax lien and collect those costs subject to subdivision (e) of Section 2922.

(d) The assessor shall, upon the request of an assessee or his or her designated representative, permit the assessee or representative to inspect or copy any market data in the assessor's possession. For purposes of this subdivision, ''market data'' means any information in the assessor's possession, whether or not required to be prepared or kept by him or her, relating to the sale of any property comparable to the property of the assessee, if the assessor bases his or her assessment of the assessee's property, in whole or in part, on that comparable sale or sales. The assessor shall provide the names of the seller and buyer of each property on which the comparison is based, the location of that property, the date of the sale, and the consideration paid for the property, whether paid in money or otherwise. However, for purposes of providing market data, the assessor shall not display any document relating to the business affairs or property of another.

(e) (1) With respect to information, documents, and records, other than market data as defined in subdivision (d), the assessor shall, upon request of an assessee of property, or his or her designated representative, permit the assessee or representative to inspect or copy all information, documents, and records, including auditors' narrations and workpapers, whether or not required to be kept or prepared by the assessor, relating to the appraisal and the assessment of the assessee's property, and any penalties and interest thereon.

(2) After enrolling an assessment, the assessor shall respond to a written request for information supporting the assessment, including, but not limited to, any appraisal and other data requested by the assessee.

(3) Except as provided in Section 408.1, an assessee, or his or her designated representative, shall not be permitted to inspect or copy information and records that also relate to the property or business affairs of another, unless that disclosure is ordered by a competent court in a proceeding initiated by a taxpayer seeking to challenge the legality of the assessment of his or her property.

(f) (1) Permission for the inspection or copying requested pursuant to subdivision (d) or (e) shall be granted as soon as reasonably possible to the assessee or his or her designated representative.

(2) If the assessee, or his or her designated representative, requests the assessor to make copies of any of the requested records, the assessee shall reimburse the assessor for the reasonable costs incurred in reproducing and providing the copies.

(3) If the assessor fails to permit the inspection or copying of materials or information as requested pursuant to subdivision (d) or (e) and the assessor introduces any requested materials or information at any assessment appeals board hearing, the assessee or his or her

representative may request and shall be granted a continuance for a reasonable period of time. The continuance shall extend the two-year period specified in subdivision (c) of Section 1604 for a period of time equal to the period of continuance.

CHAPTER 760

An act to amend Sections 1345, 1367.22, 1371.2, and 1374.9 of the Health and Safety Code, and to amend Section 12726 of the Insurance Code, relating to health care.

[Approved by Governor September 20, 2002. Filed with Secretary of State September 21, 2002.]

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

SECTION 1. Section 1345 of the Health and Safety Code is amended to read:

1345. As used in this chapter:

(a) ''Advertisement'' means any written or printed communication or any communication by means of recorded telephone messages or by radio, television, or similar communications media, published in connection with the offer or sale of plan contracts.

(b) ''Basic health care services'' means all of the following:

(1) Physician services, including consultation and referral.

(2) Hospital inpatient services and ambulatory care services.

(3) Diagnostic laboratory and diagnostic and therapeutic radiologic services.

(4) Home health services.

(5) Preventive health services.

(6) Emergency health care services, including ambulance and ambulance transport services and out-of-area coverage. ''Basic health care services'' includes ambulance and ambulance transport services provided through the ''911'' emergency response system.

(7) Hospice care pursuant to Section 1368.2.

(c) ''Enrollee'' means a person who is enrolled in a plan and who is a recipient of services from the plan.

(d) ''Evidence of coverage'' means any certificate, agreement, contract, brochure, or letter of entitlement issued to a subscriber or enrollee setting forth the coverage to which the subscriber or enrollee is entitled.

(e) ''Group contract'' means a contract which by its terms limits the eligibility of subscribers and enrollees to a specified group.

(f) ''Health care service plan'' or ''specialized health care service plan'' means either of the following:

(1) Any person who undertakes to arrange for the provision of health care services to subscribers or enrollees, or to pay for or to reimburse any part of the cost for those services, in return for a prepaid or periodic charge paid by or on behalf of the subscribers or enrollees.

(2) Any person, whether located within or outside of this state, who solicits or contracts with a subscriber or enrollee in this state to pay for or reimburse any part of the cost of, or who undertakes to arrange or arranges for, the provision of health care services that are to be provided wholly or in part in a foreign country in return for a prepaid or periodic charge paid by or on behalf of the subscriber or enrollee.

(g) ''License'' means, and ''licensed'' refers to, a license as a plan pursuant to Section 1353.

(h) ''Out-of-area coverage,'' for purposes of paragraph (6) of subdivision (b), means coverage while an enrollee is anywhere outside the service area of the plan, and shall also include coverage for urgently needed services to prevent serious deterioration of an enrollee's health resulting from unforeseen illness or injury for which treatment cannot be delayed until the enrollee returns to the plan's service area.

(i) ''Provider'' means any professional person, organization, health facility, or other person or institution licensed by the state to deliver or furnish health care services.

(j) ''Person'' means any person, individual, firm, association, organization, partnership, business trust, foundation, labor organization, corporation, limited liability company, public agency, or political subdivision of the state.

(k) ''Service area'' means a geographical area designated by the plan within which a plan shall provide health care services.

(*l*) ''Solicitation'' means any presentation or advertising conducted by, or on behalf of, a plan, where information regarding the plan, or services offered and charges therefor, is disseminated for the purpose of inducing persons to subscribe to, or enroll in, the plan.

(m) ''Solicitor'' means any person who engages in the acts defined in subdivision (*l*).

(n) ''Solicitor firm'' means any person, other than a plan, who through one or more solicitors engages in the acts defined in subdivision (*l*).

(o) ''Specialized health care service plan contract'' means a contract for health care services in a single specialized area of health care, including dental care, for subscribers or enrollees, or which pays for or which reimburses any part of the cost for those services, in return for a prepaid or periodic charge paid by or on behalf of the subscribers or enrollees.

(p) ''Subscriber'' means the person who is responsible for payment to a plan or whose employment or other status, except for family dependency, is the basis for eligibility for membership in the plan.

(q) Unless the context indicates otherwise, ''plan'' refers to health care service plans and specialized health care service plans.

(r) ''Plan contract'' means a contract between a plan and its subscribers or enrollees or a person contracting on their behalf pursuant to which health care services, including basic health care services, are furnished; and unless the context otherwise indicates it includes specialized health care service plan contracts; and unless the context otherwise indicates it includes group contracts.

(s) All references in this chapter to financial statements, assets, liabilities, and other accounting items mean those financial statements and accounting items prepared or determined in accordance with generally accepted accounting principles, and fairly presenting the matters which they purport to present, subject to any specific requirement imposed by this chapter or by the director.

SEC. 2. Section 1367.22 of the Health and Safety Code is amended to read:

1367.22. (a) A health care service plan contract, issued, amended, or renewed on or after July 1, 1999, that covers prescription drug benefits shall not limit or exclude coverage for a drug for an enrollee if the drug previously had been approved for coverage by the plan for a medical condition of the enrollee and the plan's prescribing provider continues to prescribe the drug for the medical condition, provided that the drug is appropriately prescribed and is considered safe and effective for treating the enrollee's medical condition. Nothing in this section shall preclude the prescribing provider from prescribing another drug covered by the plan that is medically appropriate for the enrollee, nor shall anything in this section be construed to prohibit generic drug substitutions as authorized by Section 4073 of the Business and Professions Code. For purposes of this section, a prescribing provider shall include a provider authorized to write a prescription, pursuant to subdivision (a) of Section 4059 of the Business and Professions Code, to treat a medical condition of an enrollee.

(b) This section does not apply to coverage for any drug that is prescribed for a use that is different from the use for which that drug has been approved for marketing by the federal Food and Drug Administration. Coverage for different-use drugs is subject to Section 1367.21.

(c) This section shall not be construed to restrict or impair the application of any other provision of this chapter, including, but not limited to, Section 1367, which includes among its requirements that plans furnish services in a manner providing continuity of care and

demonstrate that medical decisions are rendered by qualified medical providers unhindered by fiscal and administrative management.

(d) This section does not prohibit a health care service plan from charging a subscriber or enrollee a copayment or a deductible for prescription drug benefits or from setting forth, by contract, limitations on maximum coverage of prescription drug benefits, provided that the copayments, deductibles, or limitations are reported to, and held unobjectionable by, the director and set forth to the subscriber or enrollee pursuant to the disclosure provisions of Section 1363.

SEC. 3. Section 1371.2 of the Health and Safety Code is amended to read:

1371.2. No health care service plan, including a specialized health care service plan, shall request reimbursement for overpayment or reduce the level of payment to a provider based solely on the allegation that the provider has entered into a contract with any other licensed health care service plan for participation in a benefit plan that has been approved by the director.

SEC. 4. Section 1374.9 of the Health and Safety Code is amended to read:

1374.9. For violations of Section 1374.7, the director may, after appropriate notice and opportunity for hearing, by order, levy administrative penalties as follows:

(a) Any health care service plan that violates Section 1374.7, or that violates any rule or order adopted or issued pursuant to this section, is liable for administrative penalties of not less than two thousand five hundred dollars ($2,500) for each first violation, and of not less than five thousand dollars ($5,000) nor more than ten thousand dollars ($10,000) for each second violation, and of not less than fifteen thousand dollars ($15,000) and not more than one hundred thousand dollars ($100,000) for each subsequent violation.

(b) The administrative penalties shall be paid to the Managed Health Care Fund.

(c) The administrative penalties available to the director pursuant to this section are not exclusive, and may be sought and employed in any combination with civil, criminal, and other administrative remedies deemed advisable by the director to enforce the provisions of this chapter.

SEC. 8. Section 12726 of the Insurance Code is amended to read:

12726. The board may permit the exclusion of coverage or benefits for charges or expenses incurred by a subscriber during the first six months of enrollment in the program for any condition for which, during the six months immediately preceding enrollment in the program medical advice, diagnosis, care, or treatment was recommended or received as to the condition during that period.

However, the exclusion from coverage of this section shall be waived to the extent to which the subscriber was covered under any creditable coverage, as defined in Section 10900, that was terminated, provided the subscriber has applied for enrollment in the program not later than 63 days following termination of the prior coverage, or within 180 days of termination of coverage if the subscriber lost his or her previous creditable coverage because the subscriber's employment ended, the availability of health coverage offered through employment or sponsored by an employer terminated, or an employer's contribution toward health coverage terminated. The exclusion from coverage of this section shall also be waived as to any condition of a subscriber previously receiving coverage under a plan of another state similar to the program established by this part if the subscriber was eligible for benefits under that other-state coverage for the condition. The board may establish alternative mechanisms applicable to enrollment in health plans described in subdivision (c) or (d) of Section 12723. These mechanisms may include, but are not limited to, a postenrollment waiting period.

CHAPTER 761

An act to amend Sections 16305.2, 16429.1, and 16480 of, and to add Sections 16305.9 and 16429.4 to, the Government Code, relating to local agency investments, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 20, 2002. Filed with Secretary of State September 21, 2002.]

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

SECTION 1. Section 16305.2 of the Government Code is amended to read:

16305.2. All money in the possession of or collected by any state agency or department, except for money in the Local Agency Investment Fund, is subject to Sections 16305.3 to 16305.7, inclusive, and is hereafter referred to as state money.

SEC. 2. Section 16305.9 is added to the Government Code, to read:

16305.9. (a) All money in the Local Agency Investment Fund shall be held in trust in the custody of the Treasurer.

(b) All money in the Local Agency Investment Fund is nonstate money. That money shall be held in a trust account or accounts. The Controller shall be responsible for maintaining those accounts to record

the Treasurer's accountability, and shall maintain a separate account for each trust deposit in the Local Agency Investment Fund.

(c) That money shall be subject to audit by the Department of Finance and to cash count as provided for in Sections 13297, 13298, and 13299. It may be withdrawn only upon the order of the depositing entity or its disbursing officers. The system that the Director of Finance has established for the handling, receiving, holding, and disbursing of state agency money shall also be used for the money in the Local Agency Investment Fund.

(d) All money in the Local Agency Investment Fund shall be deposited, invested, and reinvested in the same manner and to the same extent as if it were state money in the State Treasury.

SEC. 3. Section 16429.1 of the Government Code is amended to read:

16429.1. (a) There is in trust in the custody of the Treasurer the Local Agency Investment Fund, which fund is hereby created. The Controller shall maintain a separate account for each governmental unit having deposits in this fund.

(b) Notwithstanding any other provisions of law, a local governmental official, with the consent of the governing body of that agency, having money in its treasury not required for immediate needs, may remit the money to the Treasurer for deposit in the Local Agency Investment Fund for the purpose of investment.

(c) Notwithstanding any other provisions of law, an officer of any nonprofit corporation whose membership is confined to public agencies or public officials, or an officer of a qualified quasi-governmental agency, with the consent of the governing body of that agency, having money in its treasury not required for immediate needs, may remit the money to the Treasurer for deposit in the Local Agency Investment Fund for the purpose of investment.

(d) Notwithstanding any other provision of law or of this section, a local agency, with the approval of its governing body, may deposit in the Local Agency Investment Fund proceeds of the issuance of bonds, notes, certificates of participation, or other evidences of indebtedness of the agency pending expenditure of the proceeds for the authorized purpose of their issuance. In connection with these deposits of proceeds, the Local Agency Investment Fund is authorized to receive and disburse moneys, and to provide information, directly with or to an authorized officer of a trustee or fiscal agent engaged by the local agency, the Local Agency Investment Fund is authorized to hold investments in the name and for the account of that trustee or fiscal agent, and the Controller shall maintain a separate account for each deposit of proceeds.

(e) The local governmental unit, the nonprofit corporation, or the quasi-governmental agency has the exclusive determination of the length of time its money will be on deposit with the Treasurer.

(f) The trustee or fiscal agent of the local governmental unit has the exclusive determination of the length of time proceeds from the issuance of bonds will be on deposit with the Treasurer.

(g) The Local Investment Advisory Board shall determine those quasi-governmental agencies which qualify to participate in the Local Agency Investment Fund.

(h) The Treasurer may refuse to accept deposits into the fund if, in the judgment of the Treasurer, the deposit would adversely affect the state's portfolio.

(i) The Treasurer may invest the money of the fund in securities prescribed in Section 16430. The Treasurer may elect to have the money of the fund invested through the Surplus Money Investment Fund as provided in Article 4 (commencing with Section 16470) of Chapter 3 of Part 2 of Division 4 of Title 2.

(j) Money in the fund shall be invested to achieve the objective of the fund which is to realize the maximum return consistent with safe and prudent treasury management.

(k) All instruments of title of all investments of the fund shall remain in the Treasurer's vault or be held in safekeeping under control of the Treasurer in any federal reserve bank, or any branch thereof, or the Federal Home Loan Bank of San Francisco, with any trust company, or the trust department of any state or national bank.

(*l*) Immediately at the conclusion of each calendar quarter, all interest earned and other increment derived from investments shall be distributed by the Controller to the contributing governmental units or trustees or fiscal agents, nonprofit corporations, and quasi-governmental agencies in amounts directly proportionate to the respective amounts deposited in the Local Agency Investment Fund and the length of time the amounts remained therein. An amount equal to the reasonable costs incurred in carrying out the provisions of this section, not to exceed a maximum of one-half of 1 percent of the earnings of this fund, shall be deducted from the earnings prior to distribution. The amount of this deduction shall be credited as reimbursements to the state agencies having incurred costs in carrying out the provisions of this section.

(m) The Treasurer shall prepare for distribution a monthly report of investments made during the preceding month.

(n) As used in this section, ''local agency,'' ''local governmental unit,'' and "local governmental official'' includes a campus or other unit and an official, respectively, of the California State University who

deposits moneys in funds described in Sections 89721, 89722, and 89725 of the Education Code.

SEC. 4. Section 16429.4 is added to the Government Code, to read:

16429.4. The right of a city, county, city and county, special district, nonprofit corporation, or qualified quasi-governmental agency to withdraw its deposited moneys from the Local Agency Investment Fund, upon demand, may not be altered, impaired, or denied, in any way, by any state official or state agency based upon the state's failure to adopt a State Budget by July 1 of each new fiscal year.

SEC. 5. Section 16480 of the Government Code is amended to read:

16480. All state money held by the State Treasurer in treasury trust accounts, and all money in the State Treasury, except money in the Unemployment Compensation Disability Fund during any period when an election under Section 16470 is not in effect, is appropriated for the purpose of investment and deposit as provided in this article. In addition, nonstate money held by the Treasurer in the Local Agency Investment Fund may be included in those investments and deposits as provided in this article.

SEC. 6. 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 preserve the ability of cities, counties, cities and counties, special districts, nonprofit corporations, and qualified quasi-government agencies that invest in the Local Agency Investment Fund to pay current expenditures, and to avoid potential claims or litigation against the State of California, it is necessary that this act take effect immediately.

CHAPTER 762

An act to amend Section 4601.1 of the Public Resources Code, relating to forestry.

[Approved by Governor September 20, 2002. Filed with Secretary of State September 21, 2002.]

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

SECTION 1. Section 4601.1 of the Public Resources Code is amended to read:

4601.1. (a) (1) In addition to any other penalty, any person who intentionally, knowingly, or negligently violates this chapter or a rule or

regulation adopted by the board pursuant to this chapter is subject to a civil penalty imposed by a court in an amount not to exceed ten thousand dollars ($10,000) for each violation. For purposes of this section, damage that occurs over multiple days that results from a single action shall not be considered a continuing violation. For purposes of this section, each specific act that results in a violation of this chapter or a rule or regulation adopted pursuant to this chapter, including an act that is repeated on separate days, shall be considered a separate violation.

(2) The Attorney General or district attorney, upon request of the director, shall petition the superior court to impose, assess, and recover a civil penalty pursuant to this subdivision. In determining the appropriate amount, the court shall consider all relevant circumstances, including, but not limited to, persistence, circumstances, extent and gravity of the violation, the length of the time over which the violation occurred, whether any substantial damage caused by the violation is susceptible to corrective action, whether the violation was willful or caused by negligence, and, with respect to the violator, the ability of the violator to pay any fines or penalties, the effect on the ability to continue in business, the corrective action, if any, taken by the violator, whether the violator has any prior history of violations, the degree of culpability, economic savings, if any, resulting from the violation, and such other matters as justice may require.

(b) A civil penalty may also be administratively imposed by the department in accordance with Section 4601.2 on any person who intentionally, knowingly, or negligently violates this chapter or a rule or regulation adopted by the board pursuant to this chapter in an amount not to exceed ten thousand dollars ($10,000) for each violation of a separate provision. For purposes of this section, damage that occurs over multiple days that results from a single action shall not be considered a continuing violation. For purposes of this section, each specific act that results in a violation of this chapter or a rule or regulation adopted pursuant to this chapter, including an act that is repeated on separate days, shall be considered a separate violation.

(c) No person is subject to both a civil penalty imposed by the superior court under subdivision (a) and a civil penalty administratively imposed under subdivision (b) for the same act or failure to act.

(d) Any money recovered by the department pursuant to this section shall be deposited in the General Fund.