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CHAPTER 1229

An act to amend Sections 21628, 21629, and 21633 of the Business and Professions Code, and to amend Section 21208 of the Financial Code, relating to secondhand property, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 21, 1982. Filed with Secretary of State September 22, 1982.]

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

SECTION 1. Section 21628 of the Business and Professions Code is amended to read:

21628. Every secondhand dealer described in Section 21626 shall report daily, or on the first working day after receipt or purchase of such property, on forms either approved or provided at actual cost by the Department of Justice, all tangible personal property which he or she has purchased, taken in trade, taken in pawn, accepted for sale on consignment, or accepted for auctioning, to the chief of police or to the sheriff, in accordance with the provisions of Section 21630. The report shall include, but not be limited to, the following information:

(a) The name and address of the intended seller of the property.

(b) A complete and reasonably accurate description of such property, including serial numbers or other identifying marks or symbols.

(c) A certification by the intended seller that to his or her knowledge and belief the information is true and complete.

SEC. 2. Section 21629 of the Business and Professions Code is amended to read:

21629. The provisions of this article shall not apply to any tangible personal property which has been:

(a) Acquired from another secondhand dealer; provided the secondhand dealer selling or trading the tangible personal property states in writing under penalty of perjury, along with a description of the property, on an interdealer transfer form or an itemized bill of sale, that the report or reports required by this article have been properly made and submitted by that dealer. A copy of the form or the itemized bill of sale shall be delivered to the acquiring dealer at the time the transaction occurs. Interdealer transfer forms shall be provided at actual cost by the Department of Justice.

The dealers involved in the transaction shall retain their copy of the interdealer transfer form or itemized bill of sale for a period of three years as a matter of record, and shall make them available for inspection by any law enforcement officer.

(b) Acquired in a nonjudicial sale, transfer, assignment, assignment for the benefit of creditors, or consignment of the assets or stock in trade, in bulk, or a substantial part thereof, of an industrial

or commercial enterprise for purposes of voluntary dissolution or liquidation of the seller's business, or for the purpose of disposing of an excessive quantity of personal property; or which has been acquired in a nonjudicial sale or transfer from an owner of his or her entire household of personal property, or a substantial part thereof; provided, the secondhand dealer retains in his or her place of business for a period of three years a copy of the bill of sale, receipt, inventory list, or other transfer document as a matter of record which shall be made available for inspection by any law enforcement officer; and provided further, that the secondhand dealer notifies the chief of police or the sheriff that exemption from reporting is being claimed under this subdivision. "Industrial or commercial enterprise" and "owner" as used in this subdivision do not include a secondhand dealer;

(c) Acquired in a sale made by any public officer in his or her official capacity, trustee in bankruptcy, executor, administrator, receiver, or public official acting under judicial process or authority, or which has been acquired in a sale made upon the execution of, or by virtue of, any process issued by a court, or under the provisions of Division 7 (commencing with Section 7101) of the Commercial Code;

(d) Acquired as the surplus property of the United States government or of a state, city, county, city and county, municipal corporation, or public district and which after requisition or acquisition by the United States government or by a state, city, county, city and county, municipal corporation, or public district has never thereafter been sold at retail; and

(e) Reported by a secondhand dealer as an acquisition or a purchase, or which has been reported as destroyed or otherwise disposed of, (1) to a state agency by the authority of any other law of this State; or (2) to a city, county, or city and county officer or agency by the authority of any other law of this State or a city, county, or city and county ordinance.

(f) Acquired by persons, firms, partnerships, or corporations who buy, sell, or trade precious metals, whether in the form of coins or commercial grade ingots, who: (1) are designated contract markets by or registered with the Commodity Futures Trading Commission under the Federal Commodities Exchange Act and acting pursuant thereto; or (2) infrequently conduct their business directly with members of the general public. As used in this subdivision, "infrequently" means occasional and without regularity.

SEC. 3. Section 21633 of the Business and Professions Code is amended to read:

21633. The report forms approved by the Department of Justice shall consist of not less than an original and two copies. The Department of Justice shall not require the report form to consist of more than an original and two copies when the forms are obtained from a source other than the department. A local law enforcement agency may request secondhand dealers within its jurisdiction to use

a report form consisting of more than an original and two copies. However, each secondhand dealer or group of dealers shall be required only to use a form consisting of an original and two copies when the dealer does not use a form obtained from the Department of Justice.

The Department of Justice shall allow the use of forms which are compatible with computerization. The original and the duplicate copy shall be submitted by the secondhand dealer in accordance with the provisions of Sections 21628 and 21630. One copy shall be retained by the secondhand dealer in his place of business for a period of three years and shall be made available for inspection by any law enforcement officer.

SEC. 4. Section 21208 of the Financial Code is amended to read:

21208. Every pawnbroker shall report daily or on the first working day after receipt or purchase, all descriptions of all property received in pledge or purchased as tangible personal property, as defined in Section 21627 of the Business and Professions Code, in whatever quantity received, including property purchased as tangible personal property at wholesale, tangible personal property taken in for sale or possessed on consignment for sale, and tangible personal property taken in trade.

If the transaction took place within the territorial limits of an incorporated city, the report shall be submitted to the police chief executive of the city. If the transaction took place outside the territorial limits of an incorporated city, the report shall be submitted to the sheriff of the county.

All reports shall be on forms approved or provided at actual cost by the Department of Justice. The police chief executive or sheriff who receives a report on a form filed pursuant to the provisions of this section shall daily submit a legible copy of the transactions to the Department of Justice.

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 permit secondhand property dealers to use computerized report forms, and privately printed report forms, and to avoid costly revisions of reporting procedures, it is necessary that this act take effect immediately.

CHAPTER 1230

An act to amend Section 25168.2 of the Health and Safety Code, and to amend Section 5353 of the Public Utilities Code, relating to transportation.

[Approved by Governor September 21, 1982. Filed with Secretary of State September 22, 1982.]

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

SECTION 1. Section 25168.2 of the Health and Safety Code is amended to read:

25168.2. The department may, pursuant to Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, suspend or revoke the certification of a truck, trailer, semitrailer, vacuum tank, cargo tank, or container used to haul hazardous waste and may suspend or revoke the registration or deny the application for registration of a hazardous waste hauler for any of the following reasons:

(a) Failure of the registrant to pay required fees or misrepresentation upon application for original or renewal registration.

(b) Failure of a truck, trailer, semitrailer, vacuum tank, cargo tank, or container owned or operated by a registrant to comply with regulations adopted under Section 34020, subdivisions (a) and (b) of Section 34501 of the Vehicle Code, and those regulations promulgated by the department for containers used to haul hazardous waste.

(c) Failure or refusal of the registrant to permit inspection of a truck, trailer, semitrailer, vacuum tank, cargo tank, or container or make a truck, trailer, semitrailer, vacuum tank, cargo tank, or container available for inspection by a member of the California Highway Patrol upon reasonable notice.

(d) Failure to possess the minimum insurance, as prescribed in Section 25169.

(e) Violation of any provisions of this division.

SEC. 2. Section 5353 of the Public Utilities Code, as amended by Chapter 185 of the Statutes of 1982, is amended to read:

5353. The provisions of this chapter do not apply to:

(a) Transportation service rendered wholly within the corporate limits of a single city or city and county.

(b) Transportation of school pupils conducted by or under contract with the governing board of any school district entered into pursuant to the Education Code.

(c) Common carrier transportation services between fixed termini or over a regular route which are subject to authorization pursuant to the provisions of Article 2 (commencing with Section 1031) of Chapter 5 of Part 1 of Division 1 of this code.

(d) Transportation services occasionally afforded for farm employees moving to and from farms on which employed when the transportation is performed by the employer in vehicles owned or leased by him, or by a nonprofit agricultural cooperative association organized and acting within the scope of its powers under Chapter 4 (commencing with Section 1190) of Division 6 of the Food and

Agricultural Code, and without any requirement for the payment of compensation therefor by the employees.

(e) Transportation service rendered by a publicly owned transit system.

(f) Passenger vehicles carrying passengers on a noncommercial enterprise basis.

(g) Taxicab transportation service licensed and regulated by a city or county, by ordinance or resolution, rendered in vehicles designed for carrying not more than eight persons excluding the driver.

(h) Transportation of persons between home and work locations or of persons having a common work-related trip purpose in a vehicle having a seating capacity of 15 passengers or less, including the driver, which are used for the purpose of ridesharing, as defined in Section 522 of the Vehicle Code, when the ridesharing is incidental to another purpose of the driver. This exemption does not apply if the primary purpose for the transportation of those persons is to make a profit. "Profit," as used in this subdivision, does not include the recovery of the actual costs incurred in owning and operating a vanpool vehicle, as defined in Section 668 of the Vehicle Code.

(i) Medical transportation vehicles.

(j) Transportation services rendered solely within the Lake Tahoe Basin, comprising that area included within the Tahoe Regional Planning Compact as set forth in Section 66801 of the Government Code, when the operator of such services has obtained any permit required from the Tahoe Basin Transportation Authority or the City of South Lake Tahoe, or both.

CHAPTER 1231

An act to amend Sections 20202, 20390, and 21331 of, and to repeal and add Section 21212 of, the Government Code, relating to the Public Employees' Retirement System, and making an appropriation therefor.

[Approved by Governor September 21, 1982. Filed with Secretary of State September 22, 1982.]

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

SECTION 1. Section 20202 of the Government Code is amended to read:

20202. The State Treasurer is the custodian of the Retirement Fund, subject to the exclusive control of the board as to administration and investment. Notwithstanding Section 13340, all moneys in the fund are continuously appropriated, without regard to fiscal years, for payments which shall be made upon warrants drawn by the Controller upon demands made by the board. Upon demand

of the board, warrants shall be drawn for the purpose of making payments by electronic fund transfers.

SEC. 2. Section 20390 of the Government Code is amended to read:

20390. A person ceases to be a member:

(a) Upon retirement.

(b) If he is paid his normal contributions or such contributions are held pursuant to Section 20208. For the purposes of this subdivision, (1) deposit in the United States mail of a warrant drawn in favor of a member, addressed to the latest address of the member on file in the office of this system, constitutes payment to the member of the amount for which the warrant is drawn or (2) electronic fund transfer to the person's bank, savings and loan association or credit union account, constitutes payment to the person of the amount of the warrant of funds electronically transferred.

(c) If the member has less than five years of service credit and no accumulated contributions in the retirement fund at the time of termination of service.

SEC. 3. Section 21212 of the Government Code is repealed.

SEC. 4. Section 21212 is added to the Government Code, to read:

21212. Any person entitled to a benefit from this system may request that payment be made by:

(a) Deposit by electronic fund transfer in the person's bank, savings and loan association or credit union account.

(b) If deposit pursuant to subdivision (a) is not available, deposit by mail in the person's bank, savings and loan association or credit union account.

Mailing of the warrant or electronic fund transfer is a full discharge of the board and this system.

SEC. 5. Section 21331 of the Government Code is amended to read:

21331. Such election, revocation, or change of election shall be made prior to the making of the first payment on account of any retirement allowance or, in event of a change of retirement status after retirement, prior to the making of the first payment on account of any retirement allowance following the change in retirement status. "Change in retirement status" includes but is not limited to change from service to disability retirement, from disability retirement to service retirement, from nonindustrial disability retirement to industrial disability retirement, or from industrial to nonindustrial disability retirement.

For purposes of this section, payment shall be deemed to have been made on the date a warrant is mailed, or the date funds are electronically transferred to a bank, savings and loan association or credit union account for deposit in the member's account.

SEC. 6. The sum of four hundred thousand dollars ($400,000) is hereby appropriated from the Public Employees' Retirement Fund to the Board of Administration of the Public Employees' Retirement System for expenditures for expenses and costs, incurred pursuant to

this act during the 1981–82 fiscal year.

CHAPTER 1232

An act to amend, repeal and add Section 1603 of the Penal Code, relating to outpatients.

[Approved by Governor September 21, 1982. Filed with Secretary of State September 22, 1982.]

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

SECTION 1. Section 1603 of the Penal Code is amended to read:

1603. Any person subject to the provisions of subdivision (a) of Section 1601 may be placed on outpatient status if all of the following conditions are satisfied:

(a) The director of the state hospital or other treatment facility to which the person has been committed advises the committing court that the defendant is no longer likely to be a danger to the health and safety of others while on outpatient status, and will benefit from such status.

(b) The county mental health director advises the court that the defendant will benefit from such status, and identifies an appropriate program of supervision and treatment.

(c) After actual notice to the prosecutor and defense counsel, and to the victim or next of kin of the victim of the offense for which the person was committed where a request for such notice has been filed with the court, and after a hearing in court, the court specifically approves the recommendation and plan for outpatient status pursuant to Section 1604. The burden shall be on the victim or next of kin to the victim to keep the court apprised of the party's current mailing address.

In any case in which the victim or next of kin to the victim has filed a request for notice with the director of the state hospital or other treatment facility, he or she shall be notified by the director at the inception of any program in which the committed person would be allowed any type of day release unattended by the staff of the facility.

SEC. 2. Section 1603 is added to the Penal Code, to read:

1603. Any person subject to the provisions of subdivision (a) of Section 1601 may be placed on outpatient status if all of the following conditions are satisfied:

(a) The director of the state hospital or other treatment facility to which the person has been committed advises the committing court that the defendant is no longer likely to be a danger to the health and safety of others while on outpatient status, and will benefit from such status.

(b) The county mental health director advises the court that the defendant will benefit from such status, and identifies an appropriate

program of supervision and treatment.

(c) After actual notice to the prosecutor and defense counsel, and after a hearing in court, the court specifically approves the recommendation and plan for outpatient status pursuant to Section 1604.

SEC. 3. Notwithstanding Section 6 of Article XIII B of the California Constitution and Section 2231 or 2234 of the Revenue and Taxation Code, no appropriation is made by this act for the purpose of making reimbursement pursuant to these sections. It is recognized, however, that a local agency or school district may pursue any remedies to obtain reimbursement available to it under Chapter 3 (commencing with Section 2201) of Part 4 of Division 1 of that code.

SEC. 4. Section 1 of this act shall remain in effect only until January 1, 1989, and as of such date is repealed, unless a later enacted statute, which is chaptered before January 1, 1989, deletes or extends such date.

CHAPTER 1233

An act to amend Sections 12517, 12804, and 40000.11 of the Vehicle Code, relating to vehicles.

[Approved by Governor September 21, 1982. Filed with Secretary of State September 22, 1982.]

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

SECTION 1. Section 12517 of the Vehicle Code is amended to read:

12517. (a) No person shall operate a schoolbus unless the person has in his or her immediate possession a valid driver's license for the appropriate class of vehicle to be driven, and, when transporting any school pupil at or below the 12th-grade level to or from a public or private school or to or from public or private school activities, also has in his or her immediate possession a special driver's certificate issued by the department to permit the operation of schoolbuses.

(b) No person shall operate a school pupil activity bus unless that person has in his or her immediate possession a valid driver's license for the appropriate class of vehicle to be driven, and, when transporting any school pupil at or below the 12th-grade level to or from public or private school activities, also has in his or her immediate possession a special driver's certificate issued by the department to permit the operation of school pupil activity buses.

(c) Any applicant for a certificate, required under subdivisions (a) and (b) to operate a schoolbus or school pupil activity bus, shall meet the eligibility and training requirements prescribed for schoolbus and school pupil activity bus drivers in the regulations

adopted by the Department of the California Highway Patrol. The applicant shall pay a fee of twelve dollars ($12) with the application.

SEC. 2. Section 12804 of the Vehicle Code, as amended by Chapter 46 of the Statutes of 1982, is amended to read:

12804. (a) The examination shall include a test of the applicant's knowledge and understanding of the provisions of this code governing the operation of vehicles upon the highways, the ability to read and understand simple English used in highway traffic and directional signs, and his understanding of traffic signs and signals, including the bikeway signs, markers, and traffic control devices established by the Department of Transportation. The applicant shall be required to give an actual demonstration of his ability to exercise ordinary and reasonable control in operating a motor vehicle by driving it under the supervision of an examining officer and submit to an examination appropriate to the type of motor vehicle or combination of vehicles he or she desires a license to drive, except that the department may waive the driving test part of the examination of an applicant who holds a valid license issued by another state, territory, or possession of the United States, the District of Columbia, or the Commonwealth of Puerto Rico. The examination shall also include a test of the hearing and eyesight of the applicant and other matters that may be necessary to determine the applicant's mental and physical fitness to operate a motor vehicle upon the highways and whether any ground exists for refusal of a license under this e. The examination for a class 1 or class 2 license under subdivision (o) of this section shall also include a report of a medical examination of the applicant given not more than two years prior to the date of the application by a physician licensed to practice medicine. The report shall be on a form approved by the department or by the Federal Highway Administration or the Federal Aviation Administration. In establishing the requirements, consideration may be given to the standards presently required of motor carrier drivers by the Federal Highway Administration of the United States Department of Transportation. Any physical defect of the applicant, which, in the opinion of the department, is compensated to insure safe driving ability, shall not prevent the issuance of a license to the applicant.

(b) In accordance with the following classifications, any applicant for a driver's license shall be required to submit to an examination appropriate to the type of motor vehicle or combination of vehicles the applicant desires a license to drive:

(1) Class 1. Any combination of vehicles and includes the operation of all vehicles under class 2 and class 3.

(2) Class 2. Any bus, any single vehicle with three or more axles, any such vehicles towing another vehicle weighing less than 6,000 pounds gross, and all vehicles covered under class 3.

(3) Class 3. A three-axle housecar, any three-axle vehicle weighing less than 6,000 pounds gross, any two-axle vehicle, any three-axle housecar or vehicle towing another vehicle weighing less

than 6,000 pounds gross, and any two-axle vehicle weighing 4,000 pounds or more unladen when towing either a trailer coach not exceeding 9,000 pounds gross or a trailer or semitrailer not exceeding 9,000 pounds gross designed and used exclusively for hauling livestock when the hauling of livestock is not for compensation, or any schoolbus, school pupil activity bus, youth bus or farm labor vehicle, as specified in paragraph (1) of subdivision (d), except any other bus, two-wheel motorcycle, or two-wheel motor-driven cycle.

(4) Class 4. Any two-wheel motorcycle, any two-wheel motor-driven cycle, or any motorized bicycle. Authority to operate vehicles included in a class 4 license may be granted by endorsement on a class 1, 2, or 3 license upon completion of appropriate examination.

(c) Class 1 and class 2 driver's licenses shall be valid for operating class 1 or class 2 vehicles only when a medical certificate approved by the department or the Federal Highway Administration or the Federal Aviation Administration is in the licensee's immediate possession which has been issued within two years of the date of the operation of that vehicle, otherwise the license shall be valid only for operating class 3 vehicles and class 4 vehicles if so endorsed.

(d) (1) A class 3 license shall be valid for operating any schoolbus, school pupil activity bus, youth bus, or farm labor vehicle when a special driver's certificate to permit the operation of those vehicles is also in the immediate possession of the licensee. A class 3 license shall also be valid for operating any of those vehicles with no passengers aboard while receiving behind-the-wheel driver training from a person having in his or her immediate possession a special driver's certificate to permit the operation of the vehicle.

(2) A special driver certificate for the operation of a schoolbus, school pupil activity bus, youth bus, or farm labor vehicle shall not be valid unless the driver has, in his or her immediate possession, a medical certificate issued within the past two years.

(e) The department may accept a certificate of driving experience in lieu of a driving test on class 1 or 2 applications when the certificate is issued by an employer of the applicant, provided the applicant has first qualified for a class 3 license and also met the other examination requirements for the license for which he or she is applying. The certificate may be submitted as evidence of the applicant's experience or training in the operation of the types of equipment covered by the license for which he or she is applying.

(f) The department may accept a certificate of competence in lieu of a driving test on class 4 applications when the certificate is issued by a law enforcement agency for its officers who operate class 4 vehicles in their duties, provided the applicant has also met the other examination requirements for the license for which he or she is applying.

(g) Notwithstanding subdivision (b), any person holding a valid California driver's license of any class may operate a motorized bicycle without taking any special examination for the operation of

a motorized bicycle, and without having a class 4 endorsement on that license.

(h) Drivers of vanpool vehicles, may operate with class 3 licenses, but shall possess evidence of a medical examination required for a class 2 license when operating vanpool vehicles. The driver shall keep in the vanpool vehicle a statement signed under penalty of perjury that he or she has not been convicted of reckless driving, drunk driving, or a hit and run offense in the last five years in order to be eligible to drive the vanpool vehicle.

SEC. 3. Section 40000.11 of the Vehicle Code is amended to read:

40000.11. A violation of any of the following provisions shall constitute a misdemeanor, and not an infraction:

Division 5 (commencing with Section 11100), relating to occupational licensing and business regulations.

Section 12500, subdivision (a), relating to unlicensed drivers.

Section 12517, relating to a special driver's certificate to operate a schoolbus or school pupil activity bus.

Section 12519, subdivision (a), relating to a special driver's certificate to operate a farm labor vehicle.

Section 12804, subdivision (d), relating to medical certificates.

Section 12951, subdivision (b), relating to refusal to display license.

Section 13004, relating to unlawful use of identification card.

Section 14601, relating to driving when suspended.

Section 14601.1, relating to driving when suspended.

Section 14601.2, relating to driving when suspended.

Section 14610, relating to unlawful use of driver's license.

Section 15501, relating to use of false or fraudulent license by minor.

SEC. 4. No appropriation is made and no reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution or Section 2231 or 2234 of the Revenue and Taxation Code because the only costs which may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, changes the definition of a crime or infraction, changes the penalty for a crime or infraction, or eliminates a crime or infraction.

CHAPTER 1234

An act to amend Sections 2930, 2931, 2932, and 4019 of, and to add Sections 2933, 2934, and 2935 to, the Penal Code, relating to prisoners.

[Approved by Governor September 21, 1982. Filed with Secretary of State September 22, 1982.]

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

SECTION 1. Section 2930 of the Penal Code is amended to read:

2930. (a) The Department of Corrections shall inform every prisoner sentenced under Section 1170, for a crime committed prior to January 1, 1983, not later than 14 days after reception in prison, of all applicable prison rules and regulations including the possibility of receiving a one-third reduction of the sentence for good behavior and participation. Within 14 days of the prisoner's arrival at the institution to which the prisoner is ultimately assigned by the Department of Corrections, the prisoner shall be informed of the range of programs offered by that institution and their availability at that institution. The prisoner's central file shall reflect compliance with the provisions of this section not later than 90 days after reception in prison.

(b) The department shall, within 90 days after July 1, 1977, inform every prisoner who committed a felony before July 1, 1977, and who would have been sentenced under Section 1170 if the felony had been committed after July 1, 1977, of all applicable prison rules and regulations, which have not previously been provided, of the range of programs offered and their availability, and the possibility of receiving a reduction for good behavior and participation of one-third of the prisoner's remaining sentence after July 1, 1977. The prisoner's central file shall reflect compliance with the provisions of this section.

SEC. 2. Section 2931 of the Penal Code is amended to read:

2931. (a) In any case in which a prisoner was sentenced to the state prison pursuant to Section 1170, or if he committed a felony before July 1, 1977, and he would have been sentenced under Section 1170 if the felony had been committed after July 1, 1977, the Department of Corrections shall have the authority to reduce the term prescribed under such section by one-third for good behavior and participation consistent with subdivision (d) of Section 1170.2. A document shall be signed by a prison official and given to the prisoner, at the time of compliance with Section 2930, outlining the conditions which the prisoner shall meet to receive the credit. The conditions specified in such document may be modified upon any of the following:

(1) Mutual consent of the prisoner and the Department of Corrections.

(2) The transfer of the prisoner from one institution to another.

(3) The department's determination of the prisoner's lack of adaptability or success in a specific program or assignment. In such case the prisoner shall be entitled to a hearing regarding the department's decision.

(4) A change in custodial status.

(b) Total possible good behavior and participation credit shall result in a four-month reduction for each eight months served in prison or in a reduction based on this ratio for any lesser period of

time. Three months of this four-month reduction, or a reduction based on this ratio for any lesser period, shall be based upon forbearance from any act for which the prisoner could be prosecuted in a court of law, either as a misdemeanor or a felony, or any act of misconduct described as a serious disciplinary infraction by the Department of Corrections.

(c) One month of this four-month reduction, or a reduction based on this ratio for a lesser period, shall be based solely upon participation in work, educational, vocational, therapeutic or other prison activities. Failure to succeed after demonstrating a reasonable effort in the specified activity shall not result in loss of participation credit. Failure to participate in the specified activities can result in a maximum loss of credit of 30 days for each failure to participate. However, those confined for other than behavior problems shall be given specified activities commensurate with the custodial status.

(d) This section shall not apply to any person whose crime was committed on or after January 1, 1983.

SEC. 3. Section 2932 of the Penal Code is amended to read:

2932. (a) For any time credit accumulated pursuant to Section 2931 or to Section 2933, not more than 180 days of credit may be denied or lost for a single act of misconduct which could be prosecuted as a felony whether or not prosecution is undertaken. Not more than 90 days of credit may be denied or lost for a single act of misconduct which could be prosecuted as a misdemeanor, whether or not prosecution is undertaken. Not more than 30 days of credit may be denied or lost for a single act of misconduct defined by regulation as a serious disciplinary offense by the Department of Corrections. Any person confined due to a change in custodial classification following the commission of any serious disciplinary infraction shall, in addition to any loss of time credits, be ineligible to receive participation or worktime credit for a period not to exceed the number of days of credit which have been lost for such act of misconduct. In unusual cases, an inmate may be denied the opportunity to participate in a credit qualifying assignment for up to six months beyond the period specified in this subdivision if the Director of Corrections finds, after a hearing, that no credit qualifying program may be assigned to the inmate without creating a substantial risk of physical harm to staff or other inmates. At the end of the six-month period and of successive six-month periods, the denial of the opportunity to participate in a credit qualifying assignment may be renewed upon a hearing and finding by the director.

The prisoner may appeal the decision through the department's review procedure, which shall include a review by an individual independent of the institution who has supervisorial authority over the institution

(b) For any credit accumulated pursuant to Section 2931, not more than 30 days of participation credit may be denied or lost for a single failure or refusal to participate. Any act of misconduct

described by the Department of Corrections as a serious disciplinary infraction if committed while participating in work, educational, vocational, therapeutic or other prison activity shall be deemed a failure to participate.

(c) Any procedure not provided for by this section, but necessary to carry out the purposes of this section, shall be those procedures provided for by the Department of Corrections for serious disciplinary infractions if those procedures are not in conflict with this section.

(1) The Department of Corrections shall, using reasonable diligence to investigate, provide written notice to the prisoner. The written notice shall be given within 15 days after the discovery of information leading to charges that may result in a possible denial of credit, except that if the prisoner has escaped, the notice shall be given within 15 days of the prisoner's return to the custody of the Director of Corrections. The written notice shall include the specific charge, the date, the time, the place that the alleged misbehavior took place, the evidence relied upon, a written explanation of the procedures that will be employed at the proceedings and the prisoner's rights at such hearing. Such hearing shall be conducted by an individual who shall be independent of the case and shall take place within 30 days of such written notice.

(2) The prisoner may elect to be assigned an employee to assist in the investigation, preparation or presentation of a defense at the disciplinary hearing if it is determined by the department that: (i) the prisoner is illiterate; or (ii) the complexity of the issues or the prisoner's confinement status makes it unlikely that he can collect and present the evidence necessary for an adequate comprehension of the case.

(3) The prisoner may request witnesses to attend the hearing and they shall be called unless the person conducting the hearing has specific reasons to deny this request. Such specific reasons shall be set forth in writing and a copy of such document shall be presented to the prisoner.

(4) The prisoner has the right, under the direction of the person conducting the hearing, to question all witnesses.

(5) At the conclusion of the hearing the charge shall be dismissed if the facts do not support the charge, or the prisoner may be found guilty on the basis of a preponderance of the evidence.

(d) If found guilty the prisoner shall be advised in writing of the guilty finding and the specific evidence relied upon to reach this conclusion and the amount of time-credit loss. The prisoner may appeal such decision through the Department of Corrections' review procedure, and may, upon final notification of appeal denial, within 15 days of such notification demand review of the department's denial of credit to the Board of Prison Terms, and the board may affirm, reverse, or modify the department's decision or grant a hearing before the board at which hearing the prisoner will have the rights specified in Section 3041.5.

(e) Each prisoner subject to Section 2931 shall be notified of the total amount of good behavior and participation credit which may be credited pursuant to Section 2931, and his anticipated time-credit release date. The prisoner shall be notified of any change in the anticipated release date due to denial or loss of credits, award of worktime credit, under Section 2933, or the restoration of any credits previously forfeited.

(f) If the conduct the prisoner is charged with also constitutes a crime, the Department of Corrections may refer the case to criminal authorities for possible prosecution. The department shall notify the prisoner, who may request postponement of the disciplinary proceedings pending such referral.

The prisoner may revoke his request for postponement of the disciplinary proceedings up until the filing of the accusatory pleading. In the event of the revocation of the request for postponement of the proceeding, the department shall hold the hearing within 30 days of the revocation.

In the case where the prisoner is prosecuted by the district attorney, the Department of Corrections shall not deny time credit where the prisoner is found not guilty and may deny credit if the prisoner is found guilty, in which case the procedures in subdivision (c) shall not apply.

(g) If time credit denial proceedings, or criminal prosecution prohibit the release of a prisoner who would have otherwise been released, and the prisoner is found not guilty of the alleged misconduct, the amount of time spent incarcerated, in excess of what the period of incarceration would have been absent the alleged misbehavior, shall be deducted from the prisoner's parole period.

(h) Nothing in the amendments to this section made at the 1981–82 Regular Session of the Legislature shall affect granting or revocation of credits attributable to that portion of the prisoner's sentence served prior to January 1, 1983.

SEC. 4. Section 2933 is added to the Penal Code, to read:

2933. (a) It is the intent of the Legislature that persons convicted of crime and sentenced to state prison, under Section 1170, serve the entire sentence imposed by the court, except for a reduction in the time served in the custody of the Director of Corrections for performance in work, training or education programs established by the Director of Corrections. Worktime credits shall apply for performance in work assignments and performance in elementary, high school, or vocational education programs. Enrollment in a two- or four-year college program leading to a degree shall result in the application of time credits equal to that provided in Section 2931. For every six months of full-time performance in a credit qualifying program, as designated by the director, a prisoner shall be awarded worktime credit reductions from his term of confinement of six months. A lesser amount of credit based on this ratio shall be awarded for any lesser period of continuous performance. Less than maximum credit should be

awarded pursuant to regulations adopted by the director for prisoners not assigned to a full-time credit qualifying program. Every prisoner who refuses to accept a full-time credit qualifying assignment or who is denied the opportunity to earn worktime credits pursuant to subdivision (a) of Section 2932 shall be awarded no worktime credit reduction. Every prisoner who voluntarily accepts a half-time credit qualifying assignment in lieu of a full-time assignment shall be awarded worktime credit reductions from his term of confinement of three months for each six-month period of continued performance. Except as provided in subdivision (a) of Section 2932, every prisoner willing to participate in a full-time credit qualifying assignment but who is either not assigned to a full-time assignment or is assigned to a program for less than full time, shall receive no less credit than is provided under Section 2931. Under no circumstances shall any prisoner receive more than six months' credit reduction for any six-month period under this section.

(b) Worktime credit is a privilege, not a right. Worktime credit must be earned and may be forfeited pursuant to the provisions of Section 2932. Except as provided in subdivision (a) of Section 2932, every prisoner shall have a reasonable opportunity to participate in a full-time credit qualifying assignment in a manner consistent with institutional security and available resources.

(c) Under regulations adopted by the Department of Corrections, which shall require a period of not more than one year free of disciplinary infractions, worktime credit which has been previously forfeited may be restored by the director. The regulations shall provide for separate classifications of serious disciplinary infractions as they relate to restoration of credits; the time period required before forfeited credits or a portion thereof may be restored; and the percentage of forfeited credits that may be restored for such time periods. No credits may be restored if they were forfeited for a serious disciplinary infraction in which the victim died or was permanently disabled. Upon application of the prisoner and following completion of the required time period free of disciplinary offenses, forfeited credits eligible for restoration under the regulations shall be restored unless, at a hearing, it is found that the prisoner refused to accept or failed to perform in a credit qualifying assignment or extraordinary circumstances are present that require that credits not be restored. "Extraordinary circumstances" shall be defined in the regulations adopted by the director.

The prisoner may appeal the finding through the Department of Corrections review procedure, which shall include a review by an individual independent of the institution who has supervisorial authority over the institution.

(d) The provisions of subdivision (c) shall also apply in cases of credit forfeited under Section 2931 for offenses and serious disciplinary infractions occurring on or after January 1, 1983.

SEC. 5. Section 2934 is added to the Penal Code, to read:

2934. Under rules prescribed by the Director of Corrections, a

prisoner subject to the provisions of Section 2931 may waive the right to receive time credits as provided in Section 2931 and be subject to the provisions of Section 2933. In order to exercise a waiver under this section, a prisoner must apply in writing to the Department of Corrections. A prisoner exercising a waiver under this section shall retain only that portion of good behavior and participation credits, which have not been forfeited pursuant to Section 2932, attributable to the portion of the sentence served by the prisoner prior to the effective date of the waiver. A waiver under this section shall, if accepted by the department, become effective at a time to be determined by the Director of the Department of Corrections.

SEC. 6. Section 2935 is added to the Penal Code, to read:

2935. Under the guidelines prescribed by the rules and regulations of the director, the Director of Corrections may grant up to 12 additional months of reduction of the sentence to a prisoner who has performed a heroic act in a life-threatening situation, or who has provided exceptional assistance in maintaining the safety and security of a prison.

SEC. 7. Section 4019 of the Penal Code is amended to read:

4019. (a) The provisions of this section shall apply in all of the following cases:

(1) When a prisoner is confined in or committed to a county jail, industrial farm, or road camp, or any city jail, industrial farm, or road camp, including all days of custody from the date of arrest to the date on which the serving of the sentence commences, under a judgment of imprisonment, or a fine and imprisonment until the fine is paid in a criminal action or proceeding.

(2) When a prisoner is confined in or committed to the county jail, industrial farm, or road camp or any city jail, industrial farm, or road camp as a condition of probation after suspension of imposition of a sentence or suspension of execution of sentence, in a criminal action or proceeding.

(3) When a prisoner is confined in or committed to the county jail, industrial farm, or road camp or any city jail, industrial farm, or road camp for a definite period of time for contempt pursuant to a proceeding, other than a criminal action or proceeding.

(4) When a prisoner is confined in a county jail, industrial farm, or road camp, or a city jail, industrial farm, or road camp following arrest and prior to the imposition of sentence for a felony conviction.

(b) Subject to the provisions of subdivision (d), for each six-day period in which a prisoner is confined in or committed to a facility as specified in this section, one day shall be deducted from his or her period of confinement unless it appears by the record that the prisoner has refused to satisfactorily perform labor as assigned by the sheriff, chief of police, or superintendent of an industrial farm or road camp.

(c) For each six-day period in which a prisoner is confined in or committed to a facility as specified in this section, one day shall be deducted from his or her period of confinement unless it appears by

the record that the prisoner has not satisfactorily complied with the reasonable rules and regulations established by the sheriff, chief of police, or superintendent of an industrial farm or road camp.

(d) Nothing in this section shall be construed to require the sheriff, chief of police, or superintendent of an industrial farm or road camp to assign labor to a prisoner if it appears from the record that the prisoner has refused to satisfactorily perform labor as assigned or that the prisoner has not satisfactorily complied with the reasonable rules and regulations of the sheriff, chief of police, or superintendent of any industrial farm or road camp.

(e) No deduction may be made under this section unless the person is committed for a period of six days or longer.

(f) It is the intent of the Legislature that if all days are earned under this section, a term of six days will be deemed to have been served for every four days spent in actual custody.

SEC. 8. If any word, phrase, clause, or sentence in any section amended or added by this act, or any section or provision of this act, or application thereof to any person or circumstance, is held invalid, the invalidity shall not affect any other word, phrase, clause, or sentence in any section amended or added by this act, or any other section, provisions or application of this act, which can be given effect without the invalid word, phrase, clause, sentence, section, provision or application and to this end the provisions of this act are declared to be severable.

CHAPTER 1235

An act to amend Section 836.5 of the Penal Code, to add Sections 120451 and 120452 to the Public Utilities Code, and to amend Sections 256 and 257 of, and to add Section 259.1 to, the Welfare and Institutions Code, relating to public transportation.

[Approved by Governor September 21, 1982. Filed with Secretary of State September 22, 1982.]

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

SECTION 1. Section 836.5 of the Penal Code is amended to read:

836.5. (a) A public officer or employee, when authorized by ordinance, may arrest a person without a warrant whenever he has reasonable cause to believe that the person to be arrested has committed a misdemeanor in his presence which is a violation of a statute or ordinance which the officer or employee has the duty to enforce.

(b) There shall be no civil liability on the part of, and no cause of action shall arise against, any public officer or employee acting pursuant to subdivision (a) and within the scope of his authority for false arrest or false imprisonment arising out of any arrest which is

lawful or which the public officer or employee, at the time of the arrest, had reasonable cause to believe was lawful. No such officer or employee shall be deemed an aggressor or lose his right to self-defense by the use of reasonable force to effect the arrest, prevent escape, or overcome resistance.

(c) In any case in which a person is arrested pursuant to subdivision (a) and the person arrested does not demand to be taken before a magistrate, the public officer or employee making the arrest shall prepare a written notice to appear and release the person on his promise to appear, as prescribed by Chapter 5C (commencing with Section 853.6). The provisions of that chapter shall thereafter apply with reference to any proceeding based upon the issuance of a written notice to appear pursuant to this authority.

(d) The governing body of a local agency, by ordinance, may authorize its officers and employees who have the duty to enforce a statute or ordinance to arrest persons for violations of such statute or ordinance as provided in subdivision (a).

(e) For the purpose of this section, "ordinance" includes an order, rule, or regulation of any air pollution control district.

(f) For purposes of this section, a "public officer or employee" includes an officer or employee of a nonprofit transit corporation wholly owned by a local agency and formed to carry out the purposes of the local agency.

SEC. 2. Section 120451 is added to the Public Utilities Code, to read:

120451. Violation of any ordinance, rule, or regulation enacted by the board prohibiting unauthorized operation or manipulation of transit facilities owned or controlled by the board, or prohibiting unauthorized tampering or interference with transit facilities owned or controlled by the board, is an infraction punishable by a fine not exceeding fifty dollars ($50), except that such a violation by a person, after the first conviction under this section, is a misdemeanor punishable by a fine not exceeding five hundred dollars ($500) or by imprisonment not exceeding six months, or by both that fine and imprisonment.

SEC. 3. Section 120452 is added to the Public Utilities Code, to read:

120452. Violation of any ordinance, rule, or regulation enacted by the board prohibiting the unauthorized entering into, climbing upon, holding onto, or in any manner attaching oneself to vehicles operated upon exclusive public mass transit guideways owned or controlled by the board, is an infraction punishable by a fine not exceeding fifty dollars ($50), except that such a violation by a person, after the first conviction under this section, is a misdeameanor punishable by a fine not exceeding five hundred dollars ($500) or by imprisonment not exceeding six months, or by both that fine and imprisonment.

SEC. 4. Section 256 of the Welfare and Institutions Code is amended to read:

256. Subject to the orders of the juvenile court, a traffic hearing officer may hear and dispose of any and all cases wherein a minor under the age of 18 years as of the date of the alleged offense is charged with any violation of the Vehicle Code not declared to be a felony, or a violation of subdivision (m) of Section 602 of the Penal Code, or a violation of the Fish and Game Code not declared to be a felony, or a violation of any of the equipment and registration provisions of the Harbors and Navigation Code, or a violation of any provision of an ordinance of a city, county, or local agency relating to traffic offenses, or a violation of Section 126 or 27176 of the Streets and Highways Code, or a violation of any provision of an ordinance of a city, county, or local agency relating to evasion of fares on a public transportation system, as defined by Section 99211 of the Public Utilities Code, or a violation of Section 640a of the Penal Code.

SEC. 5. Section 257 of the Welfare and Institutions Code is amended to read:

257. With the consent of the minor, a hearing before a traffic hearing officer, or a hearing before a referee or a judge of the juvenile court, wherein the minor is charged with a traffic offense, may be conducted upon an exact legible copy of a written notice given pursuant to Article 2 (commencing with Section 40500) of Chapter 2 of Division 17 or Section 41103 of the Vehicle Code, or an exact legible copy of a written notice given pursuant to Chapter 5C (commencing with Section 853.6) of Title 3 of Part 2 of the Penal Code when the offense charged is a violation of the Fish and Game Code not declared to be a felony, a violation of subdivision (m) of Section 602 of the Penal Code, a violation of a provision of an ordinance of a city, county, or local agency relating to fare evasion on a public transportation system, as defined by Section 99211 of the Public Utilities Code, or a violation of Section 640a of the Penal Code, in lieu of a petition as provided in Article 16 (commencing with Section 650).

SEC. 6. Section 259.1 is added to the Welfare and Institutions Code, to read:

259.1. (a) Upon a hearing conducted in accordance with Section 257, upon admission by the minor of the commission of the offense charged under an ordinance of a city, county, or local agency relating to fare evasion on a public transportation system or of Section 640a of the Penal Code, or upon a finding that the minor did in fact commit the offense, the judge, referee, or traffic officer may do any one of the following:

(1) Reprimand the minor and take no further action.

(2) Direct the probation officer to file a petition as provided for in Article 16 (commencing with Section 650).

(3) Order that the minor pay to the treasurer of the county a sum, not to exceed fifty dollars ($50).

(b) The judge, referee, or traffic hearing officer shall retain jurisdiction of the case until all orders made under this section have been fully complied with.

SEC. 7. No appropriation is made and no reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution or Section 2231 or 2234 of the Revenue and Taxation Code because the only costs which may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, changes the definition of a crime or infraction, changes the penalty for a crime or infraction, or eliminates a crime or infraction.

CHAPTER 1236

An act to amend Sections 11349.3, 11349.5, 11349.6, and 11349.7 of the Government Code, relating to administrative regulations.

[Approved by Governor September 21, 1982. Filed with Secretary of State September 22, 1982.]

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

SECTION 1. Section 11349.3 of the Government Code is amended to read:

11349.3. (a) The Office of Administrative Law shall either approve a regulation submitted to it for review and transmit it to the Secretary of State for filing or disapprove it within 30 calendar days after the regulation has been submitted to the office for review. If the office fails to act within 30 days, the regulation shall be deemed to have been approved and the office shall transmit it to the Secretary of State for filing.

(b) If the Office of Administrative Law disapproves a regulation it shall return it to the adopting agency and specify in writing the reasons for disapproval. The office shall also publish its disapproval and the reasons therefor in the California Administrative Notice Register. No regulation shall be disapproved except for failure to comply with the standards set forth in Section 11349.1 or for failure to comply with the provisions of this chapter.

SEC. 2. Section 11349.5 of the Government Code is amended to read:

11349.5. The Governor, within 30 days after the agency and the office have complied with the requirements of this article, may overrule the decision of the office disapproving a proposed regulation, an order repealing an emergency regulation adopted pursuant to subdivision (b) of Section 11346.1, or a decision refusing to allow the readoption of an emergency regulation pursuant to Section 11346.1. In that event, the office shall immediately transmit the regulation to the Secretary of State for filing.

Upon overruling the decision of the office, the Governor shall immediately transmit to the Rules Committees of both houses of the Legislature a statement of his reasons for overruling the decision of

the office, along with copies of the adopting agency's general statement issued pursuant to Section 11346.7 and the office's statement regarding the disapproval of a regulation issued pursuant to subdivision (b) of Section 11349.3. The Governor's action and the reasons therefor shall be published in the California Administrative Notice Register.

SEC. 3. Section 11349.6 of the Government Code is amended to read:

11349.6. (a) In the event the adopting agency has complied with the provisions of Sections 11346.4 to 11346.8, inclusive, prior to the adoption of the regulation as an emergency, the office shall approve or disapprove the regulation in accordance with the provisions of this article.

(b) Emergency regulations adopted pursuant to subdivision (b) of Section 11346.1 shall be reviewed by the office within 10 calendar days after their filing date. The office shall order the repeal of an emergency regulation if it determines that the regulation is not necessary for the immediate preservation of the public peace, health and safety, or general welfare, or if it determines that the regulation fails to meet the standards set forth in Section 11349.1, or if it determines the agency failed to comply with the provisions of this chapter. The office shall publish its order and the reasons therefor in the California Administrative Notice Register. Within 30 days of the filing of a certificate of compliance, the office shall review the regulation and hearing record and approve or order the repeal of an emergency regulation if it determines that the regulation fails to meet the standards set forth in Section 11349.1, or if it determines that the agency failed to comply with the provisions of this chapter.

SEC. 4. Section 11349.7 of the Government Code is amended to read:

11349.7. Every agency subject to the provisions of this chapter shall undertake a review of all regulations administered by it as of June 30, 1980, in accordance with the following:

(a) On or before December 31, 1980, each agency shall transmit to the Office of Administrative Law a plan for the review of all regulations it is administering. The plan shall be prepared in the manner prescribed by the office and shall include the estimated annual cost of implementing the plan, time schedules for the orderly review of regulations, personnel required to evaluate all regulations, and such other information required by the office.

Time schedules shall further identify separate bodies of regulations within each title of the California Administrative Code which shall be evaluated by January 31 of each year. Review of each title shall be completed no later than the date specified in Section 11349.8.

(b) The Office of Administrative Law shall have final authority to determine the time allowed each agency for review of its regulations.

(c) All regulations shall be reviewed in accordance with the standards set forth in Section 11349.1.

(d) The Office of Administrative Law shall, on or before April 1,

1981, file with the Governor, the Senate Committee on Rules and the Speaker of the Assembly a master plan for regulation review. The master plan shall establish specific dates by which each agency shall have complied with this section, including interim review goals to be met each year in accordance with subdivision (a) of this section.

The office shall periodically publish in the California Administrative Notice Register a schedule for the review of existing bodies of regulations by each agency.

(e) The amount required to implement this section shall be included as part of the budget of each agency in the first Governor's Budget sent to the Legislature following the effective date of this section and shall be updated in each succeeding budget as appropriate.

(f) The Office of Administrative Law shall present to the Governor and the Legislature on January 31 of each year a report on the progress of each agency in complying with this section. The office may, in addition, make periodic recommendations directly to the Legislature for the repeal or amendment of statutory provisions that affect the operations of regulatory agencies.

(g) Within six months following the date when a regulation has been reviewed by a state agency and a Statement of Review Completion has been submitted to the office in accordance with time schedules adopted pursuant to this section the office, on its own motion or upon the petition of any interested person in keeping with the requirements of Section 11347, may initiate the review of any regulation, group of regulations, or series of regulations. The office may request the agency which chose not to repeal the regulation to forward to it any information on which it relied in reaching its decision. Any such request shall be answered within 14 calendar days of its receipt.

If a state agency reports in a Statement of Review Completion that it will amend or repeal a regulation, the amendment or repeal shall be completed and submitted to the office within six months of the submission of the Statement of Review Completion, unless that period is extended by the office upon a showing of good cause.

If a state agency, in conjunction with its review of existing regulations pursuant to this section, submits a proposed adoption, amendment or repeal of a regulation to the office, the time for approval or disapproval of that proposed adoption, amendment, or repeal shall also be six months from the date it is submitted to the office.

(h) In the event it determines that an existing regulation does not meet the standards set forth in Section 11349.1, or that an agency has failed to meet the provisions of this chapter, the Office of Administrative Law shall order the adopting agency to show cause why the regulation should not be repealed. In issuing such an order, the Office of Administrative Law shall specify in writing the reasons for its determination that the regulation does not meet the standards set forth in Section 11349.1, or the reasons for its determination that

the agency failed to meet the provisions of this chapter. The reasons for its determination shall be made available to the public. The office shall also publish its order and the reasons therefor in the California Administrative Notice Register. In the case of a regulation for which no, or inadequate, information relating to its necessity can be furnished by the adopting agency, the order shall specify the information which the Office of Administrative Law requires to make its determination.

(i) No later than 60 days following receipt of an order to show cause why a regulation should not be repealed, the agency shall respond in writing to the Office of Administrative Law. Upon written application by the agency, the office may extend the time for an additional 30 days.

(j) The Office of Administrative Law shall review and consider all information available to it, including information submitted by the public as well as the information, if any, transmitted to it in a timely response to the order to show cause why the regulation should not be repealed, and determine whether the regulation meets the standards set forth in Section 11349.1. During the period of review and consideration, the information available to the office relating to each regulation for which the office has issued an order to show cause shall be made available to the public. The office shall notify the adopting agency within two working days of the receipt of information submitted by the public regarding a regulation for which an order to show cause has been issued. If the Office of Administrative Law determines that a regulation fails to meet the standards, it shall prepare a statement specifying the reasons for its determination. The statement shall be delivered to the adopting agency, the Legislature, and the Governor and shall be made available to the public and the courts. Thirty days after delivery of the statement required by this subdivision the Office of Administrative Law shall prepare an order of repeal of the regulation and shall transmit it to the Secretary of State for filing.

(k) The Governor, within 30 days after the office has delivered the statement specifying the reasons for its determination to repeal, as required by subdivision (j), may overrule the decision of the office ordering the repeal of a regulation. The regulation shall then remain in full force and effect. Notice of the Governor's action and the reasons therefor shall be published in the California Administrative Notice Register.

The Governor shall transmit to the Rules Committees of both houses of the Legislature a statement of reasons for overruling the decision of the office, plus any other information that may be requested by either of the Rules Committees.

(*l*) In the event that the office orders the repeal of a regulation, it shall publish the order and the reasons therefor in the California Administrative Notice Register.

(m) Notwithstanding any other subdivision of this section, the Office of Administrative Law, at the request of any standing, select,

or joint committee of the Legislature, shall initiate a priority review of any regulation, group of regulations, or series of regulations which the committee believes does not meet the standards set forth in Section 11349.1. A review pursuant to this subdivision may be made at any time and shall be made without regard to the master plan review schedule in subdivision (d), or to the sequence for reviewing individual titles of the California Administrative Code as required by Section 11349.8.

The Office of Administrative Law shall notify interested persons and shall publish in the California Administrative Notice Register that a priority review has been requested, shall consider the written comments submitted by interested persons, and shall complete each priority review made pursuant to this subdivision within 60 calendar days of the receipt of the committee's written request. During the period of any priority review made pursuant to this subdivision, all information available to the office relating to the priority review shall be made available to the public. In the event that the Office of Administrative Law determines that a regulation does not meet the standards set forth in Section 11349.1, it shall order the adopting agency to show cause why the regulation should not be repealed and shall proceed to seek repeal of the regulation as provided by this section.

(n) The power of a court to invalidate a regulation shall not be altered or barred by the fact that the office has not ordered the repeal of a regulation pursuant to this section. The procedure adopted by this section allowing the office to order the repeal of a regulation shall not be considered an exhaustible administrative remedy.

CHAPTER 1237

An act to add Title 1 (commencing with Section 1725) to Part 4 of Division 3 of the Civil Code, relating to homeowners' associations.

[Approved by Governor September 21, 1982. Filed with Secretary of State September 22, 1982.]

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

SECTION 1. Title 1 (commencing with Section 1725) is added to Part 4 of Division 3 of the Civil Code, to read:

TITLE 1. COMMON-INTEREST SUBDIVISION ASSOCIATIONS

CHAPTER 1. LATE CHARGES

1725. (a) Late charges levied by a common-interest subdivision

association against a member of the association for the delinquent payment of regular and special assessments to defray expenses attributable to the ownership, operation, and furnishing of common interests in improved real property and enforcement assessments or penalties imposed upon a member for failure to comply with the governing instruments of the association, shall not exceed the following rates computed on the outstanding balance, which shall include any late charges previously assessed and unpaid, from month to month:

(1) On so much of the outstanding balance as does not exceed one thousand dollars ($1,000), 1.5 percent.

(2) If the outstanding balance is more than one thousand dollars ($1,000), 1 percent on the excess over one thousand dollars ($1,000) of the outstanding balance.

(3) If the late charge so computed is less than ten dollars ($10) for any month, ten dollars ($10).

No charge may be imposed more than once for the delinquency of the same payment, provided, however, that the imposition of a late charge on any delinquent payment shall not eliminate or supersede charges imposed on prior delinquent payments. The payment of an assessment is not delinquent for the purpose of this section until at least 30 days following the due date of the assessment. When an assessment is paid more than 30 days after the due date of the assessment, late charges shall accrue from the first day following the due date of the assessment.

(b) The late charge permitted by this section shall constitute full compensation for any additional bookkeeping, billing, or other administrative costs that may be incurred by the common-interest subdivision association as a result of the late payment of an assessment.

(c) Upon motion, a court may award reasonable attorney's fees and costs to the prevailing party in any action instituted by a common-interest subdivision association to enforce the payment by a member of any delinquent regular or special assessment, any enforcement assessment or penalty, and any attendant late fees.

(d) As used in this section, "common-interest subdivision association" means any association, organization, corporation, or group of individuals which has been vested with the management responsibilities of ownership, operation, and furnishing of common interests in subdivisions defined and described in Sections 11000 and 11004.5 of the Business and Professions Code, for and on behalf of other owners.

(e) This section shall not apply to a homeowners' association whose members own individual parcels of 75 acres or more.

(f) This section creates and authorizes an exempt class of persons in common-interest subdivision associations pursuant to the authority of Section 1 of Article XV of the California Constitution relating to usury.

CHAPTER 1238

An act to amend Section 547 of the Code of Civil Procedure, and to add Section 26841 to the Government Code, relating to domestic violence.

[Approved by Governor September 21, 1982. Filed with Secretary of State September 22, 1982.]

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

SECTION 1. Section 547 of the Code of Civil Procedure is amended to read:

547. The court may issue upon notice and a hearing, any of the following orders:

(a) Any of the orders set forth in subdivision (a) of Section 4359 of the Civil Code, or in the case of a nonmarital relationship between the plaintiff and the defendant, any of the orders set forth in paragraphs (2), (3), (5) and (6) of subdivision (a) of Section 4359 of the Civil Code and where there is a minor child of the plaintiff and the defendant an order determining the temporary custody of the child.

(b) Where there exists a presumption that the defendant is the natural father of any minor child, pursuant to Section 7004 of the Civil Code, and the child is in the custody of the plaintiff, the court may order a party to pay any amount necessary for the support and maintenance of the child if such an order would otherwise be authorized in an action brought pursuant to Part 7 of Division 4 (commencing with Section 7000) of the Civil Code; however, any order pursuant to this subdivision shall be without prejudice in any such action.

(c) An order that restitution be paid to the family or household member for loss of earnings and out-of-pocket expenses, including, but not limited to, expenses for medical care and temporary housing, incurred as a direct result of the abuse or any actual physical injuries sustained therefrom; an order that restitution be paid by plaintiff for out-of-pocket expenses incurred by a party as a result of any order issued ex parte which is found by the court to have been issued upon facts shown at a noticed hearing to be insufficient to support the order; or an order requiring that the defendant shall pay any public or private agency for the reasonable cost of providing services to a family or household member required as a direct result of the abuse inflicted by the defendant or any actual injuries sustained therefrom.

(d) An order requiring any party to participate in counseling where the parties so stipulate or where it is shown that the parties intend to continue to reside in the same household or have continued to reside in the same household after previous instances of domestic violence.

(e) An order for the payment of attorneys' fees and costs of the

prevailing party.

SEC. 2. Section 26841 is added to the Government Code, to read:

26841. The superior court in any county may increase the fee for the filing of any paper in response to an order or an application for an order described in paragraph (2) or (3) of subdivision (a) of Section 4359 of the Civil Code, issued pursuant to that section, or issued to any person in accordance with Chapter 4 (commencing with Section 540) of Part 2 of Title 7 of the Code of Civil Procedure, by five dollars ($5), upon the adoption of a resolution to that effect by the board of supervisors. The five dollars ($5) shall be disposed of pursuant to the provisions of Chapter 5 (commencing with Section 18290) of Part 6 of Division 9 of the Welfare and Institutions Code.

CHAPTER 1239

An act to add Section 1002 to the Civil Code, and to add Section 1245.326 to the Code of Civil Procedure, relating to acquisition of property.

[Approved by Governor September 21, 1982. Filed with Secretary of State September 22, 1982.]

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

SECTION 1. Section 1002 is added to the Civil Code, to read:

1002. (a) Subject to the provisions of Article 3 (commencing with Section 1245.310) of Chapter 4 of Title 7 of Part 3 of the Code of Civil Procedure, the power of eminent domain may be exercised by an owner of real property to acquire a temporary right to enter upon adjacent or nearby property to repair or reconstruct land or improvements, if all of the following conditions are established or met:

(1) There is a necessity to do the repair or reconstruction work and there is a great necessity to enter upon the adjacent or nearby property to do the repair or reconstruction work because (A) the repair or reconstruction work cannot be done safely without entry, or the cost of performing the repair or reconstruction work without entry would be substantially higher; and (B) the property without repair or reconstruction adversely affects the surrounding community.

(2) The right to enter upon the adjacent or nearby land will be exercised in a manner which provides the least damage to the property and the least inconvenience or annoyance to the occupants or owners thereof consistent with satisfactory completion of the repair or reconstruction work.

(3) The hardship to the person seeking to exercise the power of eminent domain, if that power is not exercised, clearly outweighs any hardship to the owner or occupant of the adjacent or nearby

property.

(b) No entry shall be made upon the property to be condemned until an eminent domain proceeding has been commenced and then only after a court order permitting entry is issued or after judgment is entered for the plaintiff.

A deposit of security, in the form of cash or a bond, shall be made to the court in an amount the court determines is necessary to permit the owner of the adjacent or nearby property to restore the property to the condition it was in prior to the entry, if the person exercising the power of eminent domain does not do so within a reasonable period of time as determined by the court.

(c) The court may order the person acquiring the temporary right to enter the land of another, pursuant to this section, to pay the owner of the land subject to that temporary right a reasonable amount of rent for the use of the land.

(d) "Adjacent" or "nearby" for purposes of this section shall mean land contiguous with the property needing repair or reconstruction, or land through which the party granted temporary access must pass to reach adjacent land.

(e) The provisions of this section shall not apply to the temporary entry upon lands used primarily for the commercial production of agricultural commodities and forest products.

SEC. 2. Section 1245.326 is added to the Code of Civil Procedure, to read:

1245.326. Where an owner of real property seeks to acquire by eminent domain a temporary right of entry pursuant to Section 1002 of the Civil Code:

(a) The person seeking to exercise the power of eminent domain shall be deemed to be a "quasi-public entity" for the purposes of this article.

(b) In lieu of the requirements of subdivision (c) of Section 1245.340, the resolution required by this article shall contain a declaration that the legislative body has found and determined that each of the conditions required by Section 1002 of the Civil Code appears to exist.

CHAPTER 1240

An act to add Section 2414 to the Streets and Highways Code, relating to bridges, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 21, 1982. Filed with Secretary of State September 22, 1982.]

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

SECTION 1. Section 2414 is added to the Streets and Highways Code, to read:

2414. (a) The Legislature finds and declares that it is in the state's vital interest to participate fully in the federal highway bridge replacement program.

(b) The department shall, with its available resources, expedite bridge replacement projects in order that federal funds be used to full advantage as soon as they become available.

(c) The commission, in allocating funds, and the department, in expending funds, for bridge replacement projects, shall follow federal design standards so that the projects will be eligible for federal funds, except that this subdivision shall not apply to a project if the commission finds by resolution, after a public hearing, that application of the federal design standards would adversely affect public health or safety or would significantly increase the cost of the project to the state.

(d) Nothing in this section shall affect the authority of the department to negotiate with the appropriate federal agency for the purpose of gaining approval of a project.

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 protect the health and safety of the citizens of this state by expediting the bridge replacement program and to maintain eligibility for federal funds, it is necessary that this act take effect immediately.

CHAPTER 1241

An act to amend Section 1851, 11732.1, and 11750.1 of the Insurance Code, relating to workers' compensation.

[Approved by Governor September 21, 1982. Filed with Secretary of State September 22, 1982]

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

SECTION 1. Section 1851 of the Insurance Code is amended to read:

1851. The provisions of this chapter shall apply to all insurance on risks or on operations in this state, except:

(a) Reinsurance, other than joint reinsurance to the extent stated in Article 5.

(b) Life insurance.

(c) Insurance of vessels or craft, their cargoes, marine builders'

risks, marine protection and indemnity, or other risks commonly insured under marine, as distinguished from inland marine, insurance policies. Inland marine insurance shall be deemed to include insurance now or hereafter defined by statute, or by interpretation thereof, or if not so defined or interpreted, by ruling of the commissioner or as established by general custom of the business, as inland marine insurance.

(d) Title insurance.

(e) Disability insurance.

(f) Workers' compensation insurance and insurance of any liability of employers for injuries to, or death of, employees arising out of, and in the course of, employment when this insurance is incidental to, and written in connection with, the workers' compensation insurance issued to the same employer and covering the same employer interests.

(g) Mortgage insurance.

(h) Insurance transacted by county mutual fire insurers or county mutual fire reinsurers.

SEC. 2. Section 11732.1 of the Insurance Code is amended to read:

11732.1. The commissioner may, pursuant to all grants of authority contained in this article with respect to workers' compensation insurance and subject to all limitations therein, approve or issue as adequate for all admitted workers' compensation insurers a classification of risks and premium rates relating to insurance of any liability of employers for injuries to, or death of, employees arising out of, and in the course of, employment when this insurance is incidental to, and written in connection with, the workers' compensation insurance issued to the same employer and covering the same employer interests. Such classification and rates may be included in those for workers' compensation insurance or separate therefrom, and if issued or approved by the commissioner shall be binding upon insurers to the same extent as are the classifications and rates issued or approved for workers' compensation insurance.

SEC. 3. Section 11750.1 of the Insurance Code is amended to read:

11750.1. As used in this article, unless a different meaning is manifest, the term:

(a) "Insurer" means every insurer authorized to transact workers' compensation insurance and employer's liability insurance incidental thereto and written in connection therewith in this state, including the State Compensation Insurance Fund;

(b) "Rating organization" means any organization which has as its primary object or purpose the collecting of rating information, the making of rates, rating plans and rating systems for workers' compensation insurance and employer's liability insurance incidental thereto and written in connection therewith and presenting them to the commissioner for issuance or approval;

(c) "Insurance" means workers' compensation insurance and employer's liability insurance incidental thereto and written in connection therewith;

(d) "Willful" or "willfully" in relation to an act or omission which constitutes a violation of this article means with actual knowledge or belief that such act or omission constitutes such violation and with specific intent to commit such violation.

(e) "Advisory organization" means every person, group or organization, other than an insurer, whether located within or without this state, which prepares policy forms or underwriting rules incidental to or in connection with workers' compensation insurance and employer's liability insurance incidental thereto and written in connection therewith or which collects and furnishes to admitted insurers or rating organizations rating experience, loss or expense statistics or other statistical information and data relating to workers' compensation insurance and employer's liability insurance incidental thereto and written in connection therewith and acts in an advisory capacity to such insurers or rating organizations as distinguished from a ratemaking capacity. No duly authorized attorney at law acting in the usual course of his profession shall be deemed to be an advisory organization.

(f) "Employer's liability insurance incidental thereto and written in connection therewith" means insurance of any liability of employers for injuries to, or death of, employees arising out of, and in the course of, employment when this insurance is incidental to, and written in connection with, the workers' compensation insurance issued to the same employer and covering the same employer interests.

SEC. 4. This act does not constitute a change in, but is declaratory of, the existing law.

CHAPTER 1242

An act to amend Sections 4642, 4644, and 4677 of, and to repeal Section 4677 of, the Welfare and Institutions Code, relating to developmental disabilities.

[Approved by Governor September 21, 1982. Filed with Secretary of State September 22, 1982.]

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

SECTION 1. Section 4642 of the Welfare and Institutions Code is amended to read:

4642. Any person believed to have a developmental disability, and any person believed to have a high risk of parenting a developmentally disabled infant shall be eligible for initial intake and assessment services in the regional centers. In addition, any infant

having a high risk of becoming developmentally disabled may be eligible for initial intake and assessment services in the regional centers. For purposes of this section, "high-risk infant" means a child less than 36 months of age whose genetic, medical, or environmental history is predictive of a substantially greater risk for developmental disability than that for the general population. The department, in consultation with the State Department of Health Services, shall develop specific risk and service criteria for the high-risk infant program on or before July 1, 1983. These criteria may be modified in subsequent years based on analysis of actual clinical experience.

Initial intake shall be performed within 15 working days following request for assistance. Initial intake shall include, but need not be limited to, information and advice about the nature and availability of services provided by the regional center and by other agencies in the community, including guardianship, conservatorship, income maintenance, mental health, housing, education, work activity and vocational training, medical, dental, recreational, and other services or programs that may be useful to persons with developmental disabilities or their families. Intake shall also include a decision to provide assessment.

SEC. 2. Section 4644 of the Welfare and Institutions Code is amended to read:

4644. (a) In addition to any person eligible for initial intake or assessment services, regional centers may cause to be provided preventive services to any potential parent requesting these services and who is determined to be at high risk of parenting a developmentally disabled infant, or, at the request of the parent or guardian, to any infant at high risk of becoming developmentally disabled. It is the intent of the Legislature that preventive services shall be given equal priority with all other basic regional center services. These services shall, inasmuch as feasible, be provided by appropriate generic agencies, including, but not limited to, county departments of health, perinatal centers, and genetic centers. The department shall implement operating procedures to ensure that prevention activities are funded from regional center purchase of service funds only when funding for these services is unavailable from local generic agencies. In no case, shall regional center funds be used to supplant funds budgeted by any agency which has a responsibility to provide prevention services to the general public.

(b) For purposes of this section, "generic agency" means any agency which has a legal responsibility to serve all members of the general public and which is receiving public funds for providing such services.

SEC. 3. Section 4677 of the Welfare and Institutions Code, as amended by Chapter 563 of the Statutes of 1981, is repealed.

SEC. 4. Section 4677 of the Welfare and Institutions Code, as added by Chapter 327 of the Statutes of 1982, is amended to read:

4677. All parental fees collected by or for regional centers shall be remitted to the State Treasury to be deposited in the

Developmental Disabilities Program Development Fund, which is hereby created and hereinafter called the Program Development Fund. The purpose of the Program Development Fund shall be to provide resources needed to initiate new programs, consistent with approved priorities for program development in the state plan. In no event shall an allocation from the Program Development Fund be granted for more than 24 months.

On or before October 1, 1982, the State Council on Developmental Disabilities shall request from all regional centers information on priority services needed but currently unavailable. Based on the information provided by the regional centers and other local agencies, the State Council on Developmental Disabilities shall annually develop an assessment of the level of need for new community programs. This needs assessment shall be included in the state plan. The State Council on Developmental Disabilities, in consultation with the Department of Developmental Services, shall make a recommendation to the Department of Finance as to the level of funding for program development to be included in the Governor's Budget, based upon this needs assessment.

Parental fee schedules shall be evaluated pursuant to the provisions of Section 4785 and adjusted annually by the department, with the approval of the state council. Fees for out-of-home care shall bear an equitable relationship to the cost of such care and the ability of the family to pay.

In addition to parental contributions and General Fund appropriations, the Program Development Fund may be augmented by federal funds available to the state for program development purposes, when such funds are allotted to the Program Development Fund in the state plan. The Program Development Fund is hereby appropriated to the department, and subject to any allocations which may be made in the annual Budget Act. In no event shall any such funds revert to the General Fund. Prior to July 1, 1983, the Department of Finance shall review the utilization and effectiveness of the Program Development Fund and shall report its findings to the Legislature.

The Legislative Analyst shall review and comment on the utilization and effectiveness of the Program Development Fund in connection with the annual budget hearings.

The department may allocate funds from the Program Development Fund for any legal purpose, provided, that requests for proposals and such allocations are approved by the state council, in consultation with the department, and are consistent with the priorities for program development in the state plan. Allocations from the Program Development Fund shall take into consideration the following factors:

(1) The future fiscal impact of such allocations on other state supported programs for developmentally disabled persons.

(2) The information on priority services needed but currently unavailable submitted by the Regional Centers.

Consistent with the level of need as determined in the state plan, excess parental fees may be used for purposes other than new program development only when specifically appropriated to the Department of Developmental Services for such other purposes.

Under no circumstances shall the deposit of federal moneys into the Program Development Fund be construed as requiring the State Department of Developmental Services to comply with a definition of "developmental disabilities" and "services for persons with developmental disabilities" other than as specified in subdivisions (a) and (b) of Section 4512 for the purposes of determining eligibility for developmental services or for allocating parental fees and state general funds deposited in the Program Development Fund.

CHAPTER 1243

An act to amend Section 12002 of the Penal Code, relating to deadly weapons.

[Approved by Governor September 21, 1982. Filed with Secretary of State September 22, 1982.]

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

SECTION 1. Section 12002 of the Penal Code is amended to read:

12002. (a) Nothing in this chapter prohibits police officers, special police officers, peace officers, or law enforcement officers from carrying any wooden club, baton, or any equipment authorized for the enforcement of law or ordinance in any city or county.

(b) Nothing in this chapter prohibits a uniformed security guard, regularly employed and compensated as such by a person engaged in any lawful business, while actually employed and engaged in protecting and preserving property or life within the scope of his or her employment, from carrying any wooden club or baton if the uniformed security guard has satisfactorily completed a course of instruction certified by the Department of Consumer Affairs in the carrying and use of the club or baton. The training institution certified by the Department of Consumer Affairs to present this course, whether public or private, is authorized to charge a fee covering the cost of the training.

(c) The Department of Consumer Affairs, in cooperation with the Commission on Peace Officer Standards and Training, shall develop standards for a course in the carrying and use of the club or baton.

(d) Any uniformed security guard who successfully completes a course of instruction under this section is entitled to receive a permit to carry and use a club or baton within the scope of his or her employment, issued by the Department of Consumer Affairs. The department may authorize certified training institutions to issue permits to carry and use a club or baton. A fee in the amount

provided by law shall be charged by the Department of Consumer Affairs to offset the costs incurred by the department in course certification, quality control activities associated with the course and issuance of the permit.

(e) Any person who has received a permit or certificate which indicates satisfactory completion of a club or baton training course approved by the Commission on Peace Officer Standards and Training prior to January 1, 1983, shall not be required to obtain a baton or club permit or complete a course certified by the Department of Consumer Affairs.

CHAPTER 1244

An act to amend Sections 25174, 25208, 25208.5, 25342, 25344, 25345, and 25347 of, and to add Sections 25342.1 and 25347.2 to, the Health and Safety Code, and to add Section 43002.3 to the Revenue and Taxation Code, relating to hazardous waste, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 21, 1982. Filed with Secretary of State September 22, 1982.]

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

SECTION 1. Section 25174 of the Health and Safety Code is amended to read:

25174. Each operator of any site at which hazardous wastes or extremely hazardous wastes are disposed, including every person who disposes of those wastes on site, shall pay a fee to the State Board of Equalization for disposal of those wastes. The director shall establish a schedule of the fees to be paid to the State Board of Equalization by the operator for disposal of hazardous or extremely hazardous waste, which shall provide revenues which shall not exceed the amount necessary, but shall be sufficient, to cover all costs incurred in the administration of this chapter. The fees shall be deposited by the State Board of Equalization in the Hazardous Waste Control Account in the General Fund. The funds deposited in that account are continuously appropriated for expenditure without regard to fiscal years for the following purposes:

(a) To the State Board of Equalization to pay refunds of fees collected pursuant to Section 43051 of the Revenue and Taxation Code.

(b) To the department to carry out the provisions of this chapter.

SEC. 2. Section 25208 of the Health and Safty Code is amended to read:

25208. Prior to April 1, 1983, the Hazardous Waste Management Council shall prepare a Hazardous Waste Management Plan which

shall include all of the following elements:

(a) The development of a statewide hazardous waste facilities siting and permit process which will provide for, but not be limited to, the following:

(1) Public participation in the site selection and permit process.

(2) Local government and regional council government and regional government participation in the site selection and permit process.

(3) Maximum acility applicant and local community discussion to determine local permit conditions and applicant actions to offset risks imposed by the facility.

(4) Opportunity for negotiation and arbitration over siting and facility disputes.

(5) Incorporation of statewide and regional hazardous waste facility needs in the siting and local permit process and alternatives to meet those needs.

(b) Recommendations regarding legislative, administrative, and economic mechanisms necessary to assist in the siting of new hazardous waste facilities including those actions necessary to implement the process developed pursuant to subdivision (b), including consideration of the need for the council to be reestablished with additional powers.

(c) Recommendations to the Legislature regarding legislative, administrative, and economic mechanisms necessary to ensure that all persons, particularly those in communities where hazardous wastes are treated and disposed of, shall be fully compensated for injury or damage caused by hazardous materials.

SEC. 3. Section 25208.5 of the Health and Safety Code is amended to read:

25208.5. (a) Prior to the completion of a final plan, the council shall prepare a preliminary draft plan. The preliminary draft plan shall be distributed to local units of government and regional councils of government throughout the state. The council shall establish a system whereby notice of the availability of the plan is disseminated throughout the state and shall also issue a statewide news release announcing the availability of the draft and how it may be reviewed or obtained.

(b) The council shall conduct not less than three public hearings throughout the state at diverse geographical locations. The first public hearing shall not be held until 60 days have elapsed from the date of the notice announcing the availability of the draft. The notice of the hearing shall be widely publicized within the area. Within 30 days after the hearings are completed, the council shall prepare a written summary of the comments received, provide comments on the major concerns raised at the hearings, and make appropriate amendments to the preliminary draft. The council shall submit a completed final plan upon completion of this review process, but prior to October 1, 1983, with the comments and amendments, to the Governor and the Legislature.

SEC. 4. Section 25342 of the Health and Safety Code is amended to read:

25342. On or before March 1, 1982, and March 1 of each year thereafter, every person who submitted for disposal offsite, or who disposed of onsite, hazardous waste or extremely hazardous waste in the state during the preceding calendar year shall report to the board the following information:

(a) The total amount of hazardous or extremely hazardous waste, as defined by Sections 25117 and 25115, respectively, the federal regulation of which has been suspended under the Solid Waste Disposal Act (42 U.S.C. 6901) by act of Congress, which that person has disposed of, or submitted for disposal, in the state, plus the total amount of hazardous or extremely hazardous waste and material, which that person has transferred to a surface impoundment in the state for purposes of reducing the water content of the waste and material by evaporation, exclusive of that waste specified in subdivision (d).

(b) The total amount of hazardous waste disposed of, or submitted for disposal, in the state by that person, exclusive of that waste specified in subdivisions (a), (c), and (d).

(c) The total amount of extremely hazardous waste disposed of, or submitted for disposal, in the state by that person, exclusive of that waste specified in subdivisions (a), (b), and (d).

(d) The total amount of hazardous or extremely hazardous waste that person has disposed of, or submitted for disposal, in the state from the extraction, beneficiation, and processing of ores and minerals, including phosphate rock and overburden from mining of uranium ore.

SEC. 5. Section 25342.1 is added to the Health and Safety Code, to read:

24342.1. The total amount of hazardous waste reported pursuant to Section 25342 shall be the total weight, measured in tons, of all components of the waste in the form in which the waste existed at the time of disposal, submission for disposal, or transferral to a surface impoundment, as specified in subdivision (a) of Section 25342.

SEC. 6. Section 25344 of the Health and Safety Code is amended to read:

25344. On April 15th of each year, the board shall certify to the Governor:

(a) The total amount of waste and material specified by all persons pursuant to subdivision (a) of Section 25342.

(b) The total amount of waste specified by all persons pursuant to subdivision (b) of Section 25342.

(c) The total amount of waste specified by all persons pursuant to subdivision (c) of Section 25342.

(d) The total amount of waste specified by all persons pursuant to subdivision (d) of Section 25342.

(e) The total amount of taxes to be collected pursuant to this chapter.

(f) The total amount of taxes in the state account subject to the rebate specified in Section 25347.2.

SEC. 7. Section 25345 of the Health and Safety Code is amended to read:

25345. (a) There is hereby imposed a tax, payable annually, and to be collected by the board, upon each ton or fraction thereof, of waste and material specified in Section 25342, according to the formula specified herein. The board shall set the base tax rate upon the waste and material specified in Section 25342 in accordance with the following formula:

$$\text{Base tax rate} = \frac{(\$10{,}000{,}000\text{-}M)}{(0.15W_1+W_2+2W_3+0.01W_4)}$$

where:

(1) "M" is the existing unobligated balance in the fund (M shall equal zero (0) for June 30, 1982). As used in this article, "unobligated balance" means all unencumbered funds in the account as of June 30, as estimated on March 1 of each year, less:

(A) Any funds in the reserve account for emergencies established by Section 25354.

(B) Any remaining principal of the loan authorized by Section 25332.

(C) Any interest due on any remaining principal of the loan authorized by Section 25332.

(D) Any funds paid as taxes for the following fiscal year.

(E) Any funds received from the federal government pursuant to the federal act.

The unobligated balance shall not be less than zero (0).

(F) Any funds in the state account subject to the rebate specified in Section 25347.2.

(2) W_1 is the total amount in tons of waste and material specified in subdivision (a) of Section 25344.

(3) W_2 is the total amount in tons of waste specified in subdivision (b) of Section 25344.

(4) W_3 is the total amount in tons of waste specified in subdivision (c) of Section 25344.

(5) W_4 is the total amount in tons of waste specified in subdivision (d) of Section 25344.

(b) On or before May 1 of each year, using the formula specified in subdivision (a), the board shall determine the base tax rate for the current year.

(c) The tax imposed upon each person subject to Section 25342 shall be assessed according to the following formula:

$$\text{Tax} = (\text{base tax rate}) \times (0.15\ P_1+P_2+2P_3+0.01P_4)$$

where:

(1) "Base tax rate" equals the figure determined pursuant to subdivision (a).

(2) P_1 is the amount in tons of waste and material specified by the person pursuant to subdivision (a) of Section 25342.

(3) P_2 is the amount in tons of waste specified by the person pursuant to subdivision (b) of Section 25342.

(4) P_3 is the total amount in tons of waste specified by the person pursuant to subdivision (c) of Section 25342.

(5) P_4 is the total amount in tons of waste specified by the person pursuant to subdivision (d) of Section 25342.

(d) On or before May 1 of each year, the board shall send to each person subject to Section 25342 a notice of assessment.

(e) On or before July 1 of each year, each person subject to Section 25342 shall pay to the board the amount of the assessment as stated in the notice. The tax under this chapter shall not be imposed again on hazardous waste or extremely hazardous waste if the waste, or any portion thereof, is removed subsequently to another place for disposal and if the person has paid the amount of assessment for the waste in accordance with this section before the removal thereof.

(f) Notwithstanding any other provision of this section, hazardous wastes disposed of into an injection well during the 1981 calendar year shall be subject to a tax rate that does not exceed 26.4 percent of the base tax rate, as determined in subdivision (a), per ton or fraction thereof. For purposes of this section, the following definitions apply:

(1) "Injection well" means a bored, drilled or driven shaft, whose depth is greater than the largest surface dimension, and which is used to inject hazardous waste into an underground formation. Injection well does not mean any well located in Class I or a Class II-I disposal site, as defined in Sections 2510 and 2511 of Title 23 of the California Administrative Code, on the effective date of this section.

(2) "Formation" means a body of rock characterized by a degree of lithologic homogenity which is prevailingly, but not necessarily, tabular and is mapable on the earth's surface or traceable in the subsurface.

SEC. 8. Section 25347 of the Health and Safety Code is amended to read:

25347. (a) In no event shall the total taxes collected in any one fiscal year pursuant to this chapter exceed ten million dollars ($10,000,000), less the unobligated balance in the state account as defined in paragraph (1) of subdivision (a) of Section 25345.

(b) This section shall not be construed to prevent the board from collecting any taxes which are not paid when due, or from issuing any determination or redetermination pursuant to Sections 43201 and 43304 of the Revenue and Taxation Code. Any such determination of taxes shall be at the tax rates established pursuant to Section 25345 of this code for the period for which the determination is issued.

SEC. 9. Section 25347.2 is added to the Health and Safety Code, to read:

25347.2. (a) "State account rebate" means the total taxes, interest and penalties for any preceding calendar year which have been collected during the previous 12-month period, pursuant to Section 25345 and Part 22 (commencing with Section 43001) of Division 2 of the Revenue and Taxation Code, less the total of:

(1) Ten million dollars ($10,000,000), or the amount appropriated for the current fiscal year by the Legislature for the purposes of this chapter, whichever is the lesser amount.

(2) The total amount of refunds of tax, interest and penalties paid during the previous 12-month period.

(3) The total amount of claims for refund filed and pending, to the extent that these claims relate to tax, interest and penalties collected during the previous 12-month period.

(b) "Previous 12-month period" means the period from March 1 of the preceding year to March 1 of the current year.

(c) On or before June 1 of each year the State Board of Equalization shall compute the amount of the state account rebate for the previous 12-month period. The state account rebate shall be credited or paid to each person who paid taxes for the preceding calendar year pursuant to Section 25345 and Part 22 (commencing with Section 43001) of Division 2 of the Revenue and Taxation Code on a pro rata basis in proportion to the amount of taxes, interest and penalties paid by that person for the preceding year.

(d) The amount of any credit or payment for the state account rebate shall be accompanied by a brief explanation or statement of account and may be reflected in the notice of assessment for the current year.

(e) There is hereby continuously appropriated from the Hazardous Substance Account in the General Fund, to the State Board of Equalization, sufficient funds to pay the state account rebates authorized by this section.

SEC. 10. Section 43002.3 is added to the Revenue and Taxtion Code, to read:

43002.3. (a) For purposes of the collection of the fee imposed pursuant to Section 25174 of the Health and Safety Code, a determination by the State Department of Health Services that a waste is nonhazardous shall be effective only for wastes disposed of, or submitted for disposal, commencing with the month during which the State Department of Health Services receives a completed application for that determination.

(b) For purposes of the collection of the tax imposed pursuant to Section 25345 of the Health and Safety Code, a determination by the State Department of Health Services that a waste is nonhazardous shall commence with, and be effective for, wastes disposed of, or submitted for disposal, during the calendar year, or portion thereof, as determined by the State Department of Health Services, in which the State Department of Health Services receives a completed application for that determination on or before November 30 of that calendar year. Applications filed in December shall be deemed

received on the following January 1st.

SEC. 11. The Legislature hereby declares its intention that the tax rates set forth in this chapter shall be revised by statute during the 1983 legislative session to ensure an equitable distribution of the tax burden by taking into account the relative environmental risk posed by all forms of hazardous waste disposal, including disposal into injection wells, and that these revised tax rates shall be applicable to disposal beginning January 1, 1982.

SEC. 12. Notwithstanding Section 6 of Article XIII B of the California Constitution and Section 2231 or 2234 of the Revenue and Taxation Code, no appropriation is made by this act for the purpose of making reimbursement pursuant to these sections. It is recognized, however, that a local agency or school district may pursue any remedies to obtain reimbursement available to it under Chapter 3 (commencing with Section 2201) of Part 4 of Division 1 of that code.

SEC. 13. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order that urgently needed programs to protect the public health and safety and the environment from hazardous substances may be commenced as soon as possible, it is necessary that this act take effect immediately.

CHAPTER 1245

An act to amend Sections 18950.1, 18951, 19054, and 19057.1 of, and to add Sections 18801.1, 19054.1, and 19057.2 to, the Government Code, relating to state employment.

[Approved by Governor September 21, 1982. Filed with Secretary of State September 22, 1982.]

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

SECTION 1. Section 18801.1 is added to the Government Code, to read:

18801.1. The Department of Personnel Administration shall designate managerial positions, as defined in subdivision (e) of Section 3513, and shall report those designations to the board annually. Any disputes as to the managerial classification or position designations may be appealed to the State Personnel Board.

SEC. 2. Section 18950.1 of the Government Code is amended to read:

18950.1. Notwithstanding any other provision of the law, full-time employees of the state who are exempt from state civil service pursuant to the provisions of Section 4 of Article VII of the California

Constitution, shall be eligible to receive three career credits, except when competing for managerial positions, as defined in Section 3513, under conditions prescribed by the State Personnel Board.

Such credits shall be granted only for open nonpromotional examinations. In order to be eligible to receive credits, such employees must meet all qualification requirements specified by the board and must have 12 consecutive months of service in an exempt position.

SEC. 3. Section 18951 of the Government Code is amended to read:

18951. The board and each state agency and employee shall encourage economy and efficiency in and devotion to state service by encouraging promotional advancement of employees showing willingness and ability to perform efficiently services assigned them, and every person in state service shall be permitted to advance according to merit and ability.

In an examination held on an open, nonpromotional basis under the provisions of Section 18950, a competitor, who has permanent civil service status, or who has a mandatory right of reinstatement to a position with permanent civil service status, and who attains the passing mark established for an examination which is not for a managerial position as defined in Section 3513, shall have three credits added to his or her earned score. Such credits shall be known as career credits.

SEC. 4. Section 19054 of the Government Code is amended to read:

19054. Except as provided in Section 19054.1, the order of preference in certifying eligibles shall be: subdivisional reemployment list, departmental reemployment list, general reemployment list, subdivisional promotional list, departmental promotional list, multidepartmental promotional list, servicewide promotional list, eligible list. The preferred limited-term list, in accordance with board rule, may be given preference only over the eligible list when making limited-term appointments.

SEC. 4.5. Section 19054 of the Government Code is amended to read:

19054. Except as provided in Section 19054.1, the order of preference in certifying eligibles shall be: subdivisional reemployment list, departmental reemployment list, general reemployment list, subdivisional promotional list, departmental promotional list, multidepartmental promotional list, servicewide promotional list, departmental eligible list, and eligible list. The preferred limited-term list, in accordance with board rule, may be given preference over the departmental eligible list, and the eligible list when making limited-term appointments.

SEC. 5. Section 19054.1 is added to the Government Code, to read:

19054.1. When an examination for a managerial position is conducted on an open and promotional basis, the names of eligibles

shall be placed on one list, ranked in relative order of the examination score received and for purposes of preference in certifying eligibles the list shall be considered an eligible list.

SEC. 6. Section 19057.1 of the Government Code is amended to read:

19057.1. Notwithstanding the provisions of Section 19057, for positions in classes designated by the board as professional, scientific, or administrative, or for any open employment list, there shall be certified to the appointing power the names and addresses of all those eligibles whose scores, at time of certification, represent the three highest ranks on the employment list for the class, and who have indicated their willingness to accept appointment under the conditions of employment specified.

For purposes of ranking, scores of eligibles on employment lists for such classes shall be rounded to the nearest whole percent. A rank shall consist of one or more eligibles with the same whole percentage score.

If the names on the list from which certification is being made represent fewer than three ranks, then additional eligibles shall be certified from the various lists next lower in order of preference until names from three ranks appear. If there are fewer than three names available for certification, and the appointing authority does not choose to appoint from among these, the appointing authority may demand certification of three names. In such case, examinations shall be conducted until at least three names may be certified by the procedure described in this section, and the appointing authority shall fill the position by appointment of one of the persons certified.

In accordance with board rule, fractional examination scores shall be provided to the appointing power upon his or her request.

The board may by rule provide for certifying less than three ranks where the size of the certified group is disproportionate to the number of vacancies.

SEC. 7. Section 19057.2 is added to the Government Code, to read:

19057.2. Notwithstanding the provisions of Section 19057, for positions in classes designated by the board as management, there shall be certified to the appointing power the names and addresses of all those applicants whose scores, at the time of certification, represent the three highest ranks on the employment list for the class, and who have indicated their willingness to accept appointment under the conditions of employment specified.

For purposes of ranking, scores of eligibles on employment lists for such classes shall be divided into six ranks. The first rank shall consist of eligibles who receive a score of 95 percent or higher. The second rank shall consist of eligibles who receive a score of 90 to 94 percent. The third rank shall consist of eligibles who receive a score of 85 to 89 percent. The fourth rank shall consist of eligibles who receive a score of 80 to 84 percent. The fifth rank shall consist of eligibles who receive a score of 75 to 79 percent. The sixth rank shall consist of

eligibles who receive a score of 70 to 74 percent. All examination scores for positions in these classes shall be rounded to the nearest whole percent.

If the names on the list from which certification is being made represent fewer than three ranks, then additional eligibles shall be certified from the various lists next lower in order of preference until names from three ranks appear. If there are fewer than three names available for certification, and the appointing authority does not choose to appoint from among these, the appointing authority may demand certification of three names. In such case, examinations shall be conducted until at least three names may be certified by the procedure described in this section, and the appointing authority shall fill the position by appointment of one of the persons certified.

In accordance with board rule, fractional examination scores shall be provided to the appointing power upon his or her request.

The board may by rule provide for certifying less than three ranks where the size of the certified group is disproportionate to the number of vacancies.

SEC. 8. The amendments made by Section 7 of this act shall be applicable to names certified from employment lists after the date this act becomes operative even though the examination was given prior to such operative date.

SEC. 9. It is the intent of the Legislature, if this bill and Assembly Bill 3122 are both chaptered and become effective January 1, 1983, both bills amend Section 19054 of the Government Code, and this bill is chaptered after Assembly Bill 3122, that the amendments to Section 19054 proposed by both bills be given effect and incorporated in Section 19054 in the form set forth in Section 4.5 of this act. Therefore, Section 4.5 of this act shall become operative only if this bill and Assembly Bill 3122 are both chaptered and become effective January 1, 1983, both amend Section 19054, and this bill is chaptered after Assembly Bill 3122, in which case Section 4 of this act shall not become operative.

CHAPTER 1246

An act to amend Section 65590 of the Government Code, and to amend Section 30414 of the Public Resources Code, relating to the California coastal zone.

[Approved by Governor September 21, 1982. Filed with Secretary of State September 22, 1982]

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

SECTION 1. Section 65590 of the Government Code is amended to read:

65590. (a) In addition to the requirements of Article 10.6

(commencing with Section 65580), the provisions and requirements of this section shall apply within the coastal zone as defined and delineated in Division 20 (commencing with Section 30000) of the Public Resources Code. Each respective local government shall comply with the requirements of this section in that portion of its jurisdiction which is located within the coastal zone.

(b) The conversion or demolition of existing residential dwelling units occupied by persons and families of low or moderate income, as defined in Section 50093 of the Health and Safety Code, shall not be authorized unless provision has been made for the replacement of those dwelling units with units for persons and families of low or moderate income. Replacement dwelling units shall be located within the same city or county as the dwelling units proposed to be converted or demolished. The replacement dwelling units shall be located on the site of the converted or demolished structure or elsewhere within the coastal zone if feasible, or, if location on the site or elsewhere within the coastal zone is not feasible, they shall be located within three miles of the coastal zone. The replacement dwelling units shall be provided and available for use within three years from the date upon which work commenced on the conversion or demolition of the residential dwelling unit. In the event that an existing residential dwelling unit is occupied by more than one person or family, the provisions of this subdivision shall apply if at least one such person or family, excluding any dependents thereof, is of low or moderate income.

For purposes of this subdivision, a residential dwelling unit shall be deemed occupied by a person or family of low or moderate income if the person or family was evicted from that dwelling unit within one year prior to the filing of an application to convert or demolish the unit and if the eviction was for the purpose of avoiding the requirements of this subdivision. If a substantial number of persons or families of low or moderate income were evicted from a single residential development within one year prior to the filing of an application to convert or demolish that structure, the evictions shall be presumed to have been for the purpose of avoiding the requirements of this subdivision and the applicant for the conversion or demolition shall bear the burden of proving that the evictions were not for the purpose of avoiding the requirements of this subdivision.

The requirements of this subdivision for replacement dwelling units shall not apply to the following types of conversion or demolition unless the local government determines that replacement of all or any portion of the converted or demolished dwelling units is feasible, in which event replacement dwelling units shall be required:

(1) The conversion or demolition of a residential structure which contains less than three dwelling units, or, in the event that a proposed conversion or demolition involves more than one residential structure, the conversion or demolition of 10 or fewer

dwelling units.

(2) The conversion or demolition of a residential structure for purposes of a nonresidential use which is either "coastal dependent," as defined in Section 30101 of the Public Resources Code, or "coastal related," as defined in Section 30101.3 of the Public Resources Code. However, the coastal-dependent or coastal-related use shall be consistent with the provisions of the land use plan portion of the local government's local coastal program which has been certified as provided in Section 30512 of the Public Resources Code. Examples of coastal-dependent or coastal-related uses include, but are not limited to, visitor-serving commercial or recreational facilities, coastal-dependent industry, or boating or harbor facilities.

(3) The conversion or demolition of a residential structure located within the jurisdiction of a local government which has within the area encompassing the coastal zone, and three miles inland therefrom, less than 50 acres, in aggregate, of land which is vacant, privately owned and available for residential use.

(4) The conversion or demolition of a residential structure located within the jurisdiction of a local government which has established a procedure under which an applicant for conversion or demolition will pay an in-lieu fee into a program, the various provisions of which, in aggregate, will result in the replacement of the number of dwelling units which would otherwise have been required by this subdivision. As otherwise required by this subdivision, the replacement units shall, (i) be located within the coastal zone if feasible, or, if location within the coastal zone is not feasible, shall be located within three miles of the coastal zone, and (ii) shall be provided and available for use within three years from the date upon which work commenced on the conversion or demolition.

The requirements of this subdivision for replacement dwelling units shall not apply to the demolition of any residential structure which has been declared to be a public nuisance under the provisions of Division 13 (commencing with Section 17000) of the Health and Safety Code, or any local ordinance enacted pursuant to those provisions.

For purposes of this subdivision, no building, which conforms to the standards which were applicable at the time the building was constructed and which does not constitute a substandard building, as provided in Section 17920.3 of the Health and Safety Code, shall be deemed to be a public nuisance solely because the building does not conform to one or more of the current provisions of the Uniform Building Code as adopted within the jurisdiction for new construction.

(c) The conversion or demolition of any residential structure for purposes of a nonresidential use which is not "coastal dependent", as defined in Section 30101 of the Public Resources Code, shall not be authorized unless the local government has first determined that a residential use is no longer feasible in that location. If a local government makes this determination and authorizes the

conversion or demolition of the residential structure, it shall require replacement of any dwelling units occupied by persons and families of low or moderate income pursuant to the applicable provisions of subdivision (b).

(d) New housing developments constructed within the coastal zone shall, where feasible, provide housing units for persons and families of low or moderate income, as defined in Section 50093 of the Health and Safety Code. Where it is not feasible to provide these housing units in a proposed new housing development, the local government shall require the developer to provide such housing, if feasible to do so, at another location within the same city or county, either within the coastal zone or within three miles thereof. In order to assist in providing new housing units, each local government shall offer density bonuses or other incentives, including, but not limited to, modification of zoning and subdivision requirements, accelerated processing of required applications, and the waiver of appropriate fees.

(e) Any determination of the "feasibility" of an action required to be taken by this section shall be reviewable pursuant to the provisions of Section 1094.5 of the Code of Civil Procedure.

(f) The housing provisions of any local coastal program prepared and certified pursuant to Division 20 (commencing with Section 30000) of the Public Resources Code prior to January 1, 1982, shall be deemed to satisfy all of the requirements of this section. Any change or alteration in those housing provisions made on or after January 1, 1982, shall be subject to all of the requirements of this section.

(g) As used in this section:

(1) "Conversion" means a change of a residential dwelling, including a mobilehome, as defined in Section 18008 of the Health and Safety Code, or a mobilehome lot in a mobilehome park, as defined in Section 18214 of the Health and Safety Code, or a residential hotel as defined in paragraph (1) of subdivision (b) of Section 50519 of the Health and Safety Code, to a condominium, cooperative, or similar form of ownership; or a change of a residential dwelling, including a mobilehome, or a mobilehome lot in a mobilehome park, or a residental hotel to a nonresidential use.

(2) "Demolition" means the demolition of a residential dwelling, including a mobilehome, as defined in Section 18008 of the Health and Safety Code, or a mobilehome lot in a mobilehome park, as defined in Section 18214 of the Health and Safety Code, or a residential hotel, as defined in paragraph (1) of subdivision (b) of Section 50519 of the Health and Safety Code, which has not been declared to be a public nuisance under Division 13 (commencing with Section 17000) of the Health and Safety Code or any local ordinance enacted pursuant to those provisions.

(3) "Feasible" means capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, social, and technical factors.

(h) With respect to the requirements of Sections 65583 and 65584,

compliance with the requirements of this section is not intended and shall not be construed as any of the following:

(1) A statutory interpretation or determination of the local government actions which may be necessary to comply with the requirements of those sections; except that compliance with this section shall be deemed to satisfy the requirements of paragraph (2) of subdivision (c) of Section 65583 for that portion of a local government's jurisdiction which is located within the coastal zone.

(2) A limitation on the program components which may be included in a housing element, or a requirement that a housing element be amended in order to incorporate within it any specific provision of this section or related policies. Any revision of a housing element pursuant to Section 65588 shall, however, take into account any low- or moderate-income housing which has been provided or required pursuant to this section.

(3) Except as otherwise specifically required by this section, a requirement that a local government adopt individual ordinances or programs in order to implement the requirements of this section.

(i) No provision of this section shall be construed as increasing or decreasing the authority of a local government to enact ordinances or to take any other action to ensure the continued affordability of housing.

(j) Local governments may impose fees upon persons subject to the provisions of this section to offset administrative costs incurred in order to comply with the requirements of this section.

(k) This section establishes minimum requirements for housing within the coastal zone for persons and families of low or moderate income. It is not intended and shall not be construed as a limitation or constraint on the authority or ability of a local government, as may otherwise be provided by law, to require or provide low- or moderate-income housing within the coastal zone which is in addition to the requirements of this section.

SEC. 2. Section 30414 of the Public Resources Code is amended to read:

30414. (a) The State Air Resources Board and air pollution control districts established pursuant to state law and consistent with requirements of federal law are the principal public agencies responsible for the establishment of ambient air quality and emission standards and air pollution control programs. The provisions of this division do not authorize the commission or any local government to establish any ambient air quality standard or emission standard, air pollution control program or facility, or to modify any ambient air quality standard, emission standard, or air pollution control program or facility which has been established by the state board or by an air pollution control district.

(b) Any provision of any certified local coastal program which establishes or modifies any ambient air quality standard, any emission standard, any air pollution control program or facility shall be inoperative.

(c) The State Air Resources Board and any air pollution control district may recommend ways in which actions of the commission or any local government can complement or assist in the implementation of established air quality programs.

SEC. 3. A new time-share project, estate or use as defined in Section 11003.5 of the Business and Professions Code shall be deemed to comply with subdivision (c) of Section 65590 of the Government Code if it provides for replacement of all residential dwelling units occupied as a primary residence by persons and families of low or moderate income as defined in Section 50093 of the Health and Safety Code with an equivalent number of residential dwelling units for persons and families of low or moderate income prior to any demolition or conversion of the existing residential use.

This provision shall remain in effect until January 1, 1985.

SEC. 4. Notwithstanding Section 6 of Article XIII B of the California Constitution and Section 2231 or 2234 of the Revenue and Taxation Code, no appropriation is made by this act for the purpose of making reimbursement pursuant to these sections. It is recognized, however, that a local agency or school district may pursue any remedies to obtain reimbursement available to it under Chapter 3 (commencing with Section 2201) of Part 4 of Division 1 of that code.

SEC. 5. Notwithstanding Section 2231.5 of the Revenue and Taxation Code, this act does not contain a repealer, as required by that section; therefore, the provisions of this act shall remain in effect unless and until they are amended or repealed by a later enacted act.

CHAPTER 1247

An act to amend Sections 7526, 7526.1, and 7526.3 of, and to add Sections 7512.9, 7521.5 and 7582 to, the Business and Professions Code, and to repeal Section 12 of Chapter 1138 of the Statutes of 1981, relating to the Private Investigators Act.

[Approved by Governor September 21, 1982. Filed with Secretary of State September 22, 1982]

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

SECTION 1. Section 7512.9 is added to the Business and Professions Code, to read:

7512.9. As used in this chapter, "chief" means the Chief of the Bureau of Collection and Investigative Services.

SEC. 2. Section 7521.5 is added to the Business and Professions Code, to read:

7521.5. (a) Unless specifically exempted by Section 7522, no person shall engage in the business of private investigator, private patrol operator, or alarm company operator, as defined in Section

7521, unless that person has applied for and received a license to engage in that business pursuant to this chapter.

(b) Any person who knowingly engages in the business of a private investigator, private patrol operator, or alarm company operator without a license issued pursuant to this chapter is guilty of a misdemeanor punishable by fine not to exceed five hundred dollars ($500) or by imprisonment in the county jail not to exceed one year, or by both such fine and imprisonment.

(c) The chief shall gather evidence of violations of this chapter and of any rule or regulation established pursuant to this chapter by persons engaged in the business of private investigator, private patrol operator, or alarm company operator who fail to obtain licenses and shall gather evidence of violations and furnish that evidence to prosecuting officers of any county or city for the purpose of prosecuting all violations occurring within their jurisdiction.

(d) The prosecuting officer of any county or city shall prosecute all violations of this chapter occurring within his or her jurisdiction.

SEC. 3. Section 7526 of the Business and Professions Code is amended to read:

7526. Before an application for a license is granted, the applicant or his manager, shall meet all of the following:

(a) Be at least 18 years of age.

(b) Not have committed acts or crimes constituting grounds for denial of a license under Section 480.

(c) Comply with the requirements specified in this chapter for the particular license for which an application is made.

(d) Comply with such other qualifications as the director may fix by rule.

SEC. 4. Section 7526.1 of the Business and Professions Code is amended to read:

7526.1. An applicant, or his or her manager, for a license as a private investigator shall have had at least two years' experience in investigation work or the equivalent thereof as determined by the director.

An applicant shall substantiate the claimed years of qualifying experience and the exact details as to the character and nature thereof by written certifications from the employer, subject to independent verification by the chief as he or she may determine. In the event of inability of an applicant to supply the written certifications from the employer in whole or in part, applicants may offer other written certifications from others than employers substantiating employment for consideration by the chief.

SEC. 5. Section 7526.3 of the Business and Professions Code is amended to read:

7526.3. An applicant, or his or her manager, for a license as a private patrol operator shall have had at least one year of experience as a patrolman, guard or watchman, or the equivalent thereof as determined by the director. An applicant shall substantiate the claimed year of qualifying experience and the exact details as to the

character and nature thereof by written certifications from the employer, subject to independent verification by the chief as he or she may determine. In the event of inability of an applicant to supply the written certifications from the employer in whole or in part, applicants may offer other written certifications from others than employers substantiating employment for consideration by the chief.

SEC. 6. Section 7582 is added to the Business and Professions Code, to read:

7582. The department shall propose a separate budget and expenditure statement and a separate revenue statement outlining all money derived from and expended for the licensing and regulation of private investigators in accordance with the provisions of this chapter.

All money derived from the licensing and regulation of private investigators shall be expended exclusively on the licensing and regulation of private investigators.

If, at the end of any fiscal year, the money derived from the licensing of private investigators and not expended pursuant to this section is an amount which equals or is more than the money necessary for the regulation of private investigators for the next two fiscal years, license or other fees shall be reduced during the following fiscal year in an amount which will reduce any surplus money derived from the licensing of private investigators to an amount less than the money expended for the regulation of private investigators for the next two fiscal years.

This section shall become operative on July 1, 1983.

SEC. 7. Section 12 of Chapter 1138 of the Statutes of 1981 is repealed.

SEC. 8. No appropriation is made and no reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution or Section 2231 or 2234 of the Revenue and Taxation Code because the only costs which may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, changes the definition of a crime or infraction, changes the penalty for a crime or infraction, or eliminates a crime or infraction.

CHAPTER 1248

An act to add Section 66462.5 to the Government Code, relating to subdivision maps.

[Approved by Governor September 21, 1982. Filed with Secretary of State September 22, 1982.]

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

SECTION 1. Section 66462.5 is added to the Government Code, to read:

66462.5. A city, county, or city and county shall not postpone or refuse approval of a final map because the subdivider has failed to meet a tentative map condition which requires the subdivider to construct or install offsite improvements on land in which neither the subdivider nor the local agency has sufficient title or interest, including an easement or license, at the time the tentative or final map is filed with the local agency, to permit the improvements to be made. In such cases, the city, county or city and county shall, within 90 days of the filing of the final map, pursuant to Section 66457, acquire by negotiation or commence proceedings pursuant to Title 7 (commencing with Section 1230.010) of Part 3 of the Code of Civil Procedure to acquire an interest in the land which will permit the improvements to be made, including proceedings for immediate possession of the property under Article 3 (commencing with Section 1255.410) of Chapter 6 of such title. In the event a city, county, or city and county fails to meet the 90-day time limitation, the condition for construction of offsite improvements shall be conclusively deemed to be waived. Prior to approval of the final map the city, county, or city and county may require the subdivider to enter into an agreement to complete the improvements pursuant to Section 66462 at such time as the city, county, or city and county acquires an interest in the land which will permit the improvements to be made.

Nothing in this section precludes a city, county, or city and county from requiring a subdivider to pay the cost of acquiring offsite real property interests required in connection with a subdivision.

"Offsite improvements," as used in this section, does not include improvements which are necessary to assure replacement or construction of housing for persons and families of low or moderate income, as defined in Section 50093 of the Health and Safety Code.

CHAPTER 1249

An act to amend Section 1051 of, and add Section 1102.5 to, the Penal Code, relating to discovery.

[Approved by Governor September 21, 1982. Filed with Secretary of State September 22, 1982.]

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

SECTION 1. Section 1051 of the Penal Code is amended to read:

1051. Upon a trial for any offense, if a defense witness other than the defendant testifies, there shall be good cause for a reasonable

continuance unless the court finds that the prosecutor was or should, with due diligence, have been aware of such evidence.

SEC. 2. Section 1102.5 is added to the Penal Code, to read:

1102.5. (a) Upon motion, the prosecution shall be entitled to obtain from the defendant or his or her counsel, all statements, oral or however preserved, by any defense witness other than the defendant, after that witness has testified on direct examination at trial. At the request of the defendant or his or her counsel, the court shall review the statement in camera and limit discovery to those matters within the scope of the direct testimony of the witness. As used in this section, the statement of a witness includes factual summaries, but does not include the impressions, conclusions, opinions, or legal research or theories of the defendant, his or her counsel, or agent.

(b) The prosecution shall make available to the defendant, as soon as practicable, all evidence, including the names, addresses and statements of witnesses, which was obtained or prepared as a consequence of obtaining any discovery or information pursuant to this section.

(c) Nothing in this section shall be construed to deny either to the defendant or to the people information or discovery to which either is now entitled under existing law.

SEC. 3. Notwithstanding Section 6 of Article XIII B of the California Constitution and Section 2231 or 2234 of the Revenue and Taxation Code, no appropriation is made by this act for the purpose of making reimbursement pursuant to these sections. It is recognized, however, that a local agency or school district may pursue any remedies to obtain reimbursement available to it under Chapter 3 (commencing with Section 2201) of Part 4 of Division 1 of that code.

CHAPTER 1250

An act to add Section 1265.6 to the Unemployment Insurance Code, relating to unemployment insurance, and making an appropriation therefor.

[Approved by Governor September 21, 1982. Filed with Secretary of State September 22, 1982.]

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

SECTION 1. Section 1265.6 is added to the Unemployment Insurance Code, to read:

1265.6. Notwithstanding any other provision of this division, payments to an individual for holiday pay for any holiday occurring in a week during which the individual was unemployed shall be deemed wages received for the week in which the individual returns

to work, if holiday pay is not paid until the individual returns to work.

On and after January 1, 1989, this section shall not apply to officers and employees of local government agencies or school districts.

SEC. 2. Notwithstanding Section 6 of Article XIII B of the California Constitution and Section 2231 or 2234 of the Revenue and Taxation Code, no appropriation is made by this act for the purpose of making reimbursement pursuant to these sections. It is recognized, however, that a local agency or school district may pursue any remedies to obtain reimbursement available to it under Chapter 3 (commencing with Section 2201) of Part 4 of Division 1 of that code.

CHAPTER 1251

An act to add Chapter 2.9 (commencing with Section 1001.50) to Title 6 of Part 2 of the Penal Code, relating to pretrial diversion.

[Approved by Governor September 21, 1982. Filed with Secretary of State September 22, 1982.]

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

SECTION 1. The Legislature finds and declares that the diversion of individuals who are amenable to approved diversion programs and are charged with certain misdemeanor offenses promotes the interest of the public in conserving scarce criminal justice resources and promotes the rehabilitation of defendants. It is the intent of the Legislature that nothing in this act shall limit the power to implement a diversion program pursuant to Chapter 2.7 (commencing with Section 1001) of Title 6 of Part 2 of the Penal Code.

SEC. 2. Chapter 2.9 (commencing with Section 1001.50) is added to Title 6 of Part 2 of the Penal Code, to read:

CHAPTER 2.9. DIVERSION OF MISDEMEANOR OFFENDERS

1001.50. (a) Notwithstanding any other provision of law, this chapter shall become operative in a county only if the board of supervisors adopts the provisions of this chapter by ordinance.

(b) The district attorney of each county shall review annually any diversion program established pursuant to this chapter, and no program shall continue without the approval of the district attorney. No person shall be diverted under a program unless it has been approved by the district attorney. Nothing in this subdivision shall authorize the prosecutor to determine whether a particular

defendant shall be diverted.

(c) As used in this chapter, "pretrial diversion" means the procedure of postponing prosecution either temporarily or permanently at any point in the judicial process from the point at which the accused is charged until adjudication.

1001.51. (a) This chapter shall apply whenever a case is before any court upon an accusatory pleading concerning the commission of a misdemeanor, except a misdemeanor specified in subdivision (b), and it appears to the court that all of the following apply to the defendant:

(1) The defendant's record does not indicate that probation or parole has ever been revoked without thereafter being completed.

(2) The defendant's record does not indicate that he has been diverted pursuant to this chapter within five years prior to the filing of the accusatory pleading which charges the divertible offense.

(3) The defendant has never been convicted of a felony, and has not been convicted of a misdemeanor within five years prior to the filing of the accusatory pleading which charges the divertible offense.

(b) This chapter shall not apply to any pretrial diversion or posttrial program otherwise established by this code, nor shall this chapter be deemed to authorize any pretrial diversion or posttrial program for any person alleged to have committed a violation of Section 23152 or 23153 of the Vehicle Code.

(c) This chapter shall not apply whenever the accusatory pleading charges the commission of a misdemeanor:

(1) For which incarceration would be mandatory upon conviction of the defendant.

(2) For which registration would be required pursuant to Section 290 upon conviction of the defendant.

(3) Which the magistrate determines shall be prosecuted as a misdemeanor pursuant to paragraph (5) of subdivision (b) of Section 17.

(4) Which involves the use of force or violence against a person, unless the charge is of a violation of Section 241 or 243.

(5) For which the granting of probation is prohibited.

(6) Which is a driving offense punishable as a misdemeanor pursuant to the Vehicle Code.

1001.52. (a) If the defendant consents and waives his right to a speedy trial, the case shall be referred to the probation department. The probation department shall conduct such investigation as is necessary to determine whether the defendant qualifies for diversion under subdivision (a) of Section 1001.51, and whether he or she is a person who would be benefited by education, treatment or rehabilitation. The probation department shall also determine which educational, treatment or rehabilitative plan would benefit the defendant. The probation department shall report its findings and recommendation to the court. If the recommendation includes referral to a community program, the report shall contain a

statement regarding the program's willingness to accept the defendant and the manner in which the services they offer can assist the defendant in completing the diversion program successfully.

(b) No statement, or any information procured therefrom, made by the defendant to any probation officer, which is made during the course of any investigation conducted by the probation department pursuant to subdivision (b), and prior to the reporting of the probation department's findings and recommendations to the court, shall be admissible in any action or proceeding brought subsequent to the investigation.

No statement, or any information procured therefrom, with respect to the specific offense with which the defendant is charged, which is made to any probation officer subsequent to the granting of diversion, shall be admissible in any action or proceeding.

In the event that diversion is either denied, or is subsequently revoked once it has been granted, neither the probation investigation nor statements or information divulged during that investigation shall be used in any pretrial sentencing procedures.

1001.53. The court shall hold a hearing and, after consideration of the probation department's report, and any other relevant information, shall determine if the defendant consents to further proceedings under this chapter and waives his or her right to a speedy trial. If the court orders a defendant to be diverted, the court may make inquiry into the financial condition of the defendant, and upon a finding that the defendant is able in whole or in part, to pay the reasonable cost of diversion, the court may order him or her to pay all or part of such expense. The reasonable cost of diversion shall not exceed the amount determined to be the actual average cost of diversion services.

If the court does not deem the defendant to be a person who would be benefited by diversion, or if the defendant does not consent to participate, the proceedings shall continue as in any other case.

At such time that a defendant's case is diverted, any bail bond or undertaking, or deposit in lieu thereof, on file by or on behalf of the defendant shall be exonerated, and the court shall enter an order so directing.

The period during which the further criminal proceedings against the defendant may be diverted shall be for the length of time required to complete and verify the diversion program but in no case shall it exceed two years.

1001.54. If it appears to the probation department that the divertee is performing unsatisfactorily in the assigned program, or that the divertee is not benefiting from education, treatment or rehabilitation, or that the divertee is convicted of a misdemeanor in which force or violence is used, or if the divertee is convicted of a felony, after notice to the divertee, the court shall hold a hearing to determine whether the criminal proceedings should be reinstituted. If the court finds that the divertee is not performing satisfactorily in the assigned program, or that the divertee is not benefiting from

diversion, or the court finds that the divertee has been convicted of a crime as indicated above, the criminal case shall be referred back to the court for resumption of the criminal proceedings. If the divertee has performed satisfactorily during the period of diversion, at the end of the period of diversion, the criminal charges shall be dismissed.

1001.55. Any record filed with the Department of Justice shall indicate the disposition in those cases diverted pursuant to this chapter. Upon successful completion of a diversion program, the arrest upon which the diversion was based shall be deemed to have never occurred. The divertee may indicate in response to any question concerning his prior criminal record that he was not arrested or diverted for such offense. A record pertaining to an arrest resulting in successful completion of a diversion program shall not, without the divertee's consent, be used in any way which could result in the denial of any employment, benefit, license, or certificate.

CHAPTER 1252

An act to add Section 43005.5 to the Revenue and Taxation Code, relating to waste.

[Approved by Governor September 21, 1982. Filed with Secretary of State September 22, 1982.]

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

SECTION 1. Section 43005.5 is added to the Revenue and Taxation Code, to read:

43005.5. The penalty provisions of Sections 43155 and 43201 shall not apply to the fees imposed pursuant to Section 25174 of the Health and Safety Code for those disposals which occurred prior to September 25, 1981.

CHAPTER 1253

An act to amend Section 1005 of, to add Sections 1003 and 1003.5 to, and to add Article 5 (commencing with Section 1091) to Chapter 5 of Part 1 of Division 1 of, the Public Utilities Code, relating to public utilities, and making an appropriation therefor.

[Approved by Governor September 21, 1982. Filed with Secretary of State September 22, 1982.]

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

SECTION 1. It is the intent of the Legislature in enacting this act to do all of the following:

(a) To provide the Public Utilities Commission with independent and credible reviews and information regarding electric and gas public utility construction projects.

(b) To provide the commission with sufficient reliable information to enable it to fulfill its functions to issue justifiable decisions regarding the certification of electric and gas plants.

(c) To provide the commission with sufficient reliable information to enable it to fulfill its functions to establish fair and equitable rates to cover prudent and reasonable costs incurred by electric and gas public utilities in the construction of electric and gas plants.

SEC. 2. Section 1003 is added to the Public Utilities Code, to read:

1003. Every electrical and every gas corporation submitting an application to the commission for a certificate authorizing the new construction of any electric plant, line, or extension, or gas plant, line, or extension, not subject to the provisions of Chapter 6 (commencing with Section 25500) of Division 15 of the Public Resources Code, shall include all of the following information in the application in addition to any other required information:

(a) Preliminary engineering and design information on the project. The design information provided for thermal electric plants shall include preliminary data regarding the operating characteristics of the proposed plant, including, but not limited to, the annual capacity factor, availability factor, and the heat rate for each year of the useful life of the plant, line, or extension.

(b) A project implementation plan showing how the project would be contracted for and constructed. This plan shall show how all major tasks would be integrated and shall include a timetable identifying the design, construction, completion, and operation dates for each major component of the plant, line, or extension.

(c) An appropriate cost estimate, including preliminary estimates of the costs of financing, construction, and operation, including fuel, maintenance, and dismantling or inactivation after the useful life of the plant, line, or extension.

(d) A cost analysis comparing the project with any feasible alternative sources of power. The corporation shall demonstrate the financial impact of the plant, line, or extension construction on the corporation's ratepayers, stockholders, and on the cost of the corporation's borrowed capital. The cost analyses shall be performed for the projected useful life of the plant, line, or extension, including dismantling or inactivation after the useful life of the plant, line, or extension.

(e) A design and construction management and cost control plan which indicates the contractual and working responsibilities and interrelationships between the corporation's management and other

major parties involved in the project. This plan shall also include a construction progress information system and specific cost controls.

SEC. 3. Section 1003.5 is added to the Public Utilities Code, to read:

1003.5. Every electrical and gas corporation submitting an application to the commission for a certificate authorizing the new construction of an electric plant, line, or extension, or gas plant, line, or extension, which is subject to the provisions of Chapter 6 (commencing with Section 25500) of Division 15 of the Public Resources Code, shall include in the application the information specified in subdivisions (b), (c), and (e) of Section 1003, in addition to any other required information. The corporation may also include in the application any other information specified in Section 1003.

SEC. 4. Section 1005 of the Public Utilities Code is amended to read:

1005. (a) The commission may, with or without hearing, issue the certificate as prayed for, or refuse to issue it, or issue it for the construction of a portion only of the contemplated street railroad line, plant, or system, or extension thereof, or for the partial exercise only of the right or privilege, and may attach to the exercise of the rights granted by the certificate such terms and conditions, including provisions for the acquisition by the public of the franchise or permit and all rights acquired thereunder and all works constructed or maintained by authority thereof, as in its judgment the public convenience and necessity require; provided, however, upon timely application for a hearing by any person entitled to be heard thereat, the commission, before issuing or refusing to issue the certificate, shall hold a hearing thereon.

(b) When the commission issues a certificate for the new construction of a gas or electric plant, line, or extension, the certificate shall specify the operating and cost characteristics of the plant, line, or extension, including, but not limited to, the size, capacity, cost, and all other characteristics of the plant, line, or extension which are specified in the information which the gas and electrical corporations are required to submit, pursuant to Section 1003 or 1003.5.

SEC. 5. Article 5 (commencing with Section 1091) is added to Chapter 5 of Part 1 of Division 1 of the Public Utilities Code, to read:

Article 5. Electrical and Gas Corporations

1091. In addition to the requirements of Article 1 (commencing with Section 1001) and any other provision of law, every electrical and every gas corporation proposing to construct or modify any electric or gas plant within the state, or line, or extension, which will in the case of an electrical plant, line, or extension add generating capacity in excess of 50 megawatts, or in the case of a gas plant, line, or extension cost in excess of fifty million dollars ($50,000,000), or proposing to construct any electric or gas plant out-of-state of which

at least twenty-five percent (25%) of the costs will be borne by the corporation, shall comply with this article.

1092. Whenever application is made to the commission for certification of an electric or gas plant, line, or extension subject to this article, the commission shall appoint a construction project board of consultants to evaluate the design, construction, project management, and economic soundness of the proposed plant, line, or extension, if the commission determines that a significant potential exists for the occurrence of problems in any of the areas for which an electrical or gas corporation is required to submit information pursuant to Section 1003 or 1003.5. The extent of the board's evaluation shall be determined by the commission. The board may, upon approval of the commission, employ staff independent of the commission staff to carry out its functions under this article. The board may, upon approval of the commission, undertake special studies addressing potential problem areas identified by the board.

1093. (a) The construction project board of consultants shall consist of eminently qualified and highly experienced design, construction, and project management economic specialists who can, as a group or as individuals, independently and objectively address the full scope of design, construction, and project management and economic evaluations requested by the commission.

(b) No member of the construction project board of consultants shall have a current financial interest in, or receive any compensation from, any business, firm, or corporation which has a financial interest in the project. The commission shall adopt criteria and guidelines to define financial interest for the purposes of this subdivision. Any person considered for appointment to the board shall disclose to the commission any interests the member has in the project or in the corporation which may constitute a prohibited financial interest.

1094. The members of the construction project board of consultants shall receive fees and expenses from the commission. The corporation whose project the construction project board of consultants is evaluating shall, upon demand of the commission, reimburse the commission for the amount expended by the commission for the fees and other expenses of the board, including, but not limited to, special studies, staff, or commission staff costs directly attributable to activities of the construction project board of consultants.

The commission shall deposit all money received pursuant to this section at least once each month in the Certification Fund, which is hereby created in the State Treasury. The money in the Certification Fund is hereby continuously appropriated to the commission in augmentation of any other appropriation for the support of the board.

The commission may allow the inclusion of any amounts received

from an electrical or gas corporation pursuant to this section as an authorized expense for purposes of establishing rates.

1095. The corporation shall provide the construction project board of consultants with all information the board determines necessary for its evaluation of the project. The corporation shall provide information regarding problems and uncertainties which have been encountered during the planning, design, and development of the project.

1096. The construction project board of consultants shall evaluate the design, construction, project management, and economic soundness of the project as directed by the commission, and submit an appropriate written report of its findings and recommendations to the commission and the corporation prior to the commission's issuance of a certificate. The members of the board may provide testimony before the commission in formal or informal hearings on the project.

1097. (a) For purposes of assisting the construction project board of consultants in monitoring project construction, the corporation shall submit the current design, estimate of project costs, implementation schedule, and draft construction contracts to the commission and the construction project board of consultants before awarding any major construction contract. The corporation shall inform the commission and the board of all bid quotations and any significant exceptions which the bidders may have taken to the corporation's engineering designs, specifications, and draft contracts.

(b) The examination by the commission and the construction project board of consultants of documents furnished pursuant to this section shall be conducted so as not to unreasonably delay the contracts, bidding, and awards process.

1098. Throughout the design and construction process, the corporation shall submit quarterly progress reports to the commission and the construction project board of consultants on the status of the project. The corporation shall provide complete information on any major problems and deviations in the areas for which an electrical or gas corporation is required to submit information pursuant to Section 1003 or 1003.5.

The corporation shall provide the commission and the board with reports each month containing the following information for each of the major cost categories within the project and for the project as a whole:

(a) The original estimated costs as of the time of certification.

(b) The actual costs to date.

(c) The percentage of the work completed to date.

(d) The estimated costs to completion.

(e) The costs associated with changes made by regulatory bodies to the scope or design of the project.

If the actual costs to date or the estimated costs to completion for any major cost category, or the project as a whole, exceed the original estimated costs by 10 percent, the corporation shall advise the board

and the commission of this fact, and provide the commission and the board with an explanation and a proposal for corrective action. The commission shall consult with the board in determining whether to order corrective action. The board shall submit quarterly reports to the commission and to the corporation if it determines that a potential for major problems exists.

1099. Upon completion of the project and commencement of operations, the construction project board of consultants shall submit a final report of its findings and recommendations to the commission and the corporation.

1100. The commission and the corporation shall give full consideration to all reports, findings, and recommendations of the construction project board of consultants and provide a public response in writing within 45 days after receiving the reports, findings, and recommendations. Copies of the written reports of the board containing its findings and recommendations shall be made available to the public, at cost, at the same time that the reports are issued to the commission and the corporation. The public shall have 45 days from the date of issuance to respond, in writing, to the commission on the reports.

1101. No provision of this article shall be construed to relieve an electrical or gas corporation of any responsibility for the construction or modification of any electric or gas plant including ultimate costs, cost control mechanisms, schedules, and completion dates. Members of the construction project board of consultants, individually or as a group, shall assume no responsibility for the design, construction, project management, or any other part of a plant construction or modification project.

CHAPTER 1254

An act to amend Section 35104 of the Elections Code, relating to redistricting.

[Approved by Governor September 21, 1982. Filed with Secretary of State September 22, 1982.]

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

SECTION 1. Section 35104 of the Elections Code is amended to read:

35104. Any person claiming that the estimates of population used in the redistricting pursuant to Section 35103 do not reflect the current population within the district boundaries more accurately than the most recent census data, may commence an action in the superior court in declaratory relief to determine that fact. Such an action shall be brought within 42 days after the adoption of the redistricting ordinance or resolution.

CHAPTER 1255

An act to add Section 821.5 to the Government Code, to amend Sections 41962 and 41971 of the Health and Safety Code, and to amend Sections 290, 2400, 21109, 32000.5, 34001.1, 34002, 34021, 34022, 34023, 34024, 34040, 34041, 34042, 34043, 34044, 34045, 34048, 34049, 34060, 34061, 34062, 34063, 34064, 34100, 34101, and 34102 of, to add Sections 21109.5, 34000, 34019, 34020.5, 34045.5, 34050, and 34060.5 to, to repeal Sections 34046 and 34047 of, and to repeal and add Section 34020 of, the Vehicle Code, relating to transportation.

[Approved by Governor September 21, 1982. Filed with Secretary of State September 22, 1982.]

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

SECTION 1. Section 821.5 is added to the Government Code, to read:

821.5. A public entity or a public employee acting within the scope of his employment is not liable for failing to prohibit or restrict the time that cargo tank vehicles required to display flammable liquid placards may travel through a tunnel.

SEC. 2. Section 41962 of the Health and Safety Code is amended to read:

41962. (a) Notwithstanding Section 34002 of the Vehicle Code, the state board shall adopt test procedures to determine the compliance of vapor recovery systems of cargo tanks on tank vehicles used to transport gasoline with vapor emission standards which are reasonable and necessary to achieve or maintain any applicable ambient air quality standard. The performance standards and test procedures adopted by the state board shall be consistent with the regulations adopted by the Commissioner of the California Highway Patrol and the State Fire Marshal pursuant to Division 14.7 (commencing with Section 34001) of the Vehicle Code.

(b) The state board may test, or contract for testing, the vapor recovery system of any cargo tank of any tank vehicle used to transport gasoline. The state board shall certify the cargo tank vapor recovery system upon its determination that the system, if properly installed and maintained, will meet the requirements of subdivision (a). The state board shall enumerate the specifications used for issuing such certification. After a cargo tank vapor recovery system has been certified, if circumstances beyond control of the state board cause the system to no longer meet the required specifications, the certification may be revoked or modified.

(c) Upon verification of certification pursuant to subdivision (b), which shallbe done annually, the state board shall send a verified copy of the certification to the registered owner of the tank vehicle, which copy shall be retained in the tank vehicle as evidence of certification of its vapor recovery system. For each system certified,

the state board shall issue a nontransferable and nonremovable decal to be placed on the cargo tank where the decal can be readily seen.

(d) With respect to any tank vehicle operated within a district, the state board, upon request of the district, shall send to the district, free of charge, a certified copy of the certification and test results of any cargo tank vapor recovery system on the tank vehicle.

(e) The state board may contract with the Department of the California Highway Patrol to carry out the responsibilities imposed by subdivisions (b), (c), and (d).

(f) The state board shall charge a reasonable fee for certification, not to exceed its estimated costs therefor. Payment of the fee shall be a condition of certification. The fees may be collected by the Department of the California Highway Patrol and deposited in the Motor Vehicle Account in the State Transportation Fund. The Department of the California Highway Patrol shall transfer to the Air Pollution Control Fund the amount of those fees necessary to reimburse the state board for the costs of administering the certification program.

(g) No person shall operate, or allow the operation of, a tank vehicle transporting gasoline and required to have a vapor recovery system, unless the system thereon has been certified by the state board and is installed and maintained in compliance with the state board's requirements for certification. Tank vehicles used exclusively to service gasoline storage tanks which are not required to have gasoline vapor controls are exempt from the certification requirement.

(h) Performance standards of any district for cargo tank vapor recovery systems on tank vehicles used to transport gasoline shall be identical with those adopted by the state board therefor and no district shall adopt test procedures for, or require certification of, cargo tank vapor recovery systems. No district may impose any fees on, or require any permit of, tank vehicles with vapor recovery systems. However, nothing in this section shall be construed to prohibit a district from inspecting and testing cargo tank vapor recovery systems on tank vehicles for the purposes of enforcing this section or any rule and regulation adopted thereunder that are applicable to such systems and to the loading and unloading of cargo tanks on tank vehicles.

(i) The Legislature hereby declares that the purposes of this section regarding cargo tank vapor recovery systems on tank vehicles are (1) to remove from the districts the authority to certify, except as specified in subdivision (b), such systems and to charge fees therefor, and (2) to grant such authority to the state board, which shall have the primary responsibility to assure that such systems are operated in compliance with its standards and procedures adopted pursuant to subdivision (a).

SEC. 2.5. Section 41971 of the Health and Safety Code is amended to read:

41971. Proof of correction shall consist either of a verification

pursuant to Section 41972 or of a certification by an authorized representative of one of the following agencies that the alleged violation has been corrected:

(a) The state board.

(b) The State Fire Marshal.

(c) The district board.

(d) The Department of the California Highway Patrol.

SEC. 2.6. Section 290 of the Vehicle Code is amended to read:

290. "Department" means the Department of Motor Vehicles except, when used in Chapter 2 (commencing with Section 2100) of Division 2 and in Divisions 11 (commencing with Section 21000), 12 (commencing with Section 24000), 13 (commencing with Section 29000), 14 (commencing with Section 31600), 14.1 (commencing with Section 32000), 14.5 (commencing with Section 33000), 14.7 (commencing with Section 34000), and 14.8 (commencing with Section 34500), it shall mean the Department of the California Highway Patrol.

SEC. 3. Section 2400 of the Vehicle Code is amended to read:

2400. The commissioner shall administer Chapter 4 (commencing with Section 10850) of Division 4, Article 3 (commencing with Section 17300) of Chapter 1 of Division 9, Division 10 (commencing with Section 20000), Division 11 (commencing with Section 21000), except Chapter 11 (commencing with Section 22950), Division 12 (commencing with Section 24000), Division 13 (commencing with Section 29000), Division 14 (commencing with Section 31600), Division 14.1 (commencing with Section 32000), Division 14.5 (commencing with Section 33000), Division 14.7 (commencing with Section 34000), Division 14.8 (commencing with Section 34500), Division 15 (commencing with Section 35000), Division 16 (commencing with Section 36000) except Chapter 2 (commencing with Section 36100) and Chapter 3 (commencing with Section 36300), and Division 16.5 (commencing with Section 38000) except Chapter 2 (commencing with Section 38010).

The commissioner shall enforce all laws regulating the operation of vehicles and the use of the highways except that, on ways or places to which Section 592 makes reference, the commissioner shall not be required to provide patrol or enforce any provisions of this code other than those provisions applicable to private property.

The commissioner shall not be required to provide patrol for or enforce any provisions of Division 16.5 (commencing with Section 38000).

The commissioner shall have full responsibility and primary jurisdiction for the administration and enforcement of such provisions and laws, and for the investigation of traffic accidents, on all state highways constructed as freeways within incorporated areas of the state; provided, however, that city police officers while engaged primarily in general law enforcement duties may incidentally enforce state and local traffic laws and ordinances on

state freeways. In any city having either a population in excess of 2,000,000 or an area of more than 300 square miles city, police officers shall have full responsibility and primary jurisdiction for the administration and enforcement of such laws and ordinances, unless the city council of any such city shall by resolution request administration and enforcement of such laws by the commissioner.

The commissioner may enter into any interagency agreement with the State Board of Equalization for the purpose of enforcement of statutes requiring commercial vehicles from foreign jurisdictions to have a diesel fuel tax permit and to make payments to the board as required.

SEC. 4. Section 21109 of the Vehicle Code is amended to read:

21109. (a) Local authorities may adopt rules and regulations by ordinance or resolution regulating vehicular and pedestrian traffic in subways, tubes, and tunnels or upon bridges or viaducts.

(b) The proposed ordinance or resolution shall not be effective as to any state highway until approved in writing by the Department of Transportation. The Department of Transportation, in considering any proposed ordinance or resolution to prohibit or restrict the use by cargo tank vehicles displaying flammable liquids placards in tunnels of a length of 300 feet or greater, shall consult with the Department of the California Highway Patrol and hold a public hearing as provided in Section 21109.5 of the Vehicle Code. In evaluating the feasibility of prohibiting or restricting the use of the structure by cargo tank vehicles displaying flammable liquids placards, the Department of Transportation shall conduct a traffic and engineering survey which includes an analysis of the relative risks to public safety in determining the feasibility of reasonable alternative routes.

(c) The rules or regulations shall not be effective until appropriate signs have been posted giving notice thereof to drivers and pedestrians approaching the highway structures.

SEC. 5. Section 21109.5 is added to the Vehicle Code, to read:

21109.5. (a) No restriction or prohibition shall be effective pursuant to subdivision (b) of Section 21109 or Section 34020.5 except upon notice and hearing in the manner prescribed in this section.

(b) Notice of hearing shall be published pursuant to Section 6064 of the Government Code. The notice shall advise all interested parties that they may submit written or oral objections to the proposed action and shall designate a time and place for presentation of the objections. The time for submission of objections shall not expire, and the hearings shall not be held, less than 60 days after the first publication of notice. The hearing shall be conducted by the Department of Transportation and interested parties shall be accorded an adequate opportunity to be heard with respect to their objections.

SEC. 5.5. Section 32000.5 of the Vehicle Code, as amended by Assembly Bill 2739, is further 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) 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.

(c) This division shall not apply to implements of husbandry, as defined in Section 36000.

(d) This division shall not apply to special fireworks classified by the United States Department of Transportation as class B explosives when such special fireworks are regulated by and in conformance with Part 2 (commencing with Section 12500) of Division 11 of the Health and Safety Code.

SEC. 6. Section 34000 is added to Article 1 of Division 14.7 of the Vehicle Code, immediately preceding Section 34001, to read:

34000. It is the intent of the Legislature to provide additional protection to the public and reduce the risk of possible hazards in the highway transportation of flammable and combustible liquids in tank vehicles. It is further the intent of the Legislature that the Department of the California Highway Patrol shall inspect and certify cargo tanks, compile the necessary data, and administer the program in cooperation with the State Air Resources Board and the State Fire Marshal.

SEC. 7. Section 34001.1 of the Vehicle Code is amended to read:

34001.1. Every county, city, district, public authority, or any other public entity in this state which owns or operates any cargo tank or tank vehicle shall pay to the department the registration fees imposed by this division for the operation of cargo tanks.

SEC. 8. Section 34002 of the Vehicle Code is amended to read:

34002. (a) It is the legislative intention that the regulations adopted by the commissioner and the State Fire Marshal pursuant to this division shall apply uniformly throughout the State of California, and no state agency, city, city and county, county, or other political subdivision of this state, including, but not limited to, a chartered city, city and county, or county, shall adopt or enforce any ordinance or regulation which is inconsistent with the provisions of this division.

(b) No state agency, city, city and county, county, or other public agency of this state, including, but not limited to, a chartered city, city and county, or county, shall enforce any provisions regarding the design and construction of any cargo tank subject to the provisions

of this division, regardless of the location of the cargo tank, or the area of operation of the cargo tank, within this state.

SEC. 9. Section 34019 is added to Article 2 of Division 14.7 of the Vehicle Code, immediately preceding Section 34020, to read:

34019. The State Fire Marshal, after consulting with the department, shall adopt reasonable regulations with respect to the design and construction of cargo tanks and fire safety devices.

SEC. 10. Section 34020 of the Vehicle Code is repealed.

SEC. 11. Section 34020 is added to the Vehicle Code, to read:

34020. The commissioner may adopt regulations as necessary to enforce and administer the provisions of this division, including proration of annual fees as necessary to implement year-round registration.

SEC. 12. Section 34020.5 is added to the Vehicle Code, to read:

34020.5. (a) The Department of Transportation, after consultation with the Department of the California Highway Patrol, the State Fire Marshal, and affected local agencies, and following a public hearing subject to Section 21109.5, may regulate the time when tank vehicles may travel through a tunnel on state highways.

(b) In evaluating the use of a tunnel on a state highway, the Department of Transportation shall conduct a traffic and engineering survey which includes an analysis of the relative risks to public safety in determining the feasibility of reasonable alternative routes.

(c) For the purposes of this section, a tunnel is a horizontal passage enclosed on the sides and top containing a roadway of a length of not less than 300 feet.

(d) No prohibition or restriction adopted pursuant to this section shall be effective until appropriate signs have been posted giving notice thereof to drivers approaching the tunnel.

SEC. 13. Section 34021 of the Vehicle Code is amended to read:

34021. The regulations adopted by the commissioner and the State Fire Marshal shall make reasonable allowances for cargo tanks in existence when the regulations become effective. No allowance shall, however, be made for any cargo tank which because of its design or construction constitutes a distinct hazard to life or property.

SEC. 14. Section 34022 of the Vehicle Code is amended to read:

34022. In making the regulations, the commissioner and the State Fire Marshal shall consider as evidence of generally accepted safety standards the publications of the National Fire Protection Association and the United States Department of Transportation.

SEC. 15. Section 34023 of the Vehicle Code is amended to read:

34023. To assist in the making or revision of the regulations dealing with the design and contruction of cargo tanks and fire safety devices, the State Fire Marshal shall appoint an advisory committee of 11, which shall consist of the State Fire Marshal or delegated authority, who shall serve as chairman, a representative of the California Highway Patrol, and representatives of the fire services,

associations of proprietary carriers, for-hire carriers, petroleum companies, and from industry, labor, and other governmental agencies, as may be determined and selected, from time to time, by the State Fire Marshal. The members of the advisory committee shall serve at the pleasure of the State Fire Marshal. They shall receive no compensation for their services.

SEC. 16. Section 34024 of the Vehicle Code is amended to read:

34024. The regulations adopted by the commissioner and the State Fire Marshal pursuant to this division shall be adopted, amended, and repealed in accordance with Chapter 4.5 (commencing with Section 11371), Part 1, Division 3, Title 2, of the Government Code.

SEC. 17. Section 34040 of the Vehicle Code is amended to read:

34040. Application for original or renewal registration of cargo tanks shall be made to the department on forms provided by the department and shall be accompanied by the fees prescribed in this article. The application shall contain the name and current address of the applicant and such other information as the commissioner shall require.

SEC. 18. Section 34041 of the Vehicle Code is amended to read:

34041. Following receipt of an application for original or renewal registration and appropriate fees, the department shall grant or deny the registration.

SEC. 19. Section 34042 of the Vehicle Code is amended to read:

34042. The application may be denied for any of the following reasons:

(a) Failure to pay required fees.

(b) Misrepresentation in the application.

(c) Failure of the cargo tank to comply with the regulations of the commissioner or the State Fire Marshal adopted pursuant to Section 34019 or 34020.

(d) Failure or refusal of the applicant to make the cargo tank available for inspection by a duly authorized employee of the department upon reasonable notice.

SEC. 20. Section 34043 of the Vehicle Code is amended to read:

34043. The original or renewal registration shall be for one year commencing on the last day of the month when the applicant meets all of the requirements of this division and expiring at midnight of the next to last day of the same month in the next succeeding year. Application for renewal registration shall be made on or before a date 60 days prior to the date that the current registration expires.

SEC. 21. Section 34044 of the Vehicle Code is amended to read:

34044. At the time the original or renewal registration is issued, the department shall issue a sticker, label, or other suitable device constituting a certificate of compliance to identify cargo tanks which are currently registered. The certificate of compliance shall be plainly affixed to the cargo tank. The size, shape, color, and design of the certificate of compliance and the positioning of such on the cargo tank shall be determined by the commissioner by regulation.

SEC. 22. Section 34045 of the Vehicle Code is amended to read:

34045. (a) The fee for an original or renewal registration of a cargo tank, which does not require certification of a vapor recovery system, shall not be more than fifty dollars ($50).

(b) If the State Air Resources Board enters into a contract with the Department of the California Highway Patrol to carry out subdivision (b) of Section 41962 of the Health and Safety Code, the total fee for an original or renewal registration of a cargo tank, which includes the certification of a vapor recovery system, shall not be more than sixty-five dollars ($65).

SEC. 23. Section 34045.5 is added to the Vehicle Code, to read:

34045.5. (a) All fees collected by the department pursuant to Section 34041 or 34048 for the issuance, renewal, or transfer of a cargo tank registration or certification shall be deposited in the Motor Vehicle Account in the State Transportation Fund.

(b) All moneys collected from these fees, except the amount of those fees transferred to the Air Pollution Control Fund pursuant to subdivision (f) of Section 41962 of the Health and Safety Code, shall be used for the support of the cargo tank inspection and registration program of the department, including sufficient personnel and equipment and a management information system or systems, upon appropriation therefor by the Legislature.

(c) The Department of the California Highway Patrol shall transfer to the Air Pollution Control Fund an amount of those fees necessary to reimburse the State Air Resources Board for its costs as defined in subdivision (f) of Section 41962 of the Health and Safety Code.

SEC. 24. Section 34046 of the Vehicle Code is repealed.

SEC. 25. Section 34047 of the Vehicle Code is repealed.

SEC. 26. Section 34048 of the Vehicle Code is amended to read:

34048. Procedures shall be established by the commissioner for transfer of ownership, issuance of duplicate registration or duplicate certificate of compliance and change of address of registrant. A fee of ten dollars ($10) shall be paid for each transfer of ownership or the issuance of duplicate registration or certificate of compliance.

SEC. 27. Section 34049 of the Vehicle Code is amended to read:

34049. Every registrant shall notify the department in writing at its Sacramento office within 15 days of any change of address.

SEC. 27.5. Section 34050 is added to the Vehicle Code, to read:

34050. The amendments to provisions of Division 14.7 (commencing with Section 34000) of the Vehicle Code and Sections 41962 and 41971 of the Health and Safety Code enacted by Assembly Bill No. 2457 of the 1981–82 Regular Session of the Legislature shall become operative on January 1, 1983, for an original registration of any cargo tank and on July 1, 1983, for the renewal of a registration of a cargo tank. Any unexpired registration existing on January 1, 1983, shall not be revoked, canceled, suspended, or changed because of those changes of law until its date of expiration.

SEC. 28. Section 34060 of the Vehicle Code is amended to read:

34060. The commissioner shall provide for the establishment, operation, and enforcement of an inspection service for cargo tanks, and shall designate the duly authorized employees of the department who may inspect cargo tanks to determine whether or not the cargo tanks are designed, constructed, and maintained in accordance with the regulations adopted by the commissioner and the State Fire Marshal pursuant to Sections 34019 and 34020, and otherwise comply with the provisions of this division.

SEC. 29. Section 34060.5 is added to the Vehicle Code, to read:

34060.5. Any required pressure, vacuum, or hydrostatic testing of a cargo tank shall be performed, or be caused to be performed, by the carrier, operator, or consultant who shall certify in writing that the cargo tank meets the requirements of the State Fire Marshal, the Air Resources Board, and the commissioner. An authorized representative of the department may observe or require these tests. Records of these certifications shall be maintained at the carrier's place of business.

SEC. 30. Section 34061 of the Vehicle Code is amended to read:

34061. The department may, pursuant to Chapter 5 (commencing with Section 11500), Part 1, Division 3, Title 2, of the Government Code, suspend or revoke the registration of a cargo tank for any of the following reasons:

(a) Failure of the registrant to pay required fees or misrepresentation upon application for original or renewal registration.

(b) Failure of the cargo tank to comply with the regulations of the commissioner or the State Fire Marshal adopted pursuant to this division.

(c) Failure or refusal of the registrant to permit inspection of the cargo tank or make available the cargo tank for inspection by a duly authorized employee of the department upon reasonable notice.

(d) Violation of any provisions of this division.

SEC. 31. Section 34062 of the Vehicle Code is amended to read:

34062. Upon revocation or suspension of the registration of a cargo tank, the department may order the removal of the certificate of compliance from the cargo tank during the period of revocation or suspension. The certificate of compliance shall thereupon be removed by the registrant pursuant to that order.

SEC. 32. Section 34063 of the Vehicle Code is amended to read:

34063. If, upon inspection of any currently registered cargo tank, a cargo tank is found to be not in compliance with the regulations of the commissioner or the State Fire Marshal or any provision of this division, the inspector may immediately remove the certificate of compliance from the cargo tank. At the time of the removal, the inspector shall deliver to the registrant or his or her representative a written notice specifying in what particulars the cargo tank does not so comply. Within 20 days from the date of the removal of the certificate of compliance and the written notice, a statement of suspension or revocation of the cargo tank registration shall be filed.

If within that 20-day period the registrant notifies the department and the department is satisfied that the cargo tank has been brought into compliance, the certificate of compliance may be reinstated by issuance of a duplicate thereof. In such event, the statement of suspension or revocation may, but need not, be filed.

SEC. 33. Section 34064 of the Vehicle Code is amended to read:

34064. Any duly authorized employee of the department may inspect cargo tanks located at terminals, yards, or similar places, or the appurtenances and equipment thereof, as often as may be necessary for the purpose of ascertaining and causing to be corrected any conditions liable to cause a highway fire or explosion or any violation of the provisions or intent of this division. Any duly authorized employee of the department may enter upon private property to conduct those inspections. The owner, lessee, bailee, manager, or operator of any such property shall permit any duly authorized employee of the department to enter and inspect cargo tanks for the purpose stated in this division.

SEC. 34. Section 34100 of the Vehicle Code is amended to read:

34100. No person shall drive, move, or leave standing any tank vehicle upon any highway unless all cargo tanks on such vehicles have been registered, pursuant to this division, with the department and the appropriate fees have been paid.

This section does not apply to trucks, trailers, semitrailers, vacuum tanks, cargo tanks, or containers certified pursuant to Section 25169.1 of the Health and Safety Code.

SEC. 35. Section 34101 of the Vehicle Code is amended to read:

34101. No tank vehicle shall be operated upon any highway in this state unless there is plainly affixed on the cargo tank of the tank vehicle a valid certificate of compliance label for the cargo tank, as provided in this division and the regulations of the commissioner.

SEC. 36. Section 34102 of the Vehicle Code is amended to read:

34102. A violation of any provision of this division or of any regulation adopted by the commissioner or the State Fire Marshal pursuant thereto is a misdemeanor. No person shall operate a tank vehicle upon a highway in violation of any provision of this division or of any regulation adopted by the commissioner or the State Fire Marshal pursuant thereto.

SEC. 37. Notwithstanding Section 6 of Article XIII B of the California Constitution and Section 2231 or 2234 of the Revenue and Taxation Code, no appropriation is made by this act for the purpose of making reimbursement pursuant to these sections. It is recognized, however, that a local agency or school district may pursue any remedies to obtain reimbursement available to it under Chapter 3 (commencing with Section 2201) of Part 4 of Division 1 of that code.

SEC. 38. Notwithstanding Section 2231.5 of the Revenue and Taxation Code, this act does not contain a repealer, as required by that section; therefore, the provisions of this act shall remain in effect unless and until they are amended or repealed by a later enacted act.

CHAPTER 1256

An act to add and repeal Section 53066.2 of, and to repeal and add Section 53066.1 of, the Government Code, relating to community antenna television.

[Approved by Governor September 21, 1982. Filed with Secretary of State September 22, 1982.]

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

SECTION 1. Section 53066.1 of the Government Code is repealed.

SEC. 2. Section 53066.1 is added to the Government Code, to read:

53066.1. (a) Notwithstanding the provisions of Section 53066, any cable television system which meets all of the following criteria:

(1) Has a capacity of 20 or more video channels.

(2) Receives television signals from a satellite-earth receiving station.

(3) (A) Has a subscriber penetration ratio of less than 70 percent in the entire franchise area which is located in a county or portion of a county which has available three significantly viewed television stations, or two significantly viewed television stations and an educational television station; or (B) has a subscriber penetration ratio of 70 percent or greater in a franchise area which is located in a county or a portion of a county which has available five significantly viewed television stations, or four significantly viewed television stations and an educational television station.

(4) Complies upon the filing of a statement pursuant to subdivision (d), with the community services channel requirements set forth in subdivision (f), shall, upon written notice to the franchisor, and upon publication of that notice in a newspaper of general circulation within the cable television system's franchise area, be exempt from control by that franchisor or any other authority as to rates, charges, and rate structures, provided that such notice may not be given prior to the expiration of two years following the completion and activation of 80 percent of the plant miles required to be constructed by the franchisee pursuant to the original terms of its franchise.

(b) Notwithstanding the provisions of Section 53066, any cable television system which is unable to meet all the requirements of subdivision (a), whose franchise area is located in a county or portion of a county which has available three significantly viewed television stations, or two significantly viewed television stations and an educational television station, may, upon written notice to the franchisor, and upon publication of that notice in a newspaper of general circulation within the cable television system's franchise area, thereafter adjust its rates, charges, and rate structures at any

time without the approval of the franchisor or other authority, by an amount not to exceed 75 percent of the percentage increase in the Consumer Price Index for the period since the date of the last previous adjustment, or December 31, 1975, if there have been no adjustments since December 31, 1975, and the cable television system meets one of the following criteria:

(1) Has a subscriber penetration ratio of 70 percent or more in its franchise area and meets all requirements of subdivision (a), except clause (B) of paragraph (3).

(2) Has a capacity of at least 12 video channels in a franchise area with fewer than 3,500 subscribers in a community of less than 20,000 in population, and otherwise meets the requirements of paragraph (4) of subdivision (a).

(c) Notwithstanding the provisions of Section 53066, a cable television system which satisfies the requirements of subdivision (b), and which, prior to January 1, 1980, had a capacity of less than 20 video channels, and subsequently rebuilds its system to a capacity of 20 or more video channels, may initially raise its rates, charges, and rate structures, without the approval of the franchisor or other authority, to a level not to exceed the statewide average rates for those cable television systems having a capacity of 20 or more video channels, and subsequently thereafter adjust its rates, charges, and rate structures at any time without the approval of the franchisor or other authority, by an amount not to exceed 75 percent of the percentage increase in the Consumer Price Index for the period since the date of the last previous adjustment. The statewide average rates for those cable television systems in California having a capacity of 20 or more video channels shall be determined by the California Public Broadcasting Commission on the basis of information as to the respective rates, charges, and rate structures of the cable television systems submitted to the California Public Broadcasting Commission by March 1 of each year that this section is in effect. The average rates shall be determined by multiplying each applicable cable television system's rates by the number of its subscribers, adding together that figure for all applicable cable television systems, and dividing that total by the total number of applicable subscribers. The California Public Broadcasting Commission shall determine the statewide average rate by July 1 of each year that this section is in operation.

(d) Within 15 working days of the issuance of the written notice to the franchisor under subdivision (a) or (b), the cable television system shall submit to the franchisor a statement, certified pursuant to Section 2015.5 of the Code of Civil Procedure, setting forth each of the following:

(1) The name under which the cable television system is doing business.

(2) The mailing address and telephone number of the system.

(3) The video channel capacity of the system.

(4) The subscriber penetration ratio of the system computed

within 60 days prior to issuance of the notice to the franchisor.

(5) The method by which the system receives television signals from a satellite-to-earth receiving station.

(6) An identification of the significantly viewed television stations within the county in which the system operates.

(7) The facts demonstrating timely compliance with the community service channel requirement set forth in subdivision (f).

(e) Neither party to a franchise agreement or prospective franchise agreement, or any renewal thereof, shall request, demand, propose, or agree to any provision which by its terms or effect waives any right to which either party is entitled under this section. Any such provision shall be void. This provision is not intended to either validate or invalidate any action by a party to a franchise agreement, prospective franchise agreement or any renewal thereof entered into prior to January 1, 1983, which would otherwise be prohibited by its terms.

(f) A cable television system shall be deemed to be offering a community service channel program if the system does all of the following:

(1) (A) Provides, for those systems which have a capacity of not more than 20 video channels, one channel or its equivalent for use by local members of the public and government entities; or (B) provides for those systems which have a capacity of more than 20 video channels, a second such channel if the first channel is in use during 80 percent of the weekdays for 80 percent of the time during any consecutive 13-hour period for 10 consecutive weeks; or (C) provides, if such system has a capacity of more than 30 video channels, a third such composite channel if the second channel is in use during 80 percent of the weekdays for 80 percent of the time during any consecutive 13-hour period for 10 consecutive weeks.

Upon written request of the franchisor, for those systems which have a capacity of 20 or more channels, the first such channel shall, if possible, consistent with the requirements of federal law, and reserving three additional channels for programming by the system, be provided as part of the basic service of the system.

(2) Participates by payment of fifty cents ($0.50) per subscriber per year to a nonprofit foundation formed by cable operators with a board of directors which shall include cable operators and a group of directors representing both local nongovernmental user groups and governmental user groups representative of the cultural, geographic, sexual, racial, and ethnic diversity of the state. The purposes of the foundation shall include the encouragement of and the provision of: (A) instruction and training for individuals, groups, entities, and agencies interested in using community service channels; (B) the nondiscriminatory employment and promotion of other opportunities for minorities and women in the cable television industry; and (C) public information on the effective use of cable television community service channels. The foundation shall have grant-making authority.

(3) In the event the local franchising authority has established or designated an entity whose purpose is substantially similar to the foundation identified in paragraph (2), then, in lieu of the requirement of paragraph (2), the cable television system may elect to provide forty cents ($0.40) per subscriber per year to that local entity and ten cents ($0.10) per subscriber per year to the statewide foundation.

(4) Provides, if requested, to individuals, groups and entities using community service channels, technical advice by local program staff and reasonable access to local studio and earth station receiving facilities, if such facilities and staff are part of the local system.

(5) Notifies secondary schools and community colleges located within the franchise area which furnish training in the uses of community service channels of the availability of the system's community service channels.

(6) Has available for use without charge tape playback facilities for entrance into the system.

(7) Provides, by display information on the community service channels, written notice to subscribers, or published notice, information to potential users of the opportunity to have access to community service channels.

(8) Provides, upon election to deregulate and thereafter, as requested, the name, address, and telephone number of the system, the name of the system manager, and the status and utilization of the community service channels, to the foundation for community service channels.

(g) This section shall cease to be operative on January 1, 1991, unless on or before such date its operative date is extended by the Legislature; except that rates, charges, and rate structures in effect on January 1, 1991, shall not be subject to reduction by a franchisor having rate reduction authority.

SEC. 3. Section 53066.1 is added to the Government Code, to read:

53066.1. (a) Notwithstanding the provisions of Section 53066, any cable television system which meets all of the following criteria:

(1) Has a capacity of 20 or more video channels,

(2) Receives television signals from a satellite-earth receiving station,

(3) (A) Has a subscriber penetration ratio of less than 70 percent in the entire franchise area which is located in a county or portion of a county which has available three significantly viewed television stations, or two significantly viewed television stations and an educational television station; or (B) has a subscriber penetration ratio of 70 percent or greater in a franchise area which is located in a county or a portion of a county which has available five significantly viewed television stations, or four significantly viewed television stations and an educational television station, and

(4) Complies, upon the filing of a statement pursuant to subdivision (d), with the community services channel requirements

set forth in subdivision (f), shall, upon written notice to the franchisor, and upon publication of that notice in a newspaper of general circulation within the cable television system's franchise area, be exempt from control by that franchisor or any other authority as to rates, charges, and rate structures, provided that such notice may not be given prior to the expiration of two years following the completion and activation of 80 percent of the plant miles required to be constructed by the franchisee pursuant to the original terms of its franchise.

(b) Notwithstanding the provisions of Section 53066, any cable television system which is unable to meet all the requirements of subdivision (a), whose franchise area is located in a county or portion of a county which has available three significantly viewed television stations, or two significantly viewed television stations and an educational television station, and:

(1) Has a subscriber penetration ratio of 70 percent or more in its franchise area and meets all requirements of subdivision (a), except clause (B) of paragraph (3), or

(2) Has a capacity of at least 12 video channels in a franchise area with fewer than 3,500 subscribers in a community of less than 20,000 in population, and otherwise meets the requirements of paragraph (4) of subdivision (a),

may, upon written notice to the franchisor, and upon publication of that notice in a newspaper of general circulation within the cable television system's franchise area, thereafter adjust its rates, charges, and rate structures at any time, without the approval of the franchisor or other authority, by an amount not to exceed 75 percent of the percentage increase in the Consumer Price Index for the period since the date of the last previous adjustment, or December 31, 1975, if there have been no adjustments since December 31, 1975.

(c) Notwithstanding the provisions of Section 53066, a cable television system which satisfies the requirements of subdivision (b), and which, prior to January 1, 1980, had a capacity of less than 20 video channels, and subsequently rebuilds its system to a capacity of 20 or more video channels, may initially raise its rates, charges, and rate structures, without the approval of the franchisor or other authority, to a level not to exceed the statewide average rates for those cable television systems having a capacity of 20 or more video channels, and subsequently thereafter adjust its rates, charges, and rate structures at any time without the approval of the franchisor or other authority, by an amount not to exceed 75 percent of the percentage increase in the Consumer Price Index for the period since the date of the last previous adjustment. The statewide average rates for those cable television systems in California having a capacity of 20 or more video channels shall be determined by the California Public Broadcasting Commission on the basis of information as to the respective rates, charges, and rate structures of the cable television systems submitted to the California Public Broadcasting Commission by March 1 of each year that this section is in effect. The average

rates shall be determined by multiplying each applicable cable television system's rates by the number of its subscribers, adding together that figure for all applicable cable television systems, and dividing that total by the total number of applicable subscribers. The California Public Broadcasting Commission shall determine the statewide average rate by July 1 of each year that this section is in effect.

(d) Within 15 working days of the issuance of the written notice to the franchisor under subdivision (a) or (b), the cable television system shall submit to the franchisor a statement, certified pursuant to Section 2015.5 of the Code of Civil Procedure, setting forth each of the following:

(1) The name under which the cable television system is doing business.

(2) The mailing address and telephone number of the system.

(3) The video channel capacity of the system.

(4) The subscriber penetration ratio of the system computed within 60 days prior to issuance of the notice to the franchisor.

(5) The method by which the system receives television signals from a satellite-to-earth receiving station.

(6) An identification of the significantly viewed television stations within the county in which the system operates.

(7) The facts demonstrating timely compliance with the community service channel requirement set forth in subdivision (f).

(e) Neither party to a franchise agreement or prospective franchise agreement, or any renewal thereof, shall request, demand, propose, or agree to any provision which by its terms or effect waives any right to which either party is entitled under this section. Any such provision shall be void. This provision is not intended to either validate or invalidate any action by a party to a franchise agreement, prospective franchise agreement or any renewal thereof entered into prior to January 1, 1983, which would otherwise be prohibited by its terms.

(f) A cable television system shall be deemed to be offering a community service channel program if the system does all of the following:

(1) (A) Provides, for those systems which have a capacity of not more than 20 video channels, one channel or its equivalent for use by local members of the public and government entities; or (B) provides for those systems which have a capacity of more than 20 video channels, a second such channel if the first channel is in use during 80 percent of the weekdays for 80 percent of the time during any consecutive 13-hour period for 10 consecutive weeks; or (C) provides, if such system has a capacity of more than 30 video channels, a third such composite channel if the second channel is in use during 80 percent of the weekdays for 80 percent of the time during any consecutive 13-hour period for 10 consecutive weeks.

Upon written request of the franchisor, for those systems which have a capacity of 20 or more channels, the first such channel shall,

if possible, consistent with the requirements of federal law, and reserving three additional channels for programming by the system, be provided as part of the basic service of the system.

(2) Participates by payment of fifty cents ($0.50) per subscriber per year to a nonprofit foundation formed by cable operators with a board of directors which shall include cable operators and a group of directors representing both local nongovernmental user groups and governmental user groups representative of the cultural, geographic, sexual, racial and ethnic diversity of the state. The purposes of the foundation shall include the encouragement of and the provision of: (A) instruction and training for individuals, groups, entities, and agencies interested in using community service channels; (B) the nondiscriminatory employment and promotion of other opportunities for minorities and women in the cable television industry; and (C) public information on the effective use of cable television community service channels. Such foundation shall have grant-making authority.

(3) In the event the local franchising authority has established or designated an entity whose purpose is substantially similar to the foundation identified in paragraph (2), then, in lieu of the requirement of paragraph (2), the cable television system may elect to provide forty cents ($0.40) per subscriber per year to that local entity and ten cents ($0.10) per subscriber per year to the statewide foundation.

(4) Provides, if requested, to individuals, groups and entities using community service channels, technical advice by local program staff and reasonable access to local studio and earth station receiving facilities, if such facilities and staff are part of the local system.

(5) Notifies secondary schools and community colleges located within the franchise area which furnish training in the uses of community service channels of the availability of the system's community service channels.

(6) Has available for use without charge tape playback facilities for entrance into the system.

(7) Provides, by display information on the community service channels, written notice to subscribers, or published notice, information to potential users of the opportunity to have access to community service channels.

(8) Provides, upon election to deregulate and thereafter, as requested, the name, address, and telephone number of the system, the name of the system manager, and the status and utilization of the community service channels, to the foundation for community service channels.

(g) (1) If at the time of a cable television system's election under subdivision (a), (b), or (c), the cable television system does not meet the capacity, satellite-earth receiving station or penetration ratio requirements thereof, or is not in substantial compliance with the material provisions of its franchise, excluding the performance of any term or condition which the system is or has been excused or

prevented from performing or which is, in whole or in part, in the control of a third party, or which is, in whole or in part, invalid, the franchisor may, within 90 days of receipt of the written notice of the system's election, notify the cable television system in writing of the noncompliance, setting forth in detail the grounds therefor. Within 30 days of receipt of the notice from the franchisor, the cable television system shall respond in writing to the grounds set forth therein. The franchisor shall have 30 days from the receipt of the system's response within which to renew its earlier objection and respond in writing to the cable television system, if the franchisor has reason to believe that the system does not meet the prescribed capacity, satellite-earth receiving station, or penetration ratio requirements, or that no good cause exists for the system's alleged failure to substantially comply with the material provisions of its franchise. The cable television system shall have 90 days from receipt of the second written notice from the franchisor within which to correct any such noncompliance and to notify the franchisor in writing of such correction.

(2) If the franchisor is not satisfied with the cable television system's attempts to meet the prescribed capacity, satellite-earth receiving station, or penetration ratio requirements, or to correct the alleged substantial noncompliance with the material provisions of its franchise within the 90-day period from receipt of the second notice from the franchisor, and the franchisor believes there is not valid excuse pursuant to paragraph (1), the franchisor shall notify the cable television system in writing of such dissatisfaction within 30 days from either the end of the 90-day period, or the receipt of notice from the system that it has corrected the noncompliance, whichever is sooner. If the franchisor does not provide such written notice within the 30-day period, it shall be barred, in any proceedings to determine the right to deregulate under this section, from alleging that the franchisee has failed to correct any of the items of noncompliance alleged in the original notice given by the franchisor to the franchisee. The cable television system may request a hearing before the governing body of the franchisor, which hearing shall be conducted within 30 days of the governing body's receipt of a request therefor, and a decision thereon rendered within 15 days following conclusion of the hearing.

(3) If the franchisor transmits written notice pursuant to paragraph (2), the franchisor or the cable television system may file a breach of contract action for breach of the franchise agreement in a court of competent jurisdiction. All factual and legal issues shall be determined by civil procedures and under rules of evidence applicable to breach of contract actions. If it is finally determined that the cable television system fails to meet prescribed capacity, satellite-earth receiving station, or penetration ratio requirements, or to comply with material provisions of its franchise, the remedy therefor shall be a refund in the form of a monthly credit to the subscriber of an amount no greater than any increase in rates

obtained under this section, and resulting from and proportionate to such violation. The maximum number of monthly credits to subscribers shall be limited to the number of months during which the cable television system failed to meet prescribed capacity, satellite-earth receiving station, or penetration ratio requirements, or was in noncompliance with material provisions of its franchise. At the franchisor's option, this remedy may be utilized in lieu of any remedies provided for in the franchise. Notwithstanding a final determination that the cable television system fails to meet prescribed capacity, satellite-earth receiving station, or penetration ratio requirements, or to comply with the material provisions of its franchise, the cable television system may thereafter elect to be bound by the provisions of this section at the time of its compliance. The court may reserve jurisdiction to determine whether the cable television system has so complied and the date of such compliance.

(4) The alleged breaches of the material provisions of the franchise which may be considered in determining eligibility to deregulate shall be limited to those which (A) the franchisor has notified the franchisee of in writing within the one-year period immediately preceding the date of the election, (B) the franchisor has orally notified the franchisee of during the 6 months immediately preceding the date of the election, or (C) occurred within the 90 days immediately preceding the election to deregulate, if discovered within 20 days following the election to deregulate.

(h) (1) If at any time a cable television system, which has made an election pursuant to subdivision (a), (b), or (c), is not in compliance with subdivision (f), the franchisor shall notify the cable television system in writing of the alleged noncompliance, setting forth in detail the grounds therefor. Within 30 days of receipt of the notice, the cable television system shall respond in writing to the franchisor. The franchisor shall have 30 days from the receipt of the response within which to renew its earlier objections in writing to the cable television system, if the franchisor has reason to believe that no good cause exists for the system's failure to so comply with subdivision (f). The cable television system shall have 30 days from receipt of the second written notice within which to correct the alleged noncompliance.

(2) If the franchisor is not satisfied with the cable television system's attempts to correct its noncompliance within the 30-day period, the franchisor shall notify the cable television system in writing of its dissatisfaction within 30 days following the 30-day period allowed to correct the alleged noncompliance. If the franchisor does not provide such written notice within the 30-day period, it shall be barred, in any proceedings to determine the cable television system's compliance with subdivision (f), from alleging that the franchisee has failed to correct any of the items of noncompliance alleged in the original notice given by the franchisor to the franchisee.

(3) If the franchisor transmits written notice pursuant to

paragraph (2) of this subdivision, the franchisor or the cable television system may file a breach of contract action for breach of the franchise agreement in a court of competent jurisdiction. All factual and legal issues shall be determined by civil procedures and under rules of evidence applicable to breach of contract actions. If it is finally determined that the cable television system fails to so comply with subdivision (f), the sole remedy therefor shall be a refund in the form of a monthly credit to the subscriber of an amount no greater than any increase in rates obtained under this section. The maximum number of monthly credits to subscribers shall be limited to the number of months which elapsed from the date of the second written notice of noncompliance pursuant to paragraph (1) of this subdivision to the date the noncompliance is corrected. In no event, however, shall the refund reduce the cable system's rates to a confiscatory level below that which will enable the cable system to earn a reasonable rate of return on its investment.

(i) The franchisee may utilize any community service channel which is not used for community service programming so long as community service programming is given scheduling priority.

(j) The franchisor may elect to act as public trustee of the community service channel, to ensure the use of such channel or channels as community service channels.

(k) Neither the franchisor nor the franchisee shall be liable for acts arising from the use of such channel or channels by persons other than the franchisee. The franchisee shall establish regulations governing the use of such channels which provide uniform and nondiscriminatory standards, ensure adequate opportunity for participation by local nongovernmental users and incorporate restrictions on libelous or slanderous or illegal programs.

(*l*) No cable television system which has made an election under subdivision (a), (b), or (c) shall discriminate as to its rates, charges, and rate structures against any portion of a franchise area because that portion of the franchise area has poor broadcast television signal reception.

(m) For purposes of this section, the following definitions shall apply:

(1) "Basic service" means the lowest level of service offered by the system to individual household subscribers.

(2) "Cable television system" means a community antenna television system, under common ownership and control, serving a franchise area or two or more contiguous or electronically connected franchise areas.

(3) "Capacity" means the number of video channels capable of being carried by a cable television system, including optional services, irrespective of programming or lack thereof, or authority to carry any programming.

(4) "Consumer Price Index" means the most recently issued Consumer Price Index published by the United States Bureau of Labor Statistics for the area in which the cable television system is

located or the nearest area for which such index is published.

(5) "Franchise" means any franchise or license granted pursuant to Section 53066, or any other authority, for the construction or operation of a cable television system.

(6) "Franchisor" means any city, county, or city and county, including any chartered city, county, or city and county, granting a franchise.

(7) "Satellite-earth receiving station" means any structure or device utilized to receive signals from a satellite.

(8) "Significantly viewed television station" means each station which: (A) is designated as such for the area by the Federal Communications Commission in its 1972 listing or any future such listings; or (B) satisfies the Federal Communications Commission requirements as to significantly viewed signals for the area as contained in the most recent Arbitron study; provided that in the event a cable television system has elected deregulation pursuant to clause (B) of paragraph (3) of subdivision (a), the franchisor may require the system to submit the results of a test demonstrating that a minimum of five stations have sufficient signal strength in the geographic area served by the cable television system to meet the Grade B contour testing procedures outlined in Section 73.683, et seq., of Title 47 of the Code of Federal Regulations (particularly subsection (c) of Section 73.686, "collection of field strength data to determine television service in specific communities") from the rules and regulations of the Federal Communications Commission. Such request by the franchisor shall be made within 30 days from receipt of the statement provided for in subdivision (d).

(9) "Subscriber penetration ratio" means the number of subscribing residences divided by the total number of residences having cable available. For the purposes of this definition, a "residence" is a single-family dwelling unit which is or would be billed directly by the cable television system on an individual subscriber basis.

(n) In the absence of like provisions in the franchise, if a franchisee elects deregulation pursuant to this section, the franchisor may institute the use of any of the following mechanisms:

(1) The legislative body or bodies having jurisdiction over the franchise area may establish procedures, by ordinance, providing for resolution of individual consumer complaints. Those procedures may include mediation procedures, arbitration procedures, procedures for escrowing the disputed portion of the individual consumer's monthly service payments during pendency of the dispute and prohibition of service disconnection to the complaining consumer during pendency of the dispute if the moneys are paid into such escrow accounts. The ordinance shall provide procedures for administrative hearings and appeals. The legislative body or bodies may appoint mediators, arbitrators, or other persons or bodies to resolve such disputes. The ordinance may contain a schedule of penalties for consumer complaints, but the penalty for an individual

complaint shall not exceed two hundred dollars ($200). Prior to enacting such an ordinance, the legislative body or bodies shall give the franchisee 15 days or more written notice of the franchisor's intent to enact the ordinance, together with an outline of the intended provisions or a copy of the proposed ordinance. If requested by the franchisee, the ordinance shall provide for three-person arbitration boards, with one arbitrator chosen by the franchisor, one by the franchisee, and the third arbitrator chosen by the first two arbitrators.

(2) The legislative body may, by ordinance, provide a schedule of penalties for violations of the material franchise terms, not to exceed five hundred dollars ($500) for each occurrence or series of related occurrences. Prior to enacting such an ordinance, the legislative body or bodies shall give the franchisee 15 days or more written notice of the franchisor's intent to enact the ordinance, together with an outline of the intended provisions or a copy of the proposed ordinance. Those penalties may be levied if the franchisor gives written notice to the franchisee to correct the breach, and the franchisee fails to correct the problem within a reasonable period of time after delivery of such notice. The franchisor may not levy such a penalty more than one year after the date it notifies the franchisee of the alleged franchise breach. The ordinance shall provide that if the franchisee objects to the penalty, in writing, to the franchisor, the franchisee and franchisor shall conduct arbitration in a manner mutually agreed upon, or in accordance with the rules of the American Arbitration Association. The decision of the arbitrator shall be final. The ordinance shall provide a limit on the time the franchisee has to object to a penalty, but the time limit may not be less than 60 days. The franchisor may require the franchisee to post a bond within 90 days of the franchisee's election to deregulate and require maintenance of the bond as a condition to continuing deregulation under this section. The bond may not exceed ten thousand dollars ($10,000) for each 5,000 subscribers or fraction thereof in the franchise area, with a maximum limit of fifty thousand dollars ($50,000).

(3) The franchisor may require in the ordinance that the franchisee provide written notice to each subscriber at intervals of not more than one year, of the consumer protection sanctions and procedures enacted pursuant to paragraph (1). The telephone number and address of the franchisee and franchisor to whom complaints may be directed shall be included in such notice.

(o) The Director of Consumer Affairs may, pursuant to the director's authority under Section 321 of the Business and Professions Code, receive and act upon subscriber complaints regarding cable television service, and may initiate action thereon as authorized by that section.

(p) While the development and the regulation of cable television is a matter of statewide concern, the Legislature finds and directs that the exercise of the police power of the State of California

concerning cable television should, except as otherwise directed by the Legislature, remain in the cities, counties, or cities and counties; and that the cable television companies and the cities, counties, or cities and counties should remain able, subject to the proper limits of that police power, to contract one with the other pursuant to the ordinary rules of, and subject to the ordinary remedies of, contract law; except that henceforth neither a cable television system nor a franchisor shall be entitled, with respect to any franchise agreement awarded or renewed on or after the effective date of amendments to this section enacted by the Statutes of 1982, to raise the defense of impairment of contract in any case where the due and proper exercise of police power, or the limits thereof, is at issue, and a provision to this effect shall be deemed to be incorporated in any such franchise agreements.

(q) This section, as amended by the Statutes of 1982, shall establish the state's preemption, under the terms and conditions prescribed herein, of the control and regulation of cable television subscriber rates, charges, and rate structures heretofore or hereinafter established by any franchisor pursuant to Section 53066, to the extent that such control or regulation is inconsistent with this section.

(r) This section shall cease to be operative on January 1, 1991, unless on or before such date its operative date is extended by the Legislature; except that rates, charges, and rate structures in effect on January 1, 1991, shall not be subject to reduction by a franchisor having rate reduction authority.

SEC. 4. Section 53066.2 is added to the Government Code, to read:

53066.2. (a) With respect to the community service channels provided by cable television systems pursuant to Section 53066.1:

(1) The California Public Broadcasting Commission, in cooperation with the California Arts Council, the Office of Appropriate Technology, the State Department of Education and the State Department of Consumer Affairs, and such other agencies as requested by the commission, shall undertake efforts to encourage state and local government and educational use of the community service channel or channels and shall prepare a report by January 1, 1983, indicating the uses that government and educational agencies and community organizations have made of such channel or channels.

(2) The Regents of the University of California, if it so elects, the Trustees of the California State University, the Board of Governors of the California Community Colleges and the State Department of Education shall negotiate with representatives of cable television systems providing community service channels concerning appropriate provision for access to the community services channel or channels for educational agencies using such channels and shall implement by segment, or collectively, a program for the use of such community service channel or channels for educational purposes.

(b) This section shall remain in effect only until January 1, 1984,

and as of that date is repealed, unless a later enacted statute, which is chaptered before January 1, 1984, deletes or extends that date.

SEC. 5. It is the intent of the Legislature, if this bill and Assembly Bill 3685 are both chaptered and become effective January 1, 1983, both bills affect Section 53066.1 to the Government Code, and this bill is chaptered after Assembly Bill 3685, that the provisions proposed by both bills be given effect and incorporated in Section 53066.1 in the form set forth in Section 3 of this act. Therefore, Section 3 of this act shall become operative only if this bill and Assembly Bill 3685 are both chaptered and become effective January 1, 1983, both affect Section 53066.1 to the Government Code, and this bill is chaptered after Assembly Bill 3685, in which case Section 2 of this act shall not become operative.

CHAPTER 1257

An act to amend Sections 31143.3 and 31148 of the Water Code, relating to water pollution.

[Approved by Governor September 21, 1982. Filed with Secretary of State September 22, 1982.]

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

SECTION 1. Section 31143.3 of the Water Code is amended to read:

31143.3. (a) The owner of any real property upon which is located an onsite waste water disposal system, which system is subject to abatement as a public nuisance by the district, may request the district to replace or repair, as necessary, such system. If replacement or repair is feasible, the board of directors, in its sole discretion, may provide for the necessary replacement or repair work.

(b) The person or persons employed by the board of directors to do the work shall have a lien, subject to the provisions of subdivision (b) of Section 31143.2, for work done and materials furnished, and the work done and materials furnished shall be deemed to have been done and furnished at the request of the owner. The district, in the discretion of the board of directors, may pay all, or any part, of the cost or price of the work done and materials furnished; and, to the extent that the district pays the cost or price of the work done and materials furnished, the district shall succeed to and have all the rights, including, but not limited to, the lien, of such person or persons employed to do the work against the real property and the owner.

(c) As an alternative power to the enforcement of the lien provided in subdivision (b), the board of directors may, by ordinance adopted by two-thirds vote of the members, fix the costs of

replacement or repair; fix the times at which such costs shall become due; provide prior to the replacement or repair for the payment of the costs in installments over a period not to exceed 15 years; establish a rate of interest not to exceed 8 percent per annum, to be charged on the unpaid balance of the costs; and provide that the amount of the costs and the interest shall constitute a lien, subject to the provisions of subdivision (b) of Section 31143.2, against the respective lots or parcels upon which the work is done.

(d) With the written consent of the owner and the lienholder, if other than the district, the board of directors may issue an improvement bond pursuant to the improvement bond provisions of the Improvement Act of 1911 (Part 5 (commencing with Section 6400) of Division 7 of the Streets and Highways Code), to represent and be secured by the lien established pursuant to subdivision (b). The bond may be delivered to the lienholder if other than the district or may be sold by the board of directors at public or private sale. The amount of the bond shall be the amount of the lien, including incidental expenses allowable under the Improvement Act of 1911. The bond term and interest rate shall be determined by the board of directors within the limits established by the Improvement Act of 1911 and other applicable provisions of law.

SEC. 2. Section 31148 of the Water Code is amended to read:

31148. (a) The owner of any real property upon which is located a sanitary sewage, septic, or septic tank disposal system, which system is subject to abatement as a public nuisance by the district, may request the district to replace or repair, as necessary, such system. If replacement or repair is feasible, the board of directors, in its sole discretion, may provide for the necessary replacement or repair work.

(b) The person or persons employed by the board of directors to do the work shall have a lien, subject to the provisions of subdivision (b) of Section 31147, for work done and materials furnished, and the work done and materials furnished shall be deemed to have been done and furnished at the request of the owner. The district, in the discretion of the board of directors, may pay all, or any part, of the cost or price of the work done and materials furnished; and, to the extent that the district pays the cost or price of the work done and materials furnished, the district shall succeed to and have all the rights, including, but not limited to, the lien, of such person or persons employed to do the work against the real property and the owner.

(c) As an alternative power to the enforcement of the lien provided in subdivision (b), the board of directors may, by ordinance adopted by two-thirds vote of the members, fix the costs of replacement or repair; fix the times at which such costs shall become due; provide prior to the replacement or repair for the payment of the costs in installments over a period, not to exceed 15 years; establish a rate of interest, not to exceed 8 percent per annum, to be charged on the unpaid balance of the costs; and provide that the

amount of the costs and the interest shall constitute a lien, subject to the provisions of subdivision (b) of Section 31147, against the respective lots or parcels upon which the work is done.

(d) With the written consent of the owner and the lienholder, if other than the district, the board of directors may issue an improvement bond pursuant to the improvement bond provisions of the Improvement Act of 1911 (Part 5 (commencing with Section 6400) of Division 7 of the Streets and Highways Code), to represent and be secured by the lien established pursuant to subdivision (b). The bond may be delivered to the lienholder if other than the district or may be sold by the board of directors at public or private sale. The amount of the bond shall be the amount of the lien, including incidental expenses allowable under the Improvement Act of 1911. The bond term and interest rate shall be determined by the board of directors within the limits established by the Improvement Act of 1911 and other applicable provisions of law.

CHAPTER 1258

An act to amend Section 13894 of the Government Code, relating to the Commission on State Finance.

[Approved by Governor September 21, 1982. Filed with Secretary of State September 22, 1982.]

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

SECTION 1. Section 13894 of the Government Code is amended to read:

13894. This part shall remain in effect only until July 1, 1994, and as of such date is repealed, unless a later enacted statute chaptered before July 1, 1994, deletes or extends such date.

CHAPTER 1259

An act relating to domestic water supply systems, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 21, 1982. Filed with Secretary of State September 22, 1982.]

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

SECTION 1. The Legislature finds and declares as follows:

(a) There are not enough funds remaining available for purposes of the California Safe Drinking Water Grant Program to provide

grants to all eligible applicant public agencies.

(b) As of June 15, 1982, of the thirty million dollars ($30,000,000) available for grants under the California Safe Drinking Water Grant Program, the sum of twenty-one million one hundred thousand dollars ($21,100,000) has been designated for specific public agencies by the Department of Water Resources.

(c) It is essential that the remaining funds available for purposes of the California Safe Drinking Water Grant Program be granted to the eligible public agencies with critical public health problems in their domestic water supplies and severe financial needs as determined by the Department of Water Resources and the State Department of Health Services.

SEC. 2. Subject to the provisions of Chapter 10.5 (commencing with Section 13850) and Chapter 10.6 (commencing with Section 13880) of Division 7 of the Water Code, and notwithstanding any other provisions of law, the funds available for purposes of the California Safe Drinking Water Grant Program not subject to a letter of commitment by the Department of Water Resources as of June 15, 1982, shall be provided to those agencies selected by the Department of Water Resources and the State Department of Health Services from among those for which the Legislature has specifically approved grants. Selection criteria for funding shall include relative severity of public health problems, financial need, and timely completion of program requirements.

SEC. 3. In no event shall the outstanding grant commitment under the California Safe Drinking Water Grant Program total more than thirty million dollars ($30,000,000).

SEC. 4. A grant not to exceed the amount of four hundred thousand dollars ($400,000) is hereby authorized from the California Safe Drinking Water Fund pursuant to subdivision (d) of Section 13861 of the Water Code to the Tuolumne Regional Water District for the Brentwood water system service area for the purpose of improving its domestic water supply system to meet, at a minimum, safe drinking water standards. The Department of Water Resources shall determine eligibility for the grant in accordance with the provisions of Chapter 10.6 (commencing with Section 13880) of Division 7 of the Water Code and may make a grant in accordance with those provisions.

SEC. 5. A grant not to exceed the amount of four hundred thousand dollars ($400,000) is hereby authorized from the California Safe Drinking Water Fund pursuant to subdivision (d) of Section 13861 of the Water Code to the Tuolumne Regional Water District—Improvement District No. 11 (Lakewood water system service area) for the purpose of improving its domestic water supply system to meet, at a minimum, safe drinking water standards. The Department of Water Resources shall determine eligibility for the grant in accordance with the provisions of Chapter 10.6 (commencing with Section 13880) of Division 7 of the Water Code and may make a grant in accordance with those provisions.

SEC. 6. A grant not to exceed the amount of four hundred thousand dollars ($400,000) is hereby authorized from the California Safe Drinking Water Fund pursuant to subdivision (d) of Section 13861 of the Water Code to the Tuolumne Regional Water District—Improvement District No. 10 (Confidence Ridge water system service area) for the purpose of improving its domestic water supply system to meet, at a minimum, safe drinking water standards. The Department of Water Resources shall determine eligibility for the grant in accordance with the provisions of Chapter 10.6 (commencing with Section 13880) of Division 7 of the Water Code and may make a grant in accordance with those provisions.

SEC. 7. A grant not to exceed the amount of two hundred fifty thousand dollars ($250,000) is hereby authorized from the California Safe Drinking Water Fund pursuant to subdivision (d) of Section 13861 of the Water Code to the Pioneer Community Services District for the purpose of improving its domestic water supply system to meet, at a minimum, safe drinking water standards. The Department of Water Resources shall determine eligibility for the grant in accordance with the provisions of Chapter 10.6 (commencing with Section 13880) of Division 7 of the Water Code and may make a grant in accordance with those provisions.

SEC. 8. A grant not to exceed the amount of four hundred thousand dollars ($400,000) is hereby authorized from the California Safe Drinking Water Fund pursuant to subdivision (d) of Section 13861 of the Water Code to the Keeler Community Services District for the purpose of improving its domestic water supply system to meet, at a minimum, safe drinking water standards. The Department of Water Resources shall determine eligibility for the grant in accordance with the provisions of Chapter 10.6 (commencing with Section 13880) of Division 7 of the Water Code and may make a grant in accordance with those provisions.

SEC. 9. A grant not to exceed the amount of four hundred thousand dollars ($400,000) is hereby authorized from the California Safe Drinking Water Fund pursuant to subdivision (d) of Section 13861 of the Water Code to the El Dorado Irrigation District for the Outingdale water system service area for the purpose of improving its domestic water supply system to meet, at a minimum, safe drinking water standards. The Department of Water Resources shall determine eligibility for the grant in accordance with the provisions of Chapter 10.6 (commencing with Section 13880) of Division 7 of the Water Code and may make a grant in accordance with those provisions.

SEC. 10. A grant not to exceed the amount of four hundred thousand dollars ($400,000) is hereby authorized from the California Safe Drinking Water Fund pursuant to subdivision (d) of Section 13861 of the Water Code to the El Dorado Irrigation District for the Pollock Pines water system service area for the purpose of improving its domestic water supply system to meet, at a minimum, safe drinking water standards. The Department of Water Resources shall

determine eligibility for the grant in accordance with the provisions of Chapter 10.6 (commencing with Section 13880) of Division 7 of the Water Code and may make a grant in accordance with those provisions.

SEC. 11. A grant not to exceed the amount of four hundred thousand dollars ($400,000) is hereby authorized from the California Safe Drinking Water Fund pursuant to subdivision (d) of Section 13861 of the Water Code to the El Dorado Irrigation District for the Strawberry water system service area for the purpose of improving its domestic water supply system to meet, at a minimum, safe drinking water standards. The Department of Water Resources shall determine eligibility for the grant in accordance with the provisions of Chapter 10.6 (commencing with Section 13880) of Division 7 of the Water Code and may make a grant in accordance with those provisions.

SEC. 12. A grant not to exceed the amount of two hundred ten thousand dollars ($210,000) is hereby authorized from the California Safe Drinking Water Fund pursuant to subdivision (d) of Section 13861 of the Water Code to the San Joaquin County Waterworks District No. 2 for the purpose of improving its domestic water supply system to meet, at a minimum, safe drinking water standards. The Department of Water Resources shall determine eligibility for the grant in accordance with the provisions of Chapter 10.6 (commencing with Section 13880) of Division 7 of the Water Code and may make a grant in accordance with those provisions.

SEC. 13. The Legislature hereby finds and declares that in order to meet the minimum safe drinking water standards there is a critical need within the Brentwood water system service area, the Lakewood water system service area, the Confidence Ridge water system service area, the Pioneer Community Services District, the Keeler Community Services District, the San Joaquin County Waterworks District No. 2, the Outingdale water system service area, the Pollock Pines water system service area, and the Strawberry water system service area to immediately undertake certain improvements necessary to enable the residents of those communities to have a dependable and potable water supply.

SEC. 14. The Legislature further finds and declares that the water systems of the Brentwood water system service area, the Lakewood water system service area, the Confidence Ridge water system service area, the Pioneer Community Services District, the Keeler Community Services District, the San Joaquin County Waterworks District No. 2, the Outingdale water system service area, the Pollock Pines water system service area, and the Strawberry water system service area have critical deficiencies in the areas of treatment, storage, and distribution which pose a serious threat to the public health and welfare of all consumers within those communities and that each area is only barely meeting the demand for water within the community.

SEC. 15. 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 authorize grants from the California Safe Drinking Water Fund to the Brentwood water system service area, the Lakewood water system service area, the Confidence Ridge water system service area, the Pioneer Community Services District, the Keeler Community Services District, the San Joaquin County Waterworks District No. 2, the Outingdale water system service area, the Pollock Pines water system service area, and the Strawberry water system service area to resolve the critical water supply problem of the communities at the earliest possible time, it is necessary that this act take effect immediately.

CHAPTER 1260

An act to add Section 6253.6 to the Government Code, relating to elections.

[Approved by Governor September 21, 1982. Filed with Secretary of State September 22, 1982.]

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

SECTION 1. Section 6253.6 is added to the Government Code, to read:

6253.6. (a) Notwithstanding the provisions of Sections 6252 and 6253, requests for bilingual ballots or ballot pamphlets, made in accordance with any federal or state law, or other data that would reveal the identity of the requester, shall not be deemed to be public records and shall not be open to inspection except by the precinct board and other public officers or public employees who are responsible for receiving those requests and processing the same.

(b) Nothing contained in subdivision (a) shall be construed as prohibiting any person who is otherwise authorized by law from examining election materials, including, but not limited to, affidavits of registration, provided that requests for bilingual ballots or ballot pamphlets shall be subject to the restrictions contained in subdivision (a).

CHAPTER 1261

An act to add Article 4.7 (commencing with Section 1695) to Chapter 4 of Division 2 of the Business and Professions Code, relating to dentistry.

[Approved by Governor September 21, 1982. Filed with Secretary of State September 22, 1982.]

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

SECTION 1. Article 4.7 (commencing with Section 1695) is added to Chapter 4 of Division 2 of the Business and Professions Code, to read:

Article 4.7. Diversion Program

1695. It is the intent of the Legislature that the Board of Dental Examiners of California seek ways and means to identify and rehabilitate licentiates whose competency may be impaired due to abuse of dangerous drugs or alcohol, so that licentiates so afflicted may be treated and returned to the practice of dentistry in a manner which will not endanger the public health and safety. It is also the intent of the Legislature that the Board of Dental Examiners of California shall implement this legislation in part by establishing a diversion program as a voluntary alternative approach to traditional disciplinary actions.

1695.1. As used in this article:

(a) "Board" means the Board of Dental Examiners of California.

(b) "Committee" means a diversion evaluation committee created by this article.

1695.2. One or more diversion evaluation committees is hereby created in the state to be established by the board. The board shall establish criteria for the selection of the committee. No board member shall serve on any committee.

1695.3. Each member of a committee shall receive per diem and expenses as provided in Section 103.

1695.4. The board shall administer the provisions of this article.

1695.5. The board shall establish criteria for the acceptance, denial, or termination of licentiates in a diversion program. Only those licentiates who have voluntarily requested diversion treatment and supervision by a committee shall participate in a program.

1695.6. Each committee shall have the following duties and responsibilities:

(a) To evaluate those licentiates who request to participate in the diversion program according to the guidelines prescribed by the board and to consider the recommendations of any licentiates designated by the board to serve as consultants on the admission of the licentiate to the diversion program.

(b) To review and designate those treatment facilities to which licentiates in a diversion program may be referred.

(c) To receive and review information concerning a licentiate participating in the program.

(d) To consider in the case of each licentiate participating in a program whether he or she may with safety continue or resume the

practice of dentistry.

(e) To perform such other related duties as the board may by regulation require.

1696. Notwithstanding the provisions of Chapter 1 (commencing with Section 11120) of Part 1 of Division 2 of Title 2 of the Government Code, relating to public meetings, a committee may convene in closed session to consider reports pertaining to any licentiate requesting or participating in a diversion program. A committee shall only convene in closed session to the extent that it is necessary to protect the privacy of such a licentiate.

1697. Each licentiate who requests participation in a diversion program shall agree to cooperate with the treatment program designed by a committee. Any failure to comply with the provisions of a treatment program may result in termination of the licentiate's participation in a program.

1698. (a) After a committee in its discretion has determined that a licentiate has been rehabilitated and the diversion program is completed, the committee shall purge and destroy all records pertaining to the licentiate's participation in a diversion program.

(b) All board and committee records and records of proceedings pertaining to the treatment of a licentiate in a program shall be kept confidential and are not subject to discovery or subpoena.

1699. The board shall provide for the representation of any person making reports to a committee or the board under this article in any action for defamation for reports or information given to the committee or the board regarding a licentiate's participation in the diversion program.

SEC. 2. The Auditor General shall conduct a study to review the operation of the drug diversion programs administered by the Board of Medical Quality Assurance, the Board of Examiners in Veterinary Medicine, and the Board of Dental Examiners. A report of the study shall be submitted to the Legislature by December 31, 1984.

The report shall contain the following:

(a) A description of the design and operation of the drug diversion program administered by each of these boards.

(b) A review of the administration, utilization, and costs of each drug diversion program.

(c) A comparative analysis of all three drug diversion programs in order to ascertain which functions could be effectively shared if these programs are consolidated under one administration, and the current cost of each of these functions to each drug diversion program.

CHAPTER 1262

An act to amend Sections 7530.5, 7538.6, 7543.5, 7550, and 7550.5 of, to add Sections 7515, 7515.1, 7515.2, 7515.3, 7516, 7516 1, 7516.2, and 7580.2 to, and to add Article 3.1 (commencing with Section 7544), Article 3.2 (commencing with Section 7545), Article 3.3 (commencing with Section 7546), Article 3.4 (commencing with Section 7547), and Article 4.7 (commencing with Section 7549) to Chapter 11.5 of, to repeal Sections 7514.1, 7528.5 of, and to repeal Article 3.5 (commencing with Section 7544) of Chapter 11.5 of Division 3 of, the Business and Professions Code, to amend Section 12031 of the Penal Code, and to repeal Section 12 of Chapter 1138 of the Statutes of 1981, relating to private investigators, and making an appropriation therefor.

[Approved by Governor September 21, 1982 Filed with Secretary of State September 22, 1982.]

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

SECTION 1. Section 7514.1 of the Business and Professions Code is repealed.

SEC. 3. Section 7515 is added to the Business and Professions Code, to read:

7515. There is hereby created within the jurisdiction of the bureau, an Advisory Board on Private Security Services, hereinafter referred to as the advisory board.

The advisory board shall consist of nine members appointed by the Governor for a term of four years. Each member shall hold office until the appointment and qualification of his or her successor or until one year after the expiration of the term for which he or she was appointed, whichever first occurs. Of the nine members of the advisory board, two members shall be actively engaged in business as a licensed private patrol operator, two members shall be actively engaged in business as a licensed alarm company operator, and five members shall be public members. None of the public members shall be licensees or engaged in any business or profession in which any part of the fees, compensation, or revenue thereof, is derived from any licensee and no more than one of the public members shall be actively connected with a law enforcement agency.

The Governor may remove any member of the advisory board for misconduct, incompetency, or neglect of duty.

SEC. 4. Section 7515.1 is added to the Business and Professions Code, to read:

7515.1. The advisory board shall meet at least two times each year. Meetings may be held by the advisory board at the request of the chairperson. Five members shall constitute a quorum for the transaction of business. The advisory board shall elect from its members, a chairperson, a vice chairperson, and a secretary, each of

which shall serve for a term of one year, and may appoint such committees as it deems necessary to carry out its duties. The chief, or his or her designated representative, shall attend all advisory board meetings and the chief shall attend at least two meetings of the advisory board.

SEC. 5. Section 7515.2 is added to the Business and Professions Code, to read:

7515.2. Each member of the advisory board shall receive a per diem and shall be reimbursed for traveling and other expenses necessarily incurred in the performance of duties pursuant to Section 103.

SEC. 6. Section 7515.3 is added to the Business and Professions Code, to read:

7515.3. The advisory board shall engage in the following functions as they pertain to private patrol operators, security guards, firearm qualification cardholders, firearm training facilities, firearm training instructors, baton training facilities, baton training instructors, alarm company operators, and alarm agents:

(a) Inquire into the needs of the private patrol and alarm company businesses, the functions and policies of the bureau, and shall make recommendations with respect thereto as may be deemed important and necessary for the public welfare, and the welfare and progress of the private patrol and alarm company businesses.

(b) Consider and make appropriate recommendations as to changes in, additions to, or deletions of, rules and regulations which may be deemed important and necessary to the private patrol and alarm company business.

(c) Assist the chief in the collection of information and data as the chief may deem necessary to the proper administration of this chapter.

(d) Coordinate and participate in the formulation and validation of the licensing and the firearm qualification written examinations; establish the minimum equivalency standards to meet the qualifications of the examinations; make recommendations, upon request of the chief, concerning the issuance of licenses, certifications, registrations, or qualification cards; review the renewal of firearms training facilities, firearm training instructors, baton training facilities, and baton training instructors upon request by the chief, to determine if renewal should be granted; and coordinate and participate in the formulation and validation of the "powers to arrest manual," the "firearm training manual," and the "baton training manual" and update those manuals.

SEC. 7. Section 7516 is added to the Business and Professions Code, to read:

7516. The two licensed private patrol operators and three public members of the advisory board shall appoint a private security review committee, hereafter referred to as the disciplinary review committee, and may remove any member of the disciplinary review

committee for misconduct, incompetency, or neglect of duty.

The disciplinary review committee shall consist of five members. Of the five members, one member shall be actively engaged in the business of licensed private patrol operator, one member shall be actively engaged in the business of a firearm training facility, one member shall be actively engaged in the business of a registered security guard, and two members shall be public members. None of the public members shall be licensees or registrants or engaged in any business or profession in which any part of the fees, compensation, or revenue thereof, is derived from any licensee.

The committee shall meet every 60 days or more or less frequently as may be required. The members shall be paid per diem pursuant to Section 103 and shall be reimbursed for actual travel expenses. The members shall be appointed for a term of four years.

SEC. 8. Section 7516.1 is added to the Business and Professions Code, to read:

7516.1. The disciplinary review committee shall perform the following functions as they pertain to private patrol operators, security guards, firearm qualification cardholders, firearm training facilities, firearm training instructors, baton training facilities, and baton training instructors:

(a) Affirm, rescind, or modify all appeals which concern administrative fines assessed by the director.

(b) Affirm, rescind, or modify all appeals which concern denials, revocations, or suspensions of a license, certificate, or registration except denials, revocations, or suspensions ordered by the director in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.

SEC. 9. Section 7516.2 is added to the Business and Professions Code, to read:

7516.2. A private patrol operator, qualified manager of a private patrol operator, security guard, firearm qualification cardholder, firearm training facility, firearm training instructor, baton training facility, or baton training instructor may request a review by the disciplinary review committee to contest the assessment of an administrative fine or to appeal a denial, revocation, or suspension of a license, certificate, or registration unless the denial, revocation, or suspension is ordered by the director in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.

A request for a review shall be by written notice to the chief within 20 days of the issuance of the citation and assessment, denial, revocation, or suspension.

Following a review by the disciplinary review committee, the appellant shall be notified within 30 days, in writing, by regular mail, of the committee's decision.

If the appellant disagrees with the decision made by the disciplinary review committee, he or she may request a hearing in accordance with Chapter 5 (commencing with Section 11500) of Part

1 of Division 3 of Title 2 of the Government Code. A request for a hearing following a decision by the disciplinary review committee shall be by written notice to the chief within 30 days of the committee's decision.

If the appellant does not request a hearing within 30 days, the review committee's decision shall become final.

SEC. 10. Section 7528.5 of the Business and Professions Code is repealed.

SEC. 11. Section 7530.5 of the Business and Professions Code is amended to read:

7530.5. Except in cases where licensees are required to comply with the provisions of Section 7516.2, where a hearing is held under this chapter to determine whether an application for a license should be granted or to determine the qualifications of a licensee's manager, the proceedings shall be conducted in accordance with Chapter 5 of Part 1 of Division 3 of Title 2 of the Government Code, and the director shall have all of the powers granted therein.

SEC. 12. Section 7538.6 of the Business and Professions Code is amended to read:

7538.6. 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 which has been recorded as being in his or her possession has been misplaced, lost, or stolen, or in any other way missing, the licensee or his or her manager shall mail or deliver to the chief and to any local law enforcement agency who 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 7514.1.

(d) Fail to certify an employee's completion of the course of training in the exercise of the power to arrest prior to placing such employee at a duty station.

(e) Fail to either certify proof of current and valid registration for each employee who is subject to registration or fail to require an employee to complete an application for registration within three working days after employing an individual who does not possess a current and valid registration from the department.

(f) Permit any employee to carry a firearm or other deadly weapon without first ascertaining that such 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 such 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 such 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 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. Such 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.

(h) Fail to notify the director in writing and within 30 days that a manager previously qualified by the department is no longer connected with the licensee.

SEC. 13. Section 7543.5 of the Business and Professions Code is amended to read:

7543.5. If, upon investigation, the director determines a licensee, including a corporation, or registrant is in violation of Section 7538.6, 7538.7, 7546.1, 7546.2, 7546.3, 7546.4, 7546.5, 7546.6, 7547.23, or 7551.3 of this chapter, the director may issue a citation to such licensee or registrant. The citation shall be in writing and shall describe with particularity the nature of the violation, including specific reference to the provision of law determined to have been violated. If the director deems it appropriate, the citation may contain an order of abatement fixing a reasonable time for abatement of the violation and may contain assessment of an administrative fine. The amount of the fine shall in no event exceed one thousand dollars ($1,000).

A citation or fine assessment shall inform the licensee or registrant that if he or she contests the finding of a violation, they may request a review by the disciplinary review committee in accordance with Section 7516.2. If a review is not requested pursuant to this section, payment of any fine shall not constitute an admission of the violation charged.

If the licensee or registrant neither requests a review nor pays the assessed fine within 20 days of the assessment, the director shall suspend the license or registration of such person 30 days after the assessment.

Administrative fines collected pursuant to this section shall be deposited in the Private Investigator Fund.

SEC. 13.5. Section 7543.5 of the Business and Professions Code is amended to read:

7543.5. If, upon investigation, the director determines a licensee, including a corporation, or registrant is in violation of Section 7538.6, 7538.7, 7538.10, 7538.11, 7538.12, 7538.13, 7546.1, 7546.2, 7546.3, 7546.4, 7546.5, 7546.6, 7547.23, or 7551.3 of this chapter, the director may issue a citation to such licensee or registrant. The citation shall be in writing and shall describe with particularity the nature of the violation, including specific reference to the provision of law determined to have been violated. If the director deems it appropriate, the citation may contain an order of abatement fixing a reasonable time for abatement of the violation and may contain assessment of an administrative fine. The amount of the fine shall in no event exceed one thousand dollars ($1,000).

A citation or fine assessment shall inform the licensee or registrant that if he or she contests the finding of a violation, they may request a review by the disciplinary review committee in accordance with Section 7516.2. If a review is not requested pursuant to this section, payment of any fine shall not constitute an admission of the violation charged.

If the licensee or registrant neither requests a review nor pays the assessed fine within 20 days of the assessment, the director shall suspend the license or registration of such person 30 days after the assessment

Administrative fines collected pursuant to this section shall be deposited in the Private Investigator Fund.

SEC. 14. Article 3.5 (commencing with Section 7544) of Chapter 11.5 of Division 3 of the Business and Professions Code is repealed.

SEC. 15. Article 3.1 (commencing with Section 7544) is added to Chapter 11.5 of Division 3 of the Business and Professions Code, to read:

Article 3.1. Powers to Arrest and Registration of Employees

7544. For purposes of this article, "licensee" means a licensed private patrol operator.

7544.1. Every person entering the employ of a licensee to perform the functions of a security guard or a security patrolperson shall complete a course in the exercise of the power to arrest prior to being assigned to a duty location.

7544.2. (a) The course of training in the exercise of the power to arrest may be administered, tested, and certified by any licensee. The department may approve any person or school to teach the course in the exercise of the power to arrest. The course of training shall be approximately two hours in length and shall cover the following topics:

(1) Responsibilities and ethics in citizen arrest.
(2) Relationship with the public police in arrest.
(3) Limitations on security guard power to arrest.
(4) Restrictions on searches and seizures.
(5) Criminal and civil liabilities.

(A) Personal liability.

(B) Employer liability.

(b) The department shall make available a guidebook as a standard for teaching the course in the exercise of the power to arrest. The department shall encourage additional training and may provide a training guide recommending additional courses to be taken by security personnel.

7544.3. No employee of a licensee who performs the function of a security guard or security patrolperson shall be issued a registration card until 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.

7544.4. Within three working days after employment, any employee who performs the function of a security guard or security patrolperson who is not currently registered with the bureau shall submit to the bureau a completed application for registration, two classifiable fingerprint cards, and the appropriate registration fee. "Within three working days after employment" means within 72 hours from the time an employee is first compensated by a licensee for security guard or security patrolperson services. No application is required to be submitted if the employee terminates within the three working days. The licensee shall maintain supplies of applications and fingerprint cards which shall be provided by the bureau upon request.

7544.5. The application for registration under this article shall be on a form prescribed by the director and shall be accompanied by the fee as prescribed in this chapter.

7544.6. The application shall be verified and shall include all of the following:

(a) The full name, residence address, telephone number, date of birth, and social security number of the employee.

(b) The name, address, telephone number, and license number of the employer and the date the employment commenced.

(c) The signatures of the employee and the employer's certification that the employee has received a course in the exercise of the power to arrest.

(d) A statement as to whether the employee has been convicted of a misdemeanor, excluding minor traffic violations.

(e) A statement as to whether the employee has been convicted of a felony.

7544.7. An employee of a licensee may be assigned to work with a temporary registration card which indicates completion of the course in the exercise of the power to arrest until the bureau issues a registration card or denies the application for registration.

7544.8. No employee of a licensee shall carry or use a firearm unless the employee has in his or her possession a valid guard registration card and a valid firearm qualification card issued pursuant to this chapter.

7544.9. (a) The bureau, upon receipt of a criminal offense record or record of a subsequent arrest from the Department of Justice, shall make an immediate determination of fitness of (1) applicants for registration under this article, or (2) applicants for firearm qualification cards, when information contained in the records of the Department of Justice makes such a determination possible. Applications of those determined to be unfit shall be immediately denied.

(b) The bureau shall keep a current and accurate record of the individuals who have applied for and been denied registration under this article or a firearms qualification card. A list consisting of individual names and other pertinent identifying information may be made of those individuals who have been denied. The list may be updated bimonthly and made available to interested licensees and law enforcement agencies.

7544.10. (a) If the chief determines that an applicant's criminal history contains open arrest information, the chief shall issue a notice to the applicant allowing 45 days for the applicant to provide documentation concerning the disposition of the arrest or arrests.

(b) The notice shall be sent to the applicant at his or her last known residential address and shall provide sufficient information to assist the applicant in complying with the chief's request. If the applicant fails to respond within 45 days, the applicant's employment shall be automatically suspended until the bureau obtains the necessary documentation to approve or deny the application, or suspend the registration.

7544.11. If the chief determines that continued employment of an applicant or registrant, in his or her current capacity, may present an undue hazard to the public safety, the licensee, upon proper notification from the chief, shall suspend the applicant or registrant from employment in that capacity until action to approve or deny the application for registration or to suspend or revoke the registration has become final.

7544.12. (a) The chief may refuse to register any employee, or may suspend or revoke a previously issued registration, if the individual has committed any act which, if committed by a licensee, would be grounds for refusing to issue a license, or for the suspension or revocation of a license issued under this chapter.

(b) The denial of an application for registration under this article shall be in writing and shall describe the basis for the denial. The denial shall inform the applicant that if he or she desires a review by the disciplinary review committee to contest the denial, the review shall be requested of the director within 20 days of the issuance of the denial.

7544.13. 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. 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 two dollar ($2) certification fee, whereupon the bureau shall issue a certified replacement of the card.

7544.14. A qualified manager who complies with Section 7529 is not required to register under this article.

7544.15. A licensee shall at all times be responsible for ascertaining that those of his or her employees which are subject to registration are currently registered or have made proper application for registration as provided in this article. A licensee may not have in his or her employment a person whose registration has expired or been revoked, denied, suspended, or canceled.

7544.16. (a) A registration shall be effective for two years and shall expire on the 31st day of December of the second calendar year following the date of issuance; and every two years thereafter. At least 60 days prior to the expiration of a registration, a registrant who desires to continue registration shall forward to the bureau a copy of his or her current registration card, along with the renewal fee as set forth in this chapter, for renewal of his or her registration.

(b) The licensee shall provide to any employee information regarding procedures for renewal of registration.

(c) An expired registration may not be renewed. A person with an expired registration may become eligible for employment in a position for which registration is required by applying for a new registration in the manner required of persons not previously registered.

(d) If the renewed registration card has not been delivered to the registrant prior to the date of expiration of the prior registration, the registrant may present evidence of renewal to substantiate continued registration for a period not to exceed 90 days after the date of expiration.

SEC. 16. Article 3.2 (commencing with Section 7545) is added to Chapter 11.5 of Division 3 of the Business and Professions Code, to read:

Article 3.2. Firearms Permits and Permits for Other Deadly and Nonlethal Weapons

7545. Every private investigator, private patrol operator, qualified manager of a licensee or security guard who in the course of his or her employment carries a firearm shall complete a course of training in the carrying and use of firearms and shall receive a firearms qualification card prior to the carrying of such a firearm.

7545.1. A licensee shall not permit an employee to carry or use a loaded or unloaded firearm, whether or not it is serviceable or operative, unless that employee possesses a valid and current firearms qualification card issued by the bureau.

7545.2. The bureau shall issue a firearms qualification card when all of the following conditions are satisfied:

(a) The applicant is a licensee, a qualified manager of a licensee,

or a registered uniformed security guard.

(b) A certified firearms training instructor has certified that the applicant has successfully completed a written examination prepared by the bureau and training course in the carrying and use of firearms approved by the bureau.

(c) The applicant has filed with the bureau a completed application for a firearms qualification card on a form prescribed by the director, dated and signed by the applicant, certifying under penalty of perjury that the information in the application is true and correct.

(d) The bureau has determined, after investigation, that the carrying and use of a firearm by the applicant, in the course of his or her duties, presents no apparent threat to the public safety, or that the carrying and use of a firearm by the applicant is not in violation of Section 12021 of the Penal Code.

(e) The application is accompanied by the application and examination fees prescribed in this chapter.

7545.4. Examinations and reexaminations shall be given at least once a month. Locations for the examination shall be located throughout the state. No applicant shall be required to travel more than 200 miles for the purpose of taking the required written examination. Dates and times for the examinations may be fixed by the chief.

7545.7. If an applicant fails to complete his or her application within one year after it has been filed, the application shall be considered to be abandoned. An application submitted subsequent to the abandonment of the former application shall be treated as a new application.

7545.8. If a firearms permit is denied, the denial of the permit shall be in writing and shall describe the basis for the denial. The denial shall inform the applicant that if he or she desires a review by the disciplinary review committee to contest the denial, the review shall be requested of the director within 20 days of the issuance of the denial. However, no review shall be granted to an individual who is prohibited from carrying a firearm pursuant to Section 12021 of the Penal Code.

7545.9. The firearms qualification card, if issued, shall be mailed to the applicant at the address which appears on the application. 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 two dollar ($2) certification fee, whereupon the bureau shall issue a certified replacement of the card.

7545.10. A firearms qualification card does not authorize the holder thereof to carry a concealed weapon, as that term is defined in Section 12050 of the Penal Code.

7545.11. (a) A firearms qualification card expires one year from the date of issuance, if not renewed. A person who wishes to renew a firearms qualification card may file an application for renewal

within 60 days prior to the card's expiration. A person whose card has expired shall not carry a firearm until he or she has been issued a renewal card by the bureau.

(b) The bureau shall not renew a firearms qualification card unless all of the following conditions are satisfied:

(1) The cardholder has filed with the bureau a completed application for renewal of a firearms qualification card, on a form prescribed by the director, dated and signed by the applicant under penalty of perjury certifying that the information on the application is true and correct.

(2) The applicant has requalified on the range at a training facility approved by the bureau.

(3) The application is accompanied by a firearms requalification fee as prescribed in this chapter.

7545.12. Any private patrol operator, qualified manager, or a registered uniformed security guard who wishes to carry a baton in the performance of his or her duties, shall qualify to carry the weapon pursuant to Article 3.4 (commencing with Section 7547).

7545.13. A licensee shall not permit any employee to carry a baton prior to ascertaining that the employee is proficient in the use of the weapon. Evidence of proficiency shall include a certificate from a baton training facility approved by the bureau which certifies that the employee is proficient in the use of the baton.

7545.14. Every private investigator, private patrol operator, qualified manager, or a registered uniformed security guard, who in the course of his or her employment carries tear gas or any other nonlethal chemical agent, shall complete the required course pursuant to Section 12403.5 of the Penal Code.

7545.15. A licensee shall not permit any employee to carry tear gas or any other nonlethal chemical agent prior to ascertaining that the employee is proficient in the use of tear gas or other nonlethal chemical agent. Evidence of proficiency shall include a certificate from a training facility approved by the Department of Justice or by the Commission on Peace Officers Standards and Training that the person is proficient in the use of tear gas or any other nonlethal chemical agent.

SEC. 17. Article 3.3 (commencing with Section 7546) is added to Chapter 11.5 of Division 3 of the Business and Professions Code, to read:

Article 3.3. Prohibited Acts and Citations for Firearms, Batons, and Nonlethal Weapons

7546. The director may assess fines as enumerated in this article pursuant to Section 7543.5. Assessment of adminstrative fines shall be independent of any other action by the bureau or any local, state, or federal governmental agency which may result from a violation of this article.

7546.1. (a) No licensee, qualified manager, or registered

uniformed security guard shall carry any inoperable, replica, or other simulated firearm.

(b) A violation of this section is punishable by a fine of one hundred dollars ($100) for the first violation, and a fine of five hundred dollars ($500) for each subsequent violation.

7546.2. (a) No licensee, qualified manager, or registered uniformed security guard shall use a firearm in violation of the law, or in knowing violation of the standards for the carrying and usage of firearms as taught in the course of training in the carrying and use of firearms. Such unlawful or prohibited uses of firearms shall include, but not be limited to, the following:

(1) Illegally using, carrying, or possessing a dangerous weapon.

(2) Brandishing a weapon.

(3) Drawing a weapon without proper cause.

(4) Provoking a shooting incident without cause.

(5) Carrying or using a firearm while on duty while under the influence of alcohol or dangerous drugs.

(6) Carrying or using a firearm of a caliber for which a firearms permit has not been issued by the bureau.

(b) A violation of this section is punishable by a fine of five hundred dollars ($500) for the first violation, and by suspension of a firearm qualification card for six months for each subsequent violation.

7546.3. (a) No licensed private patrol operator, qualified manager, or registered uniformed security guard shall carry or use a baton in the performance of his or her duties, unless he or she has in his or her possession a valid baton certificate issued pursuant to Section 7547.18.

(b) A violation of this section is punishable by a fine of twenty-five dollars ($25) for the first violation and by a fine of one hundred dollars ($100) for each subsequent violation.

7546.4. (a) No licensee, qualified manager, or registered uniformed security guard shall carry or use tear gas or any other nonlethal chemical agent in the performance of his or her duties, unless he or she has in his or her possession proof of completion of a course in the carrying and use of tear gas or any other nonlethal chemical agent.

(b) A violation of this section is punishable by a fine of twenty-five dollars ($25) for the first violation and by a fine of one hundred dollars ($100) for each subsequent violation.

7546.5. (a) No licensee, qualified manager, or registered uniformed security guard shall carry a concealed weapon unless the person has been issued a concealed weapons permit by a local law enforcement agency pursuant to Section 12050 of the Penal Code.

(b) A violation of this section is punishable by a fine of five hundred dollars ($500) for each violation.

SEC. 18. Article 3.4 (commencing with Section 7547) is added to Chapter 11.5 of Division 3 of the Business and Professions Code, to read:

Article 3.4. Firearms and Baton Training Facilities

7547. The course of training in the carrying and usage of firearms, the satisfactory completion of which shall be required of applicants who wish to obtain a firearms qualification card, shall be in the format prescribed by the Department of Consumer Affairs as delineated in the bureau's "Firearms Training Manual." The course of training contained in the manual shall include, but not be limited to, the following:

(a) Moral and legal aspects of firearms usage.

(b) Firearms nomenclature and maintenance.

(c) Weapon handling and shooting fundamentals.

(d) Emergency procedures.

(e) Prequalification range training, including the firing of practice rounds.

(f) Qualification course of fire.

(g) Examination which has been provided by the bureau of the subject matter taught.

7547.1. For purposes of this article, "firearms course" means the firearms training course as outlined in Section 7547.

7547.2. The firearms requalification course shall consist of the successful completion of a firearms requalification course approved by the bureau.

7547.3. (a) Any institution, firm, or individual wishing the approval of the bureau to offer the firearms course shall complete an application for certification as a firearms training facility. The application shall be in a form prescribed by the chief and shall include, but not be limited to, the following information:

(1) The name, business address, and telephone number of the institution, firm, or individual.

(2) A detailed description of the places, days, and times the course will be offered.

(3) An estimate of the minimum and maximum class size.

(4) The location and description of the range facilities.

(5) The name or names of the firearms training instructors who will teach the course who have been certified by the bureau, and their certificate numbers, if available.

(b) The application shall be accompanied by the fee prescribed in this chapter.

7547.5. Upon approval by the bureau of a firearms training facility, the chief shall issue to the facility a "Firearms Training Facility Certificate." The certificate is valid only when the firearms training facility has in its employ a firearms training instructor who has been certified by the bureau. The certificate shall be posted in a conspicuous place at the facility.

7547.6. (a) Any individual who desires certification by the bureau to instruct a firearms course shall complete an application for a firearms training instructor certificate. An application shall be made on a form provided by the bureau.

(b) An applicant for a firearms training instructor certificate shall meet the following minimum qualifications:

(1) Possesses any of the following:

(A) An associate of arts degree in the administration of justice or the equivalent thereof.

(B) One year of teaching or training experience in the military, law enforcement, or a public or vocational school.

(C) A teaching credential issued by the State of California.

(2) Possess any of the following certificates, or the equivalent thereof to be determined by the chief:

(A) A firearms instructor training certificate issued by the Commission on Peace Officers Standards and Training.

(B) A police firearms instructor training certificate issued by the National Rifle Association.

(C) A firearms training certificate issued by a federal, state, or local law enforcement agency.

(c) The application shall be accompanied by the fee prescribed in this chapter.

7547.7. Upon approval by the bureau of an applicant for certification as a firearms training instructor, the chief shall issue to the applicant a "Firearms Training Instructor Certificate." The certificate shall be posted at the training site.

7547.8. (a) All firearms course material provided to the certificate holder in the "Firearms Training Manual" issued by the bureau shall be covered in each class session. Any course textbook or manual developed to be used by a firearm training facility as a course in the carrying and usage of firearms shall include the aspects of employee restraint and defensive missions of security guards in addition to following the format delineated in the bureau's "Firearms Training Manual" and shall be examined and approved by the bureau prior to use. Once the bureau has approved the textbooks or manuals all firearm training facilities shall be required to instruct in accordance with one of the textbooks or manuals. In no event shall the class instruction total less than eight hours for the initial firearms qualification. The range instruction for the initial firearms qualification shall not exceed eight hours and shall cover the following subjects:

(1) Range safety and procedure.

(2) Demonstration and dry firing.

(3) Practice rounds.

(4) Qualification firing.

(b) If a person fails to successfully complete the range instruction, that person may, at the discretion of the firearms training facility, continue range instruction for an additional eight hours. However, the person shall, in order to receive a firearms qualification card, be required to successfully pass the range instruction within 30 days of the passage of the classroom instruction.

(c) Prior to range instruction a person shall participate in the classroom instruction and pass a bureau-developed examination of

the subject matter with a minimum score of 85 percent. If a person fails to pass the written examination, he or she shall once more participate in the entire classroom instruction prior to retaking the examination. In no event shall a firearm instructor review the examination question by question with a person, allow a person to review the examination questions and answers, or in any manner assist a person with the examination.

7547.9. (a) Each firearms training facility shall be required to retain for two years the following information regarding each student:

(1) The student's name.

(2) The date of course completion.

(3) Any information regarding the passage or failure of the firearms training course.

(4) The instructor's name.

(5) The make and caliber of the qualifying weapon.

(6) The range scores.

(7) The written examination scores.

(b) Records shall be made available for examination by the bureau on demand.

(c) Each firearm training facility shall have a written procedure for the security of the written examination which shall be made available for inspection by the bureau on demand.

7547.10. (a) The course of training in the carrying and usage of the baton, the satisfactory completion of which shall be required of applicants who wish to obtain a baton permit, shall be in the format prescribed by the Department of Consumer Affairs as delineated in the bureau's "Baton Training Manual." The course of training contained in the manual shall include, but not be limited to, the following subjects:

(1) Moral and legal aspects of baton usage.

(2) Use of force.

(3) Baton familiarization and uses.

(4) First aid for baton injuries.

(5) Fundamentals of baton handling.

(A) Stances and grips.

(B) Target areas.

(C) Defensive techniques.

(D) Control techniques.

(E) Arrest and control techniques.

(6) Examination of the subject matter as taught in the classroom and as provided by the bureau.

(b) The baton training outline distributed by the Department of Justice shall be recognized as an approved outline for the baton training course until January 1, 1984, or until the bureau distributes the "Baton Training Manual."

7547.11. For the purposes of this article "a baton course" means the baton training course as outlined in Section 7547.10.

7547.12. (a) Any institution, firm, or individual wishing approval

of the bureau to offer the baton course shall complete an application for certification as a baton training facility. The application shall be in a form prescribed by the chief and shall include, but not be limited to, all of the following information:

(1) The name, business address, and telephone number of the institution, firm, or individual.

(2) A detailed description of the places, days, and times the course will be offered.

(3) An estimate of the minimum and maximum class size.

(4) Location and description of the facilities.

(5) The name or names of the baton instructors who will teach the course who have been certified by the bureau, and their certificate numbers if available.

(b) The application shall be accompanied by the fee prescribed in this chapter.

7547.13. No approval shall be given, and no certification shall be issued, to a baton training facility until a baton training instructor who has been certified by the bureau has been approved to teach the course.

7547.14. Upon approval by the bureau of a baton training facility, the chief shall issue to the facility a "Baton Training Facility Certificate." The certificate is valid only when the baton training facility has in its employ a baton training instructor who has been certified by the bureau. The certificate shall be posted in a conspicuous place at the facility.

7547.15. (a) Any individual who desires certification by the bureau to instruct the baton course shall complete an application for a baton training instructor certificate. An application shall be made on a form provided by the bureau.

(b) An applicant for a baton training instructor certificate shall meet the following minimum qualifications:

(1) Possess (A) an associate of arts degree in the administration of justice or the equivalent thereof, or (B) one year of teaching or training experience in the military, law enforcement, or a public or vocational school.

(2) Possess a basic certificate issued by the Commission on Peace Officers Standards and Training, or the equivalent thereof to be determined by the chief.

(c) The application shall be accompanied by the fee prescribed in this chapter.

7547.16. Upon approval by the bureau of an applicant for certification as a baton training instructor, the chief shall issue to the applicant a "Baton Training Instructor Certificate." The certificate shall be posted at the baton training site.

7547.17. All baton course material provided to the certificate holder in the "Baton Training Manual" issued by the bureau shall be covered in each class session. In no event shall the class instruction for the course required for baton certification total less than eight hours.

7547.18. (a) A baton training facility shall issue a certificate of successful completion of the baton training course to any person who possesses a valid guard or alarm agent registration card, or who has made application for such registration, and who has successfully completed the baton training course. The certificate is valid only when the holder possesses a valid guard or alarm agent registration card.

(b) The bureau shall issue baton training certificates to a baton training facility, in good standing, upon request and upon payment of the fees as set forth in this chapter.

(c) Each baton training facility shall submit to the bureau, no later than five working days following certification for each person, the name, address, social security number, and baton certificate number of each person certified.

7547.19. (a) Each baton training facility shall be required to retain for two years the following information regarding each student:

(1) The student's name.

(2) The date of course completion.

(3) Any information regarding the passage or failure of the baton training course.

(4) The instructor's name.

(5) Written examination scores.

(b) Records shall be made available for examination by the bureau on demand.

7547.20. Each firearms training facility or baton training facility shall notify the bureau within five working days, whenever any training instructor certified by the bureau is employed or ceases to be employed with the training facility.

7547.21. Each baton training facility shall have a written procedure for the security of the examinations and the baton certificates which shall be made available for inspection by the bureau on demand.

7547.22. Each firearms training facility, firearms training instructor, baton training facility, or baton training instructor shall report to bureau the name of any person, who, while taking the course, demonstrated that the carrying and usage of a firearm or the carrying and usage of a baton by that person would present an undue hazard to the safety of the public. The report shall contain the name and address of the student, the name of the student's employer, if available, and the reasons or specific incident which caused the certificate holder to make the report. All substantiating documents, including, but not limited to, an affidavit from the instructor regarding the incident, shall be included in the report.

7547.23. (a) The chief may refuse to issue or may cancel a previously issued firearms training facility certificate, firearms training instructor certificate, baton training facility certificate, or baton training instructor certificate, or may assess fines pursuant to Section 7543.5, on the grounds that one or more instructors have

done any of the following:

(1) Failed to maintain the records required by Section 7547.9 or 7547.19.

A violation of this paragraph is punishable by a fine of twenty-five dollars ($25) for each violation.

(2) Failed to submit the records to the bureau as required by Section 7547.18.

A violation of this paragraph is punishable by a fine of twenty-five dollars ($25) for each certificate not reported.

(3) Given inaccurate instructions regarding the laws of California and the regulations of the bureau, including, but not limited to, the necessity of an individual to possess a valid firearms qualification card issued by the bureau prior to carrying any firearm; or the necessity of an individual to possess a valid baton permit issued by the bureau prior to carrying any baton.

A violation of this paragraph is punishable by a fine of one hundred dollars ($100) for each violation.

(4) Used improper caution while instructing students, so as to endanger the safety of students.

A violation of this paragraph is punishable by a fine of five hundred dollars ($500) for each violation.

(5) Failed to instruct completely in accordance with the bureau "Firearms Training Manual" as required by Section 7547.8.

A violation of this paragraph is punishable by a fine of five hundred dollars ($500) for every hour the course has been shortened.

(6) Failed to instruct completely in accordance with the bureau's "Baton Training Manual" as required by Section 7547.10.

A violation of this paragraph is punishable by a fine of two hundred fifty dollars ($250) for every hour the course has been shortened.

(7) Allowed a noncertified instructor to teach any portion of the firearms course, including range qualification. This does not include range coaches employed to assist the instructor.

A violation of this paragraph is punishable by a fine of one hundred dollars ($100) for each violation.

(8) Allowed a noncertified instructor to teach any portion of the baton course.

A violation of this paragraph is punishable by a fine of one hundred dollars ($100) for each violation.

(9) Falsified any application for registration, firearms qualification card, firearms requalification permit, or baton certificate.

A violation of this paragraph is punishable by a fine of one thousand dollars ($1,000) for each violation.

(10) Failed to inform the bureau of any range or classroom incident as required by Section 7547.22.

A violation of this paragraph is punishable by a fine of one hundred dollars ($100) for each violation.

(11) Failed to notify the bureau of any change of employment pursuant to Section 7547.20.

A violation of this paragraph is punishable by a fine of twenty-five dollars ($25) for each violation.

(12) Made any false statement of fact required to be revealed in the application for certification as a firearms training facility or as a firearms training instructor.

A violation of this paragraph is punishable by a fine of twenty-five dollars ($25) for each violation.

(b) Fines shall not be assessed on firearms training facilities which are a part of the California community college system.

7547.24. (a) A firearms training facility certificate, a firearms training instructor certificate, a baton training facility certificate, or a baton training instructor certificate shall expire at midnight on the 31st day of May of each even-numbered year. To renew an unexpired certificate, the certificate holder shall apply for renewal on a form prescribed by the director and pay the renewal fee prescribed by this chapter.

(b) If renewal is granted, such evidence of renewal of the certificate as the director may prescribe shall be issued to the certificate holder.

7547.25. In the event the certificate holder fails to renew his or her training facility certificate or training instructor certificate, the certificate shall be automatically canceled, but may be reinstated within 30 days of the date of cancellation upon application for reinstatement and upon the payment of the reinstatement fee provided by this chapter. Reinstatement of a canceled certificate shall not prohibit the bringing of disciplinary proceedings for any act committed in violation of this chapter during the period such certificate is canceled.

7547.26. A firearms training facility, a firearms training instructor, a baton training facility, or a baton training instructor whose certificate has not been renewed may obtain a new license only upon compliance with all of the provisions of this article relating to the issuance of an original certificate.

SEC. 19. Article 4.7 (commencing with Section 7549) is added to Chapter 11.5 of Division 3 of the Business and Professions Code, to read:

Article 4.7. Financial Responsibility

7549. No private patrol operator who employs a security guard who carries a firearm as part of his or her duties shall engage in any of the practices for which he or she is required to be licensed by this chapter, unless he or she maintains an insurance policy as defined in this article.

7549.1. "Insurance policy," as used in this article, means a contract of liability insurance issued by an insurance company authorized to transact business in this state which provides minimum limits of insurance of five hundred thousand dollars ($500,000) for any one loss due to bodily injury or death and five hundred thousand

dollars ($500,000) for any one loss due to injury or destruction of property.

7549.2. Proof that a licensee maintains an insurance policy as required by this article shall be provided by the licensee to the bureau upon demand.

7549.3. The failure of a private patrol operator to maintain an insurance policy as required by this article shall constitute grounds for the suspension of the private patrol operator's license.

SEC. 20. Section 7550 of the Business and Professions Code is amended to read:

7550. Except as otherwise required to comply with the provisions of Section 7516.2 or Article 5.5 of this chapter, the proceedings under this article shall be conducted in accordance with Chapter 5 of Part 1 of Division 3 of Title 2 of the Government Code, and the director shall have all the powers granted therein.

SEC. 21. Section 7550.5 of the Business and Professions Code is amended to read:

7550.5. A person registered under the provisions of Article 3.1 (commencing with Section 7544), Article 3.2 (commencing with Section 7545), and Article 3.4 (commencing with Section 7547) shall be deemed to be a licensee for the purposes of this article.

SEC. 21.5. Section 7550.5 of the Business and Professions Code is amended to read:

7550.5. A person registered under the provisions of subdivision (f) of Section 7514, Article 3.1 (commencing with Section 7544), Article 3.2 (commencing with Section 7545), and Article 3.4 (commencing with Section 7547) shall be deemed to be a licensee for the purposes of this article.

SEC. 22. Section 7580.2 is added to the Business and Professions Code, to read:

7580.2. Fees to carry out the provisions of Article 3.1 (commencing with Section 7544), Article 3.2 (commencing with Section 7545), and Article 3.4 (commencing with Section 7547) shall be as follows:

(a) A registration fee of twelve dollars ($12).

(b) A registration renewal fee of seven dollars ($7).

(c) A firearms qualification fee of fifteen dollars ($15).

(d) A firearms requalification fee of ten dollars ($10).

(e) A initial baton certification fee of ten dollars ($10).

(f) An application fee and renewal fee for certification as a firearms training facility or a baton training facility of fifty dollars ($50).

(g) An application fee and renewal fee for certification as a firearms training instructor of twenty-five dollars ($25).

(h) A deliquency fee of 50 percent of the renewal fee in effect on the date of expiration.

(i) A reinstatement fee equal to the amount of the renewal fee plus the deliquency fee.

SEC. 23. Section 12031 of the Penal Code is amended to read:

12031. (a) Except as provided in subdivision (b), (c), or (d), every person who carries a loaded firearm on his or her person or in a vehicle while in any public place or on any public street in an incorporated city or in any public place or on any public street in a prohibited area of unincorporated territory is guilty of a misdemeanor.

Every person convicted under this section who has previously been convicted of an offense enumerated in Section 12001.6, or of any crime made punishable under this chapter, shall serve a term of at least three months in the county jail, or, if granted probation, or if the execution or imposition of sentence is suspended, it shall be a condition thereof that he or she be imprisoned for a period of at least three months.

The court shall apply the three-month minimum sentence except in unusual cases where the interests of justice would best be served by granting probation or suspending the imposition or execution of sentence without the minimum imprisonment required in this subdivision or by granting probation or suspending the imposition or execution of sentence with conditions other than those set forth in this subdivision, in which case, the court shall specify on the record and shall enter on the minutes the circumstances indicating that the interests of justice would best be served by such a disposition.

(b) Subdivision (a) shall not apply to any of the following:

(1) Peace officers listed in Section 830.1 or 830.2, whether active or honorably retired, other duly appointed peace officers, full-time paid peace officers of other states and the federal government who are carrying out official duties while in California, or any person summoned by any such officers to assist in making arrests or preserving the peace while the person is actually engaged in assisting such officer.

The agency from which a peace officer is honorably retired may, upon initial retirement of the peace officer, or at any time subsequent thereto, deny or revoke, for good cause, the retired officer's privilege to carry a weapon as provided in this paragraph. A retired peace officer shall petition the issuing agency for renewal of his or her privilege to carry a loaded firearm in public every five years. Any peace officer who has been honorably retired shall be issued an identification certificate containing an endorsement by the issuing agency indicating whether or not the retired peace officer has the privilege to carry a weapon pursuant to this paragraph and the date when the endorsement is to be reviewed again.

(2) Members of the military forces of this state or of the United States engaged in the performance of their duties.

(3) Persons who are using target ranges for the purpose of practice shooting with a firearm or who are members of shooting clubs while hunting on the premises of such clubs.

(4) The carrying of concealable weapons by persons who are authorized to carry such weapons pursuant to Article 3 (commencing with Section 12050) of Chapter 1 of Title 2 of Part 4.

(5) Armored vehicle guards, as defined in Section 7521 of the Business and Professions Code, (A) if hired prior to January 1, 1977; or (B) if hired on or after such date, if they have received a Firearms Qualification Card from the Department of Consumer Affairs, in each case while acting within the course and scope of their employment.

(c) Subdivision (a) shall not apply to any of the following who have completed a regular course in firearms training approved by the Commission on Peace Officer Standards and Training:

(1) Patrol special police officers appointed by the police commission of any city, county, or city and county under the express terms of its charter who also under the express terms of the charter (i) are subject to suspension or dismissal after a hearing on charges duly filed with the commission after a fair and impartial trial, (ii) must be not less than 18 years of age nor more than 40 years of age, (iii) must possess physical qualifications prescribed by the commission, and (iv) are designated by the police commission as the owners of a certain beat or territory as may be fixed from time to time by the police commission.

(2) The carrying of weapons by animal control officers or zookeepers, regularly compensated as such by a governmental agency when acting in the course and scope of their employment and when designated by a local ordinance or, if the governmental agency is not authorized to act by ordinance, by a resolution, either individually or by class, to carry such weapons, or by persons who are authorized to carry such weapons pursuant to Section 607f of the Civil Code, while actually engaged in the performance of their duties pursuant to that section.

(3) Harbor policemen designated pursuant to Section 663.5 of the Harbors and Navigation Code.

(d) Subdivision (a) shall not apply to any of the following who have been issued a certificate pursuant to Section 12033. Such certificate shall not be required of any person who is a peace officer, who has completed all training required by law for the exercise of his or her power as a peace officer, and who is employed while not on duty as such peace officer.

(1) Guards or messengers of common carriers, banks, and other financial institutions while actually employed in and about the shipment, transportation, or delivery of any money, treasure, bullion, bonds, or other thing of value within this state.

(2) Guards of contract carriers operating armored vehicles pursuant to California Highway Patrol and Public Utilities Commission authority (i) if hired prior to January 1, 1977; or (ii) if hired on or after January 1, 1977, if they have completed a course in the carrying and use of firearms which meets the standards prescribed by the Department of Consumer Affairs.

(3) Private investigators, private patrol operators, and alarm company operators who are licensed pursuant to Chapter 11 (commencing with Section 7500) of Division 3 of the Business and

Professions Code, while acting within the course and scope of their employment.

(4) Uniformed security guards or night watchmen employed by any public agency, while acting within the scope and in the course of their employment.

(5) Uniformed security guards, regularly employed and compensated as such by persons engaged in any lawful business, and uniformed alarm agents employed by an alarm company operator, while actually engaged in protecting and preserving the property of their employers or on duty or en route to or from their residence or their place of employment. Security guards and alarm agents en route to or from their residence or employer-required range training. Nothing in this paragraph shall be construed to prohibit cities and counties from enacting ordinances requiring alarm agents to register their name.

(6) Uniformed employees of private patrol operators and uniformed employees of private investigators licensed pursuant to Chapter 11 (commencing with Section 7500) of Division 3 of the Business and Professions Code while acting within the course and scope of their employment as private patrolmen or private investigators.

(e) In order to determine whether or not a firearm is loaded for the purpose of enforcing this section, peace officers are authorized to examine any firearm carried by anyone on his or her person or in a vehicle while in any public place or on any public street in an incorporated city or prohibited area of an unincorporated territory. Refusal to allow a peace officer to inspect a firearm pursuant to the provisions of this section constitutes probable cause for arrest for violation of this section.

(f) As used in this section "prohibited area" means any place where it is unlawful to discharge a weapon.

(g) A firearm shall be deemed to be loaded for the purposes of this section when there is an unexpended cartridge or shell, consisting of a case which holds a charge of powder and a bullet or shot, in, or attached in any manner to, the firearm, including, but not limited to, in the firing chamber, magazine, or clip thereof attached to the firearm; except that a muzzle-loader firearm shall be deemed to be loaded when it is capped or primed and has a powder charge and ball or shot in the barrel or cylinder.

(h) Nothing in this section shall prevent any person engaged in any lawful business, including a nonprofit organization, or any officer, employee, or agent authorized by such person for lawful purposes connected with such business, from having a loaded firearm within such person's place of business, or any person in lawful possession of private property from having a loaded firearm on such property.

(i) Nothing in this section shall prevent any person from carrying a loaded firearm in an area within an incorporated city while engaged in hunting, during such time and in such area as the hunting

is not prohibited by the city council.

(j) Nothing in this section is intended to preclude the carrying of any loaded firearm, under circumstances where it would otherwise be lawful, by a person who reasonably believes that the person or property of himself or herself or of another is in immediate, grave danger and that the carrying of such weapon is necessary for the preservation of such person or property. As used in this subdivision "immediate" means the brief interval before and after the local law enforcement agency, when reasonably possible, has been notified of the danger and before the arrival of its assistance.

(k) Nothing in this section is intended to preclude the carrying of a loaded firearm by any person while engaged in the act of making or attempting to make a lawful arrest.

(*l*) Nothing in this section shall prevent any person from having a loaded weapon, if it is otherwise lawful, at his or her place of residence, including any temporary residence or campsite.

SEC. 24. Section 12 of Chapter 1138 of the Statutes of 1981 is repealed.

SEC. 25. Notwithstanding any other provision of law, there is hereby appropriated the sum of sixty-four thousand dollars ($64,000) from the unencumbered balance in the Private Investigator Fund to the Bureau of Collection and Investigative Services for the purpose of implementation and continued enforcement of the provisions of this act.

SEC. 26. If any provision of this act or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of this act are severable.

SEC. 27. It is the intent of the Legislature that if this bill and Senate Bill 673 are both chaptered and become effective January 1, 1983, then Sections 3, 4, 5, and 6 of this act shall not become operative.

SEC. 28. It is the intent of the Legislature, if this bill and Assembly Bill 2456 are both chaptered and become effective January 1, 1983, both bills amend Section 7543.5 of the Business and Professions Code, and this bill is chaptered after Assembly Bill 2456, that the amendments to Section 7543.5 proposed by both bills be given effect and incorporated in Section 7543.5 in the form set forth in Section 13.5 of this act. Therefore, Section 13.5 of this act shall become operative only if this bill and Assembly Bill 2456 are both chaptered and become effective January 1, 1983, both amend Section 7543.5, and this bill is chaptered after Assembly Bill 2456, in which case Section 13 of this act shall not become operative.

SEC. 29. It is the intent of the Legislature, if this bill and Senate Bill 673 are both chaptered and become effective January 1, 1983, both bills amend Section 7550.5 of the Business and Professions Code, and this bill is chaptered after Senate Bill 673, that the amendments to Section 7550.5 proposed by both bills be given effect and incorporated in Section 7550.5 in the form set forth in Section 21.5 of

this act. Therefore, Section 21.5 of this act shall become operative only if this bill and Senate Bill 673 are both chaptered and become effective January 1, 1983, both amend Section 7550.5, and this bill is chaptered after Senate Bill 673, in which case Section 21 of this act shall not become operative.

SEC. 30. No appropriation is made and no reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution or Section 2231 or 2234 of the Revenue and Taxation Code because the only costs which may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, changes the definition of a crime or infraction, changes the penalty for a crime or infraction, or eliminates a crime or infraction.

CHAPTER 1263

An act to amend Sections 65302, 65915, and 65917 of the Government Code, relating to housing, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 21, 1982. Filed with Secretary of State September 22, 1982.]

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

SECTION 1. Section 65302 of the Government Code is amended to read:

65302. The general plan shall consist of a statement of development policies and shall include a diagram or diagrams and text setting forth objectives, principles, standards, and plan proposals. The plan shall include the following elements:

(a) A land use element which designates the proposed general distribution and general location and extent of the uses of the land for housing, business, industry, open space, including agriculture, natural resources, recreation, and enjoyment of scenic beauty, education, public buildings and grounds, solid and liquid waste disposal facilities, and other categories of public and private uses of land. The land use element shall include a statement of the standards of population density and building intensity recommended for the various districts and other territory covered by the plan. The land use element shall also identify areas covered by the plan which are subject to flooding and shall be reviewed annually with respect to such areas.

(b) A circulation element consisting of the general location and extent of existing and proposed major thoroughfares, transportation routes, terminals, and other local public utilities and facilities, all correlated with the land use element of the plan.

(c) A housing element as provided in Article 10.6 (commencing

with Section 65580).

(d) A conservation element for the conservation, development, and utilization of natural resources including water and its hydraulic force, forests, soils, rivers and other waters, harbors, fisheries, wildlife, minerals, and other natural resources. That portion of the conservation element including waters shall be developed in coordination with any countywide water agency and with all district and city agencies which have developed, served, controlled or conserved water for any purpose for the county or city for which the plan is prepared. The conservation element may also cover:

(1) The reclamation of land and waters.

(2) Flood control.

(3) Prevention and control of the pollution of streams and other waters.

(4) Regulation of the use of land in stream channels and other areas required for the accomplishment of the conservation plan.

(5) Prevention, control, and correction of the erosion of soils, beaches, and shores.

(6) Protection of watersheds.

(7) The location, quantity and quality of the rock, sand and gravel resources.

The conservation element shall be prepared and adopted no later than December 31, 1973.

(e) An open-space element as provided in Article 10.5 (commencing with Section 65560).

(f) A seismic safety element consisting of an identification and appraisal of seismic hazards such as susceptibility to surface ruptures from faulting, to ground shaking, to ground failures, or to effects of seismically induced waves such as tsunamis and seiches.

The seismic safety element shall also include an appraisal of mudslides, landslides, and slope stability as necessary geologic hazards that shall be considered simultaneously with other hazards such as possible surface ruptures from faulting, ground shaking, ground failure, and seismically induced waves.

To the extent that a county's seismic safety element is sufficiently detailed containing appropriate policies and programs for adoption by a city, a city may adopt that portion of the county's seismic safety element that pertains to the city planning area within the county's jurisdiction, in satisfaction of this subdivision.

In adopting a county seismic safety element, a city shall follow all requirements regarding the content and adoption of general plan elements as set forth in this article and Article 6 (commencing with Section 65350).

Each county and city shall submit to the Division of Mines and Geology of the Department of Conservation one copy of the seismic safety element and any technical studies used for developing the seismic safety element.

(g) A noise element, which shall recognize guidelines adopted by the Office of Noise Control pursuant to Section 46050.1 of the Health

and Safety Code, and which quantifies the community noise environment in terms of noise exposure contours for both near- and long-term levels of growth and traffic activity. Such noise exposure information shall become a guideline for use in development of the land use element to achieve noise compatible land use and also to provide baseline levels and noise source identification for local noise ordinance enforcement.

The sources of environmental noise considered in this analysis shall include, but are not limited to, the following:

(1) Highways and freeways.

(2) Primary arterials and major local streets.

(3) Passenger and freight on-line railroad operations and ground rapid transit systems.

(4) Commercial, general aviation, heliport, helistop, and military airport operations, aircraft overflights, jet engine test stands, and all other ground facilities and maintenance functions related to airport operation.

(5) Local industrial plants, including, but not limited to, railroad classification yards.

(6) Other ground stationary noise sources identified by local agencies as contributing to the community noise environment.

The noise exposure information shall be presented in terms of noise contours expressed in community noise equivalent level (CNEL) or day-night average level (L_{dn}). CNEL means the average equivalent A-weighted sound level during a 24-hour day, obtained after addition of five decibels to sound levels in the evening from 7 p.m. to 10 p.m. and after addition of 10 decibels to sound levels in the night before 7 a.m. and after 10 p.m. L_{dn} means the average equivalent A-weighted sound level during a 24-hour day, obtained after addition of 10 decibels to sound levels in the night before 7 a.m. and after 10 p.m.

The contours shall be shown in minimum increments of 5db and shall continue down to 60db. For areas deemed noise sensitive, including, but not limited to, areas containing schools, hospitals, rest homes, long-term medical or mental care facilities, or any other land-use areas deemed noise sensitive by the local jurisdiction, the noise exposure shall be determined by monitoring.

A part of the noise element shall also include the preparation of a community noise exposure inventory, current and projected, which identifies the number of persons exposed to various levels of noise throughout the community.

The noise element shall also recommend mitigating measures and possible solutions to existing and foreseeable noise problems.

The state, local, or private agency responsible for the construction, maintenance, or operation of those transportation, industrial, or other commercial facilities specified in paragraph 2 of this subdivision shall provide to the local agency producing the general plan, specific data relating to current and projected levels of activity and a detailed methodology for the development of noise contours

given this supplied data, or they shall provide noise contours as specified in the foregoing statements.

It shall be the responsibility of the local agency preparing the general plan to specify the manner in which the noise element will be integrated into the city or county's zoning plan and tied to the land use and circulation elements and to the local noise ordinance. The noise element, once adopted, shall also become the guideline for determining compliance with the state's noise insulation standards, as contained in Section 1092 of Title 25 of the California Administrative Code.

(h) A scenic highway element for the development, establishment, and protection of scenic highways pursuant to the provisions of Article 2.5 (commencing with Section 260) of Chapter 2 of Division 1 of the Streets and Highways Code.

(i) A safety element for the protection of the community from fires and geologic hazards including features necessary for such protection as evacuation routes, peakload water supply requirements, minimum road widths, clearances around structures, and geologic hazard mapping in areas of known geologic hazards.

The elements of the general plan may, at the discretion of the county or city, be combined if the county or city complies with all requirements regarding the content and adoption of general plan elements of this article and Article 6 (commencing with Section 65350).

The requirements of this section shall apply to charter cities.

SEC. 2. Section 65915 of the Government Code is amended to read:

65915. When a developer of housing agrees to construct at least 25 percent of the total units of a housing development for persons and families of low or moderate income, as defined in Section 50093 of the Health and Safety Code, or 10 percent of the total units of a housing development for lowerincome households, as defined in Section 50079.5 of the Health and Safety Code, a city, county, or city and county shall either (1) grant a density bonus or (2) provide other incentives of equivalent financial value.

A developer may submit to a city, county, or city and county a preliminary proposal for the development of housing pursuant to this section prior to the submittal of any formal requests for general plan amendments, zoning amendments, or subdivision map approvals. The city, county, or city and county shall, within 90 days of receipt of a written proposal, notify the housing developer in writing of the manner in which it will comply with this section. The city, county, or city and county shall establish procedures for carrying out this section, which shall include legislative body approval of the means of compliance with this section.

For the purposes of this chapter, "density bonus" means a density increase of at least 25 percent over the otherwise maximum allowable residential density under the applicable zoning ordinance and land use element of the general plan. The density bonus shall not

be included when determining the number of housing units which is equal to 10 or 25 percent of the total. The density bonus shall apply to housing developments consisting of five or more dwelling units.

If a developer agrees to construct both 25 percent of the total units for persons and families of low or moderate income and 10 percent of the total units for lowerincome households, the developer is entitled to only one density bonus under this section although the city, city and county, or county may, at its discretion, grant more than one density bonus.

SEC. 3. Section 65917 of the Government Code is amended to read:

65917. In enacting this chapter it is the intent of the Legislature that the density bonus or other incentives offered by the city, county, or city and county pursuant to this chapter shall contribute significantly to the economic feasibility of low- and moderate-income housing in proposed housing developments.

SEC. 4. Notwithstanding Section 6 of Article XIII B of the California Constitution and Section 2231 or 2234 of the Revenue and Taxation Code, no appropriation is made by this act for the purpose of making reimbursement pursuant to these sections. It is recognized, however, that a local agency or school district may pursue any remedies to obtain reimbursement available to it under Chapter 3 (commencing with Section 2201) of Part 4 of Division 1 of that code.

SEC. 5. Notwithstanding Section 2231.5 of the Revenue and Taxation Code, this act does not contain a repealer, as required by that section; therefore, the provisions of this act shall remain in effect unless and until they are amended or repealed by a later enacted 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 provide incentives for the development of low- and moderate-income housing units, and to more economically and expeditiously develop territory with such proposed housing units which necessitates logical reorganization of city boundaries to the extent approved by the applicable local agency formation commission, it is necessary that this act go into effect immediately.

CHAPTER 1264

An act to amend Sections 11496 and 11498 of the Insurance Code, relating to insurance.

[Approved by Governor September 21, 1982. Filed with Secretary of State September 22, 1982.]

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

SECTION 1. Section 11496 of the Insurance Code is amended to read:

11496. (a) Persons desiring to form a nonprofit hospital service corporation shall incorporate pursuant to the provisions of this chapter and the Nonprofit Hospital Service Plan Law (Article 4 (commencing with Section 10840) of Part 11 of Division 2 of Title 1 of the Corporations Code) and the provisions of 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 Mutual Benefit Corporation Law (Part 3 (commencing with Section 7110) of Division 2 of Title 1 of the Corporations Code), so far as the provisions of the Nonprofit Corporation Law are applicable and not inconsistent with this chapter.

(b) The regulatory authority of the commissioner shall extend to any organization organized in compliance with subdivision (a) whenever that entity exercises authority in the operation of another corporation, including the authority to appoint to the board of directors of a nonprofit hospital service plan corporation. The commissioner's regulatory authority shall also extend to a nonprofit hospital service plan corporation with respect to services or functions performed by a related corporation to the benefit of a nonprofit hospital service plan corporation.

(c) Organizations subject to subdivision (a) or (b) shall be under the exclusive jurisdiction of the commissioner.

SEC. 2. Section 11498 of the Insurance Code is amended to read:

11498. (a) Not more than one-third of the directors of such a corporation shall be duly appointed representatives of hospitals with which the corporation has contracts for the rendering of hospital services and duly qualified and licensed practicing physicians holding valid and unrevoked certificates to practice medicine and surgery or physician and surgeon certificates, issued under the provisions of the State Medical Practice Act in the State of California. Not less than two-thirds of the directors of such a corporation shall be duly appointed representatives of the public.

(b) The board of directors of a corporation which held a certificate of authority as a nonprofit hospital service plan corporation pursuant to this chapter during a portion of calendar year 1982 and which continues to possess appointing authority to the board of directors of a nonprofit hospital service plan corporation in 1982 and beyond shall continue its consumer-provider representative ratio specified in subdivision (a) prior to the amendments to this section enacted at the 1981–82 Regular Session of the Legislature unless changed by the Legislature.

(c) A board of directors of a nonprofit hospital service plan corporation which has less than 100,000 subscribers and is in existence prior to January 1, 1983, but not in existence for a period longer than a total of five years prior to January 1, 1983, shall be exempt from the

board composition requirements as stipulated in subdivision (a) for a period of three years commencing January 1, 1983, or until the subscriber population of the corporation exceeds 100,000 as filed with and verified by the commissioner.

A nonprofit hospital service plan corporation formed after January 1, 1983, which has less than 100,000 subscribers, shall be excluded from the board composition requirements provided for in subdivision (a) for a period of three years from the date of its formation or until the subscriber population of the corporation exceeds 100,000 as filed with and verified by the commissioner.

A corporation presently operating under this chapter shall not be required to comply with the amendments to this section enacted at the 1973–74 Regular Session of the Legislature, if such compliance would require the resignation of any person duly appointed or elected as a director of such corporation at the time such amendments become effective; provided, however, that after such amendments become effective, no person shall be appointed, elected, reappointed or reelected as a director of such corporation if such appointment, election, reappointment or reelection would be in violation of this section. This exemption shall not be applicable to any corporation operating under this chapter after January 1, 1977.

CHAPTER 1265

An act to amend Sections 8008, 8017, 8019, 8020, and 8025 of, to amend, add, and repeal Section 8016 of, and to add Sections 8010 and 8027 to, the Business and Professions Code, relating to shorthand reporters.

[Approved by Governor September 21, 1982. Filed with Secretary of State September 22, 1982.]

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

SECTION 1. Section 8008 of the Business and Professions Code, as amended by Section 1 of Chapter 1350 of the Statutes of 1980, is amended to read:

8008. The board also 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 or revoke a certificate, for any cause specified in this chapter.

(c) To charge and collect from all applicants for certificates the fees provided for in this chapter.

(d) To require the renewal of all such certificates and to collect therefor the renewal fee prescribed by this chapter or such lesser amount as may be fixed by the board.

(e) To issue subpoenas, to administer oaths, and to take testimony

concerning any matter within the jurisdiction of the board.

(f) To administer a fund established from the fees collected pursuant to Section 8031, or from any other donated sources, to reimburse indigent litigants for the cost of preparation of official transcripts of court proceedings and deposition proceedings.

(g) To submit to the Legislature no later than September 1, 1982, and annually thereafter, a report concerning the past fiscal year's experience with the Transcript Reimbursement Fund. The report shall include, but is not limited to, information which indicates the following:

(1) The number of requests for reimbursement.

(2) The number of requests granted.

(3) The number of requests denied.

(4) The total amount of funds disbursed.

(5) The amount of any remaining unexpended funds.

(6) The anticipated funding level needed to meet all requests in the following fiscal year.

(7) The total amount of refunds recovered by judicial award of costs to applicants.

(8) The amount of funds received from other sources.

(h) 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.

This section shall remain in effect only until June 30, 1986, and as of that date is repealed.

SEC. 2. Section 8008 of the Business and Professions Code, as added by Section 2 of Chapter 1350 of the Statutes of 1980, is amended to read:

8008. The board also 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 or revoke a certificate, for any cause specified in this chapter.

(c) To charge and collect from all applicants for certificates the fees provided for in this chapter.

(d) To require the renewal of all such certificates and to collect therefor the renewal fee prescribed by this chapter or such lesser amount as may be fixed by the board.

(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.

This section shall become operative on June 30, 1986.

SEC. 3. Section 8010 is added to the Business and Professions Code, to read:

8010. Information regarding a complaint against a specific

licensee shall not be disclosed to the public until such time as an accusation has been filed by the board, and the licensee has been notified of the filing of the accusation against his or her license and the disciplinary proceedings to be conducted in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.

SEC. 4. Section 8016 of the Business and Professions Code is amended to read:

8016. No person shall engage in the practice of shorthand reporting as defined in this chapter, unless such person is the holder of a certificate in full force and effect issued by the board. This section does not apply to a salaried, full-time employee of a district attorney or of any department or agency of the state who is employed as a hearing reporter. Nothing in this chapter shall be construed to prohibit the employment of any shorthand reporter not holding a certificate until a certified shorthand reporter is available. Oral depositions may be reported by a person not certified under this chapter only upon stipulation on the record, at the commencement of the deposition, by the parties or their counsel present at the deposition.

This section shall apply to all persons who are appointed, on and after January 1, 1983, to the position of official reporter or pro tempore official reporter of any court, as defined in the Government Code.

This section shall be operative until January 31, 1984, and on that date is repealed.

SEC. 4.5. Section 8016 is added to the Business and Professions Code, to read:

8016. No person shall engage in the practice of shorthand reporting as defined in this chapter, unless such person is the holder of a certificate in full force and effect issued by the board. This section does not apply to a salaried, full-time employee of a district attorney or of any department or agency of the state who is employed as a hearing reporter.

This section shall apply to all persons who are appointed, on and after January 1, 1983, to the position of official reporter or pro tempore official reporter of any court, as defined in the Government Code.

This section shall become operative on and after February 1, 1984.

SEC. 5. Section 8017 of the Business and Professions Code is amended to read:

8017. The practice of shorthand reporting is defined as the making by means of written symbols or abbreviations in shorthand or machine shorthand writing of a verbatim record of any oral court proceeding, deposition, or proceedings before any grand jury, referee, or court commissioner and the accurate transcription thereof.

SEC. 6. Section 8019 of the Business and Professions Code is amended to read:

8019. A violation of any provision of this chapter is a misdemeanor.

Any person who directly or indirectly assists in or abets the violation of, or conspires to aid or abet in the violation of, any provision of this chapter, is guilty of a misdemeanor.

SEC. 7. Section 8020 of the Business and Professions Code is amended to read:

8020. Any person over the age of 18 years, who has not committed any acts or crimes constituting grounds for denial of licensure under Section 480, who has a high school education or its equivalent as determined by the board, and who has satisfactorily passed an examination under such regulations as 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 unless he first presents satisfactory evidence to the board that within the five years immediately preceding the date his application for a certificate is filed with the board he has obtained one of the following:

(a) One year of experience in making verbatim records of meetings, conferences, hearings, or judicial or related proceedings by means of written symbols or abbreviations in shorthand or machine writing and transcribing such records.

(b) A verified certificate of satisfactory completion of a prescribed course of study in a recognized court reporting school or certificate from any such school evidencing equivalent proficiency and of the ability to make a verbatim record of material dictated in accordance with regulations adopted by the board contained in Title 16 of the Administrative Code.

(c) National Shorthand Reporters Association certificate of proficiency or certificate of merit.

(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.

SEC. 8. Section 8025 of the Business and Professions Code, as amended by Section 5 of Chapter 1350 of the Statutes of 1980, is amended to read:

8025. A certificate issued under this chapter may be suspended or revoked for one or more of the following causes:

(a) Conviction of a crime substiantally related to the qualifications, functions and duties of a certified shorthand reporter. The record of conviction, or a certified copy thereof, shall be conclusive evidence of such conviction.

(b) Fraud or misrepresentation resorted to in obtaining a certificate hereunder.

(c) Fraud, dishonesty, corruption, willful violation of duty, gross incompetency in practice, or unprofessional conduct.

"Unprofessional conduct" includes, but is not limited to, acts contrary to professional standards concerning confidentiality;

impartiality; filing and retention of notes; notifications, availability, delivery, execution and certification of transcripts; and any provision of law substantially related to the duties of a certified shorthand reporter.

(d) Repeated unexcused failure, whether or not willful, to transcribe notes of cases pending on appeal and to file the transcripts thereof within the time required by law or to transcribe or file notes of other proceedings within the time required by law or agreed by contract.

(e) Failure to pay fees required by this chapter.

This section shall remain in effect only until June 30, 1986, and as of that date is repealed.

SEC. 9. Section 8025 of the Business and Professions Code, as added by Section 6 of Chapter 1350 of the Statutes of 1980, is amended to read:

8025. A certificate issued under this chapter may be suspended or revoked for one or more of the following causes:

(a) Conviction of a crime substantially related to the qualifications, functions and duties of a certified shorthand reporter. The record of conviction, or a certified copy thereof, shall be conclusive evidence of such conviction.

(b) Fraud or misrepresentation resorted to in obtaining a certificate hereunder.

(c) Fraud, dishonesty, corruption, willful violation of duty, gross incompetency in practice, or unprofessional conduct.

"Unprofessional conduct" includes, but is not limited to, acts contrary to professional standards concerning confidentiality; impartiality; filing and retention of notes; notification, availability, delivery, execution and certification of transcripts; and any provision of law substantially related to the duties of a certified shorthand reporter.

(d) Repeated unexcused failure, whether or not willful, to transcribe notes of cases pending on appeal and to file the transcripts thereof within the time required by law or to transcribe or file notes of other proceedings within the time required by law or agreed by contract.

This section shall become operative on June 30, 1986.

SEC. 10. Section 8027 is added to the Business and Professions Code, to read:

8027. (a) 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, and shall be a residence program. It shall be legally organized and authorized to conduct its program under all applicable laws of the state, and shall conform to and offer 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, including positive daily and clock-hour attendance of each student; apprenticeship and

graduation; high school transcripts or equivalent; transcript of other education; and, student progress to date.

(b) 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 (a). Recognition shall 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 license to practice shorthand reporting as defined in Sections 8016 and 8017. Failure to meet the provisions and terms of this section shall require the board to deny recognition after the three-year period.

(c) Upon the effective date of this section, all schools previously recognized by the board shall continue to be recognized, and all schools previously granted provisional recognition shall be recognized. All such schools shall then be subject to all the provisions and terms of this section.

(d) 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.

(e) The board shall maintain statistics which 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.

(f) Inspections and investigations shall be conducted by the board as necessary to carry out the provisions of this section.

(g) All recognized and provisionally-recognized court reporting schools must notify the board of any change in school name, address, telephone number, responsible court reporting program manager, and the effective date thereof, within 30 days of such change. The board shall be notified, immediately, of the discontinuance, or pending discontinuance of the school or program. All such notifications shall be made in writing.

(h) As used in this section, "school" means the court reporter training program of any department or institution, public or private.

(i) Application for recognition of a court reporting school shall be made upon a form prescribed by the board and shall be accompanied by such evidence, statements, or documents requested. Each branch, extension center or off-campus facility requires separate application.

SEC. 11. No appropriation is made and no reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution or Section 2231 or 2234 of the Revenue and Taxation Code because the only costs which may be incurred by a local agency or school district will be incurred because this act

creates a new crime or infraction, changes the definition of a crime or infraction, changes the penalty for a crime or infraction, or eliminates a crime or infraction.

CHAPTER 1266

An act relating to the disposition of real property owned by the state, and making an appropriation therefor.

[Approved by Governor September 21, 1982. Filed with Secretary of State September 22, 1982.]

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

SECTION 1. The Director of General Services, with the approval of the State Public Works Board, is hereby authorized to sell, exchange, or lease for current market value, or for any lesser consideration authorized by law, and upon those terms and conditions and with such reservation and exceptions which in his opinion may be in the best interest of the state, all or any part of the following real property:

PARCEL 1. Approximately 2.18 acres of land located on the northerly side of First Street between North Broadway and Spring Street in the City of Los Angeles.

PARCEL 2. Approximately 33 acres located at Patton State Hospital on the south side of Highland Avenue, in the County of San Bernardino.

SEC. 2. The Director of General Services, with the approval of the State Public Works Board and the Director of Parks and Recreation, is hereby authorized to exchange upon those terms, conditions and with such reservations and exceptions which in his or her opinion may be in the best interest of the state, all or part of the following described property:

PARCEL 1. Approximately 830 acres of land located on the east side of the Southern Pacific Railroad tracks being a portion of Castle Crags State Park, in the County of Shasta.

PARCEL 2. Approximately 0.8 acre consisting of two parcels of land located on the northerly side of Headlands Drive within the Caspar Headlands Subdivision in the County of Mendocino.

PARCEL 3. Approximately 0.72 acre located northerly of State Highway 1, which constitutes a portion of Malibu Lagoon State Beach in Los Angeles County.

SEC. 3. The Director of General Services, with the approval of the State Public Works Board and the Director of the Department of Food and Agriculture, is hereby authorized to sell or exchange for current market value and upon those terms and conditions and with such reservations and exceptions which in his or her opinion may be in the best interest of the state, all or any part of approximately 6.5

acres of land located southerly of Charter Way and westerly of Airport Way in the City of Stockton, County of San Joaquin.

SEC. 4. The Director of General Services, with the approval of the State Public Works Board and the Director of Parks and Recreation, is hereby authorized to exchange, or to sell for current market value, upon those terms, conditions and with such reservation and exceptions which in his or her opinion may be in the best interest of the state, all or part of the following described property:

PARCEL 1. Approximately 0.85 acre of land being a portion of the Tahoe State Recreation Area, located approximately one mile northeasterly of Tahoe City at Star Harbor in the County of Placer.

PARCEL 2. Approximately 9 acres lying easterly of the Sacramento River and northerly of Old Town Sacramento State Historic Park, a portion of which was formerly the PG&E Steam Generation Plant, within the City and County of Sacramento.

PARCEL 3. Approximately 4 acres located on the west side of Sand Dunes Drive, at various locations within Blocks 1, 2, 5, and 6, Hot Springs Tract Map Number 2, in the City of Sand City, County of Monterey, being a portion of South Monterey Dunes State Beach.

PARCEL 4. Approximately 0.80 acre of land being a portion of South Carlsbad State Beach, located off Highway 1 in the County of San Diego.

SEC. 5. The Director of General Services, with the approval of the Director of Housing and Community Development, is hereby authorized to sell or lease upon those terms, conditions, and with such reservation and exceptions, which in his or her opinion may be in the best interest of the state, all or part of 23 parcels of land and improvements in the City of Oakland, County of Alameda, acquired by the Department of Housing and Community Development pursuant to the Final Consent Decree filed February 6, 1976, in the case of West Oakland Planning Committe, et al., v. William T. Coleman, et al. (Civil No. C-72-1323 RFP). The sale or lease shall be for the purpose of compliance with the Final Consent Decree and shall be at a price or rent and under such terms and conditions as will ensure the use of the properties for housing for very low and lower income households at an affordable housing cost, in accordance with the Final Consent Decree, including the provisions to prevent windfall profits. After meeting the costs incurred in the disposition of those parcels, the balance of proceeds, if any, from the sale or lease shall be paid into the Special Deposit Fund established under the Final Consent Decree.

SEC. 6. Pursuant to Section 9 of Article XIX of the California Constitution, the Director of Transportation is hereby authorized to transfer to the Department of Parks and Recreation all or part of the following described properties located in the coastal zone:

PARCEL 1. Approximately 0.434 acre at Big Rock Beach, in the County of Los Angeles.

PARCEL 2. Approximately 0.188 acre at Mussell Shoals, in the

County of Ventura.

PARCEL 3. Approximately 8.305 acres at Thornton State Beach, in the County of San Mateo.

PARCEL 4. Approximately 8.446 acres at Corral Solstice Beach, in the County of Los Angeles.

SEC. 7. Notice of every public auction or bid opening shall be posted on the property to be sold and shall be published in a newspaper of general circulation published in the county in which the real property to be sold is situated. All parcels in this act are exempt from the provisions of Sections 21100 to 21174, inclusive, of the Public Resources Code.

SEC. 8. Any cost or expense incurred in the disposition of any parcels may be reimbursed from the proceeds of that disposition.

SEC. 9. Subject to the provisions of Section 8 of this act, any moneys received from the disposition of the parcels in this act shall be paid into the General Fund, except that any money received from the disposition of the parcel described in Section 3 of this act, shall be paid to the 2nd District Agricultural Association, any money received from the disposition of the parcels described in Section 4 shall be deposited into the State Parks and Recreation Fund, any moneys received from the disposition of the parcels referred to in Section 5 shall be deposited as therein described, and any moneys received from the disposition of the parcels referred to in Section 6 shall be deposited in the State Transportation Fund.

SEC. 10. As to any property sold, pursuant to this act, containing 10 acres or less, the Director of General Services shall except and reserve to the state all mineral deposits, as defined in Section 6407 of the Public Resources Code, below a depth of 500 feet, without surface rights of entry. As to any such property sold containing more than 10 acres, the Director of General Services shall except and reserve in the state all mineral deposits, as defined in Section 6407 of the Public Resources Code, together with the right to prospect for, mine, and remove the deposits. The rights to prospect for, mine, and remove may be limited to those areas of the property conveyed which the director determines to be reasonably necessary for the removal of the resources and deposits.

SEC. 11. (a) No General Fund money shall be used for the development of any land exchanged for the property referred to in Parcel 1 of Section 2 of this act.

(b) The Department of General Services shall not proceed to escrow without specific legislative approval of an exchange of the property specified in Parcel 1 of Section 2 of this act.

CHAPTER 1267

An act to add Section 3496 to the Civil Code, relating to nuisances.

[Approved by Governor September 21, 1982. Filed with Secretary of State September 22, 1982.]

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

SECTION 1. Section 3496 is added to the Civil Code, to read:

3496. In a case in which the court enjoins the sale, distribution, or public exhibition, for commercial consideration, of obscene matter, as defined in Section 311 of the Penal Code, the court may award costs to the prevailing government agency which brought the action. Such costs may include the costs of investigation and reasonable attorney fees.

CHAPTER 1268

An act to add Title 5 (commencing with Section 880.020) to Part 2 of Division 2 of, and to repeal Section 1213.5 of, the Civil Code, relating to real property.

[Approved by Governor September 21, 1982. Filed with Secretary of State September 22, 1982.]

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

SECTION 1. Title 5 (commencing with Section 880.020) is added to Part 2 of Division 2 of the Civil Code, to read:

TITLE 5. MARKETABLE RECORD TITLE

CHAPTER 1. GENERAL PROVISIONS

Article 1. Construction

880.020. (a) The Legislature declares as public policy that:

(1) Real property is a basic resource of the people of the state and should be made freely alienable and marketable to the extent practicable in order to enable and encourage full use and development of the real property, including both surface and subsurface interests.

(2) Interests in real property and defects in titles created at remote times, whether or not of record, often constitute unreasonable restraints on alienation and marketability of real property because the interests are no longer valid or have been abandoned or have otherwise become obsolete.

(3) Such interests and defects produce litigation to clear and quiet titles, cause delays in real property title transactions, and hinder marketability of real property.

(4) Real property title transactions should be possible with economy and expediency. The status and security of recorded real property titles should be determinable to the extent practicable from an examination of recent records only.

(b) It is the purpose of the Legislature in enacting this title to simplify and facilitate real property title transactions in futherance of public policy by enabling persons to rely on record title to the extent provided in this title, with respect to the property interests specified in this title, subject only to the limitations expressly provided in this title and notwithstanding any provision or implication to the contrary in any other statute or in the common law. This title shall be liberally construed to effect the legislative purpose.

880.030. Nothing in this title shall be construed to:

(a) Limit application of the principles of waiver and estoppel, laches, and other equitable principles.

(b) Affect the operation of any statute governing the effect of recording or failure to record, except as specifically provided in this title.

Article 2. Application of Title

880.240. The following interests are not subject to expiration or expiration of record pursuant to this title:

(a) The interest of a person in possession (including use or occupancy) of real property and the interest of a person under whom a person in possession claims, to the extent the possession would have been revealed by reasonable inspection or inquiry.

(b) An interest of the United States or pursuant to federal law in real property that is not subjected by federal law to the recording requirements of the state and that has not terminated under federal law.

(c) An interest of the state or a local public entity in real property.

(d) A conservation easement pursuant to Chapter 4 (commencing with Section 815) of Title 2.

880.250. (a) The times prescribed in this title for expiration or expiration of record of an interest in real property or for enforcement, for bringing an action, or for doing any other required act are absolute and apply notwithstanding any disability or lack of knowledge of any person or any provisions for tolling a statute of limitation and notwithstanding any longer time applicable pursuant to any statute of limitation.

(b) Nothing in this title extends the period for enforcement, for bringing an action, or for doing any other required act, or revives an interest in real property that expires and is unenforceable, pursuant to any applicable statute of limitation.

880.260. An interest in real property, as specified in this title, does not expire or expire of record and is not unenforceable pursuant to this title at the time prescribed in this title if within the time an action is commenced to enforce, establish, clear title to, or otherwise affect the interest and a notice of the pendency of the action is recorded as provided by law. For the purpose of this section, action includes special proceeding and arbitration proceeding.

Article 3. Preservation of Interests

880.310. (a) If the time within which an interest in real property expires pursuant to this title depends upon recordation of a notice of intent to preserve the interest, a person may preserve the person's interest from expiration by recording a notice of intent to preserve the interest before the interest expires pursuant to this title. Recordation of a notice of intent to preserve an interest in real property after the interest has expired pursuant to this title does not preserve the interest.

(b) Recordation of a notice of intent to preserve an interest in real property does not preclude a court from determining that an interest has been abandoned or is otherwise unenforceable pursuant to other law, whether before or after the notice of intent to preserve the interest is recorded, and does not validate or make enforceable a claim or interest that is otherwise invalid or unenforceable. Recordation of a notice of intent to preserve an interest in real property creates a presumption affecting the burden of proof that the person who claims the interest has not abandoned and does not intend to abandon the interest.

880.320. A notice of intent to preserve an interest in real property may be recorded by any of the following persons:

(a) A person who claims the interest.

(b) Another person acting on behalf of a claimant if the person is authorized to act on behalf of the claimant or if the claimant is one of a class whose identity cannot be established or is uncertain at the time of recording the notice of intent to preserve the interest.

880.330. Subject to all statutory requirements for recorded documents:

(a) A notice of intent to preserve an interest in real property shall be in writing and signed and verified by or on behalf of the claimant. If the notice is made on behalf of a claimant, the notice shall include a statement of the authority of the person making the notice.

(b) The notice shall contain all of the following information:

(1) The name and mailing address of the claimant. If the notice is made by or on behalf of more than one claimant the notice shall contain the name and mailing address of each claimant.

(2) A statement of the character of interest claimed. The statement shall include a reference by record location to the recorded document that creates or evidences the interest in the claimant.

(3) A legal description of the real property in which the interest is claimed. The description may be the same as that contained in the recorded document that creates or evidences the interest in the claimant.

880.340. Subject to all statutory requirements for recorded documents, a notice of intent to preserve an interest in real property shall be in substantially the following form:

RECORDING INFORMATION

Recording requested by:

FOR USE OF COUNTY RECORDER

After recording return to:

Indexing instructions.
This notice must be indexed as follows:
Grantor and grantee index—each claimant is a grantor.

NOTICE OF INTENT TO PRESERVE INTEREST

This notice is intended to preserve an interest in real property from extinguishment pursuant to Title 5 (commencing with Section 880.020) of Part 2 of Division 2 of the Civil Code (Marketable Record Title).

Claimant
Name:
Mailing address:
(must be given for each claimant)

Interest
Character (e.g., power of termination):
Record location of document creating or evidencing interest in claimant:

Real Property
Legal description (may be same as in recorded document creating or evidencing interest in claimant):

I assert under penalty of perjury that this notice is not recorded for the purpose of slandering title to real property and I am informed and believe that the information contained in this notice is true. If this notice is made on behalf of a claimant, I assert under penalty of perjury that I am authorized to act on behalf of the claimant.

Signed: _____ Date: _____

(claimant)

_____

(person acting on behalf of claimant)

State of _____ ,

County of _____ , ss.

On this _____ day of _____, in the year _____, before me (here insert name and quality of officer), personally appeared _____, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to this instrument, and acknowledged that he (she or they) executed it.

Signed: _____ Official Seal:

Office: _____

880.350. (a) A notice of intent to preserve an interest in real property shall be recorded in the county in which the real property is situated.

(b) The county recorder shall index a notice of intent to preserve an interest in real property in the index of grantors and grantees. The index entry shall be for the grantor, and for the purpose of this index, the claimant under the notice shall be deemed to be the grantor. If a notice of intent to preserve is recorded by or on behalf of more than one claimant, each claimant shall be deemed to be a grantor and a separate index entry shall be made for each claimant.

880.360. A person shall not record a notice of intent to preserve an interest in real property for the purpose of slandering title to the real property. If the court in an action or proceeding to establish or quiet title determines that a person recorded a notice of intent to preserve an interest for the purpose of slandering title, the court shall award against the person the cost of the action or proceeding, including a reasonable attorney's fee, and the damages caused by the recording.

880.370. If the period prescribed by statute during which a notice of intent to preserve an interest in real property must be recorded expires before, on, or within five years after the operative date of the statute, the period is extended until five years after the operative date of the statute.

CHAPTER 2. ANCIENT MORTGAGES AND DEEDS OF TRUST

882.020. (a) Unless the lien of a mortgage, deed of trust, or other instrument that creates a security interest of record in real property to secure a debt or other obligation has earlier expired pursuant to Section 2911, the lien expires at, and is not enforceable by action for foreclosure commenced, power of sale exercised, or any other means asserted after, the later of the following times:

(1) If the final maturity date or the last date fixed for payment of the debt or performance of the obligation is ascertainable from the record, 10 years after that date.

(2) If the final maturity date or the last date fixed for payment of the debt or performance of the obligation is not ascertainable from the record, or if there is no final maturity date or last date fixed for payment of the debt or performance of the obligation, 60 years after the date the instrument that created the security interest was recorded.

(3) If a notice of intent to preserve the security interest is recorded within the time prescribed in paragraph (1) or (2), 10 years after the date the notice is recorded.

(b) For the purpose of this section, a power of sale is deemed to be exercised upon recordation of the deed executed pursuant to the power of sale.

(c) The times prescribed in this section may be extended in the same manner and to the same extent as a waiver made pursuant to Section 360.5 of the Code of Civil Procedure, except that an instrument is effective to extend the prescribed times only if it is recorded before expiration of the prescribed times.

882.030. Expiration of the lien of a mortgage, deed of trust, or other security interest pursuant to this chapter or any other statute renders the lien unenforceable by any means commenced or asserted thereafter and is equivalent for all purposes to a certificate of satisfaction, reconveyance, release, or other discharge of the security interest, and execution and recording of a certificate of satisfaction, reconveyance, release, or other discharge is not necessary to terminate or evidence the termination of the security interest. Nothing in this section precludes execution and recording at any time of a certificate of satisfaction, reconveyance, release, or other discharge.

882.040. (a) Subject to Section 880.370 (grace period for recording notice) and except as otherwise provided in this section, this chapter applies on the operative date to all mortgages, deeds of trust, and other instruments that create a security interest in real property to secure a debt or other obligation, whether executed or recorded before, on, or after the operative date.

(b) This chapter shall not cause the lien of a mortgage, deed of trust, or other security interest in real property to expire or become unenforceable before the passage of five years after the operative date of this chapter.

CHAPTER 4. UNEXERCISED OPTIONS

884.010. If a recorded instrument creates or gives constructive notice of an option to purchase real property, the option expires of record if no conveyance, contract, or other instrument that gives notice of exercise or extends the option is recorded within the following times:

(a) Six months after the option expires according to its terms.

(b) If the option provides no expiration date, six months after the date the instrument that creates or gives constructive notice of the option is recorded.

884.020. Upon the expiration of record of an option to purchase real property, the recorded instrument that creates or gives constructive notice of the option ceases to be notice to any person or to put any person on inquiry with respect to the exercise or existence of the option or of any contract, conveyance, or other writing that may have been executed pursuant to the option.

884.030. (a) Except as otherwise provided in this section, this chapter applies on the operative date to all recorded instruments that create or give constructive notice of options to purchase real property, whether executed or recorded before, on, or after the operative date.

(b) This chapter shall not cause an option that expires according to its terms within one year before, on, or within one year after the operative date of this chapter to expire of record until one year after the operative date.

(c) This chapter shall not cause an option that provides no expiration date and that is recorded before the operative date of this chapter to expire of record until five years after the operative date of this chapter.

(d) Nothing in this chapter affects a recorded instrument that has ceased to be notice to any person or put any person on inquiry with respect to the exercise or existence of an option pursuant to former Section 1213.5 before the operative date of this chapter.

CHAPTER 5. POWERS OF TERMINATION

885.010. (a) As used in this chapter, "power of termination" means the power to terminate a fee simple estate in real property to enforce a restriction in the form of a condition subsequent to which the fee simple estate is subject, whether the power is characterized in the instrument that creates or evidences it as a power of termination, right of entry or reentry, right of possession or repossession, reserved power of revocation, or otherwise, and includes a possibility of reverter that is deemed to be and is enforceable as a power of termination pursuant to Section 885.020. A power of termination is an interest in the real property.

(b) For the purpose of applying this chapter to other statutes relating to powers of termination, the terms "right of reentry,"

"right of repossession for breach of condition subsequent," and comparable terms used in the other statutes mean "power of termination" as defined in this section.

885.015. This chapter does not apply to any of the following:

(a) A reversionary interest conditioned upon the continued production or removal of oil or gas or other minerals.

(b) A reversionary interest in separately owned improvements or fixtures conditioned upon the continued leasehold or possessory interest in the underlying land.

885.020. Fees simple determinable and possibilities of reverter are abolished. Every estate that would be at common law a fee simple determinable is deemed to be a fee simple subject to a restriction in the form of a condition subsequent. Every interest that would be at common law a possibility of reverter is deemed to be and is enforceable as a power of termination.

885.030. (a) A power of termination of record expires at the later of the following times:

(1) Thirty years after the date the instrument reserving, transferring, or otherwise evidencing the power of termination is recorded.

(2) Thirty years after the date a notice of intent to preserve the power of termination is recorded, if the notice is recorded within the time prescribed in paragraph (1).

(3) Thirty years after the date an instrument reserving, transferring, or otherwise evidencing the power of termination or a notice of intent to preserve the power of termination is recorded, if the instrument or notice is recorded within 30 years after the date such an instrument or notice was last recorded.

(b) This section applies notwithstanding any provision to the contrary in the instrument reserving, transferring, or otherwise evidencing the power of termination or in another recorded document unless the instrument or other recorded document provides an earlier expiration date.

885.040. (a) If a power of termination becomes obsolete, the power expires.

(b) As used in this section, a power of termination is obsolete if any of the following circumstances applies:

(1) The restriction to which the fee simple estate is subject is of no actual and substantial benefit to the holder of the power.

(2) Enforcement of the power would not effectuate the purpose of the restriction to which the fee simple estate is subject.

(3) It would be otherwise inequitable to enforce the power because of changed conditions or circumstances.

(c) No power of termination shall expire under this section during the life of the grantor if it arises from a grant by a natural person without consideration to a public entity or to a society, corporation, institution, or association exempt by the laws of this state from taxation.

885.050. A power of termination shall be exercised only by notice

or by civil action and, if the power of termination is of record, the exercise shall be of record. The notice shall be given, and any civil action shall be commenced, within five years after breach of the restriction to which the fee simple estate is subject, or such longer period as may be agreed to by the parties by a waiver or extension recorded before expiration of that period.

885.060. (a) Expiration of a power of termination pursuant to this chapter makes the power unenforceable and is equivalent for all purposes to a termination of the power of record and a quitclaim of the power to the owner of the fee simple estate, and execution and recording of a termination and quitclaim is not necessary to terminate or evidence the termination of the power.

(b) Expiration of a power of termination pursuant to this chapter terminates the restriction to which the fee simple estate is subject and makes the restriction unenforceable by any other means, including, but not limited to, injunction and damages.

885.070. (a) Subject to Section 880.370 (grace period for recording notice) and except as otherwise provided in this section, this chapter applies on the operative date to all powers of termination, whether executed or recorded before, on, or after the operative date.

(b) If breach of the restriction to which the fee simple estate is subject occurred before the operative date of this chapter and the power of termination is not exercised before the operative date of this chapter, the power of termination shall be exercised, or in the case of a power of termination of record, exercised of record, within the earlier of the following times:

(1) The time that would be applicable pursuant to the law in effect immediately prior to the operative date of this chapter.

(2) Five years after the operative date of this chapter.

CHAPTER 6. UNPERFORMED CONTRACTS FOR SALE OF REAL PROPERTY

886.010. As used in this chapter:

(a) "Contract for sale of real property" means an agreement wherein one party agrees to convey title to real property to another party upon the satisfaction of specified conditions set forth in the contract and which requires conveyance of title within one year from the date of formation of the contract, whether designated in the agreement a "contract for sale of real property," "land sale contract," "deposit receipt," "agreement for sale," "agreement to convey," or otherwise.

(b) "Recorded contract for sale of real property" includes the entire terms of a contract for sale of real property that is recorded in its entirety or is evidenced by a recorded memorandum or short form of the contract.

886.020. If the party to whom title to real property is to be conveyed pursuant to a recorded contract for the sale of real

property fails to satisfy the specified conditions set forth in the contract and does not seek performance of the contract or restitution of amounts paid under the contract, the party shall, upon demand therefor made after the operative date of this chapter, execute a release of the contract, duly acknowledged for record, to the party who agreed to convey title. Willful violation of this section by the party to whom title is to be conveyed without good cause makes the party liable for the damages the party who agreed to convey title sustains by reason of the violation, including but not limited to court costs and reasonable attorney's fees in an action to clear title to the real property. Nothing in this section makes a release or a demand therefor a condition precedent to an action to clear title to the real property.

886.030. (a) Except as otherwise provided in this section, a recorded contract for sale of real property expires of record at the later of the following times:

(1) Five years after the date for conveyance of title provided in the contract or, if no date for conveyance of title is provided in the contract, five years after the last date provided in the contract for satisfaction of the specified conditions set forth in the contract.

(2) If there is a recorded extension of the contract within the time prescribed in paragraph (1), five years after the date for conveyance of title provided in the extension or, if no date for conveyance of title is provided in the extension, five years after the last date provided in the extension for satisfaction of the specified conditions set forth in the contract.

(b) The time prescribed in this section may be waived or extended only by an instrument that is recorded before expiration of the prescribed times.

886.040. Upon the expiration of record of a recorded contract for sale of real property pursuant to this chapter, the contract has no effect, and does not constitute an encumbrance or cloud, on the title to the real property as against a person other than a party to the contract.

886.050. (a) Except as otherwise provided in this section, this chapter applies on the operative date to all recorded contracts for sale of real property, whether recorded before, on, or after the operative date.

(b) This chapter shall not cause a recorded contract for sale of real property to expire of record before the passage of two years after the operative date of this chapter.

SEC. 2. Section 1213.5 of the Civil Code is repealed.

SEC. 3. No appropriation is made and no reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution or Section 2231 or 2234 of the Revenue and Taxation Code because the local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the program or level of service mandated by this act.

CHAPTER 1269

An act to amend Sections 437.10, 437.11, and 438.4 of, and to repeal Section 437.112 of, the Health and Safety Code, relating to health plans, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 21, 1982. Filed with Secretary of State September 22, 1982.]

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

SECTION 1. Section 437.10 of the Health and Safety Code is amended to read:

437.10. Except as otherwise exempted by Sections 437.11, 437.13, or this section, projects requiring a certificate of need issued by the Office of Statewide Health Planning and Development are the following:

(a) Construction of a new health facility, the increase of bed capacity in an existing health facility, the conversion of an existing health facility from one license category to another, or the conversion of a health facility's existing beds in one bed classification to a different bed classification. As used in this section, "license category" means any category of health facility set forth in Section 1250 and "bed classification" means any classification set forth in Section 1250.1. A facility may use beds in one bed classification which, pursuant to the facility's license, have been designated in another bed classification, if all such bed classification changes do not at any point in time exceed 5 percent of the total number of the facility's beds as set forth by the facility's license and if such use meets the requirements of Chapter 2 (commencing with Section 1250) of Division 2.

In addition, a facility may use an additional 5 percent of its beds in such manner if the director finds that seasonal fluctuations justify it.

(b) Establishment of a new specialty clinic, as defined in subdivision (b) of Section 1204, the conversion of an existing primary care clinic to a specialty clinic, or the conversion of an existing specialty clinic to a different category of specialty-clinic licensure. It shall not constitute a project and no certificate of need shall be required for the establishment of a primary care clinic, as defined in subdivision (a) of Section 1204, the conversion of an existing specialty clinic to a primary care clinic, or the conversion of an existing primary care clinic to a different category of primary-care-clinic licensure. Any capital expenditure involved in the establishment of a primary care clinic shall also not constitute a project, except as provided in subdivision (d).

(c) The establishment of a new special service delineated in subdivision (a), (b), (d), (e), (f), (g), or (h) of Section 1255, or the establishment, pursuant to subdivision (c) of Section 1255, of an

emergency center which provides basic or comprehensive emergency medical services, as defined by regulation of the Department of Health Services, or the establishment by a specialty clinic, as defined in subdivision (b) of Section 1204, of a new special service identified by or pursuant to Section 1203.

(d) The initial purchase or lease by a facility or by a clinic subject to licensure under Chapter 1 (commencing with Section 1200) of Division 2, of diagnostic or therapeutic equipment with a value in excess of four hundred thousand dollars ($400,000) in a single fiscal year, or for which the cumulative cost exceeds such amount in more than one fiscal year. For purposes of this subdivision, the purchase or lease of one or more articles of functionally related diagnostic or therapeutic equipment, as determined by the office, shall be considered together.

(e) Any project requiring a capital expenditure for a health facility, or for a specialty clinic as defined in subdivision (b) of Section 1204, or for the services, equipment or modernization of such facility or clinic in excess of six hundred thousand dollars ($600,000) in the current fiscal year or cumulation to an expenditure of six hundred thousand dollars ($600,000) in the same fiscal year or subsequent fiscal years for a single project.

The threshold exemptions from certificate-of-need requirements provided for in this subdivision shall not apply to projects for expanded outpatient surgical capacity.

For the purposes of this subdivision, a "capital expenditure" shall mean any of the following:

(1) An expenditure, including an expenditure for a construction project undertaken by the facility or clinic as its own contractor, which under generally accepted accounting principles is not properly chargeable as an expense of operation and maintenance and which exceeds six hundred thousand dollars ($600,000). The cost of studies, surveys, legal fees, land, offsite improvements, designs, plans, working drawings, specifications, and other activities essential to the acquisition, improvement, expansion, or replacement of the physical plant and equipment with respect to which such expenditure is made shall be included in determining whether such cost exceeds six hundred thousand dollars ($600,000). Where the estimated cost of a proposed project, including cost escalation factors appropriate to the area in which the project is located, is, within 60 days of the date on which the obligation for such expenditure is incurred, certified by a licensed architect or engineer to be six hundred thousand dollars ($600,000) or less, such expenditure shall be deemed not to exceed six hundred thousand dollars ($600,000) regardless of the actual cost of such project. However, in any such case where the actual cost of the project exceeds six hundred thousand dollars ($600,000) the health facility or clinic on whose behalf such expenditure is made shall provide written notification of such cost to the state department not more than 30 days after the date on which such expenditure is incurred. Such notification shall

include a copy of the certified estimate.

(2) The acquisition, under lease or comparable arrangement, or through donation, of any facility or part thereof, or equipment for a facility or clinic, the expenditure for which would have been considered a capital expenditure if the person had acquired it by purchase. For the purposes of this paragraph, "donation" shall not include a bequest.

(3) Any change in a proposed capital expenditure which itself meets the criteria set forth in this subdivision.

A "capital expenditure" shall include the total cost of the proposed project as certified by a licensed architect or engineer based on preliminary plans or specifications and concurred in by the state department. For the purposes of this subdivision, "project" shall not include the purchase of real property for future use or the transfer of ownership, in whole or part, of an existing health facility or clinic or the acquisition of all or substantially all of the assets or stock thereof, or the construction, modernization, purchase, lease, or other acquisition of parking lots or parking structures, telephone systems, and nonclinical data-processing systems.

For the purposes of this subdivision, "modernization" means the alteration, expansion, repair, remodeling, replacement, or renovation of existing buildings, including initial equipment thereof, and the replacement of equipment of existing buildings.

The office shall annually adjust the dollar thresholds set forth in subdivisions (d) and (e) of this section, and in paragraphs (6), (7), and (8) of subdivision (a) of Section 437.13, to reflect changes in the cost of living, as determined by the Department of Finance, using 1981 as the base year, and the dollar thresholds set forth in paragraph (9) of subdivision (a) of Section 437.13 using 1980 as the base year. Notwithstanding the amount of such dollar thresholds, in the event Congress increases or repeals the amount or amounts of such thresholds, the dollar thresholds set forth in subdivisions (d) and (e) of this section and in Section 437.13 shall be the highest amount or amounts permitted by Public Law 93-641, as amended, or one million dollars ($1,000,000), whichever is less, on the date such congressional action is effective.

SEC. 2. Section 437.11 of the Health and Safety Code is amended to read:

437.11. (a) The office shall exempt from the provisions of Sections 438 to 438.13, inclusive, and shall issue a certificate of exemption for those projects which were not previously subject to review under Section 437.7 prior to the effective date of this section where the applicant has shown and the office director has found all of the following:

(1) The applicant has, prior to the effective date of this section, committed or incurred a financial obligation, including any obligation payable by force account, which is certified by a licensed architect or engineer to be 10 percent of the cost of the total project, or seventy-five thousand dollars ($75,000), whichever is less.

(2) The project cannot be terminated without substantial economic loss to the applicant.

(3) Except with respect to projects set forth in subdivision (d) of Section 437.10, the project was commenced prior to the effective date of this section and is being diligently pursued to completion.

(4) The applicant has filed a notice of such project with the office on forms supplied by the office within 60 days of the effective date of this section.

For the purposes of this subdivision, "project" shall mean any project set forth in Section 437.10, and the term "financial obligation" shall include cost factors set forth in the definition of "capital expenditure" in Section 437.10.

Within 120 days of the effective date of this section, the office shall determine in public hearing which applications are entitled to an exemption under this subdivision.

(b) In addition, the office shall exempt from the provisions of Sections 438 to 438.13, inclusive, and shall issue a certificate of need for those projects where the applicant has shown and the office director has found one of the following:

(1) The project is necessary solely to replace health care services that are no longer available at the facility because of a disaster or other emergency.

(2) The project is solely for the purpose of complying with requirements of law or regulations.

(3) The project was the subject of an application submitted to an area health planning agency prior to the effective date of this section. Such applications shall be processed and decided in the manner prescribed by this part as it existed immediately prior to the operative date of this section, except that any petition for appeal of a decision or lack of decision of such an area health planning agency rendered after the effective date of this section shall be made directly to the Advisory Health Council.

(4) The project is to add not more than 10 percent of licensed bed capacity or 10 beds, whichever is less, to an existing general acute care hospital, an existing acute psychiatric hospital, an existing special hospital, an existing general acute care/rehabilitating hospital, or an existing chemical dependency recovery hospital, where the applicant has shown and the office director has found that:

(A) The applicant hospital has not been granted a certificate of exemption pursuant to this provision or pursuant to Section 437.112, as Section 437.112 existed on January 1, 1982, within the last preceding 24 months.

(B) The applicant hospital has had an occupancy rate for the classification of beds to be added, and for the facility as a whole, for the preceding 12-month period, of not less than 85 percent.

(C) The project does not exceed the capital expenditure threshold identified in subdivision (e) of Section 437.10 as adjusted to reflect changes in the cost of living.

(D) The facility is accessible to persons for whom the cost of care

is reimbursed under Chapter 7 (commencing with Section 14000) of Part 3 of Division 9 of the Welfare and Institutions Code. In the case of an acute psychiatric hospital, the showing required by this subparagraph shall be limited to those categories of patients for whom acute psychiatric hospitals are eligible to receive reimbursement under Chapter 7 (commencing with Section 1400) of Part 3 of Division 9 of the Welfare and Institutions Code.

(c) A certificate of exemption issued pursuant to this section or Section 1268 shall for all purposes have the same effect as a certificate of need issued pursuant to this part.

SEC. 3. Section 437.112 of the Health and Safety Code is repealed.

SEC. 4. Section 438.4 of the Health and Safety Code is amended to read:

438.4. The Office of Statewide Health Planning and Development shall promptly transmit a copy of each application for a certificate of need determined by it to be complete, or otherwise deemed complete pursuant to Section 438.2, to the appropriate area health planning agency. Within 30 calendar days after receiving a copy of an application, the area health planning agency shall hold one or more public meetings for review and comment upon the application if a person affected by the application requests such a meeting. The area health planning agency may hold a hearing on other applications if it determines that the public interest could be furthered thereby. Within 45 days after receiving an application, the area health planning agency shall submit to the office any recommendations or comments concerning the application.

For purposes of this section, "a person affected by the application" means any of the following:

(a) The applicant.

(b) The health systems agency for the health service area in which the proposed project is to be located.

(c) Health systems agencies serving contiguous health service areas.

(d) Members of the public who are to be served by the proposed project.

(e) Health care facilities, health maintenance organizations, and other providers located in the health service area where the project is proposed to be located and which provide services similar to the services of the facility under review.

(f) Health care facilities and health maintenance organizations which, prior to receipt by the agency of the proposal being reviewed, have formally indicated an intention to provide similar services in the future.

SEC. 5. In repealing Section 437.112 of the Health and Safety Code as enacted by Chapter 869 of the Statutes of 1981, the Legislature hereby finds and declares that to avoid undue hardship to facilities which may have proceeded on the assumption that paragraph (4) of subdivision (b) of Section 437.11 and Section 437.112 were intended to be cumulative, any hospital which, on or before the

effective date of this act filed an application or applications pursuant to both paragraph (4) of subdivision (b) of Section 437.11 and Section 437.112, or a written notice or notices of intent to apply under both sections, followed within 30 days by applications under both sections shall be entitled to the provisions of both paragraph (4) of subdivision (b) of Section 437.11 and Section 437.112.

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 facilitate the orderly implementation of existing law at the earliest possible time, it is necessary that this act take effect as soon as possible.

CHAPTER 1270

An act to amend Sections 1157, 3515.6, 11139.5, 12474, 12477, 13923, 19849.7, 22790, and 22790.1 of, to add Sections 1157.8, 1157.9, 1157.10, 3520.7, 3566, 7506, 7506.5, 12480, and 12481 to, to repeal and add Sections 1150, 1151, 1152, and 1153 of, and to repeal Sections 1154, 1155, 1156, 1156.1, 1156.2, and 1156.3 of, the Government Code, and to repeal Section 6 of Chapter 1831 of the Statutes of 1965, relating to public employees.

[Approved by Governor September 21, 1982. Filed with Secretary of State September 22, 1982.]

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

SECTION 1. Section 1150 of the Government Code is repealed.

SEC. 2. Section 1150 is added to the Government Code, to read:

1150. As used in this article:

(a) "State employee" means all persons who receive wages for services through the uniform payroll system established and administered by the Controller under Section 12470.

(b) "Public agency" includes counties, cities, municipal corporations, political subdivisions, public districts, and other public agencies of the state.

(c) "Employee organization" means an organization which represents employees of the state or the California State University in their employer-employee relations, and which is registered with the Department of Personnel Administration or the Trustees of the California State University, or which has been recognized or certified by the Public Employment Relations Board.

(d) "Bona fide association" means an organization of employees and former employees of an agency of the state and the California State University, and which does not have as one of its purposes representing these employees in their employer-employee relations.

SEC. 3. Section 1151 of the Government Code is repealed.

SEC. 4. Section 1151 is added to the Government Code, to read:

1151. State employees may authorize deductions to be made from their salaries or wages for payment of all of the following:

(a) Insurance premiums or other employee benefit programs sponsored by a state agency under appropriate statutory authority.

(b) Premiums on National Service Life Insurance or United States Government Converted Insurance.

(c) Shares or obligations to any regularly chartered credit union.

(d) Recurrent fees or charges payable to a state agency for a program which has a purpose related to government, as determined by the Controller.

(e) The purchase of United States savings bonds in accordance with procedures established by the Controller.

(f) Payment of charitable contributions under any plan approved by the Board of Control in accordance with procedures established by the Controller.

(g) Passes, tickets, or tokens issued for a period of one month, or more, by a public transportation system.

(h) Deposits into an account with a state or federal bank or savings and loan association which is located in this state.

(i) The purchase of any investment or thrift certificate issued by an industrial loan company licensed by this state.

SEC. 5. Section 1152 of the Government Code is repealed.

SEC. 6. Section 1152 is added to the Government Code, to read:

1152. Deductions may be requested by employee organizations and bona fide associations from the salaries and wages of their members, as follows:

(a) Employee organizations may request membership dues, initiation fees, and general assessments, as well as payment of any other membership benefit program sponsored by the organization.

(b) Bona fide associations may request membership dues and initiation fees.

The Controller shall not be required to make any benefit deductions for an employee member whose membership dues are not deducted.

SEC. 7. Section 1153 of the Government Code is repealed.

SEC. 8. Section 1153 is added to the Government Code, to read:

1153. The Controller shall provide for the administration of payroll deductions as set forth in Sections 1151 and 1152, and may establish, by rule or regulation, procedures for that purpose.

In administering payroll deductions the Controller shall:

(a) Make, cancel, or change a deduction at the request of the person or organization authorized to have the deduction. All requests shall be made on forms approved by the Controller.

(b) Obtain a certification from any state agency, employee organization, or business entity requesting a deduction that they have and will maintain an authorization to make the deduction, signed by the individual from whose salary or wages the deduction

is to be made.

(c) Provide for an agreement from organizations and business entities receiving deductions to relieve the state, its officers and employees, of any liability that may result from making, canceling, or changing requested deductions.

(d) Determine the cost of performing the requested deduction service and collect that cost from the organization, entity, or individual requesting or authorizing the deduction. Services requested which are incidental, but not necessary, to making the deduction may be performed at the Controller's discretion with any additional cost to be paid by the requester.

(e) Prior to making a deduction for an employee organization or a bona fide association, determine that the organization or association has been recognized, certified, or registered by the appropriate authority.

(f) Decline to make deductions for any individual, organization, or entity if the Controller determines that it is not administratively feasible or practical to make the deduction.

(g) Make, cancel, or change a deduction not later than the month subsequent to the month in which the request is received. All deductions, cancellations, or changes shall be effective when made by the Controller.

SEC. 9. Section 1154 of the Government Code is repealed.

SEC. 10. Section 1155 of the Government Code is repealed.

SEC. 11. Section 1156 of the Government Code is repealed.

SEC. 12. Section 1156.1 of the Government Code is repealed.

SEC. 13. Section 1156.2 of the Government Code is repealed.

SEC. 14. Section 1156.3 of the Government Code is repealed.

SEC. 15. Section 1157 of the Government Code is amended to read:

1157. Officers and employees of a public agency, other than those under the uniform payroll system provided for in Article 5 (commencing with Section 12470) of Chapter 5 of Part 2 of Division 3 of Title 2, may authorize the governing body of the public agency to make deductions from their salaries or wages for the payment of premiums on life, accident, health, disability, legal expense, or automobile liability insurance, or on any two or more, under a system of insurance approved by or adopted and carried into effect by the governing body, or for the payment of premiums on National Service Life Insurance or United States Government Converted Insurance. Officers and employees of the public agency may authorize the governing body of the public agency to make deductions from their salaries or wages for the payment of dues or subscription charges of nonprofit membership corporations for defraying the cost of medical service (including services rendered by doctors of medicine, doctors of osteopathy, or doctors of chiropractic), or hospital care, or legal services, or, any of them, under system of medical service, or hospital care, or legal services, or, any of them, approved by or adopted and carried into effect by the governing body.

SEC. 16. Section 1157.8 is added to the Government Code, to read:

1157.8. Officers and employees of public agencies may authorize deductions to be made from their salaries or wages for the purchase of United States savings bonds in accordance with provision made by the governing body of the public agency.

All auditors, treasurers, and other disbursing officers of public agencies are authorized to recognize and act upon these requests for salary or wage deductions and to establish special accounts for each officer or employee so that sufficient funds may be accumulated to the credit of the officer or employee for the purchase of United States savings bonds. All funds so accumulated are trust funds.

SEC. 17. Section 1157.9 is added to the Government Code, to read:

1157.9. Officers and employees of public agencies may authorize wage and salary deductions for deposit into an account with a state or federal bank or savings and loan association located in this state, or for the purchase of shares in, or the payment of money to, any regularly chartered credit union, or for the purchase of any investment or thrift certificate issued by an industrial loan company licensed by this state. Auditors, treasurers, and other disbursing officers of any public agency other than a state agency are authorized to recognize and act upon these wage or salary assignments.

SEC. 18. Section 1157.10 is added to the Government Code, to read:

1157.10. Payroll deductions for employees of public agencies, other than those under the uniform payroll system, shall be administered by the appropriate officer of the public agency. In administering payroll deductions the officer shall do all of the following:

(a) Make, cancel, or change a deduction at the request of the person or organization authorized to have the deduction. All requests shall be on forms approved by the public agency.

(b) Obtain a certification from any state agency, employee organization, or business entity requesting a deduction that they have, and will maintain, an authorization to make the deduction, signed by the individual from whose salary or wages the deduction is to be made.

(c) Provide for an agreement from organizations and business entities receiving deductions to relieve the public agency, its officers and employees, of any liability that may result from making, canceling, or changing requested deductions.

(d) Determine the cost of performing the requested deduction service and collect that cost from the organization, entity, or individual requesting or authorizing the deduction. Services requested which are incidental, but not necessary, to making the deduction may be performed at the public agency's discretion, with any additional cost to be paid by the requester.

(e) Prior to making a deduction for an employee organization or

a bona fide association, determine that the organization or association has been recognized or registered by the appropriate authority.

(f) Decline to make deductions for any individual, organization, or entity if the public agency determines that it is not administratively feasible or practical to make the deduction.

(g) Make, cancel, or change a deduction not later than the month subsequent to the month in which the request is received. All deductions, cancellations, or changes shall be effective when made by the public agency.

SEC. 19. Section 3515.6 of the Government Code is amended to read:

3515.6. All employee organizations shall have the right to have membership dues, initiation fees, membership benefit programs, and general assessments deducted pursuant to subdivision (a) of Section 1152 and Section 1153 until such time as an employee organization is recognized as the exclusive representative for employees in an appropriate unit, and then such deductions as to any employee in the negotiating unit shall not be permissible except to the exclusive representative.

SEC. 20. Section 3520.7 is added to the Government Code, to read:

3520.7. The state employer shall adopt reasonable rules and regulations for all of the following:

(a) Registering employee organizations, as defined by subdivision (c) of Section 1150, and bona fide associations, as defined by subdivision (d) of Section 1150.

(b) Determining the status of organizations and associations as employee organizations or bona fide associations.

(c) Identifying the officers and representatives who officially represent employee organizations and bona fide associations.

SEC. 21. Section 3566 is added to the Government Code, to read:

3566. The Trustees of the California State University shall adopt reasonable rules and regulations for all of the following:

(a) Registering employee organizations, as defined by subdivision (g) of Section 3562, and bona fide associations, as defined by subdivision (d) of Section 1150.

(2) Determining the status of organizations and associations as employee organizations or bona fide associations.

(3) Identifying the officers and representatives who officially represent employee organizations and bona fide associations.

SEC. 22. Section 7506 is added to the Government Code, to read:

7506. Notwithstanding any other provision of law, any person entitled to the receipt of benefits from any state retirement system may authorize the payment of the benefits to be directly deposited by electronic fund transfer into the person's account at the financial institution of his or her choice under a program for direct deposit by electronic transfer established by the Controller pursuant to Section 7506.5. The direct deposit shall discharge the state agency's

obligation in respect to that payment.

SEC. 23. Section 7506.5 is added to the Government Code, to read:

7506.5. The Controller may make an agreement with one or more financial institutions participating in the automated clearing house pursuant to the local rules, and may establish a program, for the direct deposit by electronic fund transfer of the benefits, after any withholding required by law and authorized deductions, of any person entitled to the receipt of benefits from any state retirement system who authorizes the direct deposit thereof by electronic fund transfer into the person's account at the financial institution of his or her choice.

SEC. 24. Section 11139.5 of the Government Code is amended to read:

11139.5. The Secretary of the Health and Welfare Agency, with the advice and concurrence of the Fair Employment and Housing Commission, shall establish standards for determining which persons are protected by this article and standards for determining what practices are discriminatory. The secretary, with the cooperation of the Fair Employment and Housing Commission, shall assist state agencies in coordinating their programs and activities and shall consult with such agencies, as necessary, so that consistent policies, practices, and procedures are adopted with respect to the enforcement of the provisions of the article.

SEC. 25. Section 12474 of the Government Code is amended to read:

12474. The Controller shall establish and maintain a payroll roster of all persons employed by every state agency except the University of California and may establish and maintain a roster of all established positions. The payroll roster shall include both civil service and exempt employees, but shall not necessarily include emergency appointees or the equivalent.

With the agreement of the Controller, any modification, addition, or deletion to the payroll roster may be done electronically and the data base entry shall be certified notification of the appointing powers' action for disbursement, or other acts in reliance, by the Controller.

SEC. 26. Section 12477 of the Government Code is amended to read:

12477. Rules and regulations adopted under this article or Section 1153 are excepted from the provisions of the Administrative Procedure Act and shall be distributed in the form and manner as the Controller determines.

SEC. 27. Section 12480 is added to the Government Code, to read:

12480. Officers and employees of the state may authorize the direct deposit by electronic fund transfer of their salary or wages, after any withholding required by law and authorized deductions, into an account at the financial institution of their choice under a program for direct deposit by electronic transfer established

pursuant to Section 12481. The direct deposit shall discharge the obligation of the Controller with respect to the drawing and issuance of warrants for the salaries or wages of the state officers and employees authorizing the direct deposit.

SEC. 28. Section 12481 is added to the Government Code, to read:

12481. (a) Notwithstanding any other provision of law, the Controller may make an agreement with one or more financial institutions participating in the automated clearing house pursuant to the local rules, and may establish a program, for direct deposit by electronic fund transfer of the salary or wages, after any withholding required by law and authorized deductions, of officers and employees of the state who authorize the direct deposit thereof by electronic fund transfer into the person's account at the financial institution of his or her choice.

(b) The direct deposit of state payroll pursuant to this section shall be known as the State of California SurePay Plan.

SEC. 29. Section 13923 of the Government Code is amended to read:

13923. The board may approve plans for payroll deduction from the salaries or wages of state officers and employees under subdivision (f) of Section 1151 for charitable contributions to the agency handling the principal combined fund drive in any area. The board shall establish necessary rules and regulations, including:

(a) Standards for establishing what constitutes the principal combined fund drive in an area.

(b) A requirement that the agency to receive such contributions shall pay, for deposit in the General Fund, the additional cost to the state of making such deductions and remitting the proceeds, as determined by the Controller.

(c) Provisions for standard amounts of deductions from which each state officer or employee may select the contribution he desires to make, if any.

(d) A prohibition upon state officers or employees authorizing more than one payroll deduction for charitable purposes to be in effect at the same time.

(e) A provision authorizing the Controller to combine in his records deductions for employee association dues, if authorized, and charitable deductions, if authorized.

The State Board of Control, in addition, may approve requests of any charitable organization qualified as an exempt organization under Section 23701d of the Revenue and Taxation Code, or paragraph (3) of subsection (c) of Section 501 of the Internal Revenue Code of 1954, which is not an affiliated member beneficiary of the principal combined fund drive to receive designated deductions from the principal fund drive.

The principal combined fund drive agency, any charitable organization which is an affiliated member beneficiary of the principal combined fund drive, and any charitable organization approved by the State Board of Control to receive designated

deductions on the payroll authorization form of the principal fund drive, shall certify under penalty of perjury to the State Board of Control that it is in compliance with the provisions of the Fair Employment Practice Act, Part 4.5 (commencing with Section 1410) of Division 2 of the Labor Code, as a condition of receiving such designated deductions.

The principal combined fund drive shall obtain from the State Board of Control the list of approved nonaffiliated beneficiaries, eligible for designated deductions in its approved drive area, and shall provide such information to each employee at the time of the principal fund drive. The principal combined drive agency shall provide a designation form for the employee to indicate those amounts to be contributed to affiliated and nonaffiliated beneficiaries. The designation form shall consist of a copy for each of the following: (1) the employee, (2) the employee's designated beneficiary agency, and (3) the principal combined fund drive agency. The principal combined fund drive agency shall pay the amount collected for the employee designated beneficiary agency less the amount necessary to reimburse the principal combined fund drive agency for fundraising and administrative expenses. The fee charged for fundraising and administrative cost reimbursement shall be determined by the State Board of Control, published in campaign literature and made available to the employee during the solicitation process.

Nothing contained in this section shall preclude a principal fund drive agency from giving a percentage of the undesignated funds to charities which are not members of the agency handling the principal drive, or honoring an employee's designated deduction to any charitable organization.

SEC. 30. Section 19849.7 of the Government Code is amended to read:

19849.7. Each state agency shall at the time of each payment of salary wages furnish each employee an itemized statement in writing showing all deductions made from such salary or wages. Where an employee has authorized, pursuant to Section 12480, the direct deposit by electronic fund transfer of salary, or wages, after any withholding required by law and authorized deductions, an itemized statement required by this section or an itemized statement required by Section 226 of the Labor Code shall be furnished on a quarterly basis.

SEC. 31. Section 22790 of the Government Code is amended to read:

22790. The board may contract with carriers for basic health benefit plans, comprehensive benefit plans, and, for employees and annuitants who are also covered under basic plans, major medical plans or approve basic health benefit plans offered by employee organizations, provided that the carriers have operated successfully in the prepaid hospital and medical care field prior to the contracting for or approval thereof. Such plans shall include hospital benefits,

surgical benefits, in-hospital medical benefits, outpatient benefits, obstetrical benefits, and may include other benefits including, but not limited to, benefits offered by a bona fide church, sect, denomination or organization whose principles include healing entirely by prayer or spiritual means. The board may contract with health maintenance organizations approved under Title XIII of the federal Public Health Services Act. The board shall approve any basic health benefit plan in existence on January 1, 1962, which meets the requirements of this part and the minimum standards and other rules and requirements prescribed by the board, and for which payroll deductions were authorized under Section 1151.

SEC. 32. Section 22790.1 of the Government Code is amended to read:

22790.1. Notwithstanding Section 22790, the board may approve a major medical plan in existence on July 1, 1974, which is offered by an employee organization having an approved basic health benefits plan on July 1, 1974, and for which payroll deductions were authorized under Section 1151.

SEC. 33. Section 6 of Chapter 1831 of the Statutes of 1965 is repealed.

SEC. 34. No appropriation is made and no reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution or Section 2231 or 2234 of the Revenue and Taxation Code because the local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the program or level of service mandated by this act.

SEC. 35. The Auditor General shall investigate the feasibility, costs, and savings of establishing direct deposit by electronic fund transfer of state retirement system benefits and payment of salaries and wages of officers and employees of the state. The Auditor General shall report the findings of the investigation to the Legislature no later than January 1, 1983.

CHAPTER 1271

An act to amend Section 61207 of the Government Code, to amend Sections 4733 and 6489 of the Health and Safety Code, to amend Section 11908 of the Public Utilities Code, and to amend Sections 21166 and 22840 of the Water Code, relating to districts.

[Approved by Governor September 21, 1982. Filed with Secretary of State September 22, 1982.]

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

SECTION 1. Section 61207 of the Government Code is amended to read:

61207. The board may authorize each director to receive

compensation not exceeding one hundred dollars ($100) for each meeting of the board attended by him or for each day's service rendered as a director by request of the board, not exceeding six days in any calendar month, together with any expenses incurred in the performance of his duties required or authorized by the board.

SEC. 2. Section 4733 of the Health and Safety Code is amended to read:

4733. The district board may fix the amount of compensation per meeting to be paid each member of the board for services for each meeting attended by the member. The compensation shall not exceed seventy-five dollars ($75) for each meeting of the district board attended by the member or for each day's service rendered as a member by request of the board, nor shall the compensation of a member exceed three hundred dollars ($300) in any one month, together with any expenses incident thereto. However, where a member of a district board also receives as his or her principal source of income a salary for serving as a full-time elected official on the governing board of another local agency, the member's compensation shall not exceed fifty dollars ($50) for each meeting of the district board attended by the member or for each day's service rendered as a member by request of the board, nor shall the compensation of the member exceed two hundred dollars ($200) in any one month, together with any expenses incident thereto.

SEC. 3. Section 6489 of the Health and Safety Code is amended to read:

6489. (a) Each of the members of the board shall receive compensation in an amount not to exceed seventy-five dollars ($75) per day for each day's attendance at meetings of the board or for each day's service rendered as a director by request of the board, not exceeding a total of four days in any calendar month, together with any expenses incident thereto. However, where a member of a district board also receives as his or her principal source of income a salary for serving as a full-time elected official on the governing body of another local agency the member's compensation shall not exceed fifty dollars ($50) per day for each day's attendance at meetings of the board or for each day's service rendered as a director by request of the board, not exceeding a total of four days in any calendar month, together with any expenses incident thereto.

(b) The secretary of the sanitary board shall receive compensation to be set by the sanitary district board, which compensation shall be in lieu of any other compensation to which he or she may be entitled by reason of attendance at the meeting or meetings of the sanitary board.

SEC. 4. Section 11908 of the Public Utilities Code is amended to read:

11908. The board shall establish rules for its proceedings and may provide, by ordinance or resolution, that each member shall receive for each attendance at the meetings of the board, or for each day's service rendered as a director by request of the board, the sum of one

hundred dollars ($100). No director shall receive any other compensation, nor receive pay for more than six days in any one calendar month.

SEC. 5. Section 21166 of the Water Code is amended to read:

21166. A director, for sitting on the board or acting under its orders, shall receive not exceeding:

(a) One hundred dollars ($100) per day, not exceeding six days in any calendar month, except in districts containing over 500,000 acres which shall be governed by Section 22840.

(b) Actual and necessary expenses when acting under the orders of the board.

(c) In districts producing or distributing electric power, one hundred dollars ($100) per day or, in lieu thereof, a monthly salary of not to exceed six hundred dollars ($600) per month except in districts containing over 500,000 acres which shall be governed by Section 22840.

SEC. 6. Section 22840 of the Water Code is amended to read:

22840. Directors of a district subject to this chapter may each receive a salary fixed by the board of the district at an amount not to exceed six hundred dollars ($600) per month.

CHAPTER 1272

An act to add Sections 5019.5, 5019.6, and 5019.7 to, and to repeal Section 78462.5 of, the Education Code, relating to public welfare, and making an appropriation therefor.

[Approved by Governor September 21, 1982. Filed with Secretary of State September 22, 1982.]

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

SECTION 1. Section 5019.5 is added to the Education Code, to read:

5019.5. Following each decennial federal census, and using population figures as validated by the Population Research Unit of the Department of Finance as a basis, the governing board of each school district or community college district in which trustee areas have been established, and in which each trustee is elected by the residents of the area he or she represents, shall adjust the boundaries of any or all of the trustee areas of the district so that the population of each area is, as nearly as may be, the same proportion of the total population of the district as the ratio which the number of governing board members elected from the area bears to the total number of members of the governing board.

SEC. 2. Section 5019.6 is added to the Education Code, to read:

5019.6. The boundaries of the trustee areas shall be adjusted by the governing board of each school district or community college

district before the first day of March of the year following the year in which the results of each decennial census are released. If the governing board fails to adjust the boundaries before the first day of March of the year following the year in which the results of each decennial census are released, the county committee on school district organization shall do so before the 30th day of April of the same year.

The governing board of the school or community college district shall reimburse all reasonable costs incurred by a county committee in adjusting the boundaries under these circumstances.

SEC. 3. Section 5019.7 is added to the Education Code, to read:

5019.7. Sections 5019.5 and 5019.6 shall not apply to multiple campus community college districts with campuses in more than one county.

SEC. 4. Section 78462.5 of the Education Code is repealed.

SEC. 5. Notwithstanding Sections 337 and 338 of the Code of Civil Procedure, there is hereby appropriated from the Federal Trust Fund from federal funds received pursuant to Sections 4 and 11 of the National School Lunch Act and Sections 3, 4, 5, 17, and 19 of the Child Nutrition Act of 1966, an amount sufficient for payment of child nutrition obligations still outstanding for the fiscal years 1977–78, 1978–79, and 1979–80. The Superintendent of Public Instruction shall certify to the Controller the amounts to be paid from these funds.

SEC. 6. No appropriation is made and no reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution or Section 2231 or 2234 of the Revenue and Taxation Code because Sections 1, 2, and 3 of this act affirm for the state that which has been declared existing law or regulation by action of the courts.

CHAPTER 1273

An act to amend Sections 615, 1810, 2512, 2807.3, 3012, 5005, 5008, 5020, 9262, 9553, 11102.5, 11309, 11820, 12517, 12519, 12521, 12523, as added by Chapter 133 of the Statutes of 1982, 14901, 32000.5, as amended by Assembly Bill 2739, and 38255 of, and to repeal Sections 9262.5, 9264, 9560, and 11724 of, the Vehicle Code, relating to vehicles.

[Approved by Governor September 21, 1982. Filed with Secretary of State September 22, 1982.]

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

SECTION 1. Section 615 of the Vehicle Code is amended to read:

615. (a) A "tow car" is a motor vehicle which has been altered or designed and equipped for and exclusively used in the business of towing vehicles by means of a crane, hoist, tow bar, tow line, or dolly

or is otherwise exclusively used to render assistance to other vehicles.

(b) Persons licensed as a repossession agency pursuant to Chapter 11 (commencing with Section 7500) of Division 3 of the Business and Professions Code may utilize a tow car when repossessing vehicles.

SEC. 2. Section 1810 of the Vehicle Code is amended to read:

1810. (a) The department may sell information from its records concerning the registration of any vehicle or information from the files of drivers' licenses at a charge sufficient to pay the actual cost to the department for providing the information, including, but not limited to, costs incurred by the department in carrying out the provisions of subdivision (b), the charge for the information to be determined by the director. The department may sell stamps or coupons in appropriate denominations for the convenient enforcement of this section. The stamps or coupons may be used to accompany requests for information in lieu of cash, but otherwise shall be nonredeemable and shall be canceled by the department upon granting the request for information. This section does not apply to statistical information of the type previously compiled and distributed by the department.

(b) With respect to the sale of information concerning the registration of any vehicle, the department shall, by regulation, establish administrative procedures under which any person making a request for that information shall be required to identify himself or herself and state the reason for making the request. The procedures shall provide for the verification of the name and address of the person making a request for the information, and the department may require the person to produce that information as it determines is necessary in order to ensure that the name and address of the person are his or her true name and address. The procedures shall also provide for notification to the person to whom the information primarily relates, as to what information was provided and to whom it was provided. The department shall, by regulation, establish a reasonable period of time for which a record of all the foregoing shall be maintained.

The procedures required by this subdivision shall not apply to any governmental entity, any person who has a valid permit granted pursuant to Section 1814, any person who has applied for and has been issued a requester code by the department, any court of competent jurisdiction, any attorney admitted to practice in this state who alleges that information contained therein is relevant to any pending or potential litigation, or any accredited member of the press.

SEC. 3. Section 2512 of the Vehicle Code is amended to read:

2512. (a) The commissioner, after consultation with, and pursuant to the recommendations of, the Emergency Medical Service Authority and the Department of Motor Vehicles, shall adopt and enforce reasonable regulations as the commissioner determines are necessary for the public health and safety regarding the operation, equipment, and certification of drivers of all ambulances

used for emergency services. The regulations shall not conflict with standards established by the Emergency Medical Service Authority pursuant to Section 1797.170 of the Health and Safety Code. The commissioner shall exempt, upon request of the county board of supervisors that an exemption is necessary for public health and safety, noncommercial ambulances operated within the county from the regulations adopted under this section as are specified in the board of supervisors' request. The Emergency Medical Service Authority shall be notified by the county boards of supervisors of any exemptions. The commissioner may, with the consent of the Director of Motor Vehicles, authorize the director to administer any regulations adopted pursuant to this section which relate to the issuance, suspension, or revocation of ambulance drivers' certificates, to charge a fee of twelve dollars ($12) for issuance of the certificate, and, in the administration thereof, to exercise the powers granted to the commissioner by this section.

(b) This section shall not preclude the adoption of more restrictive regulations by local authorities, but it is the intent of the Legislature that regulations adopted by the commissioner pursuant to this section shall be the minimum necessary to protect public health and safety, and shall not be so restrictive as to preclude compliance by ambulances operated in sparsely populated areas. The provisions of this subdivision shall not relieve the owner or driver of any ambulance from compliance with Section 21055.

(c) The Department of the California Highway Patrol shall prepare, and make available for purchase, an ambulance driver's handbook.

SEC. 4. Section 2807.3 of the Vehicle Code, as added by Chapter 383 of the Statutes of 1982, is amended to read:

2807.3. (a) The Department of the California Highway Patrol shall inspect and certify every youth bus at least once each school year to ascertain whether its condition complies with all provisions of law.

(b) No person shall drive any youth bus unless there is displayed therein a certificate issued by the Department of the California Highway Patrol stating that on a certain date, which shall be within 13 months of the date of operation, an authorized employee of the Department of the California Highway Patrol inspected the youth bus and found that on the date of inspection the youth bus complied with the applicable provisions of state law. The Commissioner of the California Highway Patrol shall provide, by rule or regulation, for the issuance and display of distinctive inspection certificates.

(c) The Commissioner of the California Highway Patrol may determine the fee and method of collection for the annual inspection of youth buses. The fee, established by regulation, shall be sufficient to cover the cost to the department for youth bus inspections and testing of drivers pursuant to Section 12523. All fees received shall be deposited in the Motor Vehicle Account in the State Transportation Fund.

SEC. 4.5. Section 3012 of the Vehicle Code is amended to read:

3012. Each member of the board shall receive a per diem of one hundred dollars ($100) for each day actually spent in the discharge of official duties, and he shall be reimbursed for his traveling and other expenses necessarily incurred in the performance of his duties, which per diem and reimbursement shall be wholly defrayed from funds that shall be provided in the annual budget of the department.

SEC. 5. Section 5005 of the Vehicle Code is amended to read:

5005. (a) Any person holding an unexpired amateur radio station license issued by the Federal Communications Commission may, after the requirements for the registration of the motor vehicle have been complied with, also apply directly to the department for special license plates, and the department may issue special plates in lieu of the regular license plates. The special license plates shall be affixed to the motor vehicle for which registration is sought and, in lieu of the numbers otherwise prescribed by law, shall display the official amateur radio station call letters of the applicant as assigned by the Federal Communications Commission.

The applicant shall, by satisfactory proof, show that he or she is the holder of an unexpired license.

(b) The department shall not issue more than one set of special plates for any licensed amateur radio station.

(c) In addition to the regular fees for an original registration or renewal of registration, the following special fees shall be paid:

(1) Twenty dollars ($20) for the initial issuance of the special plate.

(2) Twelve dollars ($12) for the transfer of the special plate to another motor vehicle.

SEC. 5.5. Section 5008 of the Vehicle Code is amended to read:

5008. (a) Any person who is regularly employed or engaged as a bona fide newspaper, newsreel, or television photographer or cameraman, may, after the requirements for the registration of the motor vehicle have been complied with, also apply for special license plates, and the department shall issue special license plates in lieu of the regular license plates. The special license plates shall be affixed to the vehicle for which registration is sought and shall display the letters "PP" enclosed by a shield.

The applicant shall, by satisfactory proof, show that he or she is a bona fide newspaper, newsreel, or television photographer or cameraman.

(b) The department shall not issue more than one set of the special plates to any person.

(c) In addition to the regular fees for an original registration or renewal of registration, the following special fees shall be paid:

(1) Twenty dollars ($20) for the initial issuance of the special plate.

(2) Twelve dollars ($12) for the transfer of the special plate to another motor vehicle.

SEC. 6. Section 5020 of the Vehicle Code is amended to read:

5020. Any person holding an unexpired license for a class D radio station in the Citizens Radio Service issued by the Federal Communications Commission may, at the time he or she makes application for an original or a renewal registration for a motor vehicle, also apply directly to the department for special license plates, to be affixed to the motor vehicle for which registration is sought, on which, in lieu of the numbers otherwise prescribed by law, shall be inscribed the official class D radio station call sign of the applicant as assigned by the Federal Communications Commission.

The applicant shall, by satisfactory proof, show that he or she is the holder of an unexpired license and, in addition to the regular registration fee, may be charged a fee of twenty dollars ($20) for each set of special plates when issued and fifteen dollars ($15) each succeeding year the vehicle is registered. Whenever the vehicle or the ownership of the vehicle for which plates are issued is changed, a fee of twenty dollars ($20) may be charged. When the applicant also pays weight fees, the department shall so indicate on the special license plates.

SEC. 7. Section 9262 of the Vehicle Code is amended to read:

9262. (a) The fee for a license issued to dealers and lessor-retailers shall be:

(1) For the original license, or an ownership change which requires a new application, except as provided by Section 42231, a nonrefundable fee of one hundred fifty dollars ($150).

(2) For the annual renewal of a license, a fee of fifteen dollars ($15).

(3) If an alteration of an existing license is caused by a firm name change, address change, or the addition of a branch location, a fee of seventy dollars ($70).

(b) The fee for a license issued to dismantlers, manufacturers, manufacturer branches, distributors, and distributor branches shall be:

(1) For the original license, or an ownership change which requires a new application, except as provided by Section 42231, a nonrefundable fee of one hundred dollars ($100).

(2) For the annual renewal of a license, a fee of fifteen dollars ($15).

(3) If an alteration of an existing license is caused by a firm name change, address change, or the addition of a branch location, a fee of fifty dollars ($50).

(c) The fee for a license issued to transporters shall be:

(1) For the original license, or an ownership change which requires a new application, except as provided by Section 42231, a nonrefundable fee of one hundred dollars ($100).

(2) For the annual renewal of a license, a fee of fifteen dollars ($15).

(3) If an alteration of an existing license is caused by a firm name change, address change, or the addition of a branch location, a fee of fifty dollars ($50).

(d) The fee for a license issued to representatives shall be:

(1) For the original license, or an ownership change which requires a new application, except as provided by Section 42231, a nonrefundable fee of fifty dollars ($50).

(2) For the annual renewal of a license, a fee of fifteen dollars ($15).

(e) When the holder of a license as indicated above applies for special plates as provided in subdivision (b) of Section 11714, the fee for the plates and the annual renewal of the plates shall be the prevailing vehicle registration fee as set forth in Section 9250 during the period for which the special plates are issued or renewed.

SEC. 8. Section 9262.5 of the Vehicle Code is repealed.

SEC. 9. Section 9264 of the Vehicle Code is repealed.

SEC. 10. Section 9553 of the Vehicle Code is amended to read:

9553. (a) A penalty shall be added upon any application for renewal of registration or any application for renewal of special license plates made after midnight of the expiration date thereof except as provided in Section 4604 and in subdivision (b).

(b) When renewal fee penalties have not accrued with respect to a vehicle and the vehicle is transferred, the transferee shall have a period of 20 days from the date of the transfer to pay any registration fees which become due without payment of any penalties that would otherwise be required as provided in subdivision (a).

(c) If the fee specified in Sections 9255 and 9257 is not paid within 20 days after it becomes delinquent, a penalty shall be added thereto.

(d) Except as otherwise provided in this section, if any fee is not paid within 20 days after it becomes delinquent, a penalty shall be added thereto.

SEC. 11. Section 9560 of the Vehicle Code is repealed.

SEC. 12. Section 11102.5 of the Vehicle Code is amended to read:

11102.5. (a) A driving school operator shall:

(1) Be a person who has not been convicted of a crime involving an act of dishonesty, fraud, or deceit with the intent to benefit the person or another substantially, or to injure another substantially; or has not committed any act which, if done as a licensed driving school operator, would be grounds for the suspension or revocation of his or her license.

(2) Within three attempts, pass an examination as the department shall require on traffic laws, safe driving practices, operation of motor vehicles, teaching methods and techniques, driving school statutes and regulations, and office procedures and recordkeeping.

(3) Pay to the department a fee of one hundred dollars ($100) which shall entitle the applicant to three examinations.

(4) Be 18 years of age or older.

(5) Have worked for an established licensed California driving school as a driving instructor for a period of not less than 1,000 hours of actual behind-the-wheel teaching and, on and after July 1, 1973, have satisfactorily completed a course in the teaching of driver education and driver training acceptable to the department, except

that this paragraph does not apply to any person who is certified by the Department of Education as fully qualified to teach driver education and driver training and has taught those subjects in the public school system for a period of not less than 1,000 hours.

(b) The qualifying requirements referred to in this section shall be met within one year from the date of application for a license, or a new application, examination, and fee shall be required.

SEC. 13. Section 11309 of the Vehicle Code is amended to read:

11309. (a) The following fees for a vehicle verifier's permit shall be paid to the department:

(1) For the application and original permit, except as provided by Section 42231, a nonrefundable fee of fifty dollars ($50).

(2) For an application for renewal, fifteen dollars ($15).

(b) All permits shall be renewed on a biennial basis. All original permits shall be issued for a period of not less than two years, except in the case of a probationary license which, in the discretion of the department, may be issued for a shorter term.

SEC. 14. Section 11724 of the Vehicle Code is repealed.

SEC. 15. Section 11820 of the Vehicle Code is amended to read:

11820. The following fees shall be paid to the department:

(a) Except as provided by Section 42231, a nonrefundable fee for the original issuance of a license, fifty dollars ($50).

(b) Fee for license renewal, fifteen dollars ($15).

(c) Fee for late license renewal, five dollars ($5).

(d) Fee for a duplicate license, fifteen dollars ($15).

SEC. 16. Section 12517 of the Vehicle Code is amended to read:

12517. (a) No person shall operate a schoolbus unless that person has in his or her immediate possession a valid driver's license for the appropriate class of vehicle to be driven, and when transporting one or more pupils at or below the 12th-grade level to or from a public or private school or to or from public or private school activities, the person shall also have in his or her immediate possession a certificate issued by the department to permit the operation of schoolbuses.

(b) No person shall operate a school pupil activity bus unless that person has in his or her immediate possession a valid driver's license for the appropriate class of vehicle to be driven, and when transporting one or more pupils at or below the 12th-grade level to or from public or private school activities, the person shall also have in his or her immediate possession a certificate issued by the department to permit the operation of school pupil activity buses.

(c) The applicant for a certificate to operate a schoolbus or school pupil activity bus shall meet the eligibility and training requirements specified for schoolbus and school pupil activity busdrivers in the regulations adopted by the Department of the California Highway Patrol, and shall pay a fee of twelve dollars ($12) with the application for issuance of the certificate.

SEC. 17. Section 12519 of the Vehicle Code is amended to read:

12519. (a) No person shall operate a farm labor vehicle unless the person has in his or her possession a driver's license for the

appropriate class of vehicle to be driven and, when transporting one or more farmworker passengers, a certificate issued by the department to permit the operation of farm labor vehicles.

(b) The applicants shall present evidence that they have successfully completed the driver training course developed by the Department of Education pursuant to Section 40070 of the Education Code, and approved by the Department of Motor Vehicles and the Department of the California Highway Patrol before a permanent certificate will be issued.

(c) The certificate shall be issued only to applicants qualified by examinations prescribed by the Department of Motor Vehicles and the Department of the California Highway Patrol, and upon payment of a fee of twelve dollars ($12) to the Department of the California Highway Patrol. The examinations shall be conducted by the Department of the California Highway Patrol.

SEC. 18. Section 12521 of the Vehicle Code is amended to read:

12521. Any person operating any piece of special construction equipment upon a highway having dimensions which require that permission of the authorities having jurisdiction of the highways be obtained prior to the movement of the equipment thereon, after permission has been obtained, shall have a driver's license in his or her possession which is appropriately endorsed or to which is attached a special construction equipment certificate issued by the department. The certificate shall be issued upon qualification by examination and upon payment of a fee of twelve dollars ($12).

SEC. 19. Section 12523 of the Vehicle Code, as added by Chapter 133 of the Statutes of 1982, is amended to read:

12523. (a) No person shall operate a youth bus unless he has in his possession a valid driver's license of the appropriate class and a certificate issued by the department to permit the operation of a youth bus.

(b) Applicants for a certificate to drive a youth bus shall present evidence that they have successfully completed a driver training course administered by or at the direction of their employer consisting of a minimum of 10 hours of classroom instruction covering applicable laws and regulations and defensive driving practices and a minimum of 10 hours of behind-the-wheel training in a vehicle to be used as a youth bus. Applicants seeking to renew a certificate valid for driving a youth bus shall present evidence that they have received two hours of refresher training during each 12 months of driver certificate validity.

(c) The driver certificate shall be issued only to applicants qualified by examinations prescribed by the Department of Motor Vehicles and the Department of the California Highway Patrol, and upon payment of a fee of twelve dollars ($12) to the Department of the California Highway Patrol. The examinations shall be conducted by the Department of the California Highway Patrol. The Department of Motor Vehicles may deny, suspend, or revoke a certificate valid for driving a youth bus for the causes specified in

regulations adopted by the Department of the California Highway Patrol for schoolbus drivers.

(d) An operator of a youth bus shall, at all times when operating a youth bus, do all of the following:

(1) Use seat belts.

(2) Refrain from smoking.

(3) Report any accidents to the California Highway Patrol.

SEC. 20. Section 14901 of the Vehicle Code is amended to read:

14901. Upon an application for a duplicate driver's license or for a change of name on a driver's license, there shall be paid the department a fee of ten dollars ($10).

SEC. 21. Section 32000.5, as amended by Assembly Bill 2739, 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) 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.

(c) This division shall not apply to implements of husbandry, as defined in Section 36000.

SEC. 22. Section 38255 of the Vehicle Code is amended to read:

38255. Upon application for transfer of ownership or any interest of an owner, or legal owner in or to any off-highway motor vehicle identified under this division, there shall be paid the following fees:

(a) For a transfer by the owner	$15
(b) For a transfer by the legal owner	$15
(c) When application is presented showing a transfer by both the owner and legal owner	$15

SEC. 23. It is the intent of the Legislature by this act to establish fees for vehicle programs at amounts necessary and sufficient to cover the actual costs of administering the programs.

The Legislature further intends that licenses for the transportation of hazardous material issued pursuant to Section 32000.5 of the Vehicle Code and exempted from the provisions of this act shall remain in effect until the date of expiration of the license.

CHAPTER 1274

An act to add Section 6010.9 to, and to add and repeal Section 7059 of, the Revenue and Taxation Code, relating to taxation, to take effect immediately, tax levy.

[Approved by Governor September 21, 1982. Filed with Secretary of State September 22, 1982]

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

SECTION 1. The Legislature recognizes in enacting this act that it is in the public interest to provide in this state incentives for the development and utilization of computer software, which are the programs of, or routines used, with computers. It is therefore the intent of the Legislature in enacting this act to clarify the imposition, payment, and collection of the sales and use taxes for those individuals and entities engaged in the development and maintenance of computer software.

SEC. 2. Section 6010.9 is added to the Revenue and Taxation Code, to read:

6010.9. "Sale" and "purchase," for the purposes of this part, do not include the design, development, writing, translation, fabrication, lease, or transfer for a consideration of title or possession, of a custom computer program, other than a basic operational program (as defined in Section 995.2), either in the form of written procedures or in the form of storage media on which, or in which, the program is recorded, or any required documentation or manuals designed to facilitate the use of the custom computer program so transferred.

As used in this section:

(a) "Storage media" includes punched cards, tapes, discs, diskettes, or drums on which computer programs may be embodied or stored.

(b) "Computer" does not include tape-controlled automatic drilling, milling, or other manufacturing machinery or equipment.

(c) "Computer program" means the complete plan for the solution of a problem, such as the complete sequence of automatic data-processing equipment instructions necessary to solve a problem and includes both systems and application programs and subdivisions, such as assemblers, compilers, routines, generators, and utility programs.

(d) "Custom computer program" means a computer program prepared to the special order of the customer and includes those services represented by separately stated charges for modifications to an existing prewritten program which are prepared to the special order of the customer. The term does not include a "canned" or prewritten computer program which is held or existing for general or repeated sale or lease, even if the prewritten or "canned"

program was initially developed on a custom basis or for in-house use. Modification to an existing prewritten program to meet the customer's needs is custom computer programming only to the extent of the modification.

SEC. 3. Section 7059 is added to the Revenue and Taxation Code, to read:

7059. The board shall provide notice of the application of the sales and use tax laws to automatic data-processing services and equipment, as defined in Section 1502 of Title 18 of the California Administrative Code, and to other related items of particular interest to the computer industry. The notice required by this section shall be provided annually to trade magazines, periodicals, or other publications devoted to, and published for, the computer industry.

This section shall remain in effect only until January 1, 1986, and as of such date is repealed, unless a later enacted statute, which is chaptered before January 1, 1986, deletes or extends such date.

SEC. 4. The Legislature finds and declares that sales and service of custom computer programs, as defined in Section 6010.9 of the Revenue and Taxation Code, other than basic operational programs, are service transactions not subject to sales or use taxes under any existing state law. The use of any storage media in the transfer of custom computer programs is only incidental to the true object of the transaction, which is the performance of a service. Therefore, the Legislature, consistent with the statement of intent in Chapter 165 of the Statutes of 1972, declares that Section 2 of this act is declaratory of, and not a change in, existing law. It is the intent of the Legislature in enacting this act to clarify the existing law and to affect all applicable pending proceedings.

SEC. 5. The Legislature further finds and declares that there presently is uncertainty in the application of sales and use tax to the sales and service of custom computer programs which this act is intended to clarify, and this uncertainty has resulted in incorrect payment of sales and use tax by some taxpayers and the incorrect assessment of deficiencies of sales and use tax against some taxpayers.

For the public purpose of assuring equity in the payment of sales and use taxes among retailers selling and servicing custom computer programs, any outstanding and unpaid deficiency assessments are hereby canceled, and any sales and use taxes which have been incorrectly paid by retailers on or after July 1, 1972, shall be refunded in accordance with the provisions of this act, notwithstanding any other provision of law. Claims for refund by the retailer pursuant to this act shall only be submitted for, and shall distinguish between, the following:

(a) Taxes, interest, and any penalty incorrectly paid for which there was no customer reimbursement.

(b) Taxes incorrectly paid for which there was customer reimbursement and for which the retailer can and will return incorrectly paid taxes to customers who reimbursed the retailer.

(1) The retailer shall return to a customer reimbursement paid by

that customer in proportion to the amount of refund received for those paid taxes.

(2) Any taxes refunded to the retailer that have not been returned to the customer within 60 days of the receipt of the refund shall be returned to the state.

SEC. 6. On or before December 15, 1982, any person claiming a refund of sales and use taxes as provided in Section 5 of this act shall file a claim for refund with the State Board of Equalization in such form as the board may prescribe. Any person who fails to file a claim by December 15, 1982, as provided in this section, shall have no right to a refund, notwithstanding any other provision of law.

SEC. 7. On or before July 1, 1983, the State Board of Equalization shall certify to the Controller the amount of refund due to each claimant pursuant to this act. The total amount of money to be available for refunds pursuant to this act shall not exceed one million two hundred thousand dollars ($1,200,000). If the total amount of claims exceeds one million two hundred thousand dollars ($1,200,000), the board shall determine the pro-rata share due each claimant based on the proportion each claim bears to the total amount of claims and shall report that amount for certification.

No interest shall be paid on any refund of taxes made pursuant to this act.

To the extent money is appropriated in the Budget Act of 1983, for the purposes of making the refunds pursuant to this act, the refunds pursuant to this act shall be paid by September 15, 1983.

SEC. 8. It is the intent of the Legislature in enacting this act that the refund provisions in this act shall supercede the provisions of Chapter 7 (commencing with Section 6901) of Part 1 of Division 2 of the Revenue and Taxation Code and to make the provisions of this act the exclusive procedure and remedy for the claim of, or action for, a refund of sales and use taxes on the sale or service of custom computer programming, as defined in Section 6010.9 of the Revenue and Taxation Code.

SEC. 9. On or before January 1, 1985, the Auditor General shall report to the Legislature on the amount of revenues that would be generated were the sales and use tax to be applied to custom computer programs.

SEC. 10. 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. 11. This act provides for a tax levy within the meaning of Article IV of the Constitution and shall go into immediate effect.

CHAPTER 1275

An act to add Section 23116 to the Vehicle Code, relating to vehicles.

[Approved by Governor September 21, 1982. Filed with Secretary of State September 22, 1982.]

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

SECTION 1. Section 23116 is added to the Vehicle Code, to read:

23116. (a) No person driving a motortruck shall transport any minor in the back of the motortruck in a space intended for any load on the vehicle on a highway unless the space is enclosed to a height of 46 inches extending vertically from the floor, the vehicle has installed means of preventing the minor from being discharged, or the minor is secured to the vehicle in a manner which will prevent the minor from being thrown, falling, or jumping from the vehicle.

(b) This section does not apply to the transportation of a minor in the back of the motortruck when the minor is accompanied by an adult in the back of the motortruck.

(c) For the purposes of this section, "minor" means any person 12 years of age or under.

SEC 2. The department shall conduct a study to determine the number of traffic accidents caused by an animal being discharged by jumping or falling from a vehicle onto a freeway. The department shall report the results of the study on or before December 31, 1983, and annually thereafter.

This section shall remain in effect only until January 1, 1986, and as of that date is repealed, unless a later enacted statute, which is chaptered before January 1, 1986, deletes or extends that date.

SEC. 3. No appropriation is made and no reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution or Section 2231 or 2234 of the Revenue and Taxation Code because the only costs which may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, changes the definition of a crime or infraction, changes the penalty for a crime or infraction, or eliminates a crime or infraction.

CHAPTER 1276

An act to amend Section 208 of the Civil Code, to amend Section 42923 of, and to add Section 42922.5 to, the Education Code, and to amend Sections 332 and 656 of, to add Sections 903.4, 903.5, 903.6, and 15200.3 to, to add and repeal Section 903.7 of, and to repeal Sections 905, 906, 907, 908, 909, and 910 of, the Welfare and Institutions Code, and to repeal Section 2 of Chapter 721 of the Statutes of 1981, relating

to youth, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 21, 1982. Filed with Secretary of State September 22, 1982.]

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

SECTION 1. Section 208 of the Civil Code is amended to read:

208. A parent is not bound to compensate the other parent, or a relative, for the voluntary support of his child, without an agreement for compensation, nor to compensate a stranger for the support of a child who has abandoned the parent without just cause. Nothing in this section shall be construed so as to relieve the parent of the obligation to support a child during any period in which the state, county, or other governmental entity furnishes support for the child.

SEC. 1.5. Section 42922.5 is added to the Education Code, to read:

42922.5. Commencing with fiscal year 1982–83 and annually thereafter each of the four school districts specified in paragraph (4) of subdivision (a) of Section 42920, shall reduce their base revenue calculation in an amount equal to the amount spent on such programs in the 1981–82 fiscal year.

SEC. 2. Section 42923 of the Education Code is amended to read:

42923. (a) Each of the four school districts specified in paragraph (4) of subdivision (a) of Section 42920 which continues to provide educational services for foster children shall, by January 1, 1982, and by January 1 of each even-numbered year thereafter, report to the Secretary of Health and Welfare, Superintendent of Public Instruction, and Director of the Youth Authority such information as may be required jointly and severally by the Secretary of Health and Welfare, the Superintendent of Public Instruction, and the Director of the Youth Authority for the purpose of subdivision (b).

(b) The Secretary for Health and Welfare shall, by February 15, 1982, and by February 15 of each even-numbered year thereafter, report to the Legislature and the Governor on the foster children services provided by school districts.

(1) The report made pursuant to this subdivision shall be prepared jointly by the Secretary of Health and Welfare, the Superintendent of Public Instruction, and the Director of the Youth Authority.

(2) The report made pursuant to this subdivision shall include, but not be limited to, recommendations regarding the continuation of services, the effectiveness of the services, and broadening of the application of those services.

SEC. 3. Section 332 of the Welfare and Institutions Code is amended to read:

332. A petition to commence proceedings in the juvenile court to declare a minor a ward or a dependent child of the court shall be verified and shall contain all of the following:

(a) The name of the court to which it is addressed.

(b) The title of the proceeding.

(c) The code section and subdivision under which the proceedings are instituted.

(d) The name, age, and address, if any, of the minor upon whose behalf the petition is brought.

(e) The names and residence addresses, if known to petitioner, of both parents and any guardian of the minor. If there is no parent or guardian residing within the state, or if his or her place of residence is not known to petitioner, the petition shall also contain the name and residence address, if known, of any adult relative residing within the county, or, if there is none, the adult relative residing nearest to the location of the court.

(f) A concise statement of facts, separately stated, to support the conclusion that the minor upon whose behalf the petition is being brought is a person within the definition of each of the sections and subdivisions under which the proceedings are being instituted.

(g) The fact that the minor upon whose behalf the petition is brought is detained in custody or is not detained in custody, and if he or she is detained in custody, the date and the precise time the minor was taken into custody.

(h) A notice to the father, mother, spouse, or other person liable for support of the minor child, that: (1) Section 903 makes that person, the estate of that person, and the estate of the minor child, liable for the cost of the care, support, and maintenance of the minor child in any county institution or any other place in which the child is placed, detained, or committed pursuant to an order of the juvenile court; (2) Section 903.1 makes that person, the estate of that person, and the estate of the minor child, liable for the cost to the county of legal services rendered to the minor or the parent by a private attorney or a public defender appointed pursuant to the order of the juvenile court; (3) Section 903.2 makes that person, the estate of that person, and the estate of the minor child, liable for the cost to the county of the probation supervision of the minor child by the probation officer pursuant to the order of the juvenile court; and (4) the liabilities established by these sections are joint and several.

SEC. 4. Section 656 of the Welfare and Institutions Code is amended to read:

656. A petition to commence proceedings in the juvenile court to declare a minor a ward of the court shall be verified and shall contain all of the following:

(a) The name of the court to which it is addressed.

(b) The title of the proceeding.

(c) The code section and subdivision under which the proceedings are instituted.

(d) The name, age, and address, if any, of the minor upon whose behalf the petition is brought.

(e) The names and residence addresses, if known to petitioner, of both of the parents and any guardian of the minor. If there is no

parent or guardian residing within the state, or if his or her place of residence is not known to petitioner, the petition shall also contain the name and residence address, if known, of any adult relative residing within the county, or, if there are none, the adult relative residing nearest to the location of the court.

(f) A concise statement of facts, separately stated, to support the conclusion that the minor upon whose behalf the petition is being brought is a person within the definition of each of the sections and subdivisions under which the proceedings are being instituted.

(g) The fact that the minor upon whose behalf the petition is brought is detained in custody or is not detained in custody, and if he or she is detained in custody, the date and the precise time the minor was taken into custody.

(h) A notice to the father, mother, spouse, or other person liable for support of the minor child, that: (1) Section 903 makes that person, the estate of that person, and the estate of the minor child, liable for the cost of the care, support, and maintenance of the minor child in any county institution or any other place in which the child is placed, detained, or committed pursuant to an order of the juvenile court; (2) Section 903.1 makes that person, the estate of that person, and the estate of the minor child, liable for the cost to the county of legal services rendered to the minor by a private attorney or a public defender appointed pursuant to the order of the juvenile court; (3) Section 903.2 makes that person, the estate of that person, and the estate of the minor child, liable for the cost to the county of the probation supervision of the minor child by the probation officer pursuant to the order of the juvenile court; and (4) the liabilities established by these sections are joint and several.

SEC. 5. Section 903.4 is added to the Welfare and Institutions Code, to read:

903.4. (a) The Legislature finds that even though Section 903 establishes parental liability for the cost of the care, support, and maintenance of a child in a county institution or other place in which the child is placed, detained, or committed pursuant to an order of the juvenile court, the collection of child support for juveniles who have been placed in out-of-home care as dependents or wards of the juvenile court under Sections 300, 601, and 602 of the Welfare and Institutions Code has not been pursued routinely and effectively.

It is the purpose of this section to substantially increase income to the state and to counties through court-ordered parental reimbursement for the support of juveniles who are in out-of-home placement. In this regard, the Legislature finds that the costs of collection will be offset by the additional income derived from the increased effectiveness of the parental support program.

(b) In any case in which a child is or has been declared a dependent child or a ward of the court pursuant to Section 300, 601, or 602, the juvenile court shall order any agency which has expended moneys or incurred costs on behalf of the child pursuant to an order of the juvenile court, to submit to the district attorney within 30 days,

in the form of a declaration, a statement of its costs and expenses for the benefit of the child.

(c) (1) The district attorney may petition the superior court to issue an order to show cause why an order should not be entered for continuing support and reimbursement of the costs of the support of any minor described in Section 903, 903.1, or 903.2.

Any order entered as a result of the order to show cause shall be enforceable in the same manner as any other support order entered by the courts of this state at the time it becomes due and payable.

In any case in which the district attorney has received a declaration of costs or expenses from any agency, the declaration shall be deemed an application for assistance pursuant to Section 11475.1.

(2) The order to show cause shall inform the parent of all of the following facts:

(A) He or she has been sued.

(B) If he or she wishes to seek the advice of an attorney in this matter, it should be done promptly so that his or her financial declaration and written response, if any, will be filed on time.

(C) He or she has a right to appear personally and present evidence in his or her behalf.

(D) His or her failure to appear at the order to show cause hearing, personally or through his or her attorney, may result in an order being entered against him or her for the relief requested in the petition.

(E) Any order entered could result in the garnishment of wages, taking of money or property to enforce the order, or being held in contempt of court.

(F) Any party has a right to request a modification of any order issued by the superior court in the event of a change in circumstances.

(3) Any existing support order shall remain in full force and effect unless the superior court modifies that order pursuant to subdivision (f).

(4) The district attorney shall not be required to petition the court for an order for continuing support and reimbursement if, in the opinion of the district attorney, it would not be appropriate to secure such an order. The district attorney shall not be required to continue collection efforts for any order if, in the opinion of the district attorney, it would not be appropriate or cost effective to enforce the order.

(d) (1) In any case in which an order to show cause has been issued and served upon a parent for continuing support and reimbursement of costs, a completed income and expense declaration shall be filed with the court by the parent; a copy of it shall be delivered to the district attorney at least five days prior to the hearing on the order to show cause.

(2) Any person authorized by law to receive a parent's financial declaration or information obtained therefrom, who knowingly

furnishes the declaration or information to a person not authorized by law to receive it, is guilty of a misdemeanor.

(e) If a parent has been personally served with the order to show cause and no appearance is made by the parent, or an attorney in his or her behalf, at the hearing on the order to show cause, the court may enter an order for the principal amount and continuing support in the amount demanded in the petition.

If the parent appears at the hearing on the order to show cause, the court may enter an order for the amount the court determines the parent is financially able to pay.

(f) The court shall have continuing jurisdiction to modify any order for continuing support entered pursuant to this section.

(g) As used in this section, "parent" includes any person specified in Section 903, the estate of any such person, and the estate of the minor person.

(h) The district attorney may contract with another county agency for the performance of any of the duties required by this section.

SEC. 6. Section 903.5 is added to the Welfare and Institutions Code, 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 district attorney, who shall proceed pursuant to Section 903.4.

SEC. 7. Section 903.6 is added to the Welfare and Institutions Code, to read:

903.6. Funds collected pursuant to Sections 903, 903.4, and 903.5 shall be distributed in the following manner:

(a) If the program through which the minor is placed is a county-funded program, the county shall retain 100 percent of the funds collected. For the purposes of this subdivision, programs funded in whole or part with county justices system subvention program funds shall be considered to be 100 percent county funded.

(b) If the program through which the minor is placed is funded partially with state or federal funds, the amounts collected shall be distributed by the State Department of Social Services pursuant to Section 11457 and incentives shall be paid pursuant to Sections 15200.1, 15200.2, and 15200.3.

SEC. 8. Section 903.7 is added to the Welfare and Institutions Code, to read:

903.7. (a) There is in the State Treasury the Foster Parent Training Fund, the moneys contained in which shall be used exclusively for the purposes set forth in this section.

(b) For each fiscal year beginning with fiscal year 1981–82, except as provided in Section 15200.3, the State Department of Social Services shall determine the amount equivalent to the state share of collections attributable to the enforcement of parental fiscal liability pursuant to Sections 903, 903.4, and 903.5. On July 1, 1982, and every three months thereafter, the department shall notify the Chancellor of the Community Colleges, the Department of Finance, and the Superintendent of Public Instruction of the above-specified amount. The State Department of Social Services shall authorize the quarterly transfer of any portion of this amount for any particular fiscal year exceeding three million seven hundred fifty thousand dollars ($3,750,000) to the Treasurer for deposit in the Foster Parent Training Fund.

(c) If sufficient moneys are available in the Foster Parent Training Fund, up to five hundred thousand dollars ($500,000) shall be allocated for the support of foster parent training programs conducted in community colleges. The maximum amount authorized to be allocated pursuant to this subdivision shall be adjusted annually by a cost-of-living increase each year based on the percentage given to discretionary education programs. Funds for the training program shall be provided in a separate budget item in that portion of the Budget Act pertaining to the Chancellor of the California Community Colleges, to be deposited in a separate bank account by the Chancellor of the California Community Colleges.

The chancellor shall use these funds exclusively for foster parent training, as specified by the chancellor in consultation with the California State Foster Parents Association and the State Department of Social Services.

The State Department of Social Services shall facilitate the participation of county welfare departments in the foster parent training program. The State Foster Parents Association, or the local chapters thereof, and the State Department of Social Services shall identify training participants and shall advise the chancellor on the form, content, and methodology of the training program. Funds shall be paid monthly to the foster parent training program until the maximum amount of funds authorized to be expended for that program is expended. No more than 10 percent or seventy-five thousand dollars ($75,000) of these moneys, whichever is greater, shall be used for administrative purposes; of the 10 percent or seventy-five thousand dollars ($75,000), no more than ten thousand dollars ($10,000) shall be expended to reimburse the State Department of Social Services for its services pursuant to this paragraph.

(d) To the extent moneys are remaining in the Foster Parent Training Fund, after allocation for foster parent training in community colleges in fiscal year 1983–84, funds for foster youth

services programs may be provided in the budget and shall be transferred to the Foster Youth Services Special Categorical Program. Annual adjustments for cost-of-living increases shall be made, based on the percentage given to discretionary education programs.

Funds for the Foster Youth Services Programs in school districts shall be provided in a separate budget item in that portion of the Budget Act pertaining to the Superintendent of Public Instruction and shall be transmitted directly to the school districts, to be used solely for the Foster Youth Services Programs.

Not later than November 1, 1982, and annually thereafter, the Superintendent of Public Instruction, in consultation with the State Department of Social Services, shall propose a sum to the Governor to be included in the budget for the ensuing fiscal year for allocation to each school district with foster youth services programs and to each of the additional school districts recommended to provide foster youth services.

The four school districts providing foster youth services for the fiscal year 1981–82 shall provide maintenance of effort for that program for the fiscal year 1982–83 and each fiscal year thereafter comparable to the program level that they administered in fiscal year 1981–82.

(e) The Controller shall transfer moneys from the Foster Parent Training Fund to the Chancellor of the Community Colleges and the Superintendent of Public Instruction as necessary to fulfill the requirements of subdivisions (c) and (d).

After the maximum amount authorized in any fiscal year has been transferred to the Chancellor of the Community Colleges and the Superintendent of Public Instruction, the Controller shall transfer any remaining funds to the General Fund for expenditure for any public purpose.

(f) This section shall remain in effect only until January 1, 1987, and as of that date is repealed, unless a later enacted statute, which is chaptered before January 1, 1987, deletes or extends that date.

SEC. 9. Section 905 of the Welfare and Institutions Code is repealed.

SEC. 10. Section 906 of the Welfare and Institutions Code is repealed.

SEC. 11. Section 907 of the Welfare and Institutions Code is repealed.

SEC. 12. Section 908 of the Welfare and Institutions Code is repealed.

SEC. 13. Section 909 of the Welfare and Institutions Code is repealed.

SEC. 14. Section 910 of the Welfare and Institutions Code is repealed.

SEC. 15. Section 15200.3 is added to the Welfare and Institutions Code, to read:

15200.3. (a) There is hereby appropriated out of any money in

the General Fund not otherwise appropriated, to the fund known as the Support Enforcement Incentive Fund, from which the department shall make payments to the extent and as specified in subdivision (b) to counties on collections made on or after the effective date of this section, a state incentive of 7½ percent to be paid on amounts received for nonfederally funded foster care cases, including, but not limited to, collections made pursuant to Sections 903, 903.4, and 903.5. This incentive shall be paid on collections which are used to repay the state share of aid paid pursuant to this chapter which are not entitled to incentives pursuant to Sections 15200.1 and 15200.2.

(b) The state incentive provided in subdivision (a) for nonfederal foster care cases collections shall only apply to those statewide collections made in a fiscal year in excess of the 1982–83 budget projection. From the excess, 7½ percent of collections for nonfederal foster care cases shall be set aside for payment of these incentives. At the end of the fiscal year, payment to each county of the incentive money shall be in proportion to the percentage of the total nonfederal cases support collections for the state which each county has collected. The percentage incentive specified in subdivision (a) shall not exceed the total incentive provided by the state and federal governments combined for federal foster care cases at any time but shall automatically be adjusted for any reductions. Any remaining funds shall be credited to offset expenditures for AFDC-FC.

(c) The Legislature finds and declares that the state incentive provided pursuant to this section is sufficient to reimburse counties for court and all other costs incurred through enforcement of parental liability in nonfederally funded foster care cases.

SEC. 16. Section 2 of Chapter 721 of the Statutes of 1981 is repealed.

SEC. 17. The amount generated by Section 42922.5 of the Education Code shall be transferred from the allocation in Item 6100-101-001 of the Budget Act of 1982 to the Superintendent of Public Instruction for the allocation in 1982–83 to the Foster Youth Services Special Categorical Program for the four school districts which maintained Foster Youth Services Programs specified in paragraph (4) of subdivision (a) of Section 42920 for the purpose of maintaining these programs in fiscal year 1982–83.

SEC. 18. No appropriation is made and no reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution or Section 2231 or 2234 of the Revenue and Taxation Code because the Legislature finds and declares that there are savings as well as costs in this act which, in the aggregate, do not result in additional net costs. These savings include increased county revenue resulting from the state incentive provided pursuant to Section 15200.3 of the Welfare and Institutions Code. The conclusion stated in this section is further supported by the provision for the district attorney to exercise discretion with regard to pursuing the enforcement of parental responsibility as set forth in Section 903.4.

SEC. 19. No appropriation is made and no reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution or Section 2231 or 2234 of the Revenue and Taxation Code because the only costs which may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, changes the definition of a crime or infraction, changes the penalty for a crime or infraction, or eliminates a crime or infraction.

SEC. 20. 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 achieve maximum implementation, it is necessary that this act take effect at the earliest possible date.

CHAPTER 1277

An act to add Section 7011.5 to the Business and Professions Code, to amend Sections 830.2 and 830.3 of the Penal Code, and to amend Sections 4156 and 4957 of the Public Resources Code, relating to the criminal justice system.

[Approved by Governor September 21, 1982. Filed with Secretary of State September 22, 1982.]

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

SECTION 1. Section 7011.5 is added to the Business and Professions Code, to read:

7011.5. Persons employed as investigators of the Special Investigations Unit of the Contractors' State License Board and designated by the Director of Consumer Affairs have the authority of peace officers while engaged in exercising the powers granted or performing the duties imposed upon them in investigating the laws administered by the Contractors' State License Board or commencing directly or indirectly any criminal prosecution arising from any investigation conducted under these laws. All persons herein referred to shall be deemed to be acting within the scope of employment with respect to all acts and matters in this section set forth.

SEC. 2. Section 830.2 of the Penal Code is amended to read:

830.2. The following persons are peace officers whose authority extends to any place in the state:

(a) Any member of the California Highway Patrol, provided that the primary duty of the peace officer shall be the enforcement of the provisions of the Vehicle Code or of any other law relating to the use or operation of vehicles upon the highways, as that duty is set forth

in the Vehicle Code.

(b) Any member of the California State Police Division, provided that the primary duty of the peace officer shall be the protection of state properties and occupants thereof.

(c) Members of the California National Guard have the powers of peace officers when they are (1) called or ordered into active state service by the Governor pursuant to the provisions of Section 143 or 146 of the Military and Veterans Code, (2) serving within the area wherein military assistance is required, and (3) directly assisting civil authorities in any of the situations specified in Section 143 or 146. The authority of the peace officer extends to the area wherein military assistance is required as to a public offense committed or which there is reasonable cause to believe has been committed within that area. The requirements of Section 1031 of the Government Code are not applicable under those circumstances.

(d) A member of the University of California Police Department appointed pursuant to Section 92600 of the Education Code, provided that the primary duty of the peace officer shall be the enforcement of the law within the area specified in Section 92600 of the Education Code.

(e) A member of the California State University and College Police Departments appointed pursuant to Section 89560 of the Education Code, provided that the primary duty of the peace officer shall be the enforcement of the law within the area specified in Section 89560 of the Education Code.

(f) Any member of the Law Enforcement Liaison Unit of the Department of Corrections, provided that the primary duty of the peace officer shall be the investigation or apprehension of parolees, parole violators, or escapees from state institutions, the transportation of those persons, and the coordination of those activities with other criminal justice agencies.

(g) Members of the Wildlife Protection Branch of the Department of Fish and Game, provided that the primary duty of those deputies shall be the enforcement of the law as set forth in Section 856 of the Fish and Game Code.

(h) Employees of the Department of Parks and Recreation designated by the director pursuant to Section 5008 of the Public Resources Code, provided that the primary duty of the peace officer shall be the enforcement of the law as set forth in Section 5008 of the Public Resources Code.

(i) The Director of Forestry and employees or classes of employees of the Department of Forestry designated by the director pursuant to Section 4156 of the Public Resources Code, provided that the primary duty of the peace officer shall be the enforcement of the law as that duty is set forth in Section 4156 of the Public Resources Code.

SEC. 3. Section 830.3 of the Penal Code is amended to read:

830.3. The following persons are peace officers whose authority extends to any place in the state for the purpose of performing their

primary duty or when making an arrest pursuant to Section 836 of the Penal Code as to any public offense with respect to which there is immediate danger to person or property, or of the escape of the perpetrator of such offense, or pursuant to Section 8597 or Section 8598 of the Government Code. Those peace officers may carry firearms only if authorized and under terms and conditions specified by their employing agencies:

(a) Persons employed by the Department of Alcoholic Beverage Control for the enforcement of the provisions of Division 9 (commencing with Section 23000) of the Business and Professions Code and designated by the Director of Alcoholic Beverage Control, provided that the primary duty of the peace officer shall be the enforcement of the laws relating to alcoholic beverages, as that duty is set forth in Section 25755 of the Business and Professions Code.

(b) Persons employed by the Division of Investigation of the Department of Consumer Affairs, and investigators of the Board of Medical Quality Assurance and the Board of Dental Examiners, and designated by the Director of Consumer Affairs, provided that the primary duty of the peace officer shall be the enforcement of the law as that duty is set forth in Section 160 of the Business and Professions Code.

(c) Voluntary fire wardens designated by the Director of Forestry pursuant to Section 4156 of the Public Resources Code, provided that the primary duty of the peace officer shall be the enforcement of the law as that duty is set forth in that section.

(d) Employees of the Department of Motor Vehicles designated in Section 1655 of the Vehicle Code, provided that the primary duty of the peace officer shall be the enforcement of the law as that duty is set forth in that section.

(e) Investigators of the California Horse Racing Board designated by the board, provided that the primary duty of the peace officer shall be the enforcement of the provisions of Chapter 4 (commencing with Section 19400) of Division 8 of the Business and Professions Code and Chapter 10 (commencing with Section 330) of Title 9 of Part 1 of the Penal Code.

(f) The State Fire Marshal and assistant or deputy state fire marshals appointed pursuant to Section 13103 of the Health and Safety Code, provided that the primary duty of the peace officer shall be the enforcement of the law as that duty is set forth in Section 13104 of that code.

(g) Inspectors of the Food and Drug Section as are designated by the chief pursuant to subdivision (a) of Section 216 of the Health and Safety Code, provided that the primary duty of the peace officer shall be the enforcement of the law as that duty is set forth in that section.

(h) All investigators of the Division of Labor Standards Enforcement, as designated by the Labor Commissioner, provided that the primary duty of the peace officer shall be enforcement of the law as prescribed in Section 95 of the Labor Code.

(i) All investigators of the State Departments of Health Services,

Social Services, Mental Health, Developmental Services, and Alcohol and Drug Programs, the Office of Statewide Health Planning and Development, and the Public Employees' Retirement System, provided that the primary duty of the peace officer shall be the enforcement of the law relating to the duties of the peace officer's department or office. Notwithstanding any other provision of law, investigators of the Public Employees' Retirement System shall not carry firearms.

(j) Marshals and police appointed by the Board of Directors of the California Exposition and State Fair pursuant to Section 3332 of the Food and Agricultural Code, provided that the primary duty of the peace officer shall be the enforcement of the law as prescribed in that section.

(k) The Chief of the Bureau of Fraudulent Claims of the Department of Insurance and investigators designated by the chief, provided that the primary duty of the investigators shall be enforcement of the provisions of Section 556 of the Insurance Code.

(*l*) Employees of the Department of Housing and Community Development designated under Section 18023 of the Health and Safety Code, provided that the primary duty of the peace officer shall be the enforcement of the law as that duty is set forth in that section.

(m) Investigators of the Office of the Controller, provided that the primary duty of any such investigator shall be the enforcement of the law relating to the duties of that office. Notwithstanding any other provision of law, the peace officers designated pursuant to this subdivision shall not carry firearms.

(n) Investigators of the Department of Corporations designated by the Commissioner of Corporations, provided that the primary duty of these investigators shall be enforcement of the provisions of law administered by the Department of Corporations. Notwithstanding any other provision of law, the investigators designated pursuant to this subdivision shall not carry firearms.

(o) Persons employed by the Contractors' State License Board designated by the Director of Consumer Affairs pursuant to Section 7011.5 of the Business and Professions Code, provided that the primary duty of these persons shall be the enforcement of the law as that duty is set forth in Section 7011.5 of the Business and Professions Code and in Chapter 9 (commencing with Section 7000) of Division 3 of the Business and Professions Code. The Director of Consumer Affairs may designate as peace officers not more than three persons who shall at the time of their designation be assigned to the special investigations unit of the board. Notwithstanding any other provision of law, the persons designated pursuant to this subdivision shall not carry firearms.

SEC. 4. Section 830.3 of the Penal Code is amended to read:

830.3. The following persons are peace officers whose authority extends to any place in the state for the purpose of performing their primary duty or when making an arrest pursuant to Section 836 of the Penal Code as to any public offense with respect to which there

is immediate danger to person or property, or of the escape of the perpetrator of such offense, or pursuant to Section 8597 or Section 8598 of the Government Code. Such peace officers may carry firearms only if authorized and under such terms and conditions as are specified by their employing agencies:

(a) Persons employed by the Department of Alcoholic Beverage Control for the enforcement of the provisions of Division 9 (commencing with Section 23000) of the Business and Professions Code and designated by the Director of Alcoholic Beverage Control, provided that the primary duty of any such peace officer shall be the enforcement of the laws relating to alcoholic beverages, as that duty is set forth in Section 25755 of the Business and Professions Code.

(b) Persons employed by the Division of Investigation of the Department of Consumer Affairs, and investigators of the Board of Medical Quality Assurance and the Board of Dental Examiners, and designated by the Director of Consumer Affairs, provided that the primary duty of any such peace officer shall be the enforcement of the law as that duty is set forth in Section 160 of the Business and Professions Code.

(c) Voluntary fire wardens as are designated by the Director of Forestry pursuant to Section 4156 of the Public Resources Code, provided that the primary duty of any such peace officer shall be the enforcement of the law as that duty is set forth in Section 4156 of such code.

(d) Employees of the Department of Motor Vehicles designated in Section 1655 of the Vehicle Code, provided that the primary duty of any such peace officer shall be the enforcement of the law as that duty is set forth in Section 1655 of such code.

(e) Investigators of the California Horse Racing Board designated by the board, provided that the primary duty of any such peace officer shall be the enforcement of the provisions of Chapter 4 (commencing with Section 19400) of Division 8 of the Business and Professions Code and Chapter 10 (commencing with Section 330) of Title 9 of Part 1 of the Penal Code.

(f) The State Fire Marshal and assistant or deputy state fire marshals appointed pursuant to Section 13103 of the Health and Safety Code, provided that the primary duty of any such peace officer shall be the enforcement of the law as that duty is set forth in Section 13104 of such code.

(g) Inspectors of the Food and Drug Section as are designated by the chief pursuant to subdivision (a) of Section 216 of the Health and Safety Code, provided that the primary duty of any such peace officer shall be the enforcement of the law as that duty is set forth in Section 216 of such code.

(h) All investigators of the Division of Labor Standards Enforcement, as designated by the Labor Commissioner, provided that the primary duty of any such peace officer shall be enforcement of the law as prescribed in Section 95 of the Labor Code.

(i) All investigators of the State Departments of Health Services,

Social Services, Mental Health, Developmental Services, Alcohol and Drug Programs and the Office of Statewide Health Planning and Development, and the Public Employees' Retirement System, provided that the primary duty of any such peace officer shall be the enforcement of the law relating to the duties of his department, or office. Notwithstanding any other provision of law, investigators of the Public Employees' Retirement System shall not carry firearms.

(j) Marshals and police appointed by the Board of Directors of the California Exposition and State Fair, pursuant to Section 3332 of the Food and Agricultural Code, provided that the primary duty of the peace officer shall be the enforcement of the law as prescribed in that section.

(k) The Chief of the Bureau of Fraudulent Claims of the Department of Insurance and such investigators as designated by him, provided that the primary duty of such investigators shall be enforcement of the provisions of Section 556 of the Insurance Code.

(*l*) Employees of the Department of Housing and Community Development designated under Section 18023 of the Health and Safety Code, provided that the primary duty of any such peace officer shall be the enforcement of the law as that duty is set forth in Section 18023 of the Health and Safety Code.

(m) Investigators of the Office of the Controller, provided that the primary duty of any such investigator shall be the enforcement of the law relating to the duties of that office. Notwithstanding any other provision of law, the peace officers designated pursuant to this subdivision shall not carry firearms.

(n) Investigators of the Department of Corporations designated by the Commissioner of Corporations, provided that the primary duty of these investigators shall be enforcement of the provisions of law administered by the Department of Corporations. Notwithstanding any other provision of law, the peace officers designated pursuant to this subdivision shall not carry firearms.

(o) Persons employed by the Contractors' State License Board designated by the Director of Consumer Affairs pursuant to Section 7011.5 of the Business and Professions Code, provided that the primary duty of these persons shall be the enforcement of the law as that duty is set forth in Section 7011.5 of the Business and Professions Code and in Chapter 9 (commencing with Section 7000) of Division 3 of the Business and Professions Code. The Director of Consumer Affairs may designate as peace officers not more than three persons who shall at the time of their designation be assigned to the special investigations unit of the board. Notwithstanding any other provision of law, the persons designated pursuant to this subdivision shall not carry firearms.

SEC. 5. Section 4156 of the Public Resources Code is amended to read:

4156. (a) The director and employees or classes of employees of the department designated by the director have the powers conferred by law upon peace officers listed in Section 830.2 of the

Penal Code, and voluntary firewardens designated by the director have the powers conferred by law upon peace officers listed in Section 830.3 of the Penal Code; provided, however, that the primary duty of the peace officer shall be the enforcement of forest laws and regulations, state and county fire laws and regulations, and the laws relating to explosives as set forth in Part 1 (commencing with Section 12000) of Division 11 of the Health and Safety Code, other than laws the enforcement of which is primarily the responsibility of the State Fire Marshal. Officers, employees, and voluntary firewardens, upon request pursuant to Section 8597 of the Government Code, shall have the full powers and duties of peace officers for all purposes as provided by the Penal Code and are not liable to civil action for trespass committed in the discharge of their duties.

(b) Any such peace officer may enforce federal fire laws to the extent that he or she is authorized to do so.

SEC. 6. Section 4957 of the Public Resources Code is amended to read:

4957. Conservation camp inmates and wards may be utilized in the rescue of lost or injured persons, the saving of life, and the protection of property. The department may cooperate with local agencies of government to accomplish these purposes.

The department may also, upon the request of the appropriate local agency, utilize conservation camp inmates and wards in the performance of watershed revegetation and related work necessary to prevent flood damage to land resulting from the destruction of vegetation by fire.

SEC. 7. The Department of Parks and Recreation, the Department of Forestry, and the Department of Corrections shall, using funds from existing appropriations, jointly develop a plan to expand the Department of Forestry's Conservation Camp Program to provide additional resources for wildland firefighting and maintenance of the state park system. The departments shall transmit this plan to the Senate Committee on Judiciary and the Assembly Committee on Criminal Justice on or before July 1, 1983.

SEC. 8. The Department of Transportation, the Department of Forestry, and the Department of Corrections shall, using funds from existing appropriations, jointly develop a plan to expand the Department of Forestry's Conservation Camp Program to provide additional resources for wildland firefighting and highway maintenance. The departments shall transmit this plan to the Senate Committee on Judiciary and the Assembly Committee on Criminal Justice on or before July 1, 1983.

SEC. 9. It is the intent of the Legislature that Sections 7 and 8 of this act shall be implemented with existing funds and that no additional funds shall be appropriated for these purposes.

SEC. 10. It is the intent of the Legislature that the changes effected by Sections 1 to 5, inclusive, of this act shall serve only to define peace officers, the extent of their jurisdiction, and the nature and scope of their authority, powers, and duties, and that there shall

be no change in the status of individuals for purposes of retirement, workers' compensation or similar injury or death benefits, or other employee benefits.

It is further the intent of the Legislature that the classes of investigators established in subdivisions (m), (n), and (o) of Section 830.3 of the Penal Code and that the investigators of the Public Employees' Retirement System, as authorized in subdivision (i) of Section 830.3, will primarily be involved in law enforcement involving so-called white-collar crime, thereby not requiring them to become involved or participate in the Public Safety Officers' Retirement System or the use of firearms. The Legislature declares that it is not necessary for these investigators to participate in the Public Safety Officers' Retirement System unless a major public concern is clearly established.

SEC. 11. It is the intent of the Legislature, if this bill and Assembly Bill 2405 are both chaptered and become effective on or before January 1, 1983, both bills amend Section 830.3 of the Penal Code, and this bill is chaptered after Assembly Bill 2405, that Section 830.3 of the Penal Code, as amended by Section 2.5 of Assembly Bill 2405 be further amended on the operative date of this act in the form set forth in Section 4 of this act to incorporate the changes in Section 830.3 proposed by this bill. Therefore, Section 4 of this act shall become operative only if this bill and Assembly Bill 2405 are both chaptered and become effective on or before January 1, 1983, both bills amend Section 830.3, and this bill is chaptered after Assembly Bill 2405, in which case Section 4 of this act shall become operative on the operative date of this act and Section 3 of this act shall not become operative.

CHAPTER 1278

An act to add Section 11014.5 to, and to add Section 11364.7 to, the Health and Safety Code, relating to drug paraphernalia.

[Approved by Governor September 21, 1982. Filed with Secretary of State September 22, 1982.]

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

SECTION 1. Section 11014.5 is added to the Health and Safety Code, to read:

11014.5. (a) "Drug paraphernalia" means all equipment, products and materials of any kind which are designed for use or marketed for use, in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, containing, concealing, injecting, ingesting, inhaling, or otherwise introducing into the human body a controlled substance

in violation of this division. It includes, but is not limited to:

(1) Kits designed for use or marketed for use in planting, propagating, cultivating, growing, or harvesting of any species of plant which is a controlled substance or from which a controlled substance can be derived.

(2) Kits designed for use or marketed for use in manufacturing, compounding, converting, producing, processing, or preparing controlled substances.

(3) Isomerization devices designed for use or marketed for use in increasing the potency of any species of plant which is a controlled substance.

(4) Testing equipment designed for use or marketed for use in identifying, or in analyzing the strength, effectiveness, or purity of controlled substances.

(5) Scales and balances designed for use or marketed for use in weighing or measuring controlled substances.

(6) Containers and other objects designed for use or marketed for use in storing or concealing controlled substances.

(7) Hypodermic syringes, needles, and other objects designed for use or marketed for use in parenterally injecting controlled substances into the human body.

(8) Objects designed for use or marketed for use in ingesting, inhaling, or otherwise introducing marijuana, cocaine, hashish, or hashish oil into the human body, such as:

(A) Carburetion tubes and devices.

(B) Smoking and carburetion masks.

(C) Roach clips, meaning objects used to hold burning material, such as a marijuana cigarette, that has become too small or too short to be held in the hand.

(D) Miniature cocaine spoons, and cocaine vials.

(E) Chamber pipes.

(F) Carburetor pipes.

(G) Electric pipes.

(H) Air-driven pipes.

(I) Chillums.

(J) Bongs.

(K) Ice pipes or chillers.

(b) For the purposes of this section, the phrase "marketed for use" means advertising, distributing, offering for sale, displaying for sale, or selling in a manner which promotes the use of equipment, products, or materials with controlled substances.

(c) In determining whether an object is drug paraphernalia, a court or other authority may consider, in addition to all other logically relevant factors, the following:

(1) Statements by an owner or by anyone in control of the object concerning its use.

(2) Instructions, oral or written, provided with the object concerning its use for ingesting, inhaling, or otherwise introducing a controlled substance into the human body.

(3) Descriptive materials accompanying the object which explain or depict its use.

(4) National and local advertising concerning its use.

(5) The manner in which the object is displayed for sale.

(6) Whether the owner, or anyone in control of the object, is a legitimate supplier of like or related items to the community, such as a licensed distributor or dealer of tobacco products.

(7) Expert testimony concerning its use.

(d) If any provision of this section or the application thereof to any person or circumstance is held invalid, it is the intent of the Legislature that the invalidity shall not affect other provisions or applications of the section which can be given effect without the invalid provision or application and to this end the provisions of this section are severable.

SEC. 2. Section 11364.7 is added to the Health and Safety Code, to read:

11364.7. (a) It is a misdemeanor for any person to deliver, furnish, or transfer, or to possess with intent to deliver, furnish, or transfer, or to manufacture with intent to deliver, furnish, or transfer, drug paraphernalia, knowing, or under circumstances where one reasonably should know, that it will be used to plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack, store, contain, conceal, inject, ingest, inhale, or otherwise introduce into the human body a controlled substance in violation of this division.

(b) Any person 18 years of age or over who violates subdivision (a) by delivering, furnishing, or transferring drug paraphernalia to a person under 18 years of age who is at least three years his or her junior is guilty of a misdemeanor and upon conviction may be imprisoned for not more than one year, fined not more than one thousand dollars ($1,000), or by both.

(c) The violation, or the causing or the permitting of a violation, of subdivision (a) or (b) by a holder of a business or liquor license issued by a city, county, or city and county, or by the State of California, and in the course of the licensee's business shall be grounds for the revocation of any such license.

(d) All drug paraphernalia defined in Section 11014.5 is subject to forfeiture and may be seized by any peace officer pursuant to Section 11471.

(e) If any provision of this section or the application thereof to any person or circumstance is held invalid, it is the intent of the Legislature that the invalidity shall not affect other provisions or applications of this section which can be given effect without the invalid provision or application and to this end the provisions of this section are severable.

SEC. 3. No appropriation is made and no reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution or Section 2231 or 2234 of the Revenue and Taxation Code because the only costs which may be incurred by a

local agency or school district will be incurred because this act creates a new crime or infraction, changes the definition of a crime or infraction, changes the penalty for a crime or infraction, or eliminates a crime or infraction.

CHAPTER 1279

An act to amend Sections 11100, 11100.1, 11105, and 11383 of, and to add Sections 11366.5 and 11366.7 to, the Health and Safety Code, relating to controlled substances.

[Approved by Governor September 21, 1982. Filed with Secretary of State September 22, 1982.]

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

SECTION 1. Section 11100 of the Health and Safety Code is amended to read:

11100. (a) Any manufacturer, wholesaler, retailer, or other person who sells, transfers, or otherwise furnishes any of the following substances to any person in this state shall submit a report to the State Department of Justice of all such transactions:

(1) Phenyl-2-propanone
(2) Methylamine
(3) Ethylamine
(4) D-lysergic acid
(5) Ergotamine tartrate
(6) Diethyl malonate
(7) Malonic acid
(8) Ethyl malonate
(9) Barbituric acid
(10) Piperidine
(11) N-acetylanthranilic acid
(12) Pyrolidine
(13) Phenylacetic acid
(14) Anthranilic acid.
(15) Morpoline.

(b) The Department of Justice may adopt rules and regulations in accordance with Chapter 4.5 (commencing with Section 11371) of Division 3 of Title 2 of the Government Code that add substances to subdivision (a) if the substance is a precursor to a controlled substance and delete substances from subdivision (a). However, no regulation adding or deleting a substance shall have any effect beyond March 1 of the year following the calendar year during which the regulation was adopted.

(c) This section shall not apply to any of the following:

(1) Any pharmacist or other authorized person who sells or furnishes such substance upon the prescription of a physician,

dentist, podiatrist, or veterinarian.

(2) Any physician, dentist, podiatrist, or veterinarian who administers or furnishes such substance to his patients.

(3) Any manufacturer or wholesaler licensed by the Board of Pharmacy who sells, transfers, or otherwise furnishes such substance to a licensed pharmacy, physician, dentist, podiatrist, or veterinarian.

(d) Any manufacturer, wholesaler, retailer, or other person who sells, transfers, or otherwise furnishes the substance specified in subdivision (a) to a person in this state shall, not less than 21 days prior to delivery of such substance, submit a report of such transaction to the Department of Justice. However, the Department of Justice may authorize the submission of such reports on a monthly basis with respect to repeated, regular transactions between the furnisher and the recipient involving the same substance if the Department of Justice determines that (1) a pattern of regular supply of such substance exists as between the manufacturer, wholesaler, retailer, or other person who sells, transfers, or otherwise furnishes such substance and the recipient of the substance, and (2) the recipient has established a record of utilization of such substance for lawful purposes.

(e) The Department of Justice shall grant an exemption to the reporting requirements of this section to any person who supplies a substance specified in subdivision (a) who can demonstrate, to the department's satisfaction, that the recipient requires the substance for a lawful purpose and that special circumstances prevent the supplier from reporting the transaction to the department not less than 21 days prior to delivery.

(f) (1) Any person specified in subdivision (d) who does not submit a report as required by that subdivision shall be punished by imprisonment in the county jail not exceeding six months or by a fine not exceeding five thousand dollars ($5,000) or by both such fine and imprisonment.

(2) Any person specified in subdivision (d) who has been previously convicted of a violation of subdivision (d) who subsequently does not submit a report as required by subdivision (d) shall be punished by imprisonment in the state prison, or by imprisonment in the county jail not exceeding one year, or by a fine not exceeding one hundred thousand dollars ($100,000), or by both such fine and imprisonment.

SEC. 2. Section 11100.1 of the Health and Safety Code is amended to read:

11100.1. (a) Any manufacturer, wholesaler, retailer, or other person who receives from a source outside of this state any substance specified in subdivision (a) of Section 11100 shall submit a report of such transaction to the Department of Justice in accordance with regulations adopted by that department. However, this section does not apply to any person whose prescribing or dispensing activities are subject to the reporting requirements set forth in Section 11164.

(b) (1) Any person specified in subdivision (a) who does not

submit a report as required by that subdivision shall be punished by imprisonment in the county jail not exceeding six months or by a fine not exceeding five thousand dollars ($5,000) or by both such fine and imprisonment.

(2) Any person specified in subdivision (a) who has been previously convicted of a violation of subdivision (a) who subsequently does not submit a report as required by subdivision (a) shall be punished by imprisonment in the state prison, or by imprisonment in the county jail not exceeding one year, or by a fine not exceeding one hundred thousand dollars ($100,000), or by both such fine and imprisonment.

SEC. 3. Section 11105 of the Health and Safety Code is amended to read:

11105. (a) It is unlawful for any person to knowingly make a false statement in connection with any report or record required under this article.

(b) (1) Any person who violates this section shall be punished by imprisonment in the state prison, or by imprisonment in the county jail not exceeding one year, or by a fine not exceeding five thousand dollars ($5,000), or by both such fine and imprisonment.

(2) Any person who has been previously convicted of violating this section and who subsequently violates this section shall be punished by imprisonment in the state prison for two, three, or four years, or by a fine not exceeding one hundred thousand dollars ($100,000), or by both such fine and imprisonment.

SEC. 4. Section 11366.5 is added to the Health and Safety Code, to read:

11366.5. Any person who has under his or her management or control any building, room, space, or enclosure, either as an owner, lessee, agent, employee, or mortgagee, who knowingly rents, leases, or makes available for use, with or without compensation, the building, room, space, or enclosure for the purpose of unlawfully manufacturing, storing, or distributing any controlled substance for sale or distribution shall be punished by imprisonment in the county jail for not more than one year, or in the state prison.

Any person who violates this section after previously being convicted of a violation of this section shall be punished by imprisonment in the state prison for two, three, or four years.

SEC. 5. Section 11366.7 is added to the Health and Safety Code, to read:

11366.7. Any retailer or wholesaler who sells any chemical, drug, laboratory apparatus, or device with knowledge that the chemical, drug, laboratory apparatus, or device will be used to unlawfully manufacture, compound, convert, process, or prepare a controlled substance for unlawful sale or distribution shall be punished by imprisonment in the county jail for not more than one year, or in the state prison.

SEC. 6. Section 11383 of the Health and Safety Code is amended to read:

11383. (a) Any person who possesses both methylamine and phenyl-2-propanone (phenylacetone) at the same time with the intent to manufacture methamphetamine, or who possesses both ethylamine and phenyl-2-propanone (phenylacetone) at the same time with the intent to manufacture N-ethylamphetamine, is guilty of a felony and shall be punished by imprisonment in the state prison.

(b) Any person who possesses at the same time any of the following combinations, or a combination product thereof, with intent to manufacture phencyclidine (PCP) or any of its analogs specified in subdivision (e) of Section 11055 is guilty of a felony and shall be punished by imprisonment in the state prison for three, four, or five years:

(1) Piperidine and cyclohexanone.

(2) Pyrolidine and cyclohexanone.

(3) Morpoline and cyclohexanone.

(c) For purposes of this section, possession of immediate precursors sufficient for the manufacture of methylamine, ethylamine, phenyl-2-propanone, piperidine, cyclohexanone, pyrolidine, or morpoline shall be deemed to be possession of such a derivative substance. Additionally, possession of any compound or mixture containing piperidine, cyclohexanone, pyrolidine, or morpoline shall be deemed to be possession of such substance.

(d) The provisions of subdivisions (a), (b), and (c) shall not apply to drug manufacturers licensed by this state or persons authorized by regulation of the Board of Pharmacy to possess such substances or combinations of substances.

SEC. 7. No appropriation is made and no reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution or Section 2231 or 2234 of the Revenue and Taxation Code because the only costs which may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, changes the definition of a crime or infraction, changes the penalty for a crime or infraction, or eliminates a crime or infraction.

CHAPTER 1280

An act to amend Sections 11470, 11490, and 11491 of, and to add Sections 11473.1 and 11495.5 to, the Health and Safety Code, relating to controlled substances.

[Approved by Governor September 21, 1982 Filed with Secretary of State September 22, 1982]

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

SECTION 1. Section 11470 of the Health and Safety Code is amended to read:

11470. The following are subject to forfeiture:

(a) All controlled substances which have been manufactured, distributed, dispensed, or acquired in violation of this division.

(b) All raw materials, products and equipment of any kind which are used, or intended for use, in manufacturing, compounding, processing, delivering, importing, or exporting any controlled substance in violation of this division.

(c) All property which is used, or intended for use, as a container for property described in subdivision (a) or (b).

(d) All books, records, and research products and materials, including formulas, microfilm, tapes, and data which are used, or intended for use, in violation of this division.

(e) The interest of any registered owner of a boat, airplane, or any vehicle other than an implement of husbandry, as defined in Section 36000 of the Vehicle Code, or a vehicle which may be lawfully driven upon the highway with a class 3 or class 4 license, as prescribed in Section 12804 of the Vehicle Code, used, in direct relation to the particular offense for which the owner or defendant is arrested and convicted, to unlawfully transport for sale any controlled substance.

(f) The interest of any registered owner of a vehicle which may be lawfully driven upon the highway with a class 3 or class 4 license, as prescribed in Section 12804 of the Vehicle Code, which has been used as an instrument to facilitate the possession for sale or sale of 28 grams or more of Schedule I controlled substances except marijuana, peyote of psilocybin; 10 pounds dry weight or more of marijuana, peyote or psilocybin; or 28 grams or more of any Schedule II controlled substances and the defendant has been convicted of a violation of Section 11351, 11352, 11353, 11359, 11360 or 11361 and such vehicle was used in the commission of the crime for which the conviction was obtained.

No interest may be forfeited under this subdivision if there is a community property interest in the vehicle by a person other than the defendant and the vehicle is the only vehicle available to the defendant's immediate family.

SEC. 1.5. Section 11470 of the Health and Safety Code is amended to read:

11470. The following are subject to forfeiture:

(a) All controlled substances which have been manufactured, distributed, dispensed, or acquired in violation of this division.

(b) All raw materials, products and equipment of any kind which are used, or intended for use, in manufacturing, compounding, processing, delivering, importing, or exporting any controlled substance in violation of this division.

(c) All property which is used, or intended for use, as a container for property described in subdivision (a) or (b).

(d) All books, records, and research products and materials, including formulas, microfilm, tapes, and data which are used, or

intended for use, in violation of this division.

(e) The interest of any registered owner of a boat, airplane, or any vehicle other than an implement of husbandry, as defined in Section 36000 of the Vehicle Code, or a vehicle which may be lawfully driven upon the highway with a class 3 or class 4 license, as prescribed in Section 12804 of the Vehicle Code, used, in direct relation to the particular offense for which the owner or defendant is arrested and convicted, to unlawfully transport for sale any controlled substance.

(f) The interest of any registered owner of a vehicle which may be lawfully driven upon the highway with a class 3 or class 4 license, as prescribed in Section 12804 of the Vehicle Code, which has been used as an instrument to facilitate the possession for sale or sale of 28 grams or more of Schedule I controlled substances except marijuana, peyote or psilocybin; 10 pounds dry weight or more of marijuana, peyote or psilocybin; or 28 grams or more of any Schedule II controlled substances and the defendant has been convicted of a violation of Section 11351, 11352, 11353, 11359, 11360 or 11361 and such vehicle was used in the commission of the crime for which the conviction was obtained.

No interest may be forfeited under this subdivision if there is a community property interest in the vehicle by a person other than the defendant and the vehicle is the only vehicle available to the defendant's immediate family.

(g) With the exception of moneys, negotiable instruments, securities, or other things of value upon which the Franchise Tax Board has served a notice to withhold pursuant to the provisions of Section 18817 or 26132 of the Revenue and Taxation Code, all moneys, negotiable instruments, securities, or other things of value furnished or intended to be furnished by any person in exchange for a controlled substance in violation of Section 11351, 11352, 11355, 11359, 11360, 11378, 11379, or 11382, insofar as the offense involves sale or possession for sale, for which the owner or defendant is arrested and convicted, all proceeds traceable to such an exchange, and all moneys, negotiable instruments, and securities used or intended to be used to facilitate any violation of Section 11351, 11352, 11355, 11359, 11360, 11378, 11379, or 11382, insofar as the offense involves sale or possession for sale, for which the owner or defendant is arrested and convicted, except that no property shall be forfeited under this subdivision, to the extent of the interest of an owner, by reason of any act or omission established by that owner to have been committed or omitted without the knowledge or consent of that owner.

SEC. 2. Section 11473.1 is added to the Health and Safety Code, to read:

11473.1. Notwithstanding Section 11499.1 or any other provision of law, all seizures under provisions of this chapter of vehicles which may be lawfully driven upon the highway which a class 3 or class 4 license shall, upon conviction of the defendant, be ordered sold by the court in which conviction was had and the proceeds distributed pursuant to Section 11495.5.

SEC. 3. Section 11490 of the Health and Safety Code, as amended by Section 1 of Chapter 637 of the Statutes of 1979, is amended to read:

11490. Any peace officer of this state, upon making or attempting to make an arrest for a violation of Section 11351, 11352, 11353, 11355, 11359, 11360, 11361, 11378, or 11379, insofar as the offense involves sale, transportation for sale, or possession for sale, may seize any vehicle, boat, or airplane used to unlawfully transport for sale any controlled substance. If such person does not hold the vehicle, boat, or airplane for evidence or if the law enforcement agency for which such person is employed does not initiate proceedings pursuant to Section 11499.1, such person shall immediately deliver such vehicle, boat, or airplane to the State Department of Justice to be held as evidence until a forfeiture has been declared or a release ordered; otherwise he or she shall return the vehicle, boat, or airplane to the registered owner.

This section shall remain in effect only until January 1, 1984, and as of such date is repealed, unless a later enacted statute, which is chaptered before such date, deletes or extends such date.

SEC. 4. Section 11491 of the Health and Safety Code is amended to read:

11491. (a) Within 15 days after such seizure, if the Department of Justice determines that the factual circumstances do not warrant that the vehicle, boat, or airplane come within subdivision (e) or (f) of Section 11470, or if for any other reason it decides not to seek forfeiture, it shall return the vehicle, boat, or airplane to the arresting officer who shall return it to the registered owner. If the Department of Justice does not return the vehicle, boat, or airplane to the arresting officer, it shall cause an investigation to be made as to any claimant to the vehicle, boat, or airplane whose right, title, interest, or lien is of record in the Department of Motor Vehicles or appropriate federal agency. Except as provided in subdivision (b), if the department finds that any person, other than the registered owner, is the legal owner thereof, and such ownership interest did not arise subsequent to the date and time of arrest or seizure of the vehicle, boat, or airplane, it shall forthwith send a notice of the seizure to such legal owner at his address appearing on the records of the Department of Motor Vehicles or appropriate federal agency. Notice of seizure and intended forfeiture proceedings shall be filed with the county clerk and shall be served on all owners whose interest will be affected thereby.

(b) A bona fide purchaser without notice of the arrest or seizure whose interest was acquired subsequent to the arrest or seizure shall be entitled to participate in the forfeiture proceedings to establish his or her claim.

(c) An assignee, purchaser, or holder in due course who had notice of the arrest or seizure at the time he or she acquired his or her interest and who sells, assigns, or conveys such interest is guilty of a fraudulent conveyance as provided for in Section 531 of the

Penal Code, and civilly liable under Section 3439.07 of the Civil Code.

SEC. 5. Section 11495.5 is added to the Health and Safety Code, to read:

11495.5. Notwithstanding Section 11499.1, in all cases where a vehicle which may be lawfully driven upon the highway with a class 3 or class 4 license, as prescribed in Section 12804 of the Vehicle Code, is seized pursuant to this chapter and forfeited to the state or local governmental entity and, where necessary, sold by the Department of General Services or local governmental entity, the money forfeited or the proceeds of sale shall be distributed by the state or local governmental entity as follows:

(a) To the bona fide or innocent purchaser, conditional sales vendor, or mortgagee of the property, if any, up to the amount of his or her interest in the property, when the court declaring the forfeiture orders a distribution to such person.

(b) The balance, if any, to accumulate, and from time to time, as the proceeds become sufficient, to be distributed as follows:

(1) To the Department of General Services or local governmental entity for all expenditures made or incurred by it in connection with the sale of the property, including expenditures for any necessary repairs, storage, or transportation of any property seized under this chapter.

(2) (A) Fifty percent of the remaining funds shall be allocated to the Department of Mental Health for primary prevention programs in accordance with Chapter 1083 of the Statutes of 1981.

(B) The remaining 50 percent shall be distributed to the local governmental entity or the state for all expenditures made or incurred by the local governmental entity's law enforcement and prosecutorial agency or by the Department of Justice, the Attorney General, or any other state agency, in connection with the forfeiture proceedings and underlying criminal conviction, including, but not limited to, personnel costs, expenditures for witness' fees, reporters' fees, transcripts, printing, traveling, undertakings, and investigation.

SEC. 6. No appropriation is made and no reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution or Section 2231 or 2234 of the Revenue and Taxation Code because the only costs which may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, changes the definition of a crime or infraction, changes the penalty for a crime or infraction, or eliminates a crime or infraction.

SEC. 7. It is the intent of the Legislature, if this bill and Senate Bill 845 are both chaptered and become effective January 1, 1983, both bills amend Section 11470 of the Health and Safety Code, and this bill is chaptered after Senate Bill 845, that the amendments to Section 11470 proposed by both bills be given effect and incorporated in Section 11470 in the form set forth in Section 1.5 of this act. Therefore, Section 1.5 of this act shall become operative only if this bill and Senate Bill 845 are both chaptered and become effective

January 1, 1983, both amend Section 11470, and this bill is chaptered after Senate Bill 845, in which case Section 1 of this act shall not become operative.

CHAPTER 1281

An act to add Chapter 9 (commencing with Section 186) to Title 7 of Part 1 of the Penal Code, relating to profiteering.

[Approved by Governor September 21, 1982. Filed with Secretary of State September 22, 1982.]

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

SECTION 1. Chapter 9 (commencing with Section 186) is added to Title 7 of Part 1 of the Penal Code, to read:

CHAPTER 9. CRIMINAL PROFITEERING

186. This act may be cited as the "California Control of Profits of Organized Crime Act."

186.1. The Legislature hereby finds and declares that an effective means of punishing and deterring criminal activities of organized crime is through the forfeiture of profits acquired and accumulated as a result of such criminal activities. It is the intent of the Legislature that the "California Control of Profits of Organized Crime Act" be used by prosecutors to punish and deter only such activities.

186.2. For purposes of the application of this chapter, the following definitions shall govern:

(a) "Criminal profiteering activity" means any act committed or attempted or any threat made for financial gain or advantage, which act or threat may be charged as a crime under any of the following sections:

(1) Arson, as defined in Section 451.
(2) Bribery, as defined in Sections 67, 68, and 69.
(3) Felonious assault, as defined in Section 245.
(4) Embezzlement, as defined in Sections 424 and 503.
(5) Extortion, as defined in Section 518.
(6) Forgery, as defined in Section 470.
(7) Gambling, as defined in Sections 337a to 337f, inclusive, and Section 337i, except the activities of a person who participates solely as an individual bettor.
(8) Kidnapping, as defined in Section 207.
(9) Mayhem, as defined in Section 203.
(10) Murder, as defined in Section 187.
(11) Pimping and pandering, as defined in Section 266.
(12) Receiving stolen property, as defined in Section 496.
(13) Robbery, as defined in Section 211.

(14) Solicitation of crimes, as defined in Section 653f.

(15) Grand theft, as defined in Section 487.

(16) Trafficking in controlled substances, as defined in Sections 11351, 11352, and 11353 of the Health and Safety Code.

(17) Violation of the laws governing corporate securities, as defined in Section 25541 of the Corporations Code.

(18) Presentation of a false or fraudulent claim, as defined in Section 556 of the Insurance Code.

(19) Conspiracy to commit any of the crimes listed above, as defined in Section 182.

(b) "Pattern of criminal profiteering activity" means engaging in at least two incidents of criminal profiteering, as defined by this act, which meet the following requirements:

(1) Have the same or a similar purpose, result, principals, victims or methods of commission, or are otherwise interrelated by distinguishing characteristics.

(2) Are not isolated events.

(3) Were committed as a criminal activity of organized crime.

Acts which would constitute a "pattern of criminal profiteering activity" may not be used by a prosecuting agency to seek the remedies provided by this chapter unless the underlying offense occurred after the effective date of this chapter and the prior act occurred within 10 years, excluding any period of imprisonment, of the commission of the underlying offense. A prior act may not be used by a prosecuting agency to seek remedies provided by this chapter if a prosecution for that act resulted in an acquittal.

(c) "Prosecuting agency" means the Attorney General or the district attorney of any county.

(d) "Organized crime" means crime which is of a conspiratorial and (1) organized nature and which seeks to supply illegal goods and services such as narcotics, prostitution, loan sharking, and gambling, or, (2) through planning and coordination of individual efforts, to conduct the illegal activities of arson for profit, hijacking, insurance fraud, smuggling, operating vehicle theft rings, or systematically encumbering the assets of a business for the purpose of defrauding creditors.

(e) "Underlying offense" means an offense enumerated in subdivision (a) for which the defendant is being prosecuted.

186.3. (a) In any case in which a person is alleged to have been engaged in a pattern of criminal profiteering activity, upon a conviction of the underlying offense, the assets listed in subdivisions (b) and (c) shall be subject to forfeiture upon proof of the provisions of subdivision (d) of Section 186.5.

(b) Any property interest whether tangible or intangible, acquired through a pattern of criminal profiteering activity.

(c) All proceeds of a pattern of criminal profiteering activity, which property shall include all things of value that may have been received in exchange for the proceeds immediately derived from the pattern of criminal profiteering activity.

186.4. (a) The prosecuting agency shall, in conjunction with the criminal proceeding, file a petition of forfeiture with the superior court of the county in which the defendant has been charged with the underlying criminal offense, which shall allege that the defendant has engaged in a pattern of criminal profiteering activity, including the acts or threats chargeable as crimes and the property forfeitable pursuant to Section 186.3. The prosecuting agency shall make service of process of a notice regarding that petition upon every individual who may have a property interest in the alleged proceeds, which notice shall state that any interested party may file a verified claim with the superior court stating the amount of their claimed interest and an affirmation or denial of the prosecuting agency's allegation. If the notices cannot be given by registered mail or personal delivery, the notices shall be published for at least three successive weeks in a newspaper of general circulation in the county where the property is located.

(b) All notices shall set forth the time within which a claim of interest in the property seized is required to be filed pursuant to Section 186.5.

186.5. (a) Any person claiming an interest in the property or proceeds may, at any time within 30 days from the date of the first publication of the notice of seizure, or within 30 days after receipt of actual notice, file with the superior court of the county in which the action is pending a verified claim stating his or her interest in the property or proceeds. A verified copy of the claim shall be given by the claimant to the Attorney General or district attorney, as appropriate.

(b) (1) If, at the end of the time set forth in subdivision (a), an interested person, other than the defendant, has not filed a claim, the court, upon motion, shall declare that the person has defaulted upon his or her alleged interest, and it shall be subject to forfeiture upon proof of the provisions of subdivision (d).

(2) The defendant may admit or deny that the property is subject to forfeiture pursuant to the provisions of this chapter. If the defendant fails to admit or deny or to file a claim of interest in the property or proceeds, the court shall enter a response of denial on behalf of the defendant.

(c) (1) The forfeiture proceeding shall be set for hearing in the superior court in which the underlying criminal offense will be tried.

(2) If the defendant is found guilty of the underlying offense, the issue of forfeiture shall be promptly tried, either before the same jury or before a new jury in the discretion of the court, unless waived by the consent of all parties.

(d) At the forfeiture hearing, the prosecuting agency shall have the burden of establishing beyond a reasonable doubt that the defendant was engaged in a pattern of criminal profiteering activity and that the property alleged in the petition comes within the provisions of subdivision (b) or (c) of Section 186.3.

186.6. (a) Concurrent with, or subsequent to, the filing of the

petition, the prosecuting agency may move the superior court for the following pendente lite orders to preserve the status quo of the property alleged in the petition of forfeiture:

(1) An injunction to restrain all interested parties and enjoin them from transferring, encumbering, hypothecating or otherwise disposing of that property.

(2) Appointment of a receiver to take possession of, care for, manage, and operate the assets and properties so that such property may be maintained and preserved.

(b) No preliminary injunction may be granted or receiver appointed without notice to the interested parties and a hearing to determine that such an order is necessary to preserve the property, pending the outcome of the criminal proceedings, and that there is probable cause to believe that the property alleged in the forfeiture proceedings are proceeds or property interests forfeitable under Section 186.3. However, a temporary restraining order may issue pending that hearing pursuant to the provisions of Section 527 of the Code of Civil Procedure.

(c) Notwithstanding any other provision of law, the court in granting these motions may order a surety bond or undertaking to preserve the property interests of the interested parties.

(d) The court shall, in making its orders, seek to protect the interests of those who may be involved in the same enterprise as the defendant, but who were not involved in the commission of the criminal profiteering activity.

186.7. (a) If the trier of fact at the forfeiture hearing finds that the alleged property or proceeds is forfeitable pursuant to Section 186.3 and the defendant was engaged in a pattern of criminal profiteering activity, the court shall declare that property or proceeds forfeited to the state or local governmental entity, subject to distribution as provided in Section 186.8. No property solely owned by a bona fide purchaser for value shall be subject to forfeiture.

(b) If the trier of fact at the forfeiture hearing finds that the alleged property is forfeitable pursuant to Section 186.3 but does not find that a person holding a valid lien, mortgage, security interest, or interest under a conditional sales contract acquired that interest with actual knowledge that the property was to be used for a purpose for which forfeiture is permitted, and the amount due to that person is less than the appraised value of the property, that person may pay to the state or the local governmental entity which initiated the forfeiture proceeding, the amount of the registered owner's equity, which shall be deemed to be the difference between the appraised value and the amount of the lien, mortgage, security interest, or interest under a conditional sales contract. Upon that payment, the state or local governmental entity shall relinquish all claims to the property. If the holder of the interest elects not to make that payment to the state or local governmental entity, the property shall be deemed forfeited to the state or local governmental entity and the ownership certificate shall be forwarded. The appraised value shall

be determined as of the date judgment is entered either by agreement between the legal owner and the governmental entity involved, or if they cannot agree, then by a court-appointed appraiser for the county in which the action is brought. A person holding a valid lien, mortgage, security interest, or interest under a conditional sales contract shall be paid the appraised value of his or her interest.

(c) If the amount due to a person holding a valid lien, mortgage, security interest, or interest under a conditional sales contract is less than the value of the property and the person elects not to make payment to the governmental entity, the property shall be sold at public auction by the Department of General Services or by the local governmental entity which shall provide notice of that sale by one publication in a newspaper published and circulated in the city, community, or locality where the sale is to take place.

186.8. Notwithstanding that no response or claim has been filed pursuant to Section 186.5, in all cases where property is forfeited pursuant to this chapter and, where necessary, sold by the Department of General Services or local governmental entity, the money forfeited or the proceeds of sale shall be distributed by the state or local governmental entity as follows:

(a) To the bona fide or innocent purchaser, conditional sales vendor, or holder of a valid lien, mortgage or security interest, if any, up to the amount of his or her interest in the property or proceeds, when the court declaring the forfeiture orders a distribution to that person. The court shall endeavor to discover all such lienholders and protect their interests and may, at its discretion, order the proceeds placed in escrow for up to an additional 60 days to ensure that all valid claims are received and processed.

(b) To the Department of General Services or local governmental entity for all expenditures made or incurred by it in connection with the sale of the property, including expenditures for any necessary repairs, storage, or transportation of any property seized under this chapter.

(c) To the general fund of the state or local governmental entity, whichever prosecutes.

SEC. 2. No appropriation is made and no reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution or Section 2231 or 2234 of the Revenue and Taxation Code because this act provides for the reimbursement of the local agency for costs that may be incurred by it in carrying on any program or performing any service required to be carried on or performed by it by this act.

CHAPTER 1282

An act to amend Section 11055 of the Health and Safety Code, to amend Sections 1203 and 1203.07 of the Penal Code, and to amend Section 707 of the Welfare and Institutions Code, relating to controlled substances.

[Approved by Governor September 21, 1982. Filed with Secretary of State September 22, 1982.]

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

SECTION 1. Section 11055 of the Health and Safety Code is amended to read:

11055. (a) Except for purposes of Chapter 4 (commencing with Section 11150) of this division, the controlled substances listed in this section are included in Schedule II.

(b) Any of the following substances, except those narcotic drugs listed in other schedules, whether produced directly or indirectly by extraction from substances of vegetable origin, or independently by means of chemical synthesis, or by combination of extraction and chemical synthesis:

(1) Opium and opiate, and any salt, compound, derivative, or preparation of opium or opiate, with the exception of naloxone hydrochloride (N-allyl- 14-hydroxy-nordihydromorphinone hydrochloride), but including the following:

(i) Raw opium.
(ii) Opium extracts.
(iii) Opium fluid extracts.
(iv) Powdered opium.
(v) Granulated opium.
(vi) Tincture of opium.
(vii) Apomorphine.
(viii) Codeine.
(ix) Ethylmorphine.
(x) Hydrocodone.
(xi) Hydromorphone.
(xii) Metopon.
(xiii) Morphine.
(xiv) Oxycodone.
(xv) Oxymorphone.
(xvi) Thebaine.

(2) Any salt, compound, isomer, derivative, or preparation thereof which is chemically equivalent or identical with any of the substances referred to in paragraph (1), but not including the isoquinoline alkaloids of opium.

(3) Opium poppy and poppy straw.

(4) Coca leaves and any salt, compound, derivative, or preparation of coca leaves, and any salt, compound, isomer,

derivative, or preparation thereof which is chemically equivalent or identical with any of these substances, but not including decocainized coca leaves or extractions which do not contain cocaine or ecgonine.

(c) Any of the following opiates, including their isomers, esters, ethers, salts, and salts of isomers, whenever the existence of these isomers, esters, ethers and salts is possible within the specific chemical designation:

(1) Alphaprodine.
(2) Anileridine.
(3) Bezitramide.
(4) Dihydrocodeine.
(5) Diphenoxylate.
(6) Fentanyl.
(7) Isomethadone.
(8) Levomethorphon.
(9) Levorphanol.
(10) Metazocine.
(11) Methadone.
(12) Methadone—intermediate, 4-cyano-2(N,N-dimethylamino)-4,4-diphenylbutane.
(13) Moramide—intermediate, 3-methyl-4-morpholino-2,2-diphenylbutanoic acid.
(14) Pethidine.
(15) Pethidine—intermediate—A, 4-cyano-N-methyl-4-phenylpiperidine.
(16) Pethidine—intermediate—B, ethyl 4-phenylpiperidine-4-carboxylate.
(17) Pethidine—intermediate—C, N-methyl-4-phenylpiperidine-4-carboxylic acid.
(18) Phenazocine.
(19) Piminodine.
(20) Racemethorphan.
(21) Racemorphan.

(d) Any material, compound, mixture, or preparation which contains any quantity of the following substances having a potential for abuse associated with a stimulant effect on the central nervous system:

(1) Amphetamine, its salts, optical isomers, and salts of its optical isomers.
(2) Phenmetrazine and its salts.
(3) Any substance which contains any quantity of methamphetamine, including its salts, isomers, and salts of isomers.
(4) Methylphenidate.

(e) Any material, compound, mixture, preparation, salt, or solution which contains any quantity of phencyclidine or the following analog or analogs determined by the Department of Justice to have a potential for abuse associated with a depressant effect on the central nervous system:

(1) 1-(1-phenylcyclohexyl) pyrolidine.
(2) 1-(1(2-thienyl) cyclohexyl) piperidine.
(3) 1-(1-phenylcyclohexyl) morpholine.

The Attorney General, or his or her designee, may, by rule or regulation, add additional analogs of phencyclidine to those enumerated in this subdivision after notice, posting, and hearing pursuant to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code. The Attorney General shall, in the calendar year of the regular session of the Legislature in which the rule or regulation is adopted, submit a draft of a proposed bill to each house of the Legislature which would incorporate the analogs into this code. No rule or regulation shall remain in effect beyond January 1st after the calendar year of the regular session in which the draft of the proposed bill is submitted to each house; unless the draft of the proposed bill is submitted during a recess of the Legislature exceeding 45 calendar days, in which event the rule or regulation shall be effective until January 1st after the next calendar year.

SEC. 2. Section 1203 of the Penal Code is amended to read:

1203. (a) As used in this code, "probation" shall mean the suspension of the imposition or execution of a sentence and the order of conditional and revocable release in the community under the supervision of the probation officer. As used in this code, "conditional sentence" shall mean the suspension of the imposition or execution of a sentence and the order of revocable release in the community subject to the conditions established by the court without the supervision of the probation officer. It is the intent of the Legislature that both conditional sentence and probation are authorized whenever probation is authorized in any code as a sentencing option for infractions or misdemeanors.

(b) In every case in which a person is convicted of a felony and is eligible for probation, before judgment is pronounced, the court shall immediately refer the matter to the probation officer to investigate and report to the court, at a specified time, upon the circumstances surrounding the crime and the prior history and record of the person, which may be considered either in aggravation or mitigation of the punishment. The probation officer shall immediately investigate and make a written report to the court of his or her findings and recommendations, including his or her recommendations as to the granting or denying of probation and the conditions of probation, if granted. Pursuant to Section 828 of the Welfare and Institutions Code, the probation officer shall include in his or her report any information gathered by a law enforcement agency relating to the taking of the defendant into custody as a minor, which shall be considered for purposes of determining whether adjudications of commissions of crimes as a juvenile warrant a finding that there are circumstances in aggravation pursuant to Section 1170 or to deny probation. The probation officer shall also include in the report his or her determination of whether the

defendant is a person who is required to pay a fine pursuant to Section 13967 of the Government Code. The probation officer shall also include in his or her report for the court's consideration whether the court shall require, as a condition of probation, restitution to the victim or to the Indemnity Fund if assistance has been granted to the victim pursuant to Article 1 (commencing with Section 13959) of Chapter 5 of Part 4 of Division 3 of Title 2 of the Government Code, a recommendation thereof, and if so, the amount thereof, and the means and manner of payment. The report shall be made available to the court and the prosecuting and defense attorney at least nine days prior to the time fixed by the court for the hearing and determination of the report, and shall be filed with the clerk of the court as a record in the case at the time of the hearing. The time within which the report shall be made available and filed may be waived by written stipulation of the prosecuting and defense attorney which is filed with the court or an oral stipulation in open court which is made and entered upon the minutes of the court. At a time fixed by the court, the court shall hear and determine the application, if one has been made, or, in any case, the suitability of probation in the particular case. At the hearing, the court shall consider any report of the probation officer and shall make a statement that it has considered such report which shall be filed with the clerk of the court as a record in the case. If the court determines that there are circumstances in mitigation of the punishment prescribed by law or that the ends of justice would be subserved by granting probation to the person, it may place the person on probation. If probation is denied, the clerk of the court shall immediately send a copy of the report to the Department of Corrections at the prison or other institution to which the person is delivered.

(c) If a defendant is not represented by an attorney, the court shall order the probation officer who makes the probation report to discuss its contents with the defendant.

(d) In every case in which a person is convicted of a misdemeanor, the court may either refer the matter to the probation officer for an investigation and a report or summarily pronounce a conditional sentence. If such a case is not referred to the probation officer, in sentencing the person, the court may consider any information concerning the person which could have been included in a probation report. The court shall inform the person of the information to be considered and permit him or her to answer or controvert such information. For this purpose, upon the request of the person, the court shall grant a continuance before the judgment is pronounced.

(e) Except in unusual cases where the interests of justice would best be served if the person is granted probation, probation shall not be granted to any of the following persons:

(1) Unless the person had a lawful right to carry a deadly weapon, other than a firearm, at the time of the perpetration of the crime or

his arrest, any person who has been convicted of arson, robbery, burglary, burglary with explosives, rape with force or violence, murder, assault with intent to commit murder, attempt to commit murder, trainwrecking, kidnapping, escape from the state prison, or a conspiracy to commit one or more of such crimes and was armed with such weapon at either of such times.

(2) Any person who used or attempted to use a deadly weapon upon a human being in connection with the perpetration of the crime of which he or she has been convicted.

(3) Any person who willfully inflicted great bodily injury or torture in the perpetration of the crime of which he or she has been convicted.

(4) Any person who has been previously convicted twice in this state of a felony or in any other place of a public offense which, if committed in this state, would have been punishable as a felony.

(5) Unless the person has never been previously convicted once in this state of a felony or in any other place of a public offense which, if committed in this state, would have been punishable as a felony, any person who has been convicted of burglary with explosives, rape with force or violence, murder, attempt to commit murder, assault with intent to commit murder, trainwrecking, extortion, kidnapping, escape from the state prison, a violation of Section 286, 288, or 288a, or a conspiracy to commit one or more of such crimes.

(6) Any person who has been previously convicted once in this state of a felony or in any other place of a public offense which, if committed in this state, would have been punishable as a felony, if he or she committed any of the following acts:

(i) Unless the person had a lawful right to carry a deadly weapon at the time of the perpetration of such previous crime or his arrest for such previous crime, he or she was armed with such weapon at either of such times.

(ii) The person used or attempted to use a deadly weapon upon a human being in connection with the perpetration of such previous crime.

(iii) The person willfully inflicted great bodily injury or torture in the perpetration of such previous crime.

(7) Any public official or peace officer of this state or any city, county, or other political subdivision who, in the discharge of the duties of his or her public office or employment, accepted or gave or offered to accept or give any bribe, embezzled public money, or was guilty of extortion.

(8) Any person who knowingly furnishes or gives away phencyclidine.

(f) When probation is granted in a case which comes within the provisions of subdivision (e), the court shall specify on the record and shall enter on the minutes the circumstances indicating that the interests of justice would best be served by such a disposition.

(g) If a person is not eligible for probation, the judge may, in his or her discretion, refer the matter to the probation officer for an

investigation of the facts relevant to the sentencing of the person. Upon such referral, the probation officer shall immediately investigate the circumstances surrounding the crime and the prior record and history of the person and make a written report to the court of his or her findings.

(h) In any case in which a defendant is convicted of a felony and a probation report is prepared pursuant to subdivision (b) or (g), the probation officer shall obtain and include in such report a statement of the comments of the victim concerning the offense. The court may direct the probation officer not to obtain such a statement in any case where the victim has in fact testified at any of the court proceedings concerning the offense.

(i) No probationer shall be released to enter another state unless his or her case has been referred to the Administrator, Interstate Probation and Parole Compacts, pursuant to the Uniform Act for Out-of-State Probationer or Parolee Supervision (Article 3 (commencing with Section 11175) of Chapter 2 of Title 1 of Part 4).

SEC. 3. Section 1203.07 of the Penal Code is amended to read:

1203.07. (a) Notwithstanding the provisions of Section 1203, probation shall not be granted to, nor shall the execution or imposition of sentence be suspended for, any of the following persons:

(1) Any person who is convicted of violating Section 11351 of the Health and Safety Code by possessing for sale one-half ounce or more of a substance containing heroin.

(2) Any person who is convicted of violating Section 11352 of the Health and Safety Code by selling or offering to sell one-half ounce or more of a substance containing heroin.

(3) Any person convicted of violating Section 11351 of the Health and Safety Code by possessing heroin for sale or convicted of violating Section 11352 of the Health and Safety Code by selling or offering to sell heroin, and who has one or more prior convictions for violating Section 11351 or Section 11352 of the Health and Safety Code.

(4) Any person who is convicted of violating Section 11378.5 of the Health and Safety Code by possessing for sale one-half ounce or more of any salt or solution of any controlled substance specified in subdivision (e) of Section 11055.

(5) Any person who is convicted of violating Section 11379.5 of the Health and Safety Code by transporting for sale, importing for sale, or administering phencyclidine, or offering to transport for sale, import for sale, or administer phencyclidine, or by attempting to import for sale or transport for sale phencyclidine.

(6) Any person who is convicted of violating Section 11379.5 or 11380.5 of the Health and Safety Code by manufacturing, selling, or offering to sell phencyclidine, or using, soliciting, inducing, encouraging, or intimidating a minor to manufacture, compound, or sell phencyclidine.

(7) Any person who is convicted of violating Section 11380.5 of the

Health and Safety Code by the use of a minor as an agent or who solicits, induces, encourages, or intimidates a minor with the intent that the minor shall violate the provisions of Section 11378.5 or 11379.5 of the Health and Safety Code.

(8) Any person who is convicted of violating subdivision (b) of Section 11383 of the Health and Safety Code by possessing piperidine and cyclohexanone with intent to manufacture.

(b) The existence of any fact which would make a person ineligible for probation under subdivision (a) shall be alleged in the information or indictment, and either admitted by the defendant in open court, or found to be true by the jury trying the issue of guilt or by the court where guilt is established by plea of guilty or nolo contendere or by trial by the court sitting without a jury.

SEC. 4. Section 707 of the Welfare and Institutions Code is amended to read:

707. (a) In any case in which a minor is alleged to be a person described in Section 602 by reason of the violation, when he or she was 16 years of age or older, of any criminal statute or ordinance except those listed in subdivision (b), upon motion of the petitioner made prior to the attachment of jeopardy the court shall cause the probation officer to investigate and submit a report on the behavioral patterns and social history of the minor being considered for a determination of unfitness. Following submission and consideration of the report, and of any other relevant evidence which the petitioner or the minor may wish to submit, the juvenile court may find that the minor is not a fit and proper subject to be dealt with under the juvenile court law if it concludes that the minor would not be amenable to the care, treatment, and training program available through the facilities of the juvenile court, based upon an evaluation of the following criteria:

(1) The degree of criminal sophistication exhibited by the minor.

(2) Whether the minor can be rehabilitated prior to the expiration of the juvenile court's jurisdiction.

(3) The minor's previous delinquent history.

(4) Success of previous attempts by the juvenile court to rehabilitate the minor.

(5) The circumstances and gravity of the offense alleged to have been committed by the minor.

A determination that the minor is not a fit and proper subject to be dealt with under the juvenile court law may be based on any one or a combination of the factors set forth above, which shall be recited in the order of unfitness. In any case in which a hearing has been noticed pursuant to this section, the court shall postpone the taking of a plea to the petition until the conclusion of the fitness hearing, and no plea which may already have been entered shall constitute evidence at such hearing.

(b) The provisions of subdivision (c) shall be applicable in any case in which a minor is alleged to be a person described in Section 602 by reason of the violation, when he or she was 16 years of age or

older, of one of the following offenses:

(1) Murder.

(2) Arson of an inhabited building.

(3) Robbery while armed with a dangerous or deadly weapon.

(4) Rape with force or violence or threat of great bodily harm.

(5) Sodomy by force, violence, duress, menace, or threat of great bodily harm.

(6) Lewd or lascivious act as provided in subdivision (b) of Section 288 of the Penal Code.

(7) Oral copulation by force, violence, duress, menace, or threat of great bodily harm.

(8) Any offense specified in Section 289 of the Penal Code.

(9) Kidnapping for ransom.

(10) Kidnapping for purpose of robbery.

(11) Kidnapping with bodily harm.

(12) Assault with intent to murder or attempted murder.

(13) Assault with a firearm or destructive device.

(14) Assault by any means of force likely to produce great bodily injury.

(15) Discharge of a firearm into an inhabited or occupied building.

(16) Any offense described in Section 1203.09 of the Penal Code.

(17) Any offense described in Section 12022.5 of the Penal Code.

(18) Any felony offense in which the minor personally used a weapon listed in subdivision (a) of Section 12020 of the Penal Code.

(19) Manufacturing, compounding, or selling one-half ounce or more of any salt or solution of a controlled substance specified in subdivision (e) of Section 11055 of the Health and Safety Code.

(c) With regard to a minor alleged to be a person described in Section 602 by reason of the violation, when he or she was 16 years of age or older, of any of the offenses listed in subdivision (b), upon motion of the petitioner made prior to the attachment of jeopardy the court shall cause the probation officer to investigate and submit a report on the behavioral patterns and social history of the minor being considered for a determination of unfitness. Following submission and consideration of the report, and of any other relevant evidence which the petitioner or the minor may wish to submit the minor shall be presumed to be not a fit and proper subject to be dealt with under the juvenile court law unless the juvenile court concludes, based upon evidence, which evidence may be of extenuating or mitigating circumstances, that the minor would be amenable to the care, treatment, and training program available through the facilities of the juvenile court based upon an evaluation of each of the following criteria:

(1) The degree of criminal sophistication exhibited by the minor.

(2) Whether the minor can be rehabilitated prior to the expiration of the juvenile court's jurisdiction.

(3) The minor's previous delinquent history.

(4) Success of previous attempts by the juvenile court to

rehabilitate the minor.

(5) The circumstances and gravity of the offenses alleged to have been committed by the minor.

A determination that the minor is a fit and proper subject to be dealt with under the juvenile court law shall be based on a finding of amenability after consideration of the criteria set forth above, and findings therefor recited in the order as to each of the above criteria that the minor is fit and proper under each and every one of the above criteria. In making a finding of fitness, the court may consider extenuating or mitigating circumstances in evaluating each of the above criteria. In any case in which a hearing has been noticed pursuant to this section, the court shall postpone the taking of a plea to the petition until the conclusion of the fitness hearing and no plea which may already have been entered shall constitute evidence at the hearing.

SEC. 4.5. Section 707 of the Welfare and Institutions Code is amended to read:

707. (a) In any case in which a minor is alleged to be a person described in Section 602 by reason of the violation, when he or she was 16 years of age or older, of any criminal statute or ordinance except those listed in subdivision (b), upon motion of the petitioner made prior to the attachment of jeopardy the court shall cause the probation officer to investigate and submit a report on the behavioral patterns and social history of the minor being considered for a determination of unfitness. Following submission and consideration of the report, and of any other relevant evidence which the petitioner or the minor may wish to submit, the juvenile court may find that the minor is not a fit and proper subject to be dealt with under the juvenile court law if it concludes that the minor would not be amenable to the care, treatment, and training program available through the facilities of the juvenile court, based upon an evaluation of the following criteria:

(1) The degree of criminal sophistication exhibited by the minor.

(2) Whether the minor can be rehabilitated prior to the expiration of the juvenile court's jurisdiction.

(3) The minor's previous delinquent history.

(4) Success of previous attempts by the juvenile court to rehabilitate the minor.

(5) The circumstances and gravity of the offense alleged to have been committed by the minor.

A determination that the minor is not a fit and proper subject to be dealt with under the juvenile court law may be based on any one or a combination of the factors set forth above, which shall be recited in the order of unfitness. In any case in which a hearing has been noticed pursuant to this section, the court shall postpone the taking of a plea to the petition until the conclusion of the fitness hearing, and no plea which may already have been entered shall constitute evidence at such hearing.

(b) The provisions of subdivision (c) shall be applicable in any

case in which a minor is alleged to be a person described in Section 602 by reason of the violation, when he or she was 16 years of age or older, of one of the following offenses:

(1) Murder.

(2) Arson of an inhabited building.

(3) Robbery while armed with a dangerous or deadly weapon.

(4) Rape with force or violence or threat of great bodily harm.

(5) Sodomy by force, violence, duress, menace, or threat of great bodily harm.

(6) Lewd or lascivious act as provided in subdivision (b) of Section 288 of the Penal Code.

(7) Oral copulation by force, violence, duress, menace, or threat of great bodily harm.

(8) Any offense specified in Section 289 of the Penal Code.

(9) Kidnapping for ransom.

(10) Kidnapping for purpose of robbery.

(11) Kidnapping with bodily harm.

(12) Assault with intent to murder or attempted murder.

(13) Assault with a firearm or destructive device.

(14) Assault by any means of force likely to produce great bodily injury.

(15) Discharge of a firearm into an inhabited or occupied building.

(16) Any offense described in Section 1203.09 of the Penal Code.

(17) Any offense described in Section 12022.5 of the Penal Code.

(18) Any felony offense in which the minor personally used a weapon listed in subdivision (a) of Section 12020 of the Penal Code.

(19) Any felony offense described in Section 136.1 or 137 of the Penal Code.

(20) Manufacturing, compounding, or selling one-half ounce or more of any salt or solution of a controlled substance specified in subdivision (e) of Section 11055 of the Health and Safety Code.

(c) With regard to a minor alleged to be a person described in Section 602 by reason of the violation, when he or she was 16 years of age or older, of any of the offenses listed in subdivision (b), upon motion of the petitioner made prior to the attachment of jeopardy the court shall cause the probation officer to investigate and submit a report on the behavioral patterns and social history of the minor being considered for a determination of unfitness. Following submission and consideration of the report, and of any other relevant evidence which the petitioner or the minor may wish to submit the minor shall be presumed to be not a fit and proper subject to be dealt with under the juvenile court law unless the juvenile court concludes, based upon evidence, which evidence may be of extenuating or mitigating circumstances, that the minor would be amenable to the care, treatment, and training program available through the facilities of the juvenile court based upon an evaluation of each of the following criteria:

(1) The degree of criminal sophistication exhibited by the minor.

(2) Whether the minor can be rehabilitated prior to the expiration of the juvenile court's jurisdiction.

(3) The minor's previous delinquent history.

(4) Success of previous attempts by the juvenile court to rehabilitate the minor.

(5) The circumstances and gravity of the offenses alleged to have been committed by the minor.

A determination that the minor is a fit and proper subject to be dealt with under the juvenile court law shall be based on a finding of amenability after consideration of the criteria set forth above, and findings therefor recited in the order as to each of the above criteria that the minor is fit and proper under each and every one of the above criteria. In making a finding of fitness, the court may consider extenuating or mitigating circumstances in evaluating each of the above criteria. In any case in which a hearing has been noticed pursuant to this section, the court shall postpone the taking of a plea to the petition until the conclusion of the fitness hearing and no plea which may already have been entered shall constitute evidence at the hearing.

SEC. 5. It is the intent of the Legislature, if this bill and Assembly Bill No. 2684 are both chaptered and become effective January 1, 1983, both bills amend Section 707 of the Welfare and Institutions Code, and this bill is chaptered after Assembly Bill No. 2684, that the amendments to Section 707 of the Welfare and Institutions Code proposed by both bills be given effect and incorporated in Section 707 of the Welfare and Institutions Code in the form set forth in Section 4.5 of this act. Therefore, Section 4.5 of this act shall become operative only if this bill and Assembly Bill No. 2684 are both chaptered and become effective January 1, 1983, both amend Section 707 of the Welfare and Institutions Code, and this bill is chaptered after Assembly Bill No. 2684, in which case Section 4 of this act shall not become operative.

SEC. 6. No appropriation is made and no reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution or Section 2231 or 2234 of the Revenue and Taxation Code because the only costs which may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, changes the definition of a crime or infraction, changes the penalty for a crime or infraction, or eliminates a crime or infraction.

CHAPTER 1283

An act to add Section 1203.04 to the Penal Code, relating to controlled substances.

[Approved by Governor September 21, 1982. Filed with Secretary of State September 22, 1982.]

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

SECTION 1. Section 1203.04 is added to the Penal Code, to read:

1203.04. (a) A person convicted of a felony specified in subdivision (b) may be granted probation only in an unusual case where the interests of justice would best be served; when probation is granted in such a case, the court shall specify on the record and shall enter in the minutes the circumstances indicating that the interests of justice would best be served by such a disposition.

(b) Except as provided in subdivision (a), probation shall not be granted to, nor shall the execution or imposition of sentence be suspended for, any of the following persons:

(1) Any person who is convicted of violating Section 11351 of the Health and Safety Code by possessing for sale one ounce or more of cocaine, or a substance containing one ounce or more of cocaine.

(2) Any person who is convicted of violating Section 11378 of the Health and Safety Code by possessing for sale one ounce or more of methamphetamine, or a substance containing one ounce or more of methamphetamine.

CHAPTER 1284

An act to amend Section 4350.5 of the Business and Professions Code, and to repeal and add Section 11153 to the Health and Safety Code, relating to controlled substances, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 21, 1982. Filed with Secretary of State September 22, 1982.]

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

SECTION 1. Section 4350.5 of the Business and Professions Code is amended to read:

4350.5. The board shall take action against any holder of a certificate, license, permit, registration or exemption, who is guilty of unprofessional conduct which has been brought to its attention, or whose certificate, license, permit, registration or exemption has been procured by fraud or misrepresentation or issued by mistake. Unprofessional conduct shall include but is not limited to the violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of or conspiring to violate any provision or term of this chapter or of the applicable federal and state laws and regulations governing pharmacy, including regulations established by the board. Unprofessional conduct shall also include but is not limited to the following:

(a) Gross immorality.

(b) Gross incompetence.

(c) The commission of any act involving moral turpitude, dishonesty or corruption, whether the act is committed in the course of relations as a licensee or otherwise, and whether the act is a felony or misdemeanor or not.

(d) Gross negligence.

(e) The clearly excessive furnishing of controlled substances in violation of subdivision (a) of Section 11153 of the Health and Safety Code.

(f) Actions or conduct which would have warranted denial of a certificate, license, permit, registration or exemption.

SEC. 2. Section 11153 of the Health and Safety Code is repealed.

SEC. 3. Section 11153 is added to the Health and Safety Code, to read:

11153. (a) A prescription for a controlled substance shall only be issued for a legitimate medical purpose by an individual practitioner acting in the usual course of his or her professional practice. The responsibility for the proper prescribing and dispensing of controlled substances is upon the prescribing practitioner, but a corresponding responsibility rests with the pharmacist who fills the prescription. Except as authorized by this division, the following are not legal prescriptions: (1) an order purporting to be a prescription which is issued not in the usual course of professional treatment or in legitimate and authorized research; or (2) an order for an addict or habitual user of controlled substances, which is issued not in the course of professional treatment or as part of an authorized methadone maintenance program, for the purpose of providing the user with controlled substances, sufficient to keep him or her comfortable by maintaining customary use.

(b) Any person who knowingly violates this section shall be punished by imprisonment in the state prison or in the county jail not exceeding one year, or by a fine not exceeding twenty thousand dollars ($20,000), or by both a fine and imprisonment.

(c) No provision of the amendments to this section enacted during the second year of the 1981–82 Regular Session shall be construed as expanding the scope of practice of a pharmacist.

SEC. 4. It is the intent of the Legislature that the provisions of this act be construed so as not to overrule any case law or other judicial findings interpreting Section 11153 of the Health and Safety Code.

SEC. 5. No appropriation is made and no reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution or Section 2231 or 2234 of the Revenue and Taxation Code because the only costs which may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, changes the definition of a crime or infraction, changes the penalty for a crime or infraction, or eliminates a crime or infraction.

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:

The diversion of abusable controlled substances serves to aggravate rather than curb drug abuse. Greater specification in statutes regulating professional duties is needed in order to prevent needless death and injury and in order to effectively aid prosecutors and others engaged in the war on drug abuse.

CHAPTER 1285

An act to amend Sections 11965, 11965.3, 11965.5, 11965.7, 11966, 11966.5, 11967, 11967.5, 11968, 11969, and 11969.5 of, and to repeal Section 11968.5 of, the Health and Safety Code, relating to drugs, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 21, 1982. Filed with Secretary of State September 22, 1982.]

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

SECTION 1. Section 11965 of the Health and Safety Code is amended to read:

11965. The Legislature makes the following findings and declarations of intent:

(a) A statewide drug abuse primary prevention program is essential in order to address the continuing problem of drug abuse throughout the state, which often exists in combination with other problems such as crime and juvenile delinquency. The program is labeled as "primary" prevention because it is intended to prevent drug abuse before it begins or before it has reached later stages requiring treatment.

(b) The program necessarily emphasizes a continuing partnership between education agencies, drug abuse agencies, community service agencies, parents, and other members of the community. In order to facilitate this partnership, the Legislature finds and declares that it is of vital importance that fiscal and management responsibilities for the program be shared equitably by education and drug agencies at both the state and county levels, and that this cooperation is a major tool in efforts to achieve the successful prevention of drug abuse.

(c) The program established pursuant to this article is intended by the Legislature to delegate primary responsibility for program planning to local school and local drug abuse authorities and their constituents. These agencies are best suited for dealing with lifetime drug using patterns, which are formed during youth and in the family setting.

(d) This article places primary emphasis on youth, families, and communitywide drug abuse prevention planning. Therefore, programs to acquaint professionals serving youth and families, community representatives, parents, and youth with the skills and strategies needed for program implementation is an important aspect of the total program.

SEC. 2. Section 11965.3 of the Health and Safety Code is amended to read:

11965.3. In view of the purposes and intent of this article as expressed in Section 11965, highest priority for program funding under this article shall be designated to programs which emphasize joint school-community program drug abuse prevention planning and implementation, and which focus on children, youth, and families.

It is the intent of the Legislature that, to the maximum extent possible, funds made available for the purposes of this article be used to support programs which will meet the needs of children and families.

SEC. 3. Section 11965.5 of the Health and Safety Code is amended to read:

11965.5. This article shall affect only those counties in which the board of supervisors and the county board of education have each adopted a resolution electing to apply for available funds and have been awarded funds pursuant to Section 11966. Programs funded, planned, and implemented under this article shall emphasize a joint school-community primary prevention program, which 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, 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.

SEC. 4. Section 11965.7 of the Health and Safety Code is amended to read:

11965.7. In those counties electing to apply for funds under this article, both the county drug program coordinator and the county office of education shall designate units with primary responsibility

for planning and administering the School-Community Primary Prevention Program. These units shall work together on a cooperative basis to review the school and community program application for funds. The joint application of the county drug program coordinator and the county office of education shall be submitted to the local primary prevention advisory committee as established pursuant to subdivision (b) of Section 11966, for review and comment. After this review, the application shall be submitted to the state. Applications for funding shall be reviewed by an external review selection committee. This committee shall be comprised of no less than six members, three being appointed by the State Department of Education and three being appointed by the State Department of Alcohol and Drug Programs. The committee shall review applications and make recommendations for grant awards. The State Department of Alcohol and Drug Programs and the State Department of Education shall enter into an interagency agreement in order to carry out the provisions of this chapter. Approval of both state departments is required for funding.

SEC. 5. Section 11966 of the Health and Safety Code is amended to read:

11966. The planning process at the county level shall include all of the following, which shall be incorporated into the school-community primary drug abuse prevention application submitted to the State Department of Education and the State Department of Alcohol and Drug Programs:

(a) A copy of the resolutions of the board of supervisors and the county board of education electing to apply for funding under this article, and documentation of public notice as required by Section 11967.

(b) Documentation of local school district, drug abuse agency, and community involvement in the planning process.

(c) Incorporation of comments on program plans provided by the local primary prevention advisory committee. This committee may be the existing drug abuse advisory committee unless the county board of supervisors and the county board of education have each adopted a resolution requiring the formation of an independent committee. Independent committees so established shall consist of 10 members, five members being appointed by the board of supervisors and five by the county board of education.

(d) Submission of the application as required under Section 11965.7.

(e) Evidence that there has been coordination with existing successful programs in the development of the application, and assurance of maintenance of current efforts in order to preclude the use of funds to support existing programs.

(f) Evidence that any program funded for two years or more under this article has substantially achieved its measurable goals and objectives as specified.

(g) In counties in which the board of education is appointed by

the board of supervisors, the board of supervisors shall have final authority for application, planning, and implementation of programs funded under this article.

(h) Funds may be awarded up to a maximum of three years. Applications shall include plans for program continuation.

(i) Provision for no more than 5 percent of the county level program funds being used for program administration, and specification of measurable goals and objectives for each program to be funded pursuant to the plan.

SEC. 6. Section 11966.5 of the Health and Safety Code is amended to read:

11966.5. The application from each county shall be submitted, with appropriate documentation as provided in Section 11966, on or before the existing deadline established by the administering agencies.

SEC. 7. Section 11967 of the Health and Safety Code is amended to read:

11967. Both the county drug program coordinator and the county office of education shall announce the availability of funds locally under the School-Community Primary Prevention Program pursuant to Section 6061.3 of the Government Code, and shall also disseminate such information to the public media, to school districts within the county, and to community nonprofit organizations providing preventive services to youth. This public notice shall specify the nature and intent of the program as provided in this article, and shall inform agencies and organizations concerning the details of applying for funds.

SEC. 8. Section 11967.5 of the Health and Safety Code is amended to read:

11967.5. Funds provided for purposes of this article shall be administered and allocated as follows:

(a) One-half of the total funds available shall be administered by the State Department of Education through an interagency agreement with the State Department of Alcohol and Drug Programs. The other half shall be administered by the State Department of Alcohol and Drug Programs.

(b) No more than 5 percent of the total amount for each state department shall be used for administrative costs. The maximum amount shall be inclusive of administrative costs at the state level. An appropriate portion of such maximum amount shall be used by the state departments to work together on a cooperative basis to jointly develop program application guidelines. Both departments shall jointly develop program application guidelines that are consistent with the legislative intent prescribed in Section 11965.7.

(c) The balance of program funds provided under this article shall be allocated to programs on a competitive basis.

SEC. 9. Section 11968 of the Health and Safety Code is amended to read:

11968. Upon completion of the review process and selection of

grant awards, the state agencies shall negotiate contracts with public or private nonprofit agencies to carry out primary prevention programs. These shall include county drug offices and offices of education which meet the requirements of Section 11965.

SEC. 10. Section 11968.5 of the Health and Safety Code is repealed.

SEC. 11. Section 11969 of the Health and Safety Code is amended to read:

11969. The county drug program coordinator and the county office of education may enter into interagency agreements between themselves which will allow any of the management or fiscal tasks, or both, created pursuant to this article and assigned to both the county office and the coordinator, to be performed by one of them only.

SEC. 12. Section 11969.5 of the Health and Safety Code is amended to read:

11969.5. The Department of Education and the State Department of Alcohol and Drug Programs shall establish mutually cooperative arrangements for sharing reports on the implementation of this article. These departments shall jointly submit an annual program report to the Legislature. The report shall inform the Legislature regarding the status of the program throughout the state, outstanding or exemplary programs, and the extent to which individual local programs and the School-Community Primary Prevention Program as a whole have met their respective goals and objectives within the preceding year.

SEC. 13. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to implement this program to reduce youth drug abuse as soon as possible, it is necessary that this act take effect immediately as an urgency statute.

CHAPTER 1286

An act to add Section 11375 to the Health and Safety Code, relating to controlled substances.

[Approved by Governor September 21, 1982. Filed with Secretary of State September 22, 1982.]

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

SECTION 1. Section 11375 is added to the Health and Safety Code, to read:

11375. (a) Except as otherwise provided in this division, every person who possesses for sale or sells any substance specified in

subdivision (b) shall be punished by imprisonment in the county jail for a period of not more than one year or state prison.

(b) Any material, compound, mixture, or preparation containing any of the following substances:

(1) Chlordiazepoxide.
(2) Clonazepam.
(3) Clorazepate.
(4) Diazepam.
(5) Flurazepam.
(6) Lorazepam.
(7) Mebutamate.
(8) Oxazepam.
(9) Prazepam.
(10) Temazepam.
(11) Halazepam.
(12) Alprazolam.
(13) Propoxyphene.
(14) Pentazocine.
(15) Diethylpropion.
(16) Phentermine.
(17) Pemoline.
(18) Fenfluramine.

SEC. 2. No appropriation is made and no reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution or Section 2231 or 2234 of the Revenue and Taxation Code because the only costs which may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, changes the definition of a crime or infraction, changes the penalty for a crime or infraction, or eliminates a crime or infraction.

CHAPTER 1287

An act to amend Sections 11357 and 11361.5 of the Health and Safety Code, relating to possession of marijuana.

[Approved by Governor September 21, 1982 Filed with Secretary of State September 22, 1982.]

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

SECTION 1. Section 11357 of the Health and Safety Code is amended to read:

11357. (a) Except as authorized by law, every person who possesses any concentrated cannabis shall be punished by imprisonment in the county jail for a period of not more than one year or by a fine of not more than five hundred dollars ($500), or by both such fine and imprisonment, or shall be punished by

imprisonment in the state prison.

(b) Except as authorized by law, every person who possesses not more than one avoirdupois ounce of marijuana, other than concentrated cannabis, is guilty of a misdemeanor and shall be punished by a fine of not more than one hundred dollars ($100). Notwithstanding other provisions of law, if such person has been previously convicted three or more times of an offense described in this subdivision during the two-year period immediately preceding the date of commission of the violation to be charged, the previous convictions shall also be charged in the accusatory pleading and, if found to be true by the jury upon a jury trial or by the court upon a court trial or if admitted by the person, the provisions of Sections 1000.1 and 1000.2 of the Penal Code shall be applicable to him, and the court shall divert and refer him for education, treatment, or rehabilitation, without a court hearing or determination or the concurrence of the district attorney, to an appropriate community program which will accept him. If the person is so diverted and referred he shall not be subject to the fine specified in this subdivision. If no community program will accept him, the person shall be subject to the fine specified in this subdivision. In any case in which a person is arrested for a violation of this subdivision and does not demand to be taken before a magistrate, such person shall be released by the arresting officer upon presentation of satisfactory evidence of identity and giving his written promise to appear in court, as provided in Section 853.6 of the Penal Code, and shall not be subjected to booking.

(c) Except as authorized by law, every person who possesses more than one avoirdupois ounce of marijuana, other than concentrated cannabis, shall be punished by imprisonment in the county jail for a period of not more than six months or by a fine of not more than five hundred dollars ($500), or by both such fine and imprisonment.

(d) Except as authorized by law, every person who possesses marijuana upon the grounds of, or within, any school providing instruction in kindergarten or, any of grades 1 through 12 inclusive, during hours in which the school is open for classes or school-related programs is guilty of a misdemeanor to be punished by a fine not to exceed five hundred dollars ($500), or by imprisonment in the county jail for a period of not more than 10 days, or both; provided, that except as authorized by law, every minor who possesses marijuana upon the grounds of, or within, any school providing instruction in kindergarten or, any of grades 1 through 12 inclusive, during hours in which the school is open for classes or school-related programs is guilty of a misdemeanor to be punished by a fine not to exceed two hundred fifty dollars ($250) for a first offense; and provided further, that except as authorized by law, every minor who possesses marijuana upon the grounds of, or within, any school providing instruction in kindergarten or, any of grades 1 through 12 inclusive, during hours in which the school is open for classes or school-related programs is guilty of a misdemeanor to be punished

by a fine not to exceed five hundred dollars ($500), or by imprisonment in the county jail for a period of not more than 10 days, or both, for the second and each subsequent conviction of a violation of this subdivision.

SEC. 2. Section 11361.5 of the Health and Safety Code is amended to read:

11361.5. (a) Records of any court of this state, any public or private agency that provides services upon referral under Section 1000.2 of the Penal Code, or of any state agency or local public agency pertaining to the arrest or conviction of any person for a violation of subdivision (b), (c), or (d) of Section 11357 or subdivision (b) of Section 11360, shall not be kept beyond two years from the date of the conviction, or from the date of the arrest if there was no conviction. Any court or agency having custody of the records shall provide for the timely destruction of the records in accordance with subdivision (c). The requirements of this subdivision do not apply to records of any conviction occurring prior to January 1, 1976, or records of any arrest not followed by a conviction occurring prior to that date.

(b) This subdivision applies only to records of convictions and arrests not followed by conviction occurring prior to January 1, 1976, for any of the following offenses:

(1) Any violation of Section 11357 or a statutory predecessor thereof.

(2) Unlawful possession of a device, contrivance, instrument, or paraphernalia used for unlawfully smoking marijuana, in violation of Section 11364, as it existed prior to January 1, 1976, or a statutory predecessor thereof.

(3) Unlawful visitation or presence in a room or place in which marijuana is being unlawfully smoked or used, in violation of Section 11365, as it existed prior to January 1, 1976, or a statutory predecessor thereof.

(4) Unlawfully using or being under the influence of marijuana, in violation of Section 11550, as it existed prior to January 1, 1976, or a statutory predecessor thereof.

Any person subject to an arrest or conviction for those offenses may apply to the Department of Justice for destruction of records pertaining to the arrest or conviction if two or more years have elapsed since the date of the conviction, or since the date of the arrest if not followed by a conviction. The application shall be submitted upon a form supplied by the Department of Justice and shall be accompanied by a fee, which shall be established by the department in an amount which will defray the cost of administering this subdivision and costs incurred by the state under subdivision (c), but which shall not exceed thirty-seven dollars and fifty cents ($37.50). The application form shall be made available at every local police or sheriff's department and from the Department of Justice and may require that information which the department determines is necessary for purposes of identification.

The department may request, but not require, the applicant to include a self-administered fingerprint upon the application. If the department is unable to sufficiently identify the applicant for purposes of this subdivision without the fingerprint or without additional fingerprints, it shall so notify the applicant and shall request the applicant to submit any fingerprints which may be required to effect identification, including a complete set if necessary, or, alternatively, to abandon the application and request a refund of all or a portion of the fee submitted with the application, as provided in this section. If the applicant fails or refuses to submit fingerprints in accordance with the department's request within a reasonable time which shall be established by the department, or if the applicant requests a refund of the fee, the department shall promptly mail a refund to the applicant at the address specified in the application or at any other address which may be specified by the applicant. However, if the department has notified the applicant that election to abandon the application will result in forfeiture of a specified amount which is a portion of the fee, the department may retain a portion of the fee which the department determines will defray the actual costs of processing the application, provided the amount of the portion retained shall not exceed ten dollars ($10).

Upon receipt of a sufficient application, the Department of Justice shall destroy records of the department, if any, pertaining to the arrest or conviction in the manner prescribed by subdivision (c) and shall notify the Federal Bureau of Investigation, the law enforcement agency which arrested the applicant, and, if the applicant was convicted, the probation department which investigated the applicant and the Department of Motor Vehicles, of the application. Each state or local agency receiving a notice from the Department of Justice shall destroy records of the agency, if any, pertaining to the arrest or conviction specified in the notice, in the manner prescribed by subdivision (c). The application form and the notices from the department to the agencies specified in this subdivision shall be destroyed by the department or agency, as the case may be, at the time the other records of the arrest or conviction are destroyed.

(c) Destruction of records of arrest or conviction pursuant to subdivision (a) or (b) shall be accomplished by permanent obliteration of all entries or notations upon the records pertaining to the arrest or conviction, and the record shall be prepared again so that it appears that the arrest or conviction never occurred. However, where (1) the only entries upon the record pertain to the arrest or conviction and (2) the record can be destroyed without necessarily effecting the destruction of other records, then the document constituting the record shall be physically destroyed.

(d) Notwithstanding subdivision (a) or (b), written transcriptions of oral testimony in court proceedings and published judicial appellate reports are not subject to this section. Additionally, no records shall be destroyed pursuant to subdivision (a) if the defendant or a codefendant has filed a civil action against the peace

officers or law enforcement jurisdiction which made the arrest or instituted the prosecution and if the agency which is the custodian of those records has received a certified copy of the complaint in the civil action, until the civil action has finally been resolved. Immediately following the final resolution of the civil action, records subject to subdivision (a) shall be destroyed pursuant to subdivision (c) if more than two years have elapsed from the date of the conviction or arrest without conviction.

(e) Costs incurred by local agencies in complying with the provisions of subdivision (c) shall be reimbursed as provided in Section 2231 of the Revenue and Taxation Code.

SEC. 3. The amendments to Section 11357 of the Health and Safety Code made by Section 1 of this act shall become operative on September 1, 1983.

SEC. 4. Prior to September 1, 1983, the Superintendent of Public Instruction shall request each school district to notify its students of the provisions of this act which become operative on September 1, 1983.

SEC. 5. No appropriation is made and no reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution or Section 2231 or 2234 of the Revenue and Taxation Code because the only costs which may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, changes the definition of a crime or infraction, changes the penalty for a crime or infraction, or eliminates a crime or infraction.

CHAPTER 1288

An act to add Division 10.1 (commencing with Section 11670) to the Health and Safety Code, relating to drugs, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 21, 1982. Filed with Secretary of State September 22, 1982]

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

SECTION 1. The Legislature finds and declares as follows:

(a) Early in 1980 distributors began flooding the nation with capsules and tablets known as "imitation controlled substances."

(b) Imitation controlled substances are carefully designed to resemble or duplicate the appearance of brandname amphetamines, barbiturates, tranquilizers, and narcotic pain killers. On the street, they are known by the same name as their dangerous drug counterparts. Yet the drugs contain no controlled substances, and in fact, usually contain legal over-the-counter drugs, including caffeine, phenylpropanolamine (an appetite suppressant and nasal

decongestant), ephedrine (a decongestant), pseudoephedrine, or some combination thereof.

(c) The easy availability of imitation controlled substances has encouraged a climate of acceptance among many teenagers and has conditioned them to the daily trafficking, handling, and consumption of these "pharmacal stimulants." In many places, imitation controlled substances have become a part of the drug culture.

(d) As the abuse of imitation controlled substances grew, the public health dangers of these substances quickly became apparent. The young consumer who thinks that he or she has been purchasing "speed" or "ludes" and has become used to taking several imitation controlled substances capsules or tablets at a time in order to "get the full effect" runs the risk of serious overdose or death if one day he or she ingests the same number of real controlled substances. In addition, the imitation controlled substances themselves can have serious damaging effects, especially in combination with alcohol or other drugs. The number of emergency room incidents attributable to these drugs has risen dramatically. More than a dozen deaths caused by imitation controlled substances have been reported from around the country. More deaths from caffeine overdose and emergency room hypertensive incidents from severe reactions to phenylpropanolamine may have occured but gone unreported.

(e) Although trafficking ir imitation controlled substances is not prohibited by the federal Controlled Substances Act, the Drug Enforcement Administration considers that the distribution and sale of imitation controlled substances encourages and contributes to drug abuse and drug profiteering. The problem is one more facet of the nationwide drug abuse problem.

(f) More than a dozen states have enacted or are considering legislation targeted against the manufacture and distribution of imitation controlled substances. Cities and counties have passed local ordinances prohibiting storefront imitation controlled substances sales.

SEC. 2. Division 10.1 (commencing with Section 11670) is added to the Health and Safety Code, to read:

DIVISION 10.1. IMITATION CONTROLLED SUBSTANCES ACT

CHAPTER 1. GENERAL PROVISIONS AND DEFINITIONS

11670. This division shall be known as the "California Imitation Controlled Substances Act."

11671. Unless the context otherwise requires, the definitions in this chapter govern the construction of this division.

11672. "Controlled substance" means a substance as defined in Section 11007.

11673. "Distribute" means the actual, constructive, or attempted transfer, delivery, or dispensing to another of an imitation controlled

substance.

11674. "Manufacture" means the production, preparation, compounding, processing, encapsulating, packaging or repackaging, labeling or relabeling, of an imitation controlled substance.

11675. "Imitation controlled substance" means (a) a product specifically designed or manufactured to resemble the physical appearance of a controlled substance, such that a reasonable person of ordinary knowledge would not be able to distinguish the imitation from the controlled substance by outward appearances, or (b) a product, not a controlled substance, which, by representations made and by dosage unit appearance, including color, shape, size, or markings, would lead a reasonable person to believe that, if ingested, the product would have a stimulant or depressant effect similar to or the same as that of one or more of the controlled substances included in Schedules I through V, inclusive, of the Uniform Controlled Substances Act, pursuant to Chapter 2 (commencing with Section 11053) of Division 10.

11676. The provisions of this division are cumulative, and shall not be construed as restricting any remedy, provisional or otherwise, provided by law for the benefit of any party.

CHAPTER 2. OFFENSES AND PENALTIES

11680. Any person who knowingly manufactures, distributes, or possesses with intent to distribute, an imitation controlled substance is guilty of a misdemeanor and shall, if convicted, be subject to imprisonment for not more than six months in the county jail or a fine of not more than one thousand dollars ($1,000), or both such imprisonment and fine.

11681. Any person 18 years of age or over who violates Section 11680 by knowingly distributing an imitation controlled substance to a person under 18 years of age is guilty of a misdemeanor and shall, if convicted, be subject to imprisonment for not more than one year in the county jail or a fine of not more than two thousand dollars ($2,000), or both such imprisonment and fine. Upon a second or subsequent conviction of this offense, the person shall be subject to imprisonment for not more that one year in the county jail and a fine of not less than six thousand dollars ($6,000).

11682. No civil or criminal liability shall be imposed by virtue of this division on any person registered under the California Uniform Controlled Substances Act who manufactures, distributes, or possesses an imitation controlled substance for use by a practitioner, as defined in Section 11026, in the course of lawful professional practice or research.

11683. All imitation controlled substances shall be subject to forfeiture in accordance with the procedures set forth in Chapter 8 (commencing with Section 11470) of Division 10.

SEC. 3. If any provision of this act or the application thereof to any person or circumstances is held invalid, the invalidity shall not

affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of this act are severable.

SEC. 4. No appropriation is made and no reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution or Section 2231 or 2234 of the Revenue and Taxation Code because the only costs which may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, changes the definition of a crime or infraction, changes the penalty for a crime or infraction, or eliminates a crime or infraction.

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:

The manufacture and distribution of imitation controlled substances needs to be prohibited as soon as possible in order to prevent further needless death and human injury and in order to effectively aid prosecutors and others engaged in the war on drug abuse.

CHAPTER 1289

An act to amend Sections 11470 and 11473 of, to add Sections 11488, 11488.1, 11488.2, 11488.3, 11488.4, 11488.5, 11488.6, 11488.7, and 11495.1 to, and to repeal and add Section 11495 of, the Health and Safety Code, relating to controlled substances.

[Approved by Governor September 21, 1982. Filed with Secretary of State September 22, 1982.]

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

SECTION 1. Section 11470 of the Health and Safety Code is amended to read:

11470. The following are subject to forfeiture:

(a) All controlled substances which have been manufactured, distributed, dispensed, or acquired in violation of this division.

(b) All raw materials, products and equipment of any kind which are used, or intended for use, in manufacturing, compounding, processing, delivering, importing, or exporting any controlled substance in violation of this division.

(c) All property which is used, or intended for use, as a container for property described in subdivision (a) or (b).

(d) All books, records, and research products and materials, including formulas, microfilm, tapes, and data which are used, or intended for use, in violation of this division.

(e) The interest of any registered owner of a boat, airplane, or any

vehicle other than an implement of husbandry, as defined in Section 36000 of the Vehicle Code, or a vehicle which may be lawfully driven upon the highway with a class 3 or class 4 license, as prescribed in Section 12804 of the Vehicle Code, used, in direct relation to the particular offense for which the owner or defendant is arrested and convicted, to unlawfully transport for sale any controlled substance.

(f) With the exception of moneys, negotiable instruments, securities, or other things of value upon which the Franchise Tax Board has served a notice to withhold pursuant to the provisions of Section 18817 or 26132 of the Revenue and Taxation Code, all moneys, negotiable instruments, securities, or other things of value furnished or intended to be furnished by any person in exchange for a controlled substance in violation of Section 11351, 11352, 11355, 11359, 11360, 11378, 11379, or 11382, insofar as the offense involves sale or possession for sale, for which the owner or defendant is arrested and convicted, all proceeds traceable to such an exchange, and all moneys, negotiable instruments, and securities used or intended to be used to facilitate any violation of Section 11351, 11352, 11355, 11359, 11360, 11378, 11379, or 11382, insofar as the offense involves sale or possession for sale, for which the owner or defendant is arrested and convicted, except that no property shall be forfeited under this subdivision, to the extent of the interest of an owner, by reason of any act or omission established by that owner to have been committed or omitted without the knowledge or consent of that owner. To the extent that any moneys, negotiable instruments, securities, or other things of value are returned or refunded by the Franchise Tax Board to the taxpayer as a result of a redetermination or abatement of the tax due subsequent to the serving of a notice to withhold, such things of value shall be subject to the forfeiture provisions of this subdivision.

SEC. 1.5. Section 11470 of the Health and Safety Code is amended to read:

11470. The following are subject to forfeiture:

(a) All controlled substances which have been manufactured, distributed, dispensed, or acquired in violation of this division.

(b) All raw materials, products and equipment of any kind which are used, or intended for use, in manufacturing, compounding, processing, delivering, importing, or exporting any controlled substance in violation of this division.

(c) All property which is used, or intended for use, as a container for property described in subdivision (a) or (b).

(d) All books, records, and research products and materials, including formulas, microfilm, tapes, and data which are used, or intended for use, in violation of this division.

(e) The interest of any registered owner of a boat, airplane, or any vehicle other than an implement of husbandry, as defined in Section 36000 of the Vehicle Code, or a vehicle which may be lawfully driven upon the highway with a class 3 or class 4 license, as prescribed in Section 12804 of the Vehicle Code, used, in direct relation to the

particular offense for which the owner or defendant is arrested and convicted, to unlawfully transport for sale any controlled substance.

(f) With the exception of moneys, negotiable instruments, securities, or other things of value upon which the Franchise Tax Board has served a notice to withhold pursuant to the provisions of Section 18817 or 26132 of the Revenue and Taxation Code, all moneys, negotiable instruments, securities, or other things of value furnished or intended to be furnished by any person in exchange for a controlled substance in violation of Section 11351, 11352, 11355, 11359, 11360, 11378, 11379, or 11382, insofar as the offense involves sale or possession for sale, for which the owner or defendant is arrested and convicted, all proceeds traceable to such an exchange, and all moneys, negotiable instruments, and securities used or intended to be used to facilitate any violation of Section 11351, 11352, 11355, 11359, 11360, 11378, 11379, or 11382, insofar as the offense involves sale or possession for sale, for which the owner or defendant is arrested and convicted, except that no property shall be forfeited under this subdivision, to the extent of the interest of an owner, by reason of any act or omission established by that owner to have been committed or omitted without the knowledge or consent of that owner. To the extent that any moneys, negotiable instruments, securities, or other things of value are returned or refunded by the Franchise Tax Board to the taxpayer as a result of a redetermination or abatement of the tax due subsequent to the serving of a notice to withhold, such things of value shall be subject to the forfeiture provisions of this subdivision.

(g) The interest of any registered owner of a vehicle which may be lawfully driven upon the highway with a class 3 or class 4 license, as prescribed in Section 12804 of the Vehicle Code, which has been used as an instrument to facilitate the possession for sale or sale of 28 grams or more of Schedule I controlled substances except marijuana, peyot of psilocybin; 10 pounds dry weight or more of marijuana, peyote or psilocybin; or 28 grams or more of any Schedule II controlled substances and the defendant has been convicted of a violation of Section 11351, 11352, 11353, 11359, 11360, or 11361 and such vehicle was used in the commission of the crime for which the conviction was obtained.

No interest may be forfeited under this subdivision if there is a community property interest in the vehicle by a person other than the defendant and the vehicle is the only vehicle available to the defendant's immediate family.

SEC. 2. Section 11473 of the Health and Safety Code is amended to read:

11473. All seizures under provisions of this chapter, except seizures of vehicles, boats, airplanes, or seizures of moneys, negotiable instruments, securities, or other things of value as specified in subdivision (f) of Section 11470, shall, upon conviction of the owner or defendant, be ordered destroyed by the court in which conviction was had.

SEC. 3. Section 11488 is added to the Health and Safety Code, to read:

11488. (a) Any peace officer of this state, upon making or attempting to make an arrest for a violation of Section 11351, 11352, 11355, 11359, 11360, 11378, 11379, or 11382, insofar as the offense involves sale or possession for sale, may seize all moneys, negotiable instruments, securities, or other things of value which the officer has probable cause to believe are forfeitable pursuant to subdivision (f) of Section 11470.

(b) Receipts for property seized pursuant to this section shall be delivered to any person out of whose possession such property was seized, in accordance with Section 1412 of the Penal Code. In the event property seized was not seized out of anyone's possession, receipt for the property shall be delivered to the individual in possession of the premises at which the property was seized.

(c) There shall be a presumption affecting the burden of proof that the person to whom a receipt for property was issued is the owner thereof. This presumption may, however, be rebutted at the forfeiture hearing specified in Section 11488.5.

SEC. 4. Section 11488.1 is added to the Health and Safety Code, to read:

11488.1. Property seized pursuant to Section 11488 may, where appropriate, be held for evidence. The state or any city, county, or city and county may initiate forfeiture proceedings with respect to any property seized pursuant to Section 11488 by a peace officer employed by its law enforcement agency. The Attorney General or the district attorney for the jurisdiction involved shall file and maintain such proceedings.

SEC. 5. Section 11488.2 is added to the Health and Safety Code, to read:

11488.2. If the peace officer does not hold the property seized pursuant to Section 11488 for evidence or if the law enforcement agency for which such person is employed does not initiate forfeiture proceedings pursuant to Section 11488.1, the peace officer may immediately deliver the property to the Department of Justice to be held as evidence until a forfeiture has been declared or a release ordered; otherwise the officer shall return the property to the individual designated in the receipt therefor.

SEC. 6. Section 11488.3 is added to the Health and Safety Code, to read:

11488.3. Within 15 days after such seizure, if the Department of Justice or the local governmental entity determines that the factual circumstances do not warrant that the moneys, negotiable instruments, securities, or other things of value seized come within subdivision (f) of Section 11470, or if for any other reason it decides not to seek forfeiture, it shall return the seized property to the arresting officer who shall return it to the individual designated in the receipt therefor.

SEC. 7. Section 11488.4 is added to the Health and Safety Code,

to read:

11488.4. (a) If the Department of Justice or the local governmental entity determines that the factual circumstances do warrant that the moneys, negotiable instruments, securities, or other things of value seized come within subdivision (f) of Section 11470, the Attorney General or district attorney shall file a petition of forfeiture with the superior court of the county in which the property was seized. The Attorney General or district attorney shall make service of process regarding this petition upon every individual designated in a receipt issued for the property seized. In addition, the Attorney General or district attorney shall cause a notice of the seizure and of the intended forfeiture proceeding, as well as a notice stating that any interested party may file a verified claim with the superior court of the county in which the property was seized with respect to any interest in the property seized, to be served by personal delivery or by registered mail upon any person who has an interest in the seized property other than persons designated in a receipt issued for the property seized. If the notices cannot be given by registered mail or personal delivery, the notices shall be published for at least three successive weeks in a newspaper of general circulation in the county where the seizure was made.

(b) All notices shall set forth the time within which a claim of interest in the property seized is required to be filed pursuant to Section 11488.5.

(c) Nothing contained in this chapter shall preclude a defendant from moving for a return of property pursuant to Section 1538.5 of the Penal Code.

(d) A defendant may move for the return of the property on the grounds that there is not probable cause to believe that the property is forfeitable pursuant to subdivision (f) of Section 11470. The motion may be made at the preliminary examination or subsequent thereto. If made subsequent to the preliminary examination, the district attorney may submit the record of the preliminary hearing to establish that probable cause exists to believe that the underlying criminal violations have occurred.

Within 15 days after a defendant's motion is granted, the people may file a petition for a writ of mandate or prohibition seeking appellate review of the ruling.

SEC. 8. Section 11488.5 is added to the Health and Safety Code, to read:

11488.5. (a) Any person claiming an interest in the property seized pursuant to Section 11488 may, at any time within 30 days from the date of the first publication of the notice of seizure, or within 10 days after receipt of actual notice, file with the superior court of the county in which the property was seized a verified claim stating his or her interest in the property seized. A verified copy of the claim shall be given by the claimant to the Attorney General or district attorney, as appropriate.

(b) (1) If, at the end of the time set forth in subdivision (a), there

is no claim on file, the court, upon motion, shall declare the property seized pursuant to Section 11488 forfeited to the state upon conviction of a violation set forth in subdivision (a) of Section 11488.

(2) The clerk of the court shall dispose of the forfeited property as set forth in Section 11495.

(c) (1) If a verified claim is filed, the forfeiture proceeding shall be set for hearing on a day not less than 30 days therefrom, and the proceeding shall have priority over other civil cases. Notice of the hearing shall be given in the same manner as provided in Section 11488.4. Such verified claim shall not be admissible in the proceedings regarding the underlying criminal offense set forth in subdivision (a) of Section 11488.

(2) The hearing shall be by jury, unless waived by consent of all parties.

(d) (1) At the hearing, the state or local governmental entity shall have the burden of establishing beyond a reasonable doubt that the owner of any interest in the seized property consented to the use of the property with knowledge that it would be or was used for a purpose for which forfeiture is permitted.

(2) No interest in the seized property shall be affected by a forfeiture decree under this section unless the state or local governmental entity has proven that the owner of such interest consented to the use of the property with knowledge that it would be or was used for the purpose charged. No forfeiture shall be ordered unless and until a conviction is had for an offense set forth in subdivision (a) of Section 11488.

(e) The forfeiture hearing may be continued, and upon motion of the defendant for the underlying criminal charges shall be continued, until after a verdict of guilty on the related charges has been decided. The forfeiture hearing shall be conducted in accordance with Sections 600 to 630, inclusive, of the Code of Civil Procedure if a trial by jury, and by Sections 631 to 636, inclusive, of the Code of Civil Procedure if by court. Unless the court or jury finds that the seized property was used for a purpose for which forfeiture is permitted, the court shall order the seized property released to the person it determines is entitled thereto.

If the court or jury finds that the seized property was used for a purpose for which forfeiture is permitted, but does not find that a person claiming an interest therein, to which the court has determined he or she is entitled, had actual knowledge that the seized property would be or was used for a purpose for which forfeiture is permitted, the court shall order the seized property released to the claimant.

(f) All seized property which was the subject of the forfeiture hearing and which was not released by the court to a claimant shall, upon motion, be declared by the court forfeited upon conviction of a violation set forth in subdivision (a) of Section 11488. The clerk of the court shall dispose of the forfeited property as set forth in Section 11495.

SEC. 9. Section 11488.6 is added to the Health and Safety Code, to read:

11488.6. (a) If the court or jury at the forfeiture hearing finds that the property is forfeitable pursuant to subdivision (f) of Section 11470, but does not find that a person holding a valid lien, mortgage, security interest, or interest under a conditional sales contract acquired such interest with actual knowledge that the property was to be used for a purpose for which forfeiture is permitted, and the amount due such person is less than the appraised value of the property, such person may pay to the state or the local governmental entity which initiated the forfeiture proceeding the amount of the registered owner's equity, which shall be deemed to be the difference between the appraised value and the amount of the lien, mortgage, security interest, or interest under a conditional sales contract. Upon such payment, the state or local governmental entity shall relinquish all claims to the property. If the holder of the interest elects not to make such payment to the state or local governmental entity, the property shall be deemed forfeited to the state or local governmental entity and the ownership certificate shall be forwarded. The appraised value shall be determined as of the date judgment is entered on a wholesale basis either by agreement between the legal owner and the governmental entity involved, or if they cannot agree, then by the inheritance tax appraiser for the county in which the action is brought. A person holding a valid lien, mortgage, security interest, or interest under a conditional sales contract shall be paid the appraised value of his or her interest in accordance with the provisions of Section 11495.

(b) If the amount due to a person holding a valid lien, mortgage, security interest, or interest under a conditional sales contract is less than the value of the property and the person elects not to make payment to the governmental entity, the property shall be sold at public auction by the Department of General Services or by the local governmental entity which shall provide notice of such sale by one publication in a newspaper published and circulated in the city, community, or locality where the sale is to take place.

(c) The proceeds of sale pursuant to subdivision (b) shall be first distributed in accordance with the provisions of Section 11495.

SEC. 9.5. Section 11488.7 is added to the Health and Safety Code, to read:

11488.7. For the purposes of Sections 11488 to 11488.6, inclusive, "local governmental entity" means any city, county, or city and county in this state.

SEC. 10. Section 11495 of the Health and Safety Code is repealed.

SEC. 11. Section 11495 is added to the Health and Safety Code, to read:

11495. Notwithstanding Section 11502 and except as otherwise provided in Section 11499.1, in all cases where property is seized pursuant to this chapter and forfeited to the state or local governmental entity and, where necessary, sold by the Department

of General Services or local governmental entity, the money forfeited or the proceeds of sale shall be distributed by the state or local governmental entity as follows:

(a) To the bona fide or innocent purchaser, conditional sales vendor, or mortgagee of the property, if any, up to the amount of his or her interest in the property, when the court declaring the forfeiture orders a distribution to such person.

(b) The balance, if any, to accumulate, and from time to time, as the proceeds become sufficient, to be distributed as follows:

(1) To the Department of General Services or local governmental entity for all expenditures made or incurred by it in connection with the sale of the property, including expenditures for any necessary repairs, storage, or transportation of any property seized under this chapter.

(2) (A) Fifty percent of the remaining funds shall be allocated to the Department of Mental Health for primary prevention programs in accordance with Chapter 1083 of the Statutes of 1981.

(B) The remaining 50 percent shall be distributed to the local governmental entity or the state for all expenditures made or incurred by the local governmental entity's law enforcement and prosecutorial agency or by the Department of Justice, the Attorney General, or any other state agency, in connection with the forfeiture proceedings and underlying criminal conviction, including, but not limited to, personnel costs, expenditures for witness' fees, reporters' fees, transcripts, printing, traveling, undertakings, and investigation. Any remainder shall be distributed to the Controller for deposit into the Narcotics Assistance and Relinquishment by Criminal Offender Fund as provided in Section 11495.1.

All funds distributed to a local governmental entity under this subparagraph shall be distributed by that entity only to its law enforcement and prosecutorial agency to be used solely for investigation, detection, and prosecution of criminal activities. All funds distributed to the state under this subparagraph shall be allocated to the Department of Justice for investigation, detection, and prosecution of criminal activities. Funds distributed under this subparagraph shall not supplant any local funds that would, in the absence of the provisions of this subparagraph, be made available to support the law enforcement and prosecutorial efforts of local agencies.

(3) Each governmental agency seeking reimbursement under this subdivision shall notify the district attorney or the Attorney General prosecuting the forfeiture of the nature and amount of its claim. The prosecuting agency shall petition the court for these costs and the court shall order the forfeiture proceeds distributed to the local governmental entity or the state for any agency expenditures. Should the amount forfeited be insufficient to pay all expenditures claimed, the court shall order the funds distributed on a pro rata basis.

(c) For the purposes of this section, "local governmental entity"

means any city, county, or city and county in this state.

SEC. 11.5. Section 11495.1 is added to the Health and Safety Code, to read:

11495.1. There is hereby created in the General Fund the Narcotics Assistance and Relinquishment by Criminal Offender Fund. The fund shall be administered by an advisory committee which shall be appointed by the Attorney General and which shall be comprised of three police chiefs, three sheriffs, two district attorneys, one private citizen, and the Director of the Division of Law Enforcement of the Department of Justice who shall serve as the executive officer.

The money in the fund shall be available, upon appropriation by the Legislature, for distribution by the advisory committee to local and state law enforcement agencies in support of general narcotic law enforcement efforts.

SEC. 12. It is the intent of the Legislature, if this bill and Senate Bill 518 are both chaptered and become effective January 1, 1983, both bills amend Section 11470 of the Health and Safety Code, and this bill is chaptered after Senate Bill 518, that the amendments to Section 11470 proposed by both bills be given effect and incorporated in Section 11470 in the form set forth in Section 1.5 of this act. Therefore, Section 1.5 of this act shall become operative only if this bill and Senate Bill 518 are both chaptered and become effective January 1, 1983, both amend Section 11470, and this bill is chaptered after Senate Bill 518, in which case Section 1 of this act shall not become operative.

SEC. 13. No appropriation is made and no reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution or Section 2231 or 2234 of the Revenue and Taxation Code because this act provides for the reimbursement of the local agency for costs that may be incurred by it in carrying on any program or performing any service required to be carried on or performed by it by this act.

CHAPTER 1290

An act to amend Section 460 of the Penal Code, relating to burglary.

[Approved by Governor September 22, 1982. Filed with Secretary of State September 22, 1982]

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

SECTION 1. Section 460 of the Penal Code is amended to read:

460. (a) Every burglary committed in the nighttime of an inhabited dwelling house, an inhabited recreational vehicle as defined in Section 18010.5 of the Health and Safety Code, or an

inhabited trailer coach as defined in Section 635 of the Vehicle Code, or the inhabited portion of any other building, is burglary of the first degree.

(b) All other kinds of burglary are of the second degree.

(c) This section shall not be construed to supersede or affect Section 464.

SEC. 2. No appropriation is made and no reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution or Section 2231 or 2234 of the Revenue and Taxation Code because the only costs which may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, changes the definition of a crime or infraction, changes the penalty for a crime or infraction, or eliminates a crime or infraction.

CHAPTER 1291

An act to add and repeal Chapter 5 (commencing with Section 13840) to Title 6 of Part 4 of the Penal Code, relating to community crime resistance, and making an appropriation therefor.

[Approved by Governor September 22, 1982. Filed with Secretary of State September 22, 1982.]

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

SECTION 1. Chapter 5 (commencing with Section 13840) is added to Title 6 of Part 4 of the Penal Code, to read:

CHAPTER 5. CALIFORNIA COMMUNITY CRIME RESISTANCE PROGRAM

13840. The Legislature hereby finds the resistance to crime and juvenile delinquency requires the cooperation of both community and law enforcement officials; and that successful crime resistance programs involving the participation of citizen volunteers and community leaders shall be identified and given recognition. In enacting this chapter, the Legislature intends to recognize successful crime resistance and prevention programs, disseminate successful techniques and information and to encourage local agencies to involve citizen volunteers in efforts to combat crime and related problems.

13841. As used in this chapter:

(a) "Community" means city or county governments or combinations thereof.

(b) "Elderly or senior citizen" means individuals 55 years of age or older.

13842. (a) There is hereby established in the Office of Criminal

Justice Planning an advisory group entitled "The California Crime Resistance Task Force." All funds appropriated to the Office of Criminal Justice Planning for the purposes of this chapter shall be administered and disbursed by the executive director of such office and shall to the greatest extent feasible be coordinated or consolidated with federal funds that may be made available for these purposes.

(b) The California Crime Resistance Task Force, to consist of not more than 16 members, shall be composed of two elected city officials, two elected county officials, six community members, and six law enforcement officials designated by the Governor in recognition of successful endeavors in the area of crime prevention and other forms of crime resistance. When this chapter takes effect the existing members of the California Crime Resistance Task Force shall continue as full members.

(c) Members of the task force shall assist the Governor and the Office of Criminal Justice Planning in furthering citizen involvement in local law enforcement and crime resistance efforts.

(d) The California Crime Resistance Task Force shall be chaired by the Governor or his designated representative.

(e) The Executive Director of the Office of Criminal Justice Planning shall serve as secretary of the task force. He shall accept and administer on behalf of the task force any funds made available to the California Community Crime Resistance Program.

(f) Funds awarded under this program as local assistance grants shall not be subject to review as specified in Section 14780 of the Government Code.

13843. (a) Allocation and award of funds made available under this act shall be made upon application to the Office of Criminal Justice Planning. All applications shall be reviewed and evaluated by the California Crime Resistance Task Force in accordance with its established criteria, policy, and procedures. Applications deemed appropriate for funding consideration and those deemed not appropriate for funding will be transmitted, with explanatory comments to the Executive Director of the Office of Criminal Justice Planning.

(b) The Executive Director of the Office of Criminal Justice Planning is authorized to allocate and award funds to communities developing citizen involvement and crime resistance programs in compliance with the policies and criteria developed by the California Crime Resistance Task Force as set forth in Sections 13844 and 13845. Applications receiving funding under this section shall be selected from among those deemed appropriate for funding by the California Crime Resistance Task Force. Comprehensive crime prevention programs for the elderly as set forth in paragraph (1) of subdivision (a) of Section 13844 shall, in the aggregate, be included among program activities in local assistance grants receiving not less than 50 percent of funds available under this chapter.

(c) No single award of funds under this chapter shall exceed a

maximum of one hundred twenty-five thousand dollars ($125,000) for a 12-month grant period. It is intended that at least eight local project awards will be supported with funds made available under this chapter.

(d) Funds disbursed under this chapter shall not supplant local funds that would, in the absence of the California Community Crime Resistance Program, be made available to support crime resistance programs in local law enforcement agencies.

(e) Within 90 days following the effective date of this chapter and in consultation with the California Crime Resistance Task Force, the executive director shall prepare and issue written program and administrative guidelines and procedures for the California Community Crime Resistance Program, consistent with this chapter. In addition to all other formal requirements that may apply to the enactment of such guidelines and procedures, a complete and final draft of them shall be submitted no later than 60 days following the effective date of this chapter to the Chairpersons of the Criminal Justice Committee of the Assembly and the Judiciary Committee of the Senate of the California Legislature.

(f) These guidelines shall set forth the terms and conditions upon which the Office of Criminal Justice Planning is prepared to offer grants of funds pursuant to statutory authority. The guidelines do not constitute rules, regulations, orders or standards of general application.

(g) Funds disbursed under this chapter shall be supplemented with local funds constituting, at a minimum, 10 percent of the total crime resistance program budget during the initial year and 20 percent in subsequent periods of funding.

(h) Funds disbursed under this chapter may in part be used to support statewide technical assistance and crime prevention training, public awareness activities, and the operation of the California Crime Resistance Task Force.

(i) Annually, commencing November 1, 1983, the executive director shall prepare a report to the Legislature describing in detail the operation of the program and results obtained from the California Community Crime Resistance Program.

13844. (a) Local projects supported under the California Community Crime Resistance Program shall propose to implement at least three of the following activities:

(1) Comprehensive crime prevention programs for the elderly, to include but not be limited to, education, training, and victim and witness assistance programs.

(2) Efforts to promote neighborhood involvement, such as, but not limited to, block clubs and other community-based resident-sponsored anticrime programs.

(3) Home and business security inspections.

(4) Efforts to deal with domestic violence.

(5) Prevention of sexual assaults.

(6) Programs which make available to community residents and

businesses information on locking devices, building security and related crime resistance approaches.

(7) Training for peace officers in community orientation and crime prevention.

(b) Those activities which shall be included in approved programs are:

(1) The use of volunteers to assist local law enforcement agencies in implementing and conducting community crime resistance programs.

(2) The applicant's commitment to continue the citizen involvement program with local funds after they have been developed and implemented with state moneys.

13845. Criteria for selection of communities to receive funding shall include consideration of, but need not be limited to, all of the following:

(1) Compliance with subdivisions (a) and (b) of Section 13844.

(2) The rate of reported crime, by type, including, but not limited to, the seven major offenses, in the community making the application.

(3) The number of elderly citizens residing in the community.

(4) The number and ratio of elderly crime victims compared to the total senior citizen population in that community.

(5) The display of efforts of cooperation between the community and their local law enforcement agency in dealing with the crime problem.

(6) Demonstrated effort on the part of the applicant to show how funds that may be awarded under this program may be coordinated or consolidated with other local, state or federal funds available for the activities set forth in Section 13844.

(7) Applicant must be a city or county government, or combinations thereof.

13846. (a) Evaluation and monitoring of all grants made under this section shall be the responsibility of the Office of Criminal Justice Planning.

(b) Information on successful programs shall be made available and relayed to other California communities through the California Crime Resistance Task Force technical assistance procedures.

13847. This chapter may be cited as the "Rains-Levine Community Crime Prevention Act."

SEC. 2. The crime rate in California has substantially increased over a 10-year period. The rate of increase over the last five years has been 20 percent; and over the last 10 years has been at a rate of 93 percent. This represents an average increase of almost 10 percent per year. The types of crime resistance activities to be supported under this act have generally been demonstrated to have a substantial and rapid effect in reducing local crime incidence.

SEC. 3. The sum of six hundred ninety-one thousand dollars ($691,000) is hereby reappropriated from the Budget Act of 1982 to the Office of Criminal Justice Planning for allocation pursuant to

Chapter 5 (commencing with Section 13840) of Title 6 of Part 4 of the Penal Code, according to the following schedule:

(a) Six hundred twenty-five thousand dollars ($625,000) contained in Item 8100-101-001(a).

(b) Thirty-three thousand dollars ($33,000) contained in Item 8100-001-001.

(c) Thirty-three thousand dollars ($33,000) contained in Item 8100-001-890.

SEC. 4. This act shall remain in effect only until January 1, 1986, and as of that date is repealed.

CHAPTER 1292

An act to add and repeal Chapter 6 (commencing with Section 13850) to Title 6 of Part 4 of the Penal Code, relating to crimes, and making an appropriation therefor.

[Approved by Governor September 22, 1982. Filed with Secretary of State September 22, 1982.]

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

SECTION 1. Chapter 6 (commencing with Section 13850) is added to Title 6 of Part 4 of the Penal Code, to read:

CHAPTER 6. CALIFORNIA CAREER CRIMINAL APPREHENSION PROGRAM

13850. The Legislature hereby finds that a substantial and disproportionate amount of serious crime is committed against the people of California by a relatively small number of multiple and repeat felony offenders, commonly known as career criminals. In enacting this chapter, the Legislature intends to support increased efforts by local law enforcement agencies to investigate and apprehend career criminals through management, organization and operational techniques that have been demonstrated to be effective in selected cities and counties in this and other states.

13851. (a) There is hereby established in the Office of Criminal Justice Planning a program of financial and technical assistance for local law enforcement, called the California Career Criminal Apprehension Program. All funds made available to the Office of Criminal Justice Planning for the purposes of this chapter shall be administered and disbursed by the executive director of such office.

(b) The executive director is authorized to allocate and award funds to local units of government or combinations thereof, in which career criminal apprehension units are established in law enforcement agencies in substantial compliance with policies and criteria set forth in Sections 13852 and 13853.

(c) Such allocation and award of funds shall be made upon application executed by the chief law enforcement officer of the applicant unit of government and approved by the legislative body. Funds disbursed under this chapter shall not supplant local funds that would, in the absence of the California Career Criminal Apprehension Program, be made available to support the apprehension of multiple or repeat felony criminal offenders.

(d) On or before May 1, 1979, the Executive Director of the Office of Criminal Justice Planning shall prepare and issue administrative guidelines and procedures for the California Career Criminal Apprehension Program consistent with this chapter. In addition to all other formal requirements that may apply to the enactment of such guidelines and procedures, a complete and final draft shall be submitted on or before April 1, 1979, to the Chairpersons of the Criminal Justice Committee of the Assembly and the Judiciary Committee of the Senate of the California Legislature.

(e) These guidelines shall set forth the terms and conditions upon which the Office of Criminal Justice Planning is prepared to offer grants of funds pursuant to statutory authority. The guidelines do not constitute rules, regulations, orders or standards of general application.

(f) Annually, commencing October 1, 1983, the executive director shall prepare a report to the Legislature describing in detail the operation of the program and the results obtained from law enforcement career criminal apprehension programs receiving funds under this chapter.

13852. Law enforcement agencies receiving funds under this chapter shall concentrate enhanced law enforcement management efforts and resources upon individuals identified under selection criteria set forth in Section 13853. Enhanced law enforcement efforts and resources shall include, but not be limited to:

(a) Crime analysis, which is the timely collection and study of local crime data to perform all of the following:

(1) Identify evolving or existing crime patterns, particularly those involving career felony criminals.

(2) Provide investigative leads.

(3) Identify geographical areas or population groups experiencing relatively severe crime victimization, in order to improve effectiveness of crime prevention efforts.

(4) Provide supporting data for improved allocation of overall law enforcement agency resources.

(b) Improved management of patrol and investigative operations involving use of information resulting from crime analysis, may include participation in multijurisdictional investigative units and measures to increase continuity of investigative efforts from the initial patrol response through the arrest and prosecution of the offender. Such measures may include:

(1) Innovative personnel deployment techniques.

(2) Innovative techniques of case screening.

(3) Management of continuing investigations.

(4) Monitoring of investigation operations.

(c) (1) Each career criminal apprehension program, supported under this chapter, shall concentrate on the identification and arrest of career criminals and the support of their subsequent prosecution. The determination of which suspected felony offenders shall be the subject of career criminal apprehension efforts shall be in accordance with written criteria developed by the applicant law enforcement agency, consistent with Section 13853 and approved by the head district attorney. Highly qualified and experienced personnel shall be assigned to staff career criminal apprehension programs.

(2) Each career criminal apprehension program as one of its ongoing functions, shall maintain coordination with the prosecutor assigned to each case resulting from its efforts. This coordination should include, but not be limited to, case preparation, processing, and adjudication.

13853. An individual may be the subject of career criminal apprehension efforts who is under investigation for the commission or attempted commission of one or more of the following felonies: homicide, rape or sexual assault, child molestation, robbery, burglary, arson, any unlawful act relating to controlled substances in violation of Section 11351 or 11352 of the Health and Safety Code, receiving stolen property, grand theft and grand theft auto; and who is either under suspicion of having committed three or more separate felony offenses not arising out of the same transaction, or has suffered at least one conviction during the preceding 10 years for the commission or attempted commission of any felony listed in subdivision (a), or at least two convictions during the preceding 10 years for the commission or attempted commission of any felony listed in subdivision (b):

(a) Robbery, as defined in Section 211, burglary of the first degree, arson as defined in Section 451 or 452, forcible rape, sodomy or oral copulation committed with force, lewd or lascivious conduct committed upon a child, kidnapping as defined in Section 209, or murder.

(b) Grand theft, grand theft auto, receiving stolen property, robbery other than that described in subdivision (a) above, burglary of the second degree, kidnapping as defined in Section 207, assault with a deadly weapon or instrument, or any unlawful act relating to controlled substances in violation of Section 11351 or 11352 of the Health and Safety Code.

For purposes of this chapter, the 10-year periods specified in this section shall be exclusive of any time which the arrested person has served in state prison.

13854. (a) Criteria for selection of law enforcement agencies to receive career criminal apprehension program funding shall be developed in consultation with an advisory group entitled "The Career Criminal Apprehension Program Steering Committee."

(b) The Career Criminal Apprehension Program Steering Committee shall be composed of four police chiefs, three sheriffs, two district attorneys, two attorneys primarily engaged in the practice of criminal defense, one city manager and one county administrative officer, all of whom are designated by the executive director of the Office of Criminal Justice Planning, who shall provide staff services to the steering committee.

(c) The Executive Director of the Office of Criminal Justice Planning, in consultation with the steering committee, shall develop specific guidelines, and administration of the procedures for the selection of the California Career Criminal Apprehension Program whose guidelines shall include the selected criteria described in the subdivisions above.

(d) Administration of the overall program and the evaluation and monitoring of all grants made under this chapter shall be performed by the Office of Criminal Justice Planning, provided that funds expended for such functions shall not exceed 7.5 percent of the total annual amount made available for the purpose of this chapter.

(e) Local assistance grants made pursuant to this chapter shall not be subject to review pursuant to Section 14780 of the Government Code.

SEC. 2. This act shall remain in effect only until January 1, 1986, and as of that date is repealed.

SEC. 3. Notwithstanding any other provision of law, the sum of one million two hundred fifty thousand dollars ($1,250,000) appropriated for category (b) of Item 8100-101-001 of the Budget Act of 1982 and described in Provision 2 of that item, and any funds appropriated by Item 8100-001-001 for the purpose of administering those funds, are hereby reappropriated to the Office of Criminal Justice Planning for allocation pursuant to Chapter 6 (commencing with Section 13850) of Title 6 of Part 4 of the Penal Code as added by this act.

CHAPTER 1293

An act to amend Section 213 of, and to add Section 213.5 to, the Penal Code, relating to crimes, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 22, 1982. Filed with Secretary of State September 22, 1982.]

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

SECTION 1. Section 213 of the Penal Code is amended to read:

213. Except as provided in Sections 211a and 213.5, robbery is punishable by imprisonment in the state prison for two, three, or five years.

Notwithstanding Section 664, attempted robbery is punishable by imprisonment in the state prison.

SEC. 2. Section 213.5 is added to the Penal Code, to read:

213.5. Every robbery perpetrated in an inhabited dwelling house or trailer coach as defined in the Vehicle Code is punishable by imprisonment in the state prison for three, four, or six years.

SEC. 3. No appropriation is made and no reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution or Section 2231 or 2234 of the Revenue and Taxation Code because the only costs which may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, changes the definition of a crime or infraction, changes the penalty for a crime or infraction, or eliminates a crime or infraction.

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:

The existing provisions of law are inequitable relative to the sentences for residential burglary and have contributed to the dramatic increases in violent residential burglaries. In order to remedy this situation as soon as possible, it is necessary that this act become effective immediately.

CHAPTER 1294

An act to amend Section 462 of the Penal Code, and to amend Sections 2 and 4 of Chapter 42 of the Statutes of 1980, relating to burglary, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 22, 1982. Filed with Secretary of State September 22, 1982.]

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

SECTION 1. Section 462 of the Penal Code is amended to read:

462. (a) Except in unusual cases where the interests of justice would best be served if the person is granted probation, probation shall not be granted to any person who is convicted of a burglary in the nighttime or a felony burglary in the daytime, of an inhabited dwelling house or trailer coach, as defined in Section 635 of the Vehicle Code, or the inhabited portion of any other building.

(b) In any case in which a person is convicted of misdemeanor burglary in the daytime of an inhabited dwelling house or trailer coach, as defined in Section 635 of the Vehicle Code, or the inhabited portion of any other building, such person shall be confined in the county jail for not less than 90 days nor more than one year except

in unusual cases where the interests of justice would best be served by the granting of probation.

(c) If the court grants probation under subdivision (a) or (b), it shall specify the reason or reasons for such order on the court record.

SEC. 2. Section 2 of Chapter 42 of the Statutes of 1980 is amended to read:

Sec. 2. By April 1, 1984, the Legislative Analyst shall report to the Legislature as to the effects of this enactment on the sentencing of residential burglars and its impact on the commission of such burglaries.

SEC. 3. Section 4 of Chapter 42 of the Statutes of 1980 is amended to read:

Sec. 4. This act shall remain in effect only until January 1, 1985, and as of such date is repealed, unless a later enacted statute, which is chaptered before January 1, 1985, deletes or extends such date.

SEC. 4. No appropriation is made and no reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution or Section 2231 or 2234 of the Revenue and Taxation Code because the only costs which may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, changes the definition of a crime or infraction, changes the penalty for a crime or infraction, or eliminates a crime or infraction.

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 that the benefits of Chapter 42 of the Statutes of 1980 will continue to accrue to the people of California, it is necessary that this act take effect immediately.

CHAPTER 1295

An act to amend Section 676 of the Welfare and Institutions Code, relating to juvenile court law.

[Approved by Governor September 22, 1982. Filed with Secretary of State September 22, 1982.]

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

SECTION 1. Section 676 of the Welfare and Institutions Code is amended to read:

676. (a) Unless requested by the minor concerning whom the petition has been filed and any parent or guardian present, the public shall not be admitted to a juvenile court hearing. The judge or referee may nevertheless admit such persons as he deems to have a direct and legitimate interest in the particular case or the work of

the court. However, except as provided in subdivision (b), members of the public shall be admitted, on the same basis as they may be admitted to trials in a court of criminal jurisdiction, to hearings concerning petitions filed pursuant to Section 602 alleging that a minor is a person described in Section 602 by reason of the violation of any one of the following offenses:

(1) Murder.

(2) Arson of an inhabited building.

(3) Robbery while armed with a dangerous or deadly weapon.

(4) Rape with force or violence or threat of great bodily harm.

(5) Sodomy by force, violence, duress, menace, or threat of great bodily harm.

(6) Oral copulation by force, violence, duress, menace, or threat of great bodily harm.

(7) Any offense specified in Section 289 of the Penal Code.

(8) Kidnapping for ransom.

(9) Kidnapping for purpose of robbery.

(10) Kidnapping with bodily harm.

(11) Assault with intent to murder or attempted murder.

(12) Assault with a firearm or destructive device.

(13) Assault by any means of force likely to produce great bodily injury.

(14) Discharge of a firearm into an inhabited or occupied building.

(15) Any offense described in Section 1203.09 of the Penal Code.

(16) Any offense described in Section 12022.5 of the Penal Code committed by a minor 16 years of age or older.

(17) Any felony offense in which a minor 16 years of age or older personally used a weapon listed in subdivision (a) of Section 12020 of the Penal Code.

(18) Burglary in the nighttime or a felony burglary in the daytime, of an inhabited dwelling house or trailer coach, as defined in Section 635 of the Vehicle Code, or the inhabited portion of any other building, if the minor previously has been adjudged a ward of the court by reason of the commission of any offense listed in this section, including an offense listed in this paragraph.

(b) Where the petition filed alleges that the minor is a person described in Section 602 by reason of the commission of rape with force or violence or great bodily harm; sodomy by force, violence, duress, menace, or threat of great bodily harm; oral copulation by force, violence, duress, menace, or threat of great bodily harm; or any offense specified in Section 289 of the Penal Code, members of the public shall not be admitted to the hearing in either of the following instances:

(1) Upon a motion for a closed hearing by the district attorney, who shall make the motion if so requested by the victim.

(2) During the victim's testimony, if, at the time of the offense the victim was under 16 years of age.

CHAPTER 1296

An act to add Section 1170.8 to the Penal Code, relating to felonies.

[Approved by Governor September 22, 1982. Filed with Secretary of State September 22, 1982]

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

SECTION 1. Section 1170.8 is added to the Penal Code, to read:

1170.8. (a) Notwithstanding the provisions of Section 1170.1 relating to the maximum total of subordinate terms for consecutive offenses which are not "violent felonies," the total of the subordinate terms for consecutive offenses which are all residential burglaries may exceed five years but shall not exceed 10 years.

(b) Notwithstanding the provisions of Section 1170.1, the term of imprisonment may exceed twice the number of years imposed by the trial court as the base term pursuant to subdivision (b) of Section 1170 if the defendant stands convicted of at least two residential burglaries.

(c) As used in this section, "residential burglary" means burglary in the nighttime or a felony burglary in the daytime, of an inhabited dwelling house or trailer coach, as defined in Section 635 of the Vehicle Code, or the inhabited portion of any other building.

CHAPTER 1297

An act to amend Section 460 of the Penal Code, relating to burglary.

[Approved by Governor September 22, 1982. Filed with Secretary of State September 22, 1982.]

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

SECTION 1. Section 460 of the Penal Code is amended to read:

460. 1. Every burglary of an inhabited dwelling house or trailer coach as defined by the Vehicle Code, or the inhabited portion of any other building, is burglary of the first degree.

2. All other kinds of burglary are of the second degree.

3. This section shall not be construed to supersede or affect Section 464 of the Penal Code.

SEC. 2. No appropriation is made and no reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution or Section 2231 or 2234 of the Revenue and Taxation Code because the only costs which may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, changes the definition of a crime

or infraction, changes the penalty for a crime or infraction, or eliminates a crime or infraction.

CHAPTER 1298

An act to amend Sections 52851, 52852.5, 52853, 52858, 52859, 52860, and 52870 of, to add Section 52863 to, to add Article 3 (commencing with Section 33050) to Chapter 1 of Part 20 and Article 4 (commencing with Section 54700) to Chapter 9 of Part 29 of, to repeal Article 2 (commencing with Section 52820) and Article 6 (commencing with Section 52890) of Chapter 12 of Part 28 of, to add and repeal Section 52857.5 of, to repeal Section 54003.5 of, and to repeal and add Section 52887 of, the Education Code, relating to education.

[Approved by Governor September 22, 1982. Filed with Secretary of State September 23, 1982.]

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

SECTION 1. Article 3 (commencing with Section 33050) is added to Chapter 1 of Part 20 of the Education Code, to read:

Article 3. Waiver Authority

33050. The governing board of a school district may, on a districtwide basis or on behalf of one or more of its schools, after a public hearing on the matter, request the State Board of Education to waive all or part of any section of this code, except:

(1) The provisions of Sections 52163, 52165, 52166, 52178, Part 13 (commencing with Section 22000), or Article 3 (commencing with Section 52850) of Chapter 12 of Part 28.

(2) The identification and assessment criteria relating to any categorical aid program, including Sections 52164.1 and 52164.6.

(3) The provisions specified pursuant to Section 52033.

(4) That any waiver of provisions related to the programs identified in Section 52851 shall be granted only pursuant to the provisions of Article 3 (commencing with Section 52850) of Chapter 12 of Part 28.

(5) That the waiver of an advisory committee required by law shall be granted only pursuant to the provisions of Article 4 (commencing with Section 52870) of Chapter 12 of Part 28.

33051. (a) The State Board of Education shall approve any and all requests for waivers except in those cases where the board specifically finds any of the following:

(1) The educational needs of the pupils are not adequately addressed.

(2) The waiver affects a program which requires the existence of

a school site council and the school site council did not approve the request.

(3) The appropriate councils or advisory committees, including bilingual advisory committees, did not have an adequate opportunity to review the request and the request did not include a written summary of any objections to the request by the councils or advisory committees.

(4) Pupil or school personnel protections are jeopardized.

(5) Guarantees of parental involvement are jeopardized.

(6) The request would substantially increase state costs.

(7) The exclusive representative of employees, if any, as provided in Chapter 10.7 (commencing with Section 3540) of Division 4 of Title 1 of the Government Code, was not a participant in the development of the waiver.

(b) A waiver shall be approved or renewed by the State Board of Education prior to its implementation for the period of time requested by the governing board of a district, but not to exceed two years.

33052. If formal action by the State Board of Education on a waiver request is not taken later than the second regular meeting of the board following receipt of a complete and documented waiver request by the State Department of Education, the waiver shall be deemed approved for one year, commencing the first day of the following month.

33053. The State Department of Education shall annually submit a report to the Governor, Legislature, State Board of Education, and make the report available to the superintendent and board president of each school district and county office of education. This report shall include a description of the number and types of waivers requested of the board, the actions of the board on those requests, and sources of further information on existing or possible waivers.

SEC. 2. Article 2 (commencing with Section 52820) of Chapter 12 of Part 28 of the Education Code is repealed.

SEC. 3. Section 52851 of the Education Code is amended to read:

52851. (a) A school district and school may apply to receive funds allocated pursuant to Article 4 (commencing with Section 8750) of Chapter 4 of Part 6, Article 5 (commencing with Section 44520) of Chapter 3 and Article 1 (commencing with Section 44670) of Chapter 3.1 of Part 25, Article 15 (commencing with Section 51870) of Chapter 5, Chapter 6 (commencing with Section 52000), Chapter 8 (commencing with Section 52200), and Article 2 (commencing with Section 52340) of Chapter 9 of this part, Chapter 1 (commencing with Section 54000) and Chapter 2 (commencing with Section 54100) of Part 29, and Part 30 (commencing with Section 56000), and Chapter 1 (commencing with Section 500) of Part 2 of Division 2 of the Military and Veterans Code, without complying with the provisions of those statutes or the related California Administrative Code regulations, provided that the school and school district meet the criteria established in this article.

(b) In no event shall subdivision (a) be construed to include bilingual education programs established pursuant to Article 3 (commencing with Section 52160) of Chapter 7 within the provisions of this article.

SEC. 4. Section 52852.5 of the Education Code is amended to read:

52852.5. The governing board of each school district shall:

(a) Ensure that the principal of every school receives information covering the provisions of this article, and provides such information to teachers, other school personnel, parents, and, in secondary schools, pupils.

(b) Adopt policies to ensure that, prior to a school beginning to develop a plan pursuant to Section 52853, a school site council as described in Section 52852 is established at the school site to consider whether or not it wishes the local school to participate in the school-based coordination program. The board shall ensure that all interested persons, including, but not limited to, the principal, teachers, other school personnel, parents, and, in secondary schools, pupils have an opportunity to meet in public to establish the council.

(c) Ensure that funds coordinated pursuant to this article are used to supplement, not supplant, existing state and local fiscal efforts and that schools which receive the funds shall have base expenditures comparable to nonparticipating schools.

SEC. 5. Section 52853 of the Education Code is amended to read:

52853. The school site council shall develop a school plan which shall include:

(a) Curricula, instructional strategies and materials responsive to the individual needs and learning styles of each pupil.

(b) Instructional and auxiliary services to meet the special needs of non-English-speaking or limited-English-speaking pupils, including instruction in a language these pupils understand; educationally disadvantaged pupils; gifted and talented pupils; and pupils with exceptional needs.

(c) A staff development program for teachers, other school personnel, paraprofessionals, and volunteers, including those participating in special programs.

(d) Ongoing evaluation of the educational program of the school.

(e) Other activities and objectives as established by the council.

(f) The proposed expenditures of funds available to the school through the programs described in Section 52851.

The school site council shall annually review the school plan, establish a new budget, and if necessary, make other modifications in the plan to reflect changing needs and priorities.

SEC. 6. Section 52857.5 is added to the Education Code, to read:

52857.5. Notwithstanding any other provision of this article, a school district participating in an evaluation conducted pursuant to Section 52213 shall not include within the provisions of this article funds allocated pursuant to Chapter 8 (commencing with Section 52200) of Part 28.

This section shall remain in effect only until June 30, 1983, and as of that date is repealed, unless a later enacted statute, which is chaptered before June 30, 1983, deletes or extends that date.

SEC. 7. Section 52858 of the Education Code is amended to read:

52858. If the school district and school choose to include within the provisions of this article, funds allocated pursuant to Chapter 1 (commencing with Section 54000) of Part 29, the school district shall: (a) if the number of educationally disadvantaged pupils in the school is less than 75 percent of the school's enrollment, ensure that there is state and local funding in the school available for allocation pursuant to subdivision (f) of Section 52853 which is equal to or greater than the per pupil amount allocated to that school per disadvantaged pupil through the economic impact aid program multiplied times 75 percent of the school's enrollment, (b) continue to maintain any school or district advisory committees required pursuant to Chapter 1, and (c) continue to distribute funds to schools in accordance with Sections 54004.3, 54004.5, and 54004.7 and regulations adopted which pertain to those sections.

SEC. 8. Section 52859 of the Education Code is amended to read:

52859. (a) If a school district and school choose to include within the provisions of this article funds allocated pursuant to Chapter 2 (commencing with Section 54100) of Part 29, the school district and school shall annually receive funding at the rate per specialist allocated statewide multiplied times the number of specialists approved for that school at the time it was approved to operate programs pursuant to this article, shall use these funds to employ a reading specialist who meets the criteria established pursuant to Chapter 2 (commencing with Section 54100) of Part 29, and shall comply with Section 54123.

(b) In no event shall funds coordinated pursuant to this article be used to pay for the local share of costs associated with the employment of reading specialists funded pursuant to this section.

SEC. 9. Section 52860 of the Education Code is amended to read:

52860. If a school district and school choose to include within the provisions of this article funds allocated pursuant to Part 30 (commencing with Section 56000), the school district shall comply with all requirements of that part, except that: (1) resource specialist program services and designated instruction and services may be provided to pupils who have not been identified as individuals with exceptional needs, provided that all identified individuals with exceptional needs are appropriately served; (2) programs for individuals with exceptional needs shall be under the direction of credentialed special education personnel, but services may be provided entirely by personnel not funded by special education moneys, provided that all services specified in the individualized education program are received by the pupil.

SEC. 10. Section 52863 is added to the Education Code, to read:

52863. Any governing board, on behalf of a school site council, may request the State Board of Education to grant a waiver of any

provision of this article. The State Board of Education may grant a request when it finds that the failure to do so would hinder the implementation or maintenance of a successful school-based coordinated program.

If the State Board of Education approves a waiver request, the waiver shall apply only to the school or schools which requested the waiver and shall be effective for no more than two years. The State Board of Education may renew a waiver request.

SEC. 11. Section 52870 of the Education Code is amended to read:

52870. Notwithstanding any other provisions of this chapter, if a school district and school participate in the school-based program coordination, any school site advisory committee may elect to designate the school site council to function as that advisory committee for all purposes required by statute or regulations for a period of up to two years.

This section shall not apply to any advisory committee required pursuant to federal statute or regulation.

SEC. 12. Section 52887 of the Education Code is repealed.

SEC. 13. Section 52887 is added to the Education Code, to read:

52887. (a) Any two or more school districts, each of which receive funding for educational programs pursuant to a consolidated application form prepared by the State Board of Education, may join together or join together with one or more county superintendents of schools to apply to the State Department of Education to become a consortium for conducting program reviews of educational programs utilizing consolidated application funding or for providing program development assistance and reviewing school site plans, or both.

(b) The State Board of Education shall prescribe the form and manner of the consortium application.

(c) To ensure adequate program and plan review, consistency, or application of compliance and quality criteria, consortia review personnel shall use review instruments and processes and receive training approved by the State Department of Education.

(d) The majority of persons participating in program reviews shall be persons who are not in the employment of the district under review.

SEC. 14. Article 6 (commencing with Section 52890) of Chapter 12 of Part 28 of the Education Code is repealed.

SEC. 15. Section 54003.5 of the Education Code is repealed.

SEC. 16. Article 4 (commencing with Section 54700) is added to Chapter 9 of Part 29 of the Education Code, to read:

Article 4. University and College Opportunities Program

54700. It is the intent and purpose of the Legislature that the University and College Opportunities Program provided for in this article shall be directed to improve the preparation of elementary and secondary school pupils for their successful matriculation

through courses of study at two-year and four-year institutions of postsecondary education.

It is the intent and purpose of the Legislature that school districts be authorized to establish college preparatory programs targeted towards pupils from groups which are underrepresented in institutions of postsecondary education. It is further the intent of the Legislature that funding for these programs shall be derived from existing funds apportioned to participating school districts so as to result in no additional costs to the state. It is further the intent of the Legislature that participating school districts shall be encouraged to coordinate and utilize new and existing resources and service networks available to them and that they solicit the participation of the California Community Colleges, the California State University and Colleges, the University of California, and other public and private sector entities.

54701. Any school district may apply to establish a University and College Opportunities Program with existing local or categorical funds. Any funds which may be donated by businesses or foundations may be used by participating districts to establish science and math regional centers which provide high quality science and mathematics instruction not normally available in regular school, to establish summer programs to provide academic enrichment in math, science, and English, and career awareness programs in professions requiring math and science backgrounds. Participation on the part of any school district shall be voluntary. Districts currently participating in existing categorical aid programs may utilize existing plans developed for these programs to describe their University and College Opportunities Program. The existing district plans and school plans submitted in the applications adopted by the State Board of Education pursuant to the rules and regulations adopted under Section 54704 shall contain a description of the University and College Opportunities Program, including the following:

(a) A description of the proposed program administration, staff training, and pupil identification and assessment components.

(b) A description of the comprehensive program, which shall be of sufficient size and scope to meet the intent of this article and which shall include, but not be limited to, the following criteria:

(1) Assurances that the instructional program will maintain a sound curriculum for pupils, particularly for pupils from those underrepresented groups identified pursuant to the passage of Resolution Chapter 212 of the Statutes of 1974, to meet the minimum university requirements to excel in math, science, and other technology-based careers.

(2) Academic advising to assist pupils who desire to enter into careers in the fields of math and science to select classes that best prepare them for study at the university and college levels in these fields.

(3) College counseling to assist pupils in preparing the necessary

application forms for college admission, to procure scholarships and other financial aid, and to meet all deadlines for these programs.

(4) Career counseling to inform pupils of the opportunities and options available to them within the mathematics-based professions, such as the fields of engineering, business administration, and computer sciences.

(5) The establishment of tutorial programs and study groups to enable pupils to develop the study skills necessary to compete successfully at the postsecondary level.

(6) The establishment and operation of summer programs to provide academic enrichment in mathematics, science, and English as well as providing an orientation to those professions requiring a background in mathematics.

(7) The development of strategies for parental involvement.

(8) The development of appropriate pupil and staff incentive awards.

(9) The development of a system for collecting follow-up data on pupils who participate in the program.

(10) Assurances that the educational needs of pupils intended to be served by categorical funds used by this program will continue to be addressed.

(c) A description of the district's plans for the participation of appropriate advisory groups, representatives from postsecondary institutions, representatives from private organizations and, whenever feasible, Mathematics, Engineering, Science Achievement (MESA) coordinators.

54702. School districts participating in the University and College Opportunities Program may enter into contractual agreements with neighboring community colleges, public and private universities and colleges, and other private and public sector entities for the utilization of facilities and services necessary to operate a University and College Opportunities Program. Participating districts may also enter into agreements with other districts to establish cooperative programs or to operate regional centers for instruction in the math- and science-related fields.

54703. The Superintendent of Public Instruction shall prepare rules and regulations necessary to implement the provisions of this article, including rules and regulations which:

(a) Prescribe the procedure by which a district shall identify pupils who are traditionally underrepresented in higher education.

(b) Provide for the rendering of technical assistance which, upon request, shall be available to enable school districts and schools to design, implement, or evaluate the University and College Opportunities Programs authorized by this article.

(c) Identify effective practices regarding, but not necessarily limited to, University and College Opportunities Programs and which disseminate information regarding these programs to each participating school district and county superintendent of schools.

(d) Develop, in conjunction with the California Postsecondary

Education Commission, common data elements, which can be used by secondary and postsecondary educators to assess and improve program performance.

54704. The State Board of Education shall adopt rules and regulations necessary to implement the provisions of this article on or before March 1, 1983.

SEC. 17. The Legislature hereby finds and declares that the waiver authority granted to the State Board of Education pursuant to Chapter 100 of the Statutes of 1981 is not limited to those programs specified in Chapter 12 (commencing with Section 52800) of Part 28 of the Education Code.

Therefore, the changes made by Sections 1 and 2 of this act, which renumber the waiver provisions to clarify the authority of the State Board of Education, do not constitute a change in, but are declaratory of, existing law.

CHAPTER 1299

An act to amend Sections 94303, 94311, and 94312 of the Education Code, relating to private postsecondary education.

[Approved by Governor September 22, 1982 Filed with Secretary of State September 23, 1982.]

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

SECTION 1. Section 94303 of the Education Code is amended to read:

94303. The following education and educational institutions, and these only, are exempted from the provisions of this chapter:

(a) Education solely avocational or recreational in nature, and institutions offering this education exclusively.

(b) A nonprofit institution owned, controlled, and operated and maintained by a bona fide church or religious denomination if the education is limited to instructions in the principles of that church or denomination, or to courses offered pursuant to Section 2789 of the Business and Professions Code, and the diploma or degree is limited to evidence of completion of that education, and the meritorious recognition upon which any honorary degree is conferred is limited to the principles of that church or denomination.

(c) Institutions exclusively offering instruction at any or all levels from preschool through 12th grade.

(d) Postsecondary educational institutions established, operated, and governed by the federal government or by this state or its political subdivisions.

(e) Education sponsored by a bona fide trade, business, professional, or fraternal organization predominantly for that organization's membership.

(f) Except for the provisions of subdivision (b) of Section 94311; Sections 94312, 94320, 94321, and 94332; paragraph 1 of subdivision (a) and subdivisions (b) to (f), inclusive, of Section 94333; Sections 94335 to 94339, inclusive; 94342; and 94343, institutions or persons approved by the Federal Aviation Administration, or its successor agency, offering flight education and instruction.

SEC. 2. Section 94311 of the Education Code is amended to read:

94311. No postsecondary educational institution may offer courses of education leading to educational, professional, technological, or vocational objectives unless such institution has been approved or authorized by the superintendent as meeting at least one of the following requirements:

(a) A hospital licensed under the provisions of Article 1 (commencing with Section 1250) of Chapter 2 of Division 2 of the Health and Safety Code and issues diplomas only in connection with the operation of a hospital.

(b) An institution which is accredited, approved, or licensed by a state board or agency as a school, or any person or school certified for flight instruction by the Federal Aviation Administration, or its successor agency, and which issues or confers diplomas in the profession, vocation or occupation controlled by the board or agency accrediting, approving, or licensing it. However, this subdivision shall not be construed as authorizing the issuing of a diploma which is not customarily granted for the training given and which is limited to the profession, vocation or occupation controlled by the accrediting, approving, or licensing board or agency. Authorization to operate pursuant to this subdivision shall only be denied if the institution does not possess a valid accreditation, approval, or licensure by a California state agency, or if the person or school providing flight instruction does not possess a valid certification issued by the Federal Aviation Administration, or its successor agency. Institutions or persons approved by the Federal Aviation Administration, or its successor agency, which offer flight education and instruction shall submit to the Superintendent of Public Instruction copies of those materials required pursuant to Sections 141.51 through 141.57 of Title 14 of the Code of Federal Regulations and those materials described in subdivision (a) of Section 94330 which are used by the institution or individual.

(c) An institution which at the time of the issuance of a diploma, has accreditation of the institution, program or specific course of study upon which the diploma is based by a national or applicable regional accrediting agency recognized by the United States Department of Education, and the administrative head of the institution has filed with the superintendent an annual affidavit verifying that the institution, program, or each course of study for which a diploma is issued is so accredited.

(d) An institution which has been approved by the superintendent as meeting the following minimum criteria:

(1) That the quality and content of each course or program of

instruction, training, or study are such as may reasonably and adequately achieve the stated objective for which the course or program is offered.

(2) There is in the institution adequate space, equipment, instructional material, and instructor personnel to provide training of the quality needed to attain the object of that particular course.

(3) Every instructor and administrator holds an applicable and valid Certificate of Authorization for Service issued by the superintendent in the specified competence area in which the individual will serve. Certificates may be issued to administrators upon the superintendent's determination that the applicant is of good moral character and to instructors upon the superintendent's determination that the applicant is of good moral character and possesses adequate academic, experiential, and professional qualifications.

(4) The institution maintains written records of the student's previous education and training with recognition where applicable.

(5) A copy of the course outline, schedule of tuition, fees and other charges, regulations pertaining to tardiness, absence, grading policy and rules of operation and conduct is given to students upon enrollment.

(6) The institution maintains adequate records to show attendance, progress, and grades.

(7) The institution complies with all local city, county, municipal, state, and federal regulations such as fire, building, and sanitation codes. The superintendent may require evidence of compliance.

(8) The institution does not exceed enrollment which the facilities and equipment of the institution can reasonably handle.

(9) The institution's administrator, director, owner, and instructors are of good reputation and character.

(10) Application for such approval shall be made in writing on proper application forms. Pending final approval, the superintendent may issue a provisional approval upon submission of the complete application.

Within 30 days following receipt of application, and prior to the issuance of either provisional or final approval, a representative of the superintendent shall personally inspect the school and verify the application. If the visitation does not occur within 30 days following receipt of the application, the institution shall automatically receive a provisional approval. Within 30 days following visitation, either final approval, provisional approval, or denial of approval shall be given to each application. If the superintendent does not act within 30 days following visitation, the application from the institution will automatically receive approval. If all information is in order, the superintendent may authorize provisional approval. A provisional approval shall not exceed a period of one year, subject to prior termination or conversion to annual approval. A provisional approval may not be extended.

SEC. 3. Section 94312 of the Education Code is amended to read:

94312. All institutions authorized, or approved, under this chapter shall be maintained and operated, or in the case of a new institution, shall demonstrate that it will be maintained and operated, in compliance with all of the following minimum standards:

(a) That the institution is financially capable of fulfilling its commitments to its students.

(b) That the institution and its agents do not utilize advertising of any type which is erroneous or misleading, either by actual statement, omission, or intimation.

(c) That the institution designates an agent for service of process within this state.

(d) That the institution has and maintains a fair and equitable policy in reference to refund of the unused portion of tuition fees and other charges in the event the student fails to enter the course, or withdraws therefrom at any time prior to completion of the course. Such a policy shall be in compliance with the minimum standard of refunds as adopted by the superintendent. The superintendent shall take into consideration the length and character of the educational program in determining standards for refunds.

(e) That any written contract or agreement signed by a prospective student away from the institution premises will not become operative until the student makes an initial visit to the institution. The provision applies only in those situations when the student begins payment on tuition charges (beyond the registration fee) prior to arriving at the campus. The student is obligated to visit the campus at least six days prior to the start of classes. The school officials are obligated to provide the student with a thorough tour of the campus facilities and to place a written statement, signed by the student, in the student's file to verify that the visitation and campus tour were provided. Following the visitation to the campus, the student will have a three-day "cooling off" period to void the contract with no money to be retained by the school as provided in subdivision (d). If the student does not visit the campus after signing the contract, the "cooling off" period will automatically begin six days prior to the start of classes. The student may waive the right to visit the campus at any time after signing the contract. This provision does not apply to correspondence schools or other mail study institutions. The superintendent shall take into consideration the character of the educational program in determining if other types of institutions should also be excluded from this provision.

(f) That any written contract or agreement for a course of study with an institution shall include on the first page of such agreement or contract, in 12-point boldface print or larger, the following statement:

"Any questions or problems concerning this institution which have not been satisfactorily answered or resolved by the institution should be directed to the Superintendent of Public Instruction,

State Department of Education, Sacramento, California 95814."

In addition, such written contracts or agreements shall specify, in underlined capital letters on the same page of the contract or agreement in which the student's signature is required, the total financial obligation that the student will incur upon enrollment in the institution in numbers or letters.

(g) That neither the institution nor its agents engage in sales, collection, credit, or other practices of any type which are false, deceptive, misleading, or unfair.

(h) That the institution makes available to students and other interested persons a catalog or brochure containing information describing the courses offered, program objectives, length of program, faculty and their qualifications, schedule of tuition, fees, and all other charges and expenses necessary for completion of the course of study, cancellation and refund policies, the total cost of tuition over the entire period, and (for vocational training programs for which specific placement claims are made) placement data, as well as such other material facts concerning the institution and the program or course of instruction, as are reasonably likely to affect the decision of the student to enroll therein, as specified by the superintendent and defined in the rules and regulations; and that such information is made available to prospective students prior to enrollment.

(i) That upon satisfactory completion of training, the student is given an appropriate degree or diploma by the institution, indicating that the course or courses of instruction or study have been satisfactorily completed by the student.

(j) That adequate and accurate records are maintained by the institution, in accordance with regulations adopted by the superintendent, and that satisfactory standards are enforced relating to attendance, progress, and performance.

(k) That the institution maintains current records for a period of not less than five years at its principal place of business within the State of California, immediately available during normal business hours, for inspection by the superintendent or the Attorney General of California showing all of the following:

(1) The names and addresses, both local and home, including city and street, of each of its students.

(2) The courses of study offered by the institution.

(3) The names and addresses, including city and street, of its faculty, together with a record of the educational qualifications of each.

(4) The degrees or diplomas and honorary degrees and diplomas granted, the date of granting, together with the curricula upon which the diplomas and degrees were based.

(*l*) Accreditation by a national or applicable regional accrediting agency recognized by the United States Department of Education shall be accepted by the superintendent as evidence of compliance

with the minimum standards established by the accrediting or licensing agency, and therefore as evidence of compliance with the minimum standards specified in the provisions of this section. If there is substantial evidence of violation of the standards established by the responsible agency, however, the superintendent may require such further evidence and make such further investigation as may be necessary.

(m) That the institution provides instruction as part of its educational program. Instruction shall include any specific, formal arrangement by an institution for its enrollees to participate in learning experiences wherein the institution's faculty or contracted instructors present a planned curriculum appropriate to the enrollee's educational program.

(n) Institutions licensed solely under the provisions of subdivision (b) of Section 94311, with the exception of those offering flight instruction, shall comply with subdivisions (b), (e), (g), (h), (i), and (j). The responsibility for monitoring and enforcing institutional compliance with these minimum standards shall be with the state board or agency responsible for licensing the school. Institutions certified to offer flight instruction by the Federal Aviation Administration, or its successor agency, shall comply with the requirements of all subdivisions of this section. The responsibility for monitoring and enforcing institutional compliance for these institutions shall be with the Superintendent of Public Instruction.

CHAPTER 1300

An act to amend Sections 70 and 243 of the Penal Code, relating to peace officers.

[Approved by Governor September 22, 1982 Filed with Secretary of State September 23, 1982.]

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

SECTION 1. Section 70 of the Penal Code is amended to read:

70. Every executive or ministerial officer, employee or appointee of the State of California, county or city therein or political subdivision thereof, who knowingly asks, receives or agrees to receive any emolument, gratuity or reward, or any promise thereof excepting such as may be authorized by law for doing an official act, is guilty of a misdemeanor.

This section shall not be construed to prohibit deputy registrars of voters from receiving compensation when authorized by local ordinance from any candidate, political committee, or statewide political organization for securing the registration of voters.

Nothing contained in this section shall preclude a peace officer, as defined in Chapter 4.5 (commencing with Section 830) of Title 3 of

Part 2, from engaging in, or being employed in, casual or part-time employment as a private security guard or patrolman for a public entity while off duty from his or her principal employment and outside his or her regular employment as a peace officer of a state or local agency, and exercising the powers of a peace officer concurrently with such employment, provided that such peace officer is in a police uniform and subject to reasonable rules and regulations of the agency for which he or she is a peace officer and within the provisions of subdivisions (*l*) and (m) of Section 7522 of the Business and Professions Code. Notwithstanding the above provisions, any and all civil and criminal liability arising out of the secondary employment of any peace officer shall be borne by such officer's secondary employer. It is the intent of the Legislature by this paragraph to abrogate the holdings in People v. Corey, 21 Cal. 3d 738, and Cervantez v. J.C. Penney Co., 24 Cal. 3d 579, to reinstate prior judicial interpretations of this section as they relate to criminal sanctions for assault on peace officers who are employed, on a part-time or casual basis, by a public entity, while wearing a police uniform as private security guards or patrolmen, and to allow the exercise of peace officer powers concurrently with such employment.

SEC. 2. Section 243 of the Penal Code is amended to read:

243. (a) A battery is punishable by a fine of not exceeding one thousand dollars ($1,000), or by imprisonment in the county jail not exceeding six months, or by both such fine and imprisonment.

(b) When a battery is committed against the person of a peace officer, firefighter, emergency medical technician, or mobile intensive care paramedic, engaged in the performance of his or her duties, whether on or off duty, including when the peace officer is in a police uniform and is concurrently performing the duties required of him or her as a peace officer while also employed in a private capacity for a public entity as a part-time or casual private security guard or patrolman, or a physician or nurse engaged in rendering emergency medical care outside a hospital, clinic, or other health care facility, and the person committing the offense knows or reasonably should know that such victim is a peace officer, firefighter, emergency medical technician, or mobile intensive care paramedic, engaged in the performance of his or her duties, or a physician or nurse engaged in rendering emergency medical care, the battery is punishable by a fine not exceeding one thousand dollars ($1,000), or by imprisonment in the county jail not exceeding one year, or by both such fine and imprisonment.

(c) When a battery is committed against a peace officer, firefighter, emergency medical technician, or mobile intensive care paramedic, engaged in the performance of his or her duties, whether on or off duty, including when the peace officer is in a police uniform and is concurrently performing the duties required of him or her as a peace officer while also employed in a private capacity for a public entity as a part-time or casual private security guard or patrolman,

or a physician or nurse engaged in rendering emergency medical care outside a hospital, clinic, or other health care facility, and the person committing the offense knows or reasonably should know that such victim is a peace officer, firefighter, emergency medical technician, or mobile intensive care paramedic, engaged in the performance of his or her duties, or a physician or nurse engaged in rendering emergency medical care, and an injury is inflicted on such victim, the battery is punishable by imprisonment in the county jail for a period of not more than one year, or by a fine of not more than one thousand dollars ($1,000), or by imprisonment in the state prison for 16 months, or two or three years.

(d) When a battery is committed against any person and serious bodily injury is inflicted on the person, the battery is punishable by imprisonment in the county jail for a period of not more than one year or imprisonment in the state prison for two, three, or four years.

(e) As used in this section:

(1) "Peace officer" means any person defined in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2.

(2) "Emergency medical technician" means a person possessing a valid course completion certificate from a program approved by the State Department of Health Services for the medical training and education of ambulance personnel, and who meets the standards of Division 2.5 (commencing with Section 1797) of the Health and Safety Code.

(3) "Mobile intensive care paramedic" means any person who meets the standards set forth in Section 1481 of, and Division 2.5 (commencing with Section 1797) of, the Health and Safety Code.

(4) "Nurse" means a person who meets the standards of Division 2.5 (commencing with Section 1797) of the Health and Safety Code.

(5) "Serious bodily injury" means a serious impairment of physical condition, including, but not limited to, the following: loss of consciousness; concussion; bone fracture; protracted loss or impairment of function of any bodily member or organ; a wound requiring extensive suturing; and serious disfigurement.

(6) "Injury" means any physical injury which requires professional medical treatment.

It is the intent of the Legislature by amendments to this section at the 1981–82 Regular Session to abrogate the holdings in cases such as People v. Corey, 21 Cal. 3d 738, and Cervantez v. J.C. Penney Co., 24 Cal. 3d 579, and to reinstate prior judicial interpretations of this section as they relate to criminal sanctions for battery on peace officers who are employed, on a part-time or casual basis, for a public entity, while wearing a police uniform as private security guards or patrolmen and to allow the exercise of peace officer powers concurrently with such employment.

SEC. 3. Section 243 of the Penal Code is amended to read:

243. (a) A battery is punishable by a fine of not exceeding one thousand dollars ($1,000), or by imprisonment in the county jail not exceeding six months, or by both such fine and imprisonment.

(b) When a battery is committed against the person of a peace officer, custodial officer, firefighter, emergency medical technician, or mobile intensive care paramedic, engaged in the performance of his or her duties, whether on or off duty, including when the peace officer is in a police uniform and is concurrently performing the duties required of him or her as a peace officer while also employed in a private capacity for a public entity as a part-time or casual private security guard or patrolman, or a physician or nurse engaged in rendering emergency medical care outside a hospital, clinic, or other health care facility, and the person committing the offense knows or reasonably should know that such victim is a peace officer, custodial officer, firefighter, emergency medical technician, or mobile intensive care paramedic, engaged in the performance of his or her duties, or a physician or nurse engaged in rendering emergency medical care, the battery is punishable by a fine not exceeding one thousand dollars ($1,000), or by imprisonment in the county jail not exceeding one year, or by both such fine and imprisonment.

(c) When a battery is committed against a peace officer, custodial officers, firefighter, emergency medical technician, or mobile intensive care paramedic, engaged in the performance of his or her duties, whether on or off duty, including when the peace officer is in a police uniform and is concurrently performing the duties required of him or her as a peace officer while also employed in a private capacity for a public entity as a part-time or casual private security guard or patrolman, or a physician or nurse engaged in rendering emergency medical care outside a hospital, clinic, or other health care facility, and the person committing the offense knows or reasonably should know that such victim is a peace officer, custodial officer, firefighter, emergency medical technician, or mobile intensive care paramedic, engaged in the performance of his or her duties, or a physician or nurse engaged in rendering emergency medical care, and an injury is inflicted on that victim, the battery is punishable by imprisonment in the county jail for a period of not more than one year, or by a fine of not more than one thousand dollars ($1,000), or by imprisonment in the state prison for 16 months, or two or three years.

(d) When a battery is committed against any person and serious bodily injury is inflicted on the person, the battery is punishable by imprisonment in the county jail for a period of not more than one year or imprisonment in the state prison for two, three, or four years.

(e) As used in this section:

(1) "Peace officer" means any person defined in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2.

(2) "Emergency medical technician" means a person possessing a valid course completion certificate from a program approved by the State Department of Health Services for the medical training and education of ambulance personnel, and who meets the standards of Division 2.5 (commencing with Section 1797) of the Health and

Safety Code.

(3) "Mobile intensive care paramedic" means any person who meets the standards set forth in Section 1481 of, and Division 2.5 (commencing with Section 1797) of, the Health and Safety Code.

(4) "Nurse" means a person who meets the standards of Division 2.5 (commencing with Section 1797) of the Health and Safety Code.

(5) "Serious bodily injury" means a serious impairment of physical condition, including, but not limited to, the following: loss of consciousness; concussion; bone fracture; protracted loss or impairment of function of any bodily member or organ; a wound requiring extensive suturing; and serious disfigurement.

(6) "Injury" means any physical injury which requires professional medical treatment.

(7) "Custodial officer" means any person who has the responsibilities and duties described in Section 831 and who is employed by a law enforcement agency of any city or county or who performs those duties as a volunteer.

It is the intent of the Legislature by amendments to this section at the 1981–82 Regular Session to abrogate the holdings in cases such as People v. Corey, 21 Cal. 3d 783, and Cervantez v. J.C. Penney Co., 24 Cal. 3d 579, and to reinstate prior judicial interpretations of this section as they relate to criminal sanctions for battery on peace officers who are employed, on a part-time or casual basis, by a public entity, while wearing a police uniform as private security guards or patrolmen and to allow the exercise of peace officer powers concurrently with such employment.

SEC. 4. It is the intent of the Legislature, if this bill and Assembly Bill 3276 are both chaptered and become effective January 1, 1983, both bills amend Section 243 of the Penal Code, and this bill is chaptered after Assembly Bill 3276, that the amendments to Section 243 proposed by both bills be given effect and incorporated in Section 243 in the form set forth in Section 3 of this act. Therefore, Section 3 of this act shall become operative only if this bill and Assembly Bill 3276 are both chaptered and become effective January 1, 1983, both amend Section 243, and this bill is chaptered after Assembly Bill 3276, in which case Section 2 of this act shall not become operative.

SEC. 5. No appropriation is made and no reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution or Section 2231 or 2234 of the Revenue and Taxation Code because the only costs which may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, changes the definition of a crime or infraction, changes the penalty for a crime or infraction, or eliminates a crime or infraction.

CHAPTER 1301

An act to amend Sections 44974, 44975, 44982, and 45014 of, and to add Sections 44980.5 and 44988 to, the Food and Agricultural Code, relating to avocados, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 22, 1982. Filed with Secretary of State September 23, 1982.]

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

SECTION 1. Section 44974 of the Food and Agricultural Code is amended to read:

44974. (a) Any violation or threatened violation of any provision of this chapter or regulations of the director established pursuant to this chapter is unlawful and shall constitute grounds for injunctive relief and the imposition of civil penalties of not less than five hundred dollars ($500) and not exceeding two thousand five hundred dollars ($2,500) per violation. This action may be brought in a court of competent jurisdiction by the director or district attorney of a county in which a violation or threatened violation occurred. The California Avocado Commission and the Avocado Inspection Committee are also authorized to bring an action for injunctive relief on grounds provided for in this chapter. In bringing this action, the commission or committee is not required to allege facts necessary to show or which tend to show lack of an adequate remedy at law, or which show or tend to show irreparable damage or loss. Prior to commencing this action, the commission shall allow the director the opportunity to bring an action for injunctive relief following the same procedure as provided for the committee in Section 45015. Notwithstanding the director's decision on whether or not to bring an action for injunctive relief, nothing in this section or in Section 45015 shall be construed as preventing the commission from bringing an action for injunctive relief.

(b) Each violation or threatened violation involving a lot of avocados shall be treated as a separate violation. Any number of defendants in any number of counties may be joined in one action even though the violations or threatened violations are not the same, and jurisdiction for the action may be established in any county in which any of the violations or threatened violations occur.

SEC. 2. Section 44975 of the Food and Agricultural Code is amended to read:

44975. (a) Each handler of avocados shall pay to the director an inspection and certification fee each month. The fee shall be based on the number of pounds certified as determined by the director. However, in no event shall the fee be greater than twelve cents ($0.12) per hundredweight of pounds prepared for market. The number of pounds certified shall be reported monthly to the

director, and these reports shall include all information required by the director. The fee required by this section shall be paid no later than the 10th day of the month following the month for which the fee is payable. Any handler who fails to pay the fee within the time required shall pay the director a penalty of 10 percent of the amount determined to be due, and, in addition, 1½ percent interest per month on the unpaid balance. The director may adjust the fee from time to time and reduce it whenever he finds the cost of administering this article may be defrayed from revenue derived from lower fees.

(b) Notwithstanding subdivision (a), whenever the fees derived from pounds certified do not cover the cost of inspection, the director may establish hourly and mileage rates for inspection and certification of avocados based upon the cost of providing that inspection and certification. However, alternatively, a handler may present his or her avocados for inspection and certification on a date, time, and location specified by the director and pay the fees charged pursuant to subdivision (a).

SEC. 3. Section 44980.5 is added to the Food and Agricultural Code, to read:

44980.5. The director may prescribe a higher frequency of inspection or surveillance of a person or firm handling or packing avocados for sale, if the director determines either that repeated violations of this chapter have occurred, or has probable cause to believe that a violation is about to occur or has occurred. The director may charge the person or firm the costs of performing the higher frequency of inspection or surveillance necessary to prevent violations of either this chapter or regulations of the director. Costs shall be based upon the approximate cost of the service which is rendered. This charge shall be in addition to the fee provided for in subdivision (a) of Section 44975 and shall be paid in accordance with subdivision (a) of Section 44975. Any person assessed a cost under this subdivision shall have the right of appeal to the director.

SEC. 4. Section 44982 of the Food and Agricultural Code is amended to read:

44982. Each handler of avocados shall prepare and retain for two years up-to-date records of daily transactions. These records shall contain, but not be limited to, the amount of avocados received, shipped, packed, transported, dumped, and on hand at the end of each day. Amounts for each transaction shall be kept by variety in pounds, number of containers by container type, and size when the avocados have been segregated by size.

SEC. 5. Section 44988 is added to the Food and Agricultural Code, to read:

44988. (a) The director may promulgate regulations which establish maturity standards governing the time at which avocados may be harvested. The regulations shall include minimum maturity requirements for the various varieties of avocados produced. The standards may be established in the form of a variable maturity

range, which shall include a system for determination of avocado maturity. This system shall prescribe criteria and a method by which the dates of harvest and required maturity level, as measured by a recognized method of measuring avocado maturity, may be established by the director during each harvest season.

(b) The director may modify these requirements, from time to time, in order to insure that the quality standards for marketing avocados are maintained. These modifications shall not be subject to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

SEC. 6. Section 45014 of the Food and Agricultural Code is amended to read:

45014. The committee shall be advisory to the director on all matters pertaining to this chapter, shall review all proposed regulations relating to this chapter, and shall make recommendations concerning the inspection and certification services under this chapter including, but not limited to, the annual budget and fees necessary to provide adequate inspection and certification services; inspection procedures; training and supervision of inspectors; and enforcement actions, including the imposition of any fees and costs for inspection and surveillance provided for in subdivision (c) of Section 44975.

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:

In order for the provisions of this act to benefit the consumers and producers of avocados in time for the 1982 fall harvest, it is necessary that this act take effect immediately.

CHAPTER 1302

An act to amend Section 7 of Chapter 784 of the Statutes of 1978, relating to hazardous waste disposal sites, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 22, 1982. Filed with Secretary of State September 23, 1982.]

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

SECTION 1. The sum of one million five hundred thousand dollars ($1,500,000) of the unencumbered balance of the appropriation made by Budget Item 4260-001-455 of the Budget Act of 1982 is hereby reappropriated to the State Department of Health Services for the purpose of cleaning up the McColl Hazardous Waste Disposal Site in Orange County. Any amount of the appropriation

which is not required for that cleanup shall revert to the account when the cleanup is completed, as determined by the department. No amount of the appropriation shall be used for studies relating to the cleanup, and the entire amount shall be used only for the cleaning up or other remedial action appropriate to that site, in accordance with the provisions of Article 5 (commencing with Section 25350) of Chapter 6.8 of Division 20 of the Health and Safety Code.

SEC. 2. The State Department of Health Services shall report the progress on the cleanup of the McColl Hazardous Waste Disposal Site in Orange County to the Legislature on September 15, 1982, and annually thereafter. The report shall include, but not be limited to, the expenditures made from the appropriation made by Section 1 of this act and the planned expenditures to be made, the work accomplished, and the work planned to be done, including a time schedule for each increment of work to be done and a report on the accomplishment of each increment of work done which relates to the time schedule for the accomplishment of that increment.

SEC. 3. Section 7 of Chapter 784 of the Statutes of 1978 is amended to read:

Sec. 7. The State Department of Health Services may perform any act necessary to implement the provisions of this act.

The State Department of Health Services shall have the responsibility for conduct of the permanent closure and maintenance of the Stringfellow Quarry Class I Hazardous Waste Disposal Site.

In any emergency, as that term is used in Section 25354 of the Health and Safety Code, all activities of the State Water Resources Control Board, the State Department of Health Services, or any other state agency, department, or commission, incidental to site closure and maintenance, including but not limited to state acquisition of any real property interest in the site or surrounding area, and the drafting and letting of contracts for architectural, engineering, and construction services, shall be exempt from the requirements of the California Environmental Quality Act (commencing with Section 21000 of the Public Resources Code), the State Contract Act (commencing with Section 14250 of the Government Code), the provisions of Chapter 10 (commencing with Section 4525) of Division 5 of Title 1 of the Government Code relating to procurement of architectural and engineering services, and the State Administrative Manual, Sections 1200 to 1291, inclusive.

SEC. 4. Section 3 of this act shall become operative on January 1, 1983.

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:

The State of California has a responsibility to abate the threatened conditions of hazardous waste material caused by the McColl

Hazardous Waste Disposal Site in Fullerton, Orange County, as soon as possible in order to protect the health and safety of the people. Therefore, it is necessary that this act take effect immediately.

CHAPTER 1303

An act to add Section 5011 to the Public Resources Code, relating to the state park system.

[Approved by Governor September 22, 1982 Filed with Secretary of State September 23, 1982.]

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

SECTION 1. Section 5011 is added to the Public Resources Code, to read:

5011. Any person receiving aid to the aged, blind, or disabled under the provisions of Chapter 3 (commencing with Section 12000) of Part 3 of Division 9 of the Welfare and Institutions Code, any person over 65 years of age whose total monthly income from all sources, including any old age assistance payments, does not exceed four hundred thirty-nine dollars ($439) for a single person or eight hundred fifteen dollars ($815) combined income for married persons, or any person receiving aid to families with dependent children under the provisions of Chapter 2 (commencing with Section 11200) of Part 3 of Division 9 of the Welfare and Institutions Code, upon application therefor and payment of five dollars ($5.00) to the Department of Parks and Recreation, shall be issued a "Golden Bear Pass" which shall be valid for the specified year and which shall entitle the bearer and spouse to free use on any day of the day-use facilities in units of the state park system, except Hearst San Simeon State Historical Monument, Sutter's Fort State Historic Park, and the California State Railroad Museum, under limitations as may be determined by departmental regulation regarding peak hours and contractual arrangements with vendors. The pass shall entitle the bearer and spouse to have access only to day-use facilities and not to the use of any other facilities.

The department shall not grant half-price privileges or offer any discount for the use of state park system facilities on the basis of the pass authorized by this section or on the basis of any other criterion.

The income limitation prescribed by this section shall annually be adjusted on July 1 of each year by the increase in cost of living as determined by the formula specified in Section 12201 of the Welfare and Institutions Code.

CHAPTER 1304

An act to amend Section 2406 of, and to add Article 8 (commencing with Section 3540) to Chapter 7.7 of Division 2 of, the Business and Professions Code, and to amend Section 13401.5 of the Corporations Code, relating to healing arts.

[Approved by Governor September 22, 1982. Filed with Secretary of State September 23, 1982.]

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

SECTION 1. Section 2406 of the Business and Professions Code is amended to read:

2406. A medical corporation or podiatry corporation is a corporation which is authorized to render professional services, as defined in Sections 13401 and 13401.5 of the Corporations Code, so long as that corporation and its shareholders, officers, directors and employees rendering professional services who are physicians, psychologists, registered nurses, optometrists, podiatrists or, in the case of a medical corporation only, physicians' assistants, are in compliance with the Moscone-Knox Professional Corporation Act, the provisions of this article and all other statutes and regulations now or hereafter enacted or adopted pertaining to such corporation and the conduct of its affairs.

With respect to a medical corporation or podiatry corporation, the governmental agency referred to in the Moscone-Knox Professional Corporation Act is the Division of Licensing.

SEC. 2. Article 8 (commencing with Section 3540) is added to Chapter 7.7 of Division 2 of the Business and Professions Code, to read:

Article 8. Physicians' Assistants Corporations

3540. A physicians' assistants corporation is a corporation which is authorized to render professional services, as defined in Section 13401 of the Corporations Code, so long as that corporation and its shareholders, officers, directors, and employees rendering professional services who are certified physicians' assistants are in compliance with the Moscone-Knox Professional Corporation Act, the provisions of this article, and all other statutes and regulations now or hereafter enacted or adopted pertaining to the corporation and the conduct of its affairs.

With respect to a physicians' assistants corporation, the governmental agency referred to in the Moscone-Knox Professional Corporation Act is the Physicians' Assistant Examining Committee of the Board of Medical Quality Assurance.

3541. It shall constitute unprofessional conduct and a violation of this chapter for any person licensed under this chapter to violate,

attempt to violate, directly or indirectly, or assist in or abet the violation of, or conspire to violate any provision or term of this article, the Moscone-Knox Professional Corporation Act, or any regulations duly adopted under those laws.

3542. A physicians' assistants corporation shall not do or fail to do any act the doing of which or the failure to do which would constitute unprofessional conduct under any statute or regulation, now or hereafter in effect. In the conduct of its practice, it shall observe and be bound by these statutes and regulations to the same extent as a person holding a license under this chapter.

3543. The name of a physicians' assistants corporation and any name or names under which it may render professional services shall contain the words "physicians' assistants," and wording or abbreviations denoting corporate existence.

3544. Except as provided in Sections 13401.5 and 13403 of the Corporations Code, each shareholder, director and officer of a physicians' assistants corporation, except an assistant secretary and an assistant treasurer, shall be a licensed person as defined in Section 13401 of the Corporations Code.

3545. The income of a physicians' assistants corporation attributable to professional services rendered while a shareholder is a disqualified person, as defined in Section 13401 of the Corporations Code, shall not in any manner accrue to the benefit of the shareholder or his or her shares in the physicians' assistants corporation.

3546. The board may adopt and enforce regulations to carry out the purposes and objectives of this article, including regulations requiring (a) that the bylaws of a physicians' assistants corporation shall include a provision whereby the capital stock of the corporation owned by a disqualified person (as defined in Section 13401 of the Corporations Code), or a deceased person, shall be sold to the corporation or to the remaining shareholders of the corporation within such time as the regulations may provide, and (b) that a physicians' assistants corporation shall provide adequate security by insurance or otherwise for claims against it by its patients arising out of the rendering of professional services.

SEC. 3. Section 13401.5 of the Corporations Code is amended to read:

13401.5. Notwithstanding subdivision (c) of Section 13401 and any other provision of law, the following licensed persons may be shareholders, officers, directors or professional employees of the professional corporations designated in this section so long as the sum of all shares owned by those licensed persons does not exceed 49 percent of the total number of shares of the professional corporation so designated herein and so long as the number of those licensed persons owning shares in the professional corporation so designated herein does not exceed the number of persons licensed by the governmental agency regulating the designated professional corporation:

(a) Medical corporation.
(1) Licensed podiatrists.
(2) Licensed psychologists.
(3) Registered nurses.
(4) Optometrists.
(5) Certified physicians' assistants.
(b) Podiatry corporation.
(1) Licensed physicians and surgeons.
(2) Licensed psychologists.
(3) Registered nurses.
(4) Optometrists.
(c) Psychological corporation.
(1) Licensed physicians and surgeons.
(2) Licensed podiatrists.
(3) Registered nurses.
(4) Optometrists.
(d) Speech pathology corporation.
(1) Licensed audiologist.
(e) Audiology corporation.
(1) Licensed speech pathologist.
(f) Nursing corporation.
(1) Licensed physicians and surgeons.
(2) Licensed podiatrists.
(3) Licensed psychologists.
(4) Optometrists.
(5) Certified physicians' assistants.
(g) Physicians' assistants corporation.
(1) Licensed physicians and surgeons.
(2) Registered nurses.

SEC. 4. No appropriation is made and no reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution or Section 2231 or 2234 of the Revenue and Taxation Code because the only costs which may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, changes the definition of a crime or infraction, changes the penalty for a crime or infraction, or eliminates a crime or infraction.

CHAPTER 1305

An act to add Section 61601.12 to the Government Code, relating to the Bel Marin Keys Community Services District, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 22, 1982. Filed with Secretary of State September 23, 1982.]

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

SECTION 1. Section 61601.12 is added to the Government Code, to read:

61601.12. (a) Notwithstanding the provisions of Sections 61600 and 61601, whenever the Board of Directors of the Bel Marin Keys Community Services District determines by resolution that it is feasible, economically sound, and in the public interest for the district to exercise its power for the purpose of enforcing the covenants, conditions, and restrictions adopted for each tract within the boundaries of the district, and to assume the duties of the architectural control committee for each tract within the boundaries of the district and for such other tracts as may be annexed from time to time, for the purpose of maintaining uniform standards of development within the district as adopted in the covenants, conditions, and restrictions, the board shall adopt the additional purpose by resolution entered in the minutes and such power of the district may be exercised thereafter.

The board may thereafter divest the district of the power to carry on activities in the same manner as it may acquire the power.

(b) At the next general district election, the question of whether the board may continue to exercise the power granted pursuant to subdivision (a) may, with the approval of the board of supervisors, be submitted to the voters of the district. If the proposition is not approved by a majority of the voters of the district voting on the proposition, the authority granted in subdivision (a) shall have no further force or effect.

SEC. 2. The Legislature finds and declares that Bel Marin Keys Community Services district has a special need for the power to enforce the covenants, conditions, and restrictions adopted for each tract within the boundaries of the district and to assume the duties of the architectural control committee for each tract within the boundaries of the district and for such other tracts as may be annexed from time to time, for the purpose of maintaining uniform standards of development within the district as adopted in such covenants, conditions, and restrictions. It is, therefore, hereby declared that a general law cannot be made applicable and that enactment of Section 61601.12 of the Government Code is necessary for the solution of problems existing in the Bel Marin Keys Community Services District.

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 prevent the unreasonable risk of irrevocable loss of valuable property rights and community character in the Community of Bel Marin Keys, it is necessary that this act take immediate effect.

CHAPTER 1306

An act to amend Section 2408 of the Business and Professions Code, and to amend Sections 1204 and 1206 of the Health and Safety Code, relating to health, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 22, 1982. Filed with Secretary of State September 23, 1982.]

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

SECTION 1. Section 2408 of the Business and Professions Code is amended to read:

2408. Except as provided in Sections 13401.5 and 13403 of the Corporations Code, each shareholder, director and officer of a medical or podiatry corporation, except an assistant secretary or an assistant treasurer, shall be a licensed person as defined in Section 13401 of the Corporations Code.

Notwithstanding the provisions of this section or Sections 13401.5, 13403, 13406, and 13407 of the Corporations Code, a shareholder of a medical corporation which renders professional services may be a medical corporation which has only one shareholder who must be a licensed person as defined in Section 13401 of the Corporations Code. The shareholder of the latter corporation may be an officer or director of the former corporation.

SEC. 2. Section 1204 of the Health and Safety Code is amended to read:

1204. Clinics eligible for licensure pursuant to this chapter are primary care clinics and specialty clinics.

(a) Only the following defined classes of primary care clinics shall be eligible for licensure:

(1) A "community clinic" means a clinic operated by a tax-exempt nonprofit corporation which is supported and maintained in whole or in part by donations, bequests, gifts, grants, government funds or contributions, which may be in the form of money, goods, or services. In a community clinic, any charges to the patient shall be based on the patient's ability to pay, utilizing a sliding fee scale. No corporation other than 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, shall operate a community clinic; provided, that the licensee of any community clinic so licensed on the effective date of this section shall not be required to obtain tax-exempt status under either federal or state law in order to be eligible for, or as a condition of, renewal of its license. No natural person or persons shall operate a community clinic.

(2) A "free clinic" means a clinic operated by a tax-exempt, nonprofit corporation supported in whole by voluntary donations,

bequests, gifts, grants, government funds or contributions, which may be in the form of money, goods, or services. In a free clinic there shall be no charges directly to the patient for services rendered or for drugs, medicines, appliances, or apparatuses furnished. No corporation other than 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, shall operate a free clinic; provided, that the licensee of any free clinic so licensed on the effective date of this section shall not be required to obtain tax-exempt status under either federal or state law in order to be eligible for, or as a condition of, renewal of its license. No natural person or persons shall operate a free clinic.

(3) An "employees' clinic" means 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 such group.

(b) The following types of specialty clinics shall be eligible for licensure as specialty clinics pursuant to this chapter:

(1) A "surgical clinic" means a clinic which is not part of a hospital and which provides ambulatory surgical care for patients who remain less than 24 hours. A surgical clinic does not include any place or establishment owned or leased and operated as a clinic or office by one or more physicians or dentists in individual or group practice, regardless of the name used publicly to identify the place or establishment, provided, however, that physicians or dentists may, at their option, apply for licensure.

(2) A "chronic dialysis clinic" means a clinic which provides less than 24-hour care for the treatment of patients with end-stage renal disease, including renal dialysis services.

(3) A "rehabilitation clinic" means a clinic which, in addition to providing medical services directly, also provides physical rehabilitation services for patients who remain less than 24 hours. Rehabilitation clinics shall provide at least two of the following rehabilitation services: physical therapy, occupational therapy, social, speech pathology, and audiology services. A rehabilitation clinic does not include the offices of a private physician in individual or group practice.

SEC. 3. Section 1206 of the Health and Safety Code is amended to read:

1206. The provisions of this chapter do 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 such 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 which 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 shall preclude the state department from adopting regulations which 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, and which 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 the provisions of Chapter 2 (commencing with Section 1250) of this division.

(f) Any freestanding clinical or pathological laboratory licensed under the provisions of 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 which 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 on an intermittent basis by a local health department or by a community or free clinic. Such an intermittent or satellite clinic shall, however meet all requirements of law, including administrative regulations, 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) of Division 2.

(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 State Director of Health Services, 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, which 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.

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:

Medical clinics are converting their organizational format to multispecialty clinics in order to provide greater medical education and medical research functions on behalf of the public, and these medical clinics are experiencing organizational problems that are overcome by this legislation, and in order to provide these medical education and research benefits to the public and to allow a medical corporation to be a shareholder in another medical corporation it is necessary that this act take effect immediately.

CHAPTER 1307

An act to amend Section 1916.5 of the Civil Code, relating to loans.

[Approved by Governor September 22, 1982. Filed with Secretary of State September 23, 1982.]

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

SECTION 1. Section 1916.5 of the Civil Code is amended to read:

1916.5. (a) No increase in interest provided for in any provision for a variable interest rate contained in a security document, or evidence of debt issued in connection therewith, shall be valid unless such provision is set forth in such security document, and in any evidence of debt issued in connection therewith, and such document or documents contain the following provisions:

(1) A requirement that when an increase in the interest rate is required or permitted by a movement in a particular direction of a prescribed standard an identical decrease is required in the interest rate by a movement in the opposite direction of the prescribed standard.

(2) The rate of interest shall change not more often than once during any semiannual period, and at least six months shall elapse between any two such changes.

(3) The change in the interest rate shall not exceed one-fourth of 1 percent in any semiannual period, and shall not result in a rate

more than 2.5 percentage points greater than the rate for the first loan payment due after the closing of the loan.

(4) The rate of interest shall not change during the first semiannual period.

(5) The borrower is permitted to prepay the loan in whole or in part without a prepayment charge within 90 days of notification of any increase in the rate of interest.

(6) A statement attached to the security document and to any evidence of debt issued in connection therewith printed or written in a size equal to at least 10-point bold type, consisting of the following language:

NOTICE TO BORROWER: THIS DOCUMENT CONTAINS PROVISIONS FOR A VARIABLE INTEREST RATE.

(b) (1) The provisions of this section shall be applicable only to a mortgage contract, deed of trust, real estate sales contract, or any note or negotiable instrument issued in connection therewith, when its purpose is to finance the purchase or construction of real property containing four or fewer residential units or on which four or fewer residential units are to be constructed.

(2) This section shall not apply to unamortized construction loans with an original term of two years or less or to loans made for the purpose of the purchase or construction of improvements to existing residential dwellings.

(c) Regulations setting forth the prescribed standard upon which variations in the interest rate shall be based may be adopted by the Savings and Loan Commissioner with respect to savings and loan associations, the Superintendent of Banks with respect to banks, and the Insurance Commissioner with respect to insurers.

(d) As used in this section:

(1) "Bank" includes, but is not limited to, a national banking association

(2) "Savings and loan association" includes, but is not limited to, a federal savings and loan association, as defined by Section 11000 of the Financial Code.

(3) "Insurer" includes, but is not limited to, a nonadmitted insurance company.

(4) "Semiannual period" means each of the successive periods of six calendar months commencing with the first day of the calendar month in which the instrument creating the obligation is dated.

(5) "Security document" means a mortgage contract, deed of trust, or real estate sales contract.

(6) "Evidence of debt" means a note or negotiable instrument.

(e) Notwithstanding the provisions of subdivision (b) of Section 1227 and subdivision (a) of Section 7150 of the Financial Code, when there is an increase in the interest rate of a loan subject to this section which is made by a commercial bank pursuant to subdivision (b) of Section 1227 of the Financial Code, or by a savings and loan association pursuant to subdivision (a) of Section 7150 of the Financial Code, the term of such loan may be extended at the option

of the borrower for such additional period as may be required to amortize the loan without increasing the existing monthly payment, but not to exceed a maximum term of 40 years.

(f) The provisions of this section shall be applicable only to instruments executed on and after the effective date of this section.

(g) This section shall not apply to nonprofit public corporations.

(h) This section shall not apply to a loan made to an employee of the lender where the sole increase in interest provided for with respect to the loan will result only by reason of the termination of the borrower's employment or the sale, deed, or transfer of the property securing the loan to a nonemployee of the lender.

CHAPTER 1308

An act to amend Section 626.8 of the Penal Code, relating to schools.

[Approved by Governor September 22, 1982. Filed with Secretary of State September 23, 1982.]

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

SECTION 1. Section 626.8 of the Penal Code is amended to read:

626.8. (a) Any person who comes into any school building or upon any school ground, or street, sidewalk, or public way adjacent thereto, without lawful business thereon, and whose presence or acts interfere with the peaceful conduct of the activities of such school or disrupt the school or its pupils or school activities, or any specified sex offender who comes into any school building or upon any school ground, or street, sidewalk or public way adjacent thereto, unless such person is a parent or guardian of a child attending that school, or is a student at the school or has prior written permission for the entry from the chief administrative officer of that school, is guilty of a misdemeanor if he or she:

(1) Remains there after being asked to leave by the chief administrative official of that school or his or her designated representative, or by a person employed as a member of a security department of a school district pursuant to Section 39670 of the Education Code, or a city police officer, or sheriff or deputy sheriff, or California Highway Patrol Officer; or

(2) Reenters or comes upon such place within 72 hours of being asked to leave by a person specified in paragraph (1); or

(3) Has otherwise established a continued pattern of unauthorized entry.

(b) Punishment for violation of this section shall be as follows:

(1) Upon a first conviction by a fine of not exceeding five hundred dollars ($500), by imprisonment in the county jail for a period of not more than six months, or by both such fine and imprisonment.

(2) If the defendant has been previously convicted once of a violation of any offense defined in this chapter or Section 415.5, by imprisonment in the county jail for a period of not less than 10 days or more than six months, or by both such imprisonment and a fine of not exceeding five hundred dollars ($500), and he shall not be released on probation, parole, or any other basis until he has served not less than 10 days.

(3) If the defendant has been previously convicted two or more times of a violation of any offense defined in this chapter or Section 415.5, by imprisonment in the county jail for a period of not less than 90 days or more than six months, or by both such imprisonment and a fine of not exceeding five hundred dollars ($500), and he shall not be released on probation, parole, or any other basis until he has served not less than 90 days.

(c) As used in this section:

(1) "Specified sex offender" means any person required to register pursuant to Section 290, who has been convicted of a violation of Section 220, 261, 266, 267, 272, 288, or 289, or of subdivision (c), (d), or (f) of Section 286, or of subdivision (c), (d), or (f) of Section 288a, or of an attempt to commit any of these offenses.

(2) "Lawful business" means a reason for being present upon school property which is not otherwise prohibited by statute, by ordinance, or by any regulation adopted pursuant to statute or ordinance.

(3) "Continued pattern of unauthorized entry" means that on at least two prior occasions in the same school year the defendant came into any school building or upon any school ground, or street, sidewalk, or public way adjacent thereto, without lawful business thereon, and his or her presence or acts interfered with the peaceful conduct of the activities of such school or disrupted the school or its pupils or school activities, and the defendant was asked to leave by a person specified in paragraph (1) of subdivision (a).

(4) In the case of a specified sex offender, "continued pattern of unauthorized entry" means that on at least two prior occasions in the same school year the defendant came into any school building or upon any school ground, or street, sidewalk, or public way adjacent thereto, and the defendant was asked to leave by a person specified in paragraph (1) of subdivision (a).

(5) "School" means any preschool or school having any of grades kindergarten through 12.

SEC. 2. No appropriation is made and no reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution or Section 2231 or 2234 of the Revenue and Taxation Code because the only costs which may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, changes the definition of a crime or infraction, changes the penalty for a crime or infraction, or eliminates a crime or infraction.

CHAPTER 1309

An act to amend Section 14132 of, to add Sections 12301.2 and 14149 to, to add and repeal Section 14110.2 of, and to repeal Section 4630.1 of, the Welfare and Institutions Code, relating to in-home supportive services, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 22, 1982. Filed with Secretary of State September 23, 1982.]

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

SECTION 1. Section 4630.1 of the Welfare and Institutions Code is repealed.

SEC. 2. Section 12301.2 is added to the Welfare and Institutions Code, to read:

12301.2. Any time for task guidelines can be used only if it is appropriate in meeting the individual's particular circumstances.

SEC. 3. It is the intent of the Legislature in deleting the word "comfort" from Section 12300 of the Welfare and Institutions Code, in Section 16 of Chapter 69 of the Statutes of 1981 (Senate Bill No. 633), to allow counties to provide services to individuals who apply for or receive in-home supportive services based upon their individual need for services. It is not the intent of the Legislature in deleting the word "comfort" to authorize the state or counties to make reductions in service levels without an individual assessment.

SEC. 4. Section 14110.2 is added to the Welfare and Institutions Code, to read:

14110.2. (a) In performing initial onsite reviews of long-term care patients who, prior to admission, were residing in their own homes or in a board and care facility, Medi-Cal consultants shall include the following information in their reports:

(1) An assessment of whether in-home supportive services would be a feasible alternative to long-term care.

(2) If in-home supportive services are a potential alternative, the approximate number of hours per week which would be required to maintain the beneficiary in the home.

(3) If in-home supportive services are a feasible option, whether any additional medical services, in addition to in-home supportive services, would be necessary to maintain the beneficiary in the home.

(b) In addition, the Medi-Cal consultant shall ask such patients the following questions:

(1) Did the person receive in-home supportive services?

(2) What was the reason for admission for long-term care:

(A) Denial of in-home supportive services?

(B) Reduction of in-home supportive services?

(C) Unavailability of in-home supportive services?

(c) The State Department of Health Services shall collect and

evaluate the date required by this section for a three-month period and shall submit a report to the Legislature on the findings by June 1, 1983.

This section shall remain in effect only until January 1, 1984, and as of that date is repealed, unless a later enacted statute chaptered prior to that date extends or deletes that date.

SEC. 5. Section 14132 of the Welfare and Institutions Code is amended to read:

14132. The following is the schedule of benefits under this chapter:

(a) Outpatient services are covered as follows:

Physician, hospital or clinic outpatient, surgical center, optometric, chiropractic, psychology, podiatric, occupational therapy, physical therapy, speech therapy, audiology, acupuncture to the extent federal matching funds are provided for acupuncture, and services of persons rendering treatment by prayer or healing by spiritual means in the practice of any church or religious denomination insofar as these can be encompassed by federal participation under an approved plan, subject to utilization controls.

(b) Inpatient hospital services, including, but not limited to, physician and podiatric services, physical therapy and occupational therapy, are covered subject to utilization controls.

(c) Skilled nursing facility services, including podiatry and physician services, and prescribed drugs, as described in subdivision (d), are covered subject to utilization controls. Physical therapy, occupational therapy, speech therapy, and audiology services for patients in skilled nursing facilities are covered subject to utilization controls.

(d) Purchase of prescribed drugs is covered subject to the Medi-Cal Drug Formulary and utilization controls.

(e) Outpatient dialysis services and home hemodialysis services, including physician services, medical supplies, drugs and equipment required for dialysis, are covered, subject to utilization controls.

(f) Anesthesiologist services when provided as part of an outpatient medical procedure, nurse anesthetists services when rendered by an inpatient or outpatient setting under conditions set forth by the director, outpatient laboratory services, and X-ray services are covered to the extent prescribed.

(g) Blood and blood derivatives are covered.

(h) Emergency and essential diagnostic and restorative dental services, except for orthodontic, fixed bridgework, and partial dentures that are not necessary for balance of a complete artificial denture, are covered, subject to utilization controls. The utilization controls shall allow emergency and essential diagnostic and restorative dental services and prostheses that are necessary to prevent a significant disability or to replace previously furnished prostheses which are lost or destroyed due to circumstances beyond the beneficiary's control. Notwithstanding the foregoing, the director may by regulation provide for certain fixed artificial

dentures necessary for obtaining employment or for medical conditions which preclude the use of removable dental prostheses, and for orthodontic services in cleft palate deformities administered by the department's crippled children services program.

(i) Medical transportation is covered, subject to utilization controls.

(j) Home health care services are covered, subject to utilization controls.

(k) Prosthetic and orthotic devices and eyeglasses are covered, subject to utilization controls. Utilization controls shall allow replacement of prosthetic and orthotic devices and eyeglasses necessary because of loss or destruction due to circumstances beyond the beneficiary's control. Frame styles for eyeglasses replaced pursuant to this subdivision shall not change more than once every two years, unless the department so directs.

Orthopedic and conventional shoes are covered when provided by a prosthetic and orthotic supplier on the prescription of a physician and when at least one of the shoes will be attached to a prosthesis or brace, subject to utilization controls. Modification of stock conventional or orthopedic shoes when medically indicated, is covered subject to utilization controls. When there is a clearly established medical need that cannot be satisfied by the modification of stock conventional or orthopedic shoes, custom-made orthopedic shoes are covered, subject to utilization controls.

(*l*) Hearing aids are covered, subject to utilization controls. Utilization controls shall allow replacement of hearing aids necessary because of loss or destruction due to circumstances beyond the beneficiary's control.

(m) Durable medical equipment and medical supplies are covered, subject to utilization controls. The utilization controls shall allow the replacement of durable medical equipment and medical supplies when necessary because of loss or destruction due to circumstances beyond the beneficiary's control.

(n) Intermediate care facility services, including physician services, and prescribed drugs as described in subdivision (d) are covered, subject to utilization controls. Physical therapy, occupational therapy, speech therapy and audiology services for patients in intermediate care facilities are covered subject to utilization controls.

(o) Family planning services are covered, subject to utilization controls.

(p) Inpatient intensive rehabilitation hospital services in a general acute care hospital are covered, subject to utilization controls, when the following criteria are met:

(1) A patient with a permanent disability or severe impairment requires an inpatient intensive rehabilitation hospital program as described in Section 14064 to develop function beyond the limited amount that would occur in the normal course of recovery; or

(2) A patient with a chronic or progressive disease requires an

inpatient intensive rehabilitation hospital program as described in Section 14064 to maintain the patient's present functional level as long as possible.

(q) Adult day health care is covered in accordance with the provisions of Chapter 8.7 (commencing with Section 14520) of this part.

(r) Application of fluoride, or other appropriate fluoride treatment as defined by the department, and other prophylaxis treatment for children 17 years of age and under are covered.

(s) Paramedic services performed by a city, county, or special district, or pursuant to a contract with a city, county, or special district, and pursuant to a program established under Article 3 (commencing with Section 1480) of Chapter 2.5 of Division 2 of the Health and Safety Code by a paramedic certified pursuant to that article, and consisting of defibrillation and those services specified in subdivision (3) of Section 1482 of the article.

This subdivision shall be in effect only to the extent federal financial participation is available as set forth in Section 14106.6.

(t) In-home medical care services are covered when medically appropriate and subject to utilization controls, for beneficiaries who would otherwise require care for an extended period of time in an acute care hospital at a cost higher than in-home medical care services. The director shall have the authority under this section to contract with organizations qualified to provide in-home medical care services to such persons. Such services may be provided to patients placed in facilities such as skilled nursing or intermediate care facilities, or to persons in shared-or-congregate living arrangements, if a home setting is not medically appropriate or available to the beneficiary.

(u) Home and community-based services, as set forth in Section 2176 of Public Law 97-35, shall be reimbursable as Medi-Cal benefits upon the approval of the United States Department of Health and Human Services. These home and community-based services shall be included in the Medi-Cal scope of benefits as Medi-Cal covered and reimbursable services for the duration of the approved federal waiver and to the extent the department can claim, and be reimbursed by, federal financial participation funds for these services.

SEC. 6. Section 14149 is added to the Welfare and Institutions Code, to read:

14149. The State Department of Health Services, following review and approval from the State Health and Welfare Agency, shall seek all necessary waivers from the United States Department of Health and Human Services in order to provide in-home and community-based care, as provided for under Section 2176 of the federal Omnibus Budget Reconciliation Act of 1981. The waiver proposal shall specifically include plans for the provision of services to any person who would be eligible for community-based and in-home services, as defined by the Department of Health Services,

and who would be eligible for the Medi-Cal program, provided for pursuant to this chapter, except for the person's income and who can, therefore, become eligible by meeting spend-down requirements.

SEC. 7. Emergency regulations adopted within 120 days of the effective date of this act and to implement the provisions of this act shall be deemed to be necessary for the immediate preservation of the public peace, health, and safety, or general welfare.

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 expeditiously obtain federal funds with which to provide urgently needed social services it is necessary that this act go into immediate effect.

CHAPTER 1310

An act to amend Sections 51216 and 52163 of the Education Code, and to amend Section 4 of Chapter 1157 of the Statutes of 1981, relating to schools.

[Approved by Governor September 22, 1982. Filed with Secretary of State September 23, 1982.]

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

SECTION 1. Section 51216 of the Education Code is amended to read:

51216. (a) The governing board of each district shall take appropriate steps to ensure that the progress towards proficiency in basic skills is assessed in the English language during the regular instructional program at least once during the 4th through 6th grade experience, once during the 7th through 9th grade experience and twice during the 10th through 11th grade experience. If a district determines that a pupil who has been identified as limited-English proficient pursuant to Section 52164.1 does not possess sufficient English language skills to be assessed for basic skills proficiency in the English language, the district may defer the assessment for a period of up to 24 calendar months of enrollment in the California public school system until the pupil has met the reclassification criteria pursuant to Section 52164.6 and completed six months of instruction in reading, writing, and comprehension in the English language subsequent to his or her reclassification. The prescribed six months of instruction in reading, writing, and comprehension in the English language shall be provided within the maximum 24-month assessment deferment period required under this section. Each pupil enrolled in grades 4, 5, and 6 shall be tested at least once in grades 4 to 8, inclusive, within 24 months of his or her enrollment in the

school.

However, a limited-English-proficient pupil shall be assessed for basic skills in the English language upon his or her own request or upon the request of his or her parent or guardian. A school district may grant reciprocity in proficiency assessment results from another school district for a pupil in any grade, except 12th grade, who has transferred from that district. However, no school district shall reassess for purposes of graduation eligibility any pupil in 12th grade who has demonstrated proficiency up to the prescribed level for high school graduation. Nothing in this section shall preclude any district from conducting an assessment of any pupil in English and in the native language of such pupil.

(b) Proficiency assessments shall be used to determine whether pupils need additional assistance in basic skills, and if so, the appropriate content and mode of any such assistance. No individual English-speaking pupil or limited-English-proficient pupil shall receive a high school diploma unless he or she has passed the English language proficiency assessment normally required for graduation.

It is the intent of the Legislature that pupil assessments measure the progress of each pupil in mastering basic skills rather than the pupil's performance relative to his or her classmates.

It is the intent of the Legislature that the governing board of each school district make every effort possible to periodically screen assessment instruments for racial, cultural, and sexual bias.

(c) (1) In the case of any pupil who does not demonstrate sufficient progress toward mastery of basic skills so that he or she will be able to meet prescribed standards upon exit from the 6th, 8th, or 12th grade, whichever is appropriate, the principal shall arrange a conference among the parent or guardian of the pupil and a certificated employee familiar with the pupil's progress to discuss the results of the individual pupil assessment and recommended actions to further the pupil's progress.

(2) It is the intent of the Legislature that the conference to discuss the results of the individual assessment be conducted on an individual basis among the parent or guardian of the pupil, the certificated employee familiar with the pupil's progress, and the pupil, as the case may be, and not on a group basis in which all parents or guardians of such pupils are assembled.

(3) If such conferences are conducted on a group basis, the pupil or the parent or guardian may request, and shall be granted, a conference on an individual basis without having to attend the group conference.

(4) The secondary school pupil shall attend the conference. The elementary school pupil shall attend the conference unless the principal's designee and the parent or guardian agree that such presence would not be in the pupil's best interest.

(5) The pupil and the parent or guardian shall be requested in writing to attend the conference. The notice shall be written in the primary language of the parent or guardian, whenever practicable.

If the conference is to be conducted on a group basis, the notice shall specify the right of the pupil or the parent or guardian to request and be granted a conference on an individual basis without having to attend the group conference.

Notices to pupils in grades 9 to 12 shall inform the parent or guardian that the pupil shall not receive a high school diploma unless the prescribed standards are met.

(6) Absent a response from the parent or guardian the school shall, within 10 days of the date of the scheduled conference, make a reasonable effort to contact him or her by other means to communicate directly the information contained in the written request.

(7) At the conference, the instructional program which shall be provided to assist the pupil to master basic skills shall be described. If the parent or guardian does not attend the conference, such information shall be communicated to the parent or guardian by other means within 10 days of the date of the conference.

(d) Instruction in basic skills shall be provided for any pupil who does not demonstrate sufficient progress toward mastery of basic skills and shall continue until the pupil has been given numerous opportunities to achieve mastery. Such instruction may be provided in summer school programs. Pupils who a district determines do not possess sufficient English language skills to be assessed for basic skills proficiency in the English language shall be deemed not to demonstrate sufficient progress towards mastery of basic skills for purposes of this section. The appropriate contents and mode of the remediation assistance for pupils of limited-English proficiency who are not assessed in the English language for their proficiency in basic skills pursuant to this section shall be based upon, but need not be limited to, the diagnostic assessment procedures prescribed by Section 52164.1.

SEC. 2. Section 52163 of the Education Code is amended to read:

52163. Unless the context otherwise requires, the definitions set forth in this section shall govern the construction of this article.

(a) "Basic bilingual education" is a system of instruction which builds upon the language skills of the pupil and which consists of, but is not limited to, all of the following:

(1) A structured English language development component with daily instruction leading to the acquisition of English language proficiency, including English reading and writing skills.

(2) A structured primary language component with daily basic skills instruction in the primary language for the purpose of sustaining achievement in basic subject areas until the transfer to English is made.

As the pupil develops English language skills, the amount of instruction offered through English shall increase.

(b) "Bilingual-bicultural education" is a system of instruction which uses two languages, one of which is English, as a means of instruction. It is a means of instruction which builds upon and

expands the existing language skills of each participating pupil, which will enable the pupil to achieve competency in both languages.

This instruction shall include all of the following:

(1) Daily instruction in English language development which shall include:

(A) Listening and speaking skills.

(B) Reading and writing skills; formal instruction in reading and writing of English shall be introduced when appropriate criteria are met.

(2) Language development in the pupil's primary language, including oral and literacy skills.

(3) Reading in the pupil's primary language.

(4) Selected subjects taught in the pupil's primary language.

(5) Development of an understanding of the history and culture of California and the United States, as well as an understanding of customs and values of the cultures associated with the languages being taught.

(c) (1) "Experimental bilingual programs" are:

(A) Innovative programs which are consistent with the provisions of this article, the requirements for bilingual teaching personnel pursuant to Section 52165, and the requirements for English language and primary language development pursuant to this section. Such programs may include new management approaches, greater emphasis on team teaching, or other appropriate improvements which expand the learning opportunities of pupils of limited English proficiency. Unless waivers of code sections are required, approval of the board is not required. A description of each such innovative program shall be included with the consolidated application for program funding and an annual evaluation of such programs shall be included in the multiple-funded program evaluation required pursuant to Section 33403.

(B) Planned variation programs for the purpose of comparing and improving language development programs for pupils of limited English proficiency. A primary focus shall be on appropriate instruction for pupils of limited English proficiency whose English skills are superior to their skills in their primary language.

A focus may also be placed upon situations in which the number of pupils who, in accordance with Section 52165, would be required to receive instruction pursuant to subdivision (a) or (b) of Section 52163, is substantially smaller than the census indicated for the previous year, in which case all pupils of limited English proficiency shall receive instruction through individual learning programs during the preparation of the district's proposal and the consideration of the proposal by the board. Such program shall be authorized by the board in up to 300 classrooms in 1982–83 and up to 700 classrooms in 1983–84 and each school year thereafter in districts which are representative of the state both geographically and by size. Not more than 30 such classrooms in 1982–83 and 50

classrooms in 1983–84, which may or may not be in another school, shall be approved in any one district. Such programs shall not result in segregation. For districts proposing a planned variation program, the staffing requirements of Section 52165 may be partially or totally waived by the board provided that the district has an inadequate number of certified bilingual teachers, that certified bilingual teachers are not replaced, that present level of effort is not reduced, and that the proposed language development program is appropriate. For each participating classroom there shall be another similar classroom in the district which has fully implemented and is in compliance with the other provisions of this article.

(2) Proposals for planned variation programs shall include, but need not be limited to:

(A) A clear statement of the purposes, goals, and objectives for planned variation programs and projected outcomes.

(B) A delineated management, staffing, and instructional plan.

(C) Pupil identification, diagnosis, and assessment procedures.

(D) Evidence of qualified bilingual and other instructional staff with demonstrated competence in language development, bicultural or multicultural knowledge of participating pupils, and instructional methodologies.

(E) Documented parent and community participation and support.

(F) Use of state and federal funding, where applicable.

(G) Evaluation component which controls for instructional treatments, instructional engaged time, staffing, pupil language characteristics, achievement, attendance, and related data.

(H) For purposes of this subdivision, if formal action upon a proposal for a planned variation program is not taken by the State Board of Education on or before the second regular meeting of the board following the receipt of a complete and documented proposal, the proposal shall be deemed approved for the remainder of the school year.

Proposals which meet the requirements of this subdivision shall be approved by the board in accordance with standards established in subdivision (b) of Section 52820.

Proposals may be approved annually for a second, third, or fourth year based upon a demonstration of compliance with planned variation program requirements.

(3) The department shall include in its annual report to the Legislature submitted pursuant to Sections 33405 and 52171.6 the number and nature of experimental bilingual and planned variation programs and progress of participating pupils.

(4) Nothing contained in this subdivision shall be construed to permit the operation of experimental bilingual and planned variation programs contrary to the purposes or intent of this article and other state or federal statutes and regulations promulgated for and on behalf of pupils of limited English proficiency. The primary goal of all such programs shall be to teach the pupil English.

(d) "Secondary level language learning program" is a program which provides (1) a prescriptive English language program that systematically develops a pupil's listening and speaking skills, knowledge of linguistic and grammatical structure leading to proficiency in reading and writing English, (2) primary language instructional support to sustain academic achievement in content subject areas required for high school graduation. The prescriptive English language program shall be based on the diagnosis of a pupil's language skills pursuant to Sections 52164 and 52164.1 and shall be conducted as an integral instructional program of English curriculum for not less than one full period a day for the purpose of providing pupils with minimum English language competencies pursuant to subdivision (e). The primary goal of such programs shall be to teach pupils English.

(e) "Secondary level individual learning program" is an individualized systematic program of instruction which meets the needs of limited-English-proficient pupils and builds upon their language skills in order to develop proficiency in English. This program shall be offered in a manner consistent with the United States Supreme Court decision in Lau vs. Nichols (414 U.S. 563), the Equal Education Opportunities Act of 1974 (20 U.S.C. Sec. 1701 et seq.) and federal regulations promulgated pursuant to such court decisions and federal statutes. The primary goal of all such programs shall be to teach the pupil English.

(f) "Elementary level individual learning program" is any program of instruction for a pupil of limited English proficiency in which any one of the three program options described in subdivision (a), (b), or (c) is individualized to meet the needs of the pupil of limited English proficiency and is offered in a manner consistent with the requirements of this article. Such instruction shall be offered in a manner consistent with the United States Supreme Court decision in Lau v. Nichols (414 U.S. 563), the Equal Educational Opportunities Act of 1974 (20 U.S.C. Sec. 1701 et seq.), and federal regulations promulgated pursuant to such court decisions and federal statutes. The primary goal of all such programs shall be to teach the pupil English.

(g) "Primary language" is a language other than English which is the language the pupil first learned or the language which is spoken in the pupil's home.

(h) "Bilingual-crosscultural teacher" means a person who (1) holds a valid, regular California teaching credential and (2) holds either a bilingual-crosscultural certificate of proficiency or other credential in bilingual education authorized by the Commission for Teacher Preparation and Licensing or a bilingual-crosscultural specialist credential. Such a person shall be fluent in the primary language and familiar with the cultural heritage of limited-English-proficiency pupils in the bilingual classes he or she conducts. Such a person shall have a professional demonstrated working knowledge of the methodologies which are

necessary to educate effectively those pupils.

(i) "Bilingual-crosscultural teacher aide" means an aide fluent in both English and the primary language of the pupil or pupils of limited English proficiency in a bilingual-bicultural program. Such an aide shall be familiar with the cultural heritage of pupils of limited English proficiency in the bilingual classes to which he or she is assigned.

(j) "Board" means the State Board of Education.

(k) "Superintendent" means the Superintendent of Public Instruction.

(*l*) "Basic skills" means language arts, including, but not limited to, reading and writing, and mathematics.

(m) "Pupils of limited English proficiency" are pupils who do not have the clearly developed English language skills of comprehension, speaking, reading, and writing necessary to receive instruction only in English at a level substantially equivalent to pupils of the same age or grade whose primary language is English. The determination of which pupils are pupils of limited English proficiency shall be made in accordance with the procedures specified in Sections 52164 and 52164.1. Pupils who have no proficiency in their primary language are not included within this definition.

(n) "Pupils of fluent English proficiency" are pupils whose English proficiency is comparable to that of the majority of pupils, of the same age or grade, whose primary language is English.

(o) "Department" means the Department of Education.

SEC. 3. Section 52163 of the Education Code is amended to read:

52163. Unless the context otherwise requires, the definitions set forth in this section shall govern the construction of this article.

(a) "Basic bilingual education" is a system of instruction which builds upon the language skills of the pupil and which consists of, but is not limited to, all of the following:

(1) A structured English language development component with daily instruction leading to the acquisition of English language proficiency, including English reading and writing skills.

(2) A structured primary language component with daily basic skills instruction in the primary language for the purpose of sustaining achievement in basic subject areas until the transfer to English is made.

As the pupil develops English language skills, the amount of instruction offered through English shall increase.

(b) "Bilingual-bicultural education" is a system of instruction which uses two languages, one of which is English, as a means of instruction. It is a means of instruction which builds upon and expands the existing language skills of each participating pupil, which will enable the pupil to achieve competency in both languages.

This instruction shall include all of the following:

(1) Daily instruction in English language development which

shall include:

(A) Listening and speaking skills.

(B) Reading and writing skills; formal instruction in reading and writing of English shall be introduced when appropriate criteria are met.

(2) Language development in the pupil's primary language, including oral and literacy skills.

(3) Reading in the pupil's primary language.

(4) Selected subjects taught in the pupil's primary language.

(5) Development of an understanding of the history and culture of California and the United States, as well as an understanding of customs and values of the cultures associated with the languages being taught.

(c) (1) "Experimental bilingual programs" are:

(A) Innovative programs which are consistent with the provisions of this article, the requirements for bilingual teaching personnel pursuant to Section 52165, and the requirements for English language and primary language development pursuant to this section. Such programs may include new management approaches, greater emphasis on team teaching, or other appropriate improvements which expand the learning opportunities of pupils of limited English proficiency. Unless waivers of code sections are required, projects approval of the board is not required. A description of each such innovative program shall be included with the consolidated application for program funding and an annual evaluation of such programs shall be included in the multiple-funded program evaluation required pursuant to Section 33403.

(B) Planned variation programs for the purpose of comparing and improving language development programs for pupils of limited English proficiency. A primary focus shall be on appropriate instruction for pupils of limited English proficiency whose English skills are superior to their skills in their primary language.

A focus may also be placed upon situations in which the number of pupils who, in accordance with Section 52165, would be required to receive instruction pursuant to subdivision (a) or (b) of Section 52163, is substantially smaller than the census indicated for the previous year, in which case all pupils of limited English proficiency shall receive instruction through individual learning programs during the preparation of the district's proposal and the consideration of the proposal by the board. Such programs shall be authorized by the board in up to 300 classrooms in 1982–83 and up to 700 classrooms in 1983–84 and each school year thereafter in districts which are representative of the state both geographically and by size. Not more than 30 such classrooms in 1982–83 and 50 classrooms in 1983–84, which may or may not be in another school, shall be approved in any one district. Such programs shall not result in segregation. For districts proposing a planned variation program, the staffing requirements of Section 52165 may be partially or totally waived by the board provided that the district has an inadequate

number of certified bilingual teachers, that certified bilingual teachers are not replaced, that present level of effort is not reduced, and that the proposed language development program is appropriate. For each participating classroom there shall be another similar classroom in the district which has fully implemented and is in compliance with the other provisions of this article.

(2) Proposals for planned variation programs shall include, but need not be limited to:

(A) A clear statement of the purposes, goals, and objectives for planned variation programs and projected outcomes.

(B) A delineated management, staffing, and instructional plan.

(C) Pupil identification, diagnosis, and assessment procedures.

(D) Evidence of qualified bilingual and other instructional staff with demonstrated competence in language development, bicultural or multicultural knowledge of participating pupils, and instructional methodologies.

(E) Documented parent and community participation and support.

(F) Use of state and federal funding, where applicable.

(G) Evaluation component which controls for instructional treatments, instructional engaged time, staffing, pupil language characteristics, achievement, attendance, and related data.

(H) For purposes of this subdivision, if formal action upon a proposal for a planned variation program is not taken by the State Board of Education on or before the second regular meeting of the board following the receipt of a complete and documented proposal, the proposal shall be deemed approved for the remainder of the school year.

Proposals which meet the requirements of this subdivision shall be approved by the board in accordance with standards established in subdivision (b) of Section 52820.

Proposals may be approved annually for a second, third, or fourth year based upon a demonstration of compliance with planned variation program requirements.

(3) The department shall include in its annual report to the Legislature submitted pursuant to Sections 33405 and 52171.6 the number and nature of experimental bilingual and planned variation programs and progress of participating pupils.

(4) Nothing contained in this subdivision shall be construed to permit the operation of experimental bilingual and planned variation programs contrary to the purposes or intent of this article and other state or federal statutes and regulations promulgated for and on behalf of pupils of limited English proficiency. The primary goal of all such programs shall be to teach the pupil English.

(d) "Secondary level language development program" is a program in grades 7 to 12 which provides a prescriptive English language program that systematically develops a pupil's listening and speaking skills, knowledge of linguistic and grammatical structure leading to proficiency in reading and writing English. The

prescriptive English language program shall be based on the diagnosis of a pupil's language skills pursuant to Sections 52164 and 52164.1 and shall be conducted as an integral instructional program of English curriculum for not less than one full period a day or its equivalent for the purpose of providing pupils with minimum English language competencies pursuant to subdivision (e). The primary goal of such programs shall be to teach pupils the English language.

In addition to the prescriptive English language program required by this subdivision, a secondary level language development program shall provide primary language instructional support to sustain academic achievement in nonelective content subject areas required for high school graduation consistent with current law.

Instruction in a secondary level language development program shall be provided either by a language development specialist, or by a certified bilingual-crosscultural teacher, who has received the recommendation of the local superintendent of schools verifying in writing that the teacher is competent and qualified to teach an English-as-a-second-language component, as measured by the district's personnel evaluation system.

School districts offering an instructional program pursuant to this subdivision shall not be required to provide a secondary level individual learning program, as defined in subdivision (e), but shall be required to maintain records documenting all parental notices and of the continuing evaluation of pupil needs and services.

A school district may make a secondary level language development program available to pupils enrolled in grade 6 whenever that grade is maintained by the district in a middle school comprised of any of grades 6, 7, 8, or 9.

(e) "Secondary level individual learning program" is an individualized systematic program of instruction which meets the needs of limited-English-proficient pupils and builds upon their language skills in order to develop proficiency in English. This program shall be offered in a manner consistent with the United States Supreme Court decision in Lau vs. Nichols (414 U.S. 563), the Equal Education Opportunities Act of 1974 (20 U.S.C. Sec. 1701 et seq.) and federal regulations promulgated pursuant to such court decisions and federal statutes. The primary goal of all such programs shall be to teach the pupil English.

(f) "Elementary level individual learning program" is any program of instruction for a pupil of limited English proficiency in which any one of the three program options described in subdivision (a), (b), or (c) is individualized to meet the needs of the pupil of limited English proficiency and is offered in a manner consistent with the requirements of this article. Such instruction shall be offered in a manner consistent with the United States Supreme Court decision in Lau v. Nichols (414 U.S. 563), the Equal Educational Opportunities Act of 1974 (20 U.S.C. Sec. 1701 et seq.), and federal regulations promulgated pursuant to such court

decisions and federal statutes. The primary goal of all such programs shall be to teach the pupil English.

(g) "Primary language" is a language other than English which is the language the pupil first learned or the language which is spoken in the pupil's home.

(h) "Bilingual-crosscultural teacher" means a person who (1) holds a valid, regular California teaching credential and (2) holds either a bilingual-crosscultural certificate of proficiency or other credential in bilingual education authorized by the Commission for Teacher Preparation and Licensing or a bilingual-crosscultural specialist credential. Such a person shall be fluent in the primary language and familiar with the cultural heritage of limited-English-proficiency pupils in the bilingual classes he or she conducts. Such a person shall have a professional demonstrated working knowledge of the methodologies which are necessary to educate effectively those pupils.

(i) "Bilingual-crosscultural teacher aide" means an aide fluent in both English and the primary language of the pupil or pupils of limited English proficiency in a bilingual-bicultural program. Such an aide shall be familiar with the cultural heritage of pupils of limited English proficiency in the bilingual classes to which he or she is assigned.

(j) "Board" means the State Board of Education.

(k) "Superintendent" means the Superintendent of Public Instruction.

(*l*) "Basic skills" means language arts, including, but not limited to, reading and writing, and mathematics.

(m) "Pupils of limited English proficiency" are pupils who do not have the clearly developed English language skills of comprehension, speaking, reading, and writing necessary to receive instruction only in English at a level substantially equivalent to pupils of the same age or grade whose primary language is English. The determination of which pupils are pupils of limited English proficiency shall be made in accordance with the procedures specified in Sections 52164 and 52164.1. Pupils who have no proficiency in their primary language are not included within this definition.

(n) "Pupils of fluent English proficiency" are pupils whose English proficiency is comparable to that of the majority of pupils, of the same age or grade, whose primary language is English.

(o) "Department" means the Department of Education.

SEC. 4. Section 4 of Chapter 1157 of the Statutes of 1981 is amended to read:

Sec. 4. Experimental programs provided for in this act shall terminate on June 30, 1986, unless extended by subsequent legislation. The Superintendent of Public Instruction shall evaluate the experimental year-round programs operated pursuant to this act and shall report to the Legislature by January 1, 1983, on the effects, if any, of these programs upon the academic achievement of

participating students. The report to the Legislature shall also identify major problems encountered by the school district in implementing this act.

SEC. 5. It is the intent of the Legislature, if this bill and Assembly Bill 3298 are both chaptered and become effective January 1, 1983, both bills amend Section 52163 of the Education Code, and this bill is chaptered after Assembly Bill 3298, that the amendments to Section 52163 proposed by both bills be given effect and incorporated in Section 52163 in the form set forth in Section 3 of this act. Therefore, Section 3 of this act shall become operative only if this bill and Assembly Bill 3298 are both chaptered and become effective January 1, 1983, both amend Section 52163, and this bill is chaptered after Assembly Bill 3298, in which case Section 2 of this act shall not become operative.

SEC. 6. No appropriation is made and no reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution or Section 2231 or 2234 of the Revenue and Taxation Code because the Legislature finds and declares that there are savings as well as costs in this act which, in the aggregate, do not result in additional net costs.

CHAPTER 1311

An act relating to water districts and, in this connection, to create the Merced County Flood Control District to provide for the control of flood and storm waters and the protection of watercourses, watersheds, harbors, public highways, life and property from damage or destruction from such waters, to authorize the incurring of indebtedness, the issuance and sale of bonds, and the levying and collection of taxes and assessments on property within the disrict and in the respective zones thereof, to provide for the government, management, and operation of the district and for the acquisition and construction of property and works to carry out the purposes of the district, and to define the powers of the district and its officers.

[Approved by Governor September 22, 1982 Filed with Secretary of State September 23, 1982.]

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

SECTION 1. This act shall be known and may be cited as the Merced County Flood Control District Act.

SEC. 2. A flood control district is hereby created to be called the Merced County Flood Control District. The district shall consist of all the territory of the County of Merced lying within the exterior boundaries of said county. As used in this act, "district" means the Merced County Flood Control District.

SEC. 3. The board of supervisors of the district created by this

act, by resolutions thereof adopted from time to time, may establish flood control zones within the district without reference to the boundaries of other zones, setting forth in the resolutions descriptions thereof by metes and bounds and entitling each of the zones by a zone number, and institute zone projects for the specific benefit of the zones. The board may, by resolution, amend the boundaries by annexing property to, or by withdrawing property from, the zones or may divide existing zones into two or more zones or may superimpose a new or amended zone on zones already in existence, setting forth in the resolutions descriptions of the amended, divided, or superimposed zones by metes and bounds and entitling each of the zones by a zone number. Any territory in the district may be included within one or more flood control zones. As used in this act, "zone" means a flood control zone.

Proceedings for the establishment of zones may be conducted concurrently with and as a part of proceedings for the instituting of projects relating to the zones, which proceedings shall be instituted in the manner prescribed in Section 12. However, zones may be established without complying with the procedure in Section 12.

The boundaries of any proposed zone which includes any territory within a city shall be submitted to the city council of the city for consideration before the final approval of the boundaries of the zone by the board of supervisors of the district. If the city council does not approve the boundaries of the zone lying within the city, or including the city as a whole, the city council may recommend realigned boundaries for the portion of the zone within the city. The board of supervisors may then form the zone with such boundaries as have been recommended by the city council, or the board of supervisors may approve the zone as originally submitted to the city council for consideration.

SEC. 4. The objects and purposes of this act are to provide for the control of the flood and storm waters of the district and the flood and storm waters of streams that have their source outside of the district, but which streams and the floodwaters thereof flow into the district.

SEC. 5. The district is hereby declared to be a body corporate and politic and as such shall have, in addition to the other powers vested in it by this act, the following powers:

1. To have perpetual succession.
2. To sue and be sued in the name of the district.
3. To adopt a seal.
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 without 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 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 the district, and protect from damage from flood or storm waters the watercourses, watersheds, harbors, public highways, life, and property in the district, and the watercourses outside of the district of streams flowing into the district.

6. To cooperate and to act in conjunction 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 public district, or with any public or private corporation, or with any city or county, in the construction of any works for the controlling of flood or storm waters of or flowing into the district or for the protection of life or property therein, or in any other works, acts, or purposes provided for herein, and to adopt and carry out any definite plan or system of work for any such purpose.

7. To carry on technical and other investigations of all kinds, make measurements, collect data and make analyses, studies, and inspections pertaining to control of floods both within and without the district, and for such purposes the district shall have the right of access through its authorized representatives to all properties within the district. The district, through its authorized representatives, may enter upon those lands and make examinations, surveys, and maps thereof.

8. 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 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 flood or storm water, and all necessary appertenances; to enter into and do any acts necessary or proper for the performance of any agreement with the United States, or any state, county, district of any kind, public or private corporation, association, firm, or individual, or any number of them, for the joint acquisition, construction, leasing, ownership, disposition, use, management, maintenance, repair, or operation of any rights, works, or other property of a kind which might be lawfully acquired or owned by the district; to acquire the right to carry water through any canal, ditch, or conduit not owned or controlled by the district.

9. To incur indebtedness and to issue bonds in the manner herein provided.

10. 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.

11. 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.

12. To exercise the right of eminent domain within the district to take any property necessary to carry out any of the objects or purposes of this act. The district in exercising that power shall, in addition to the damage for the taking, injury, or destruction of property, also pay the cost of removal, reconstruction, or relocation of any structure, railways, mains, pipes, conduits, wires, cable, or poles of any public utility which is required to be moved to a new location. No right shall exist in the district to take, by proceedings in eminent domain, any property appropriated to public use by any existing county or municipal utility district. Nothing in this act shall be deemed to authorize the district, or any person or persons, to divert the waters of any river, creek, stream, irrigation system, canal, or ditch, or the waters thereof or therein, unless compensation therefor be first provided in the manner prescribed by law.

13. To make contracts with the County of Merced, and to employ labor for the purpose of doing flood control work and 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 Merced, or any incorporated city therein, to require the installation of drainage or flood control improvements necessary or convenient for needs of the zone, including, but not limited to, residential, subdivision, commercial, and industrial drainage and flood control needs, the county and cities being hereby authorized to refer all drainage and flood control problems, arising under the Subdivision Map Act 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 the zone derived from the fund created under Section 14.

14. To have power to cooperate and contract with the United States under the Federal Reclamation Act of June 17, 1902, and all acts amendatory thereof or suplementary thereto, or any other act of Congress heretofore or hereafter enacted permitting cooperation or contract for the purposes of contracting works, for drainage or flood control, or for the acquisition, purchase, extension, operation, or maintenance of those works, or for the assumption as principal or guarantor of indebtedness to the United States, or for carrying out any of the purposes of the district, and to carry out and perform the terms of any contract so made.

SEC. 5.5. In addition to the powers specified in Section 5, the district may perform acts of water conservation when the water

conservation is undertaken in connection with the control of flood and storm waters. In particular, the district may spread, store, distribute, buy, and sell water, and cause water to be percolated into the soil, for beneficial and useful purposes. All of the powers, duties, and procedures set forth in this act, with regard to control of flood and storm waters, shall also apply to the powers to conserve water. None of the provisions of this act shall preclude the exercise by any other political subdivision that may now or hereafter exist, in whole or in part, within the district from exercising its powers, although those powers may be of the same nature as the powers of the district. Within the boundaries of any other public district having water conservation powers, the powers granted by this section shall be exercised only in concert and cooperation with that district.

SEC. 6. The Board of Supervisors of Merced County shall be and is hereby designated as, and empowered to act as, ex officio the Board of Supervisors of the Merced County Flood Control District. As used elsewhere in this act the terms "board" and "board of supervisors" means the Board of Supervisors of the Merced County Flood Control District.

Each member of the board of supervisors of the district may receive as compensation for his services an amount as established by the board of supervisors not to exceed on hundred dollars ($100) per month and his actual and necessary expenses. In the performance of official duties under this act, payable from the funds of the district in addition to his salary as county supervisor.

All ordinances, resolutions, and other legislative acts for the district shall be adopted by the board of supervisors, and certified to, recorded, and published, in the same manner, except as herein otherwise expressly provided, as are ordinances, resolutions, or other legislative acts for the County of Merced.

SEC. 7. The board may appoint one or more commissions consisting of not more than seven members, each of whom shall be freeholders and residents of the County of Merced and, if the commission is appointed for a particular zone, a freeholder and resident of that zone. The board may delegate any or all of its powers to such a commission applicable to the zone for which the commission is appointed, other than the power to create or modify a zone or to replace its members. The board may by resolution provide for compensation for services and payment of the actual necessary expenses incurred by those members in the performance of official duties under this act, payable from the funds of the district. Members of a commission shall serve at the pleasure of the board of supervisors.

When the board of supervisors has delegated any or all of its powers to a commission, and terms "board" and "board of supervisors" mean the commission except as to the powers not delegated. The commission may, by resolution, certified to by the chairman of the commission, take action with reference to any and all matters which have been delegated to it by the Board of

Supervisors.

SEC. 8. The County Counsel, County Surveyor, County Assessor, County Tax Collector, County Clerk, County Auditor, Purchasing Agent, and County Treasurer of the County of Merced, and their successors in office, and all their assistants, deputies, clerks, and employees, and all other officers of Merced County, their assistants, deputies, clerks, and employees, shall be ex officio officers, assistants, deputies, clerks, and employees, respectively, of the district, and shall respectively perform, unless otherwise provided by the board, the same various duties for the district as for Merced County, in order to carry out the provisions of this act.

Reimbursement may be made to the county for services rendered to the district by county officers and employees and the amounts of reimbursement shall be established by mutual agreement of the Board of Supervisors of Merced County and the board of the district.

All officers, deputies, clerks, and employees shall receive their actual necessary expenses in the performance of official duties under this act payable from the funds of the district, in accordance with regulations as may be adopted by the Board of Supervisors of Merced County.

SEC. 9. The board shall have power to make and enforce all needful rules and regulations for the administration and government of the district, and in addition to the officers and employees herein otherwise prescribed, the board may, in its discretion, appoint a chairman, a secretary, and such other officers, agents, and employees for the board or district as in its judgment may be deemed neccesary, including employees or professional assistants independent of the county staff, and may prescribe their duties and fix their compensation.

SEC. 10. The board may employ competent registered civil engineers to investigate and carefully devise a plan or plans for the accomplishment of any of the purposes of this act, and may obtain such other information in regard thereto as may be deemed necessary or useful for carrying out the purposes of this act. The board may direct the engineer or engineers to make and file reports from time to time with the board, which shall show the following:

1. A general description of the work proposed to be done, together with general plans, profiles, cross sections, and general specifications relating thereto, on each project or work of improvement.

2. A general description of the lands, rights-of-way, easements, and property proposed to be taken, acquired, or injured in carrying out the work.

3. A map or maps which shall show the location and zones, as may be required, of each of the projects or improvements, and lands, rights-of-way, easements, and property to be taken, acquired, or injured in carrying out the work, and any other information in regard to the project or work that may be deemed necessary or useful.

4. An estimate of the cost of each project or work of improvement, including an estimate of the cost of lands, rights-of-way, easements,

and property proposed to be taken, acquired, or injured in carrying out the project or work of improvement, and also of all incidental expenses incurred or likely to be incurred in connection therewith, including legal, clerical, engineering, superintendence, inspection, printing, and advertising, and stating the total amount of bonds, if any, necessary to be issued to pay for it.

The engineer or engineers shall, from time to time and as directed by the board, file with the board supplementary, amendatory, and additional reports and recommendations, as necessity and convenience may require.

SEC. 11. The board shall determine which projects or works of improvement shall be carried out and shall determine, as to each project or work of improvement, that it is one of the following:

1. For the common benefit of the district as a whole.

2. For the benefit of two or more zones, hereinafter referred to as participating zones.

3. For the benefit of a single zone.

SEC. 12. The board may institute projects for single zones and joint projects for two or more zones for the financing, constructing, maintaining, operating, extending, repairing, or otherwise improving any work or improvement of common benefit to the zone or participating zones. For the purpose of acquiring authority to proceed with any such project, the board shall adopt a resolution specifying its intention to undertake the project, together with the engineering estimates of the cost of the project to be borne by the particular zone or participating zones, including an estimate of annual operation and maintenance costs and a description of the way in which those costs will be paid. The resolution shall also set forth whether bonds are to be used to finance the project or taxes or assessments, and the amounts to be raised for the project. If taxes or assessments are to be used to finance the project, the resolution shall specify the procedure to be followed, under subdivisions 2 and 3 of Section 14, to levy the taxes or assessments. The resolution shall fix a time and place for public hearing of the resolution and shall refer to a map or maps showing the general location and general construction of the project. Notice of the hearing shall be given for a period of not less than 20 days. If there is a newspaper of general circulation published or circulated in the territory proposed to be formed into a zone, notice shall be given by publication once a week for two consecutive weeks prior to the hearing, the last publication of which shall be at least seven days before the hearing. If there is no such newspaper, notice shall be given by posting notice of the hearing for a period of 14 days prior to the hearing in five public places in the territory designated by the board. The notice shall designate a public place where a copy of the map of the project may be seen by any interested person.

At the time and place fixed for the hearing, or at any time to which the hearing may be continued, the board shall consider all written and oral objections to the proposed project, to the proposed methods

and amounts of financing the project, and to the inclusion or exclusion of property within the proposed zone or participating zone.

If, in the judgment of the board, evidence given at the public hearing indicates that changes in the proposed project or the methods and amounts of financing the project are necessary or desirable, the board may, at the conclusion of the hearing, adopt a resolution making changes in the proposed project and the methods and amounts of financing the project.

At the conclusion of the hearing, unless the board abandons the proposed project, it shall exclude from the zone or participating zones all property which, in the judgment of the board, will not be benefited by the proposed project.

SEC. 13. If the board determines to proceed with a project in a zone or zones, after the conclusion of the public hearing, it shall call an election to be held in the zone or zones on the question of proceeding with the project. The election shall be called by the adoption of a notice of election, which shall state the date of the election, the proposition to be voted upon, the hours the polls will be open, and shall designate the election precincts, the polling place within each precinct, and the names of the election officers consisting of one inspector, one judge, and one clerk for each precinct. Only registered voters within the zone or zones shall be entitled to vote at the election.

The notice of election shall be published or posted pursuant to the same procedure and time limits prescribed for giving notice of the public hearing pursuant to Section 12 of this act. No other notice of the election need be given nor need sample ballots or polling place cards be issued.

The election shall be conducted as one election comprising all of the zones affected, rather than separately in each zone, and precincts established may comprise territory in more than one zone. If a majority of the voters voting upon the proposition are in favor of the project, the board may proceed with the project. If a majority of the voters vote against the project, the board shall not proceed with the project unless it is later approved by the voters at a subsequent election called and conducted pursuant to this section. The subsequent elections may be called by the board without conducting additional public hearings.

The election may be consolidated with any district, city, or county election or statewide primary or general election under the provisions of the Elections Code relating to the consolidation of elections and, in case of consolidation, the notice herein provided may be modified as provided in the Elections Code.

If the board determines that bonded indebtedness should be incurred to pay for any portion of the cost of a proposed project, then the election required under this section shall be fully consolidated with the bond election, without complying with the procedures for consolidation of elections set forth in the Elections Code, and the

procedures for calling and conducting the bond election shall be applicable to both elections, and both propositions shall be included on the ballot for the election. In the case of such a consolidated election, the ordinance required under Section 15 of this act shall constitute the notice of election required under this section and shall contain the information required under this section. If a majority of the voters voting in all of the zones participating in the election, considering the zones as a single unit rather than separately, vote in favor of approving the project, but the bond election fails, the board may proceed to pay the costs of the project out of the taxes or assessments levied under this act or from other sources, excluding bonds.

In all particulars not provided in this act, the election shall be held and conducted and the returns canvassed and declared in the manner provided in the Elections Code for state or county general elections in the County of Merced including the provisions governing absentee ballots.

SEC. 14. The board may, in any year do the following:

1. Levy assessments upon all property in the district to pay the general administrative costs and expenses of the district, and to carry out any of the objects or purposes of this act of common benefit to the district.

2. Levy such assessments in each or any of the zones and participating zones as have been authorized after proceedings in the manner prescribed in Sections 12 and 13, to pay the cost and expenses of carrying out, constructing, maintaining, operating, extending, repairing or otherwise improving any or all works or improvements established or to be established within or on behalf of the respective zones, according to the benefits derived or to be derived by the respective zones, by either of the following methods:

(a) By an assessment upon land only within a zone or participating zones.

(b) By an assessment upon all real property within a zone or participating zones, including both land and improvements thereon.

An assessment levied under this section shall be levied in any manner which reasonably reflects the benefit which will accrue to the parcel being assessed, including, but not limited to, (1) on the basis of acreage, if benefits are determined to be substantially equal per acre, or (2) on the basis of the proportionate storm, flood, or drainage water runoff from each parcel. The board shall order the preparation of a written report, containing a description of each parcel, which may be by reference to the county assessment parcel and the amount of the assessment for each parcel, prepared and filed with the clerk of the board. The clerk shall fix a time, date, and place for a hearing upon the report. Prior to the date of the hearing, a notice of hearing shall be published pursuant to Section 6066 of the Government Code and at least three notices shall be posted in public places within the district.

At the hearing, the board shall hear and consider all protests. At

the conclusion of the hearing, the board may adopt, revise, change, reduce, or modify any assessment and shall make its determination upon each assessment described in the report, and thereafter, by resolution, shall confirm the assessments. A copy of the resolution of confirmation shall be certified by the clerk of the board and shall be filed for record in the Office of the Recorder of Merced County.

Upon recordation of the resolution confirming the assessment, the assessment shall be a lien upon the real property affected thereby and shall be levied and collected at the same time and in the same manner as the general tax levy for county purposes.

3. Levy assessments by either method authorized by subdivision 2 of this section in each or any of the zones, according to the special benefits derived or to be derived by the specific properties therein, to pay the cost and expenses of carrying out any of the objects or purposes of this act of special benefit to the zone or zones, including the constructing, maintaining, operating, extending, repairing, or otherwise improving any or all works of improvement established or to be established within, or on behalf of the respective zone or zones.

In the event of project cooperation with any of the governmental bodies, as authorized in subdivision 6 of Section 5 of this act and requiring the making of a contract with any such governmental body for the purposes set forth in subdivision 6, by the terms of which work is to be performed by any such governmental body in any specified zone or participating zones, for the particular benefit thereof, and by the proposed contract the district is to pay to the governmental body a sum of money in consideration or subvention for the performance of the work by that governmental body, the board may, after proceedings in the manner prescribed in Sections 12 and 13 of this act, levy and collect an assessment upon the property in the zone or participating zones, whereby to raise funds to enable the district to make the payment, in addition to other taxes or assessments herein otherwise provided for.

The assessments shall be levied and collected together with, and not separately from taxes for county purposes, and the revenues derived from the district assessments shall be paid into the county treasury to the credit of the district, or the respective zones thereof less reasonable costs incurred by the county for collection, and the board shall have the power to control and order the expenditure thereof for those purposes; provided, however, that no revenues, or portions thereof, derived in any zone from the assessments levied under the provisions of subdivision 2 or 3 of this section shall be expended for constructing, maintaining, operating, extending, repairing, or otherwise improving any works or improvements located in any other zone, except in the case of joint projects, or for projects authorized or established outside of the zone, or zones, but for the benefit thereof. In cases of projects joint to two or more zones, those zones are, and shall be referred to as, participating zones.

SEC. 15. (1) Whenever the board determines that a bonded indebtedness should be incurred to pay the cost of any work or

improvement in any zone or zones, the board may, by resolution, determine and declare the respective amounts of bonds necessary to be issued in each zone in order to raise the amount of money necessary for each work or improvement and the denomination and the maximum rate of interest of the bonds. The board shall cause a copy of the resolution, duly certified by the clerk, to be filed for record in the Office of the Recorder of Merced County within five days after its issuance. From and after the filing of the copy of the resolution the board shall be deemed vested with the authority to proceed with the bond election.

(2) After the filing for record of the resolution specified in subdivision (1) of this section, the board may call a special bond election in the zone or participating zones at which the question whether or not bonds shall be issued in the amount or amounts determined in the resolution and for the purpose or purposes therein stated shall be submitted to the qualified electors of the zone or participating zones. The bonds and the interest thereon shall be paid from revenue derived from annual taxes or assessments levied as provided in this act.

(3) The board shall call the special bond election by ordinance and submit to the qualified electors of the zone or participating zones the proposition of incurring a bonded debt in the zone or participating zones in the amount and for the purposes stated in the resolution and shall recite therein the objects and purposes for which the indebtedness is proposed to be incurred; provided, that it shall be sufficient to give a brief, general description of the objects and purposes, and refer to the recorded copy of the resolution adopted by the board and on file for particulars; and the ordinance shall also state the estimated cost of the proposed work and improvements, the amount of the principal of the indebtedness to be incurred therefor, and the maximum rate of interest to be paid on the indebtedness, and shall fix the date on which the special election shall be held, and the form and contents of the ballot to be used. For the purposes of the election, the board shall in the ordinance establish special bond election precincts within the boundaries of each zone and participating zone and may form election precincts by consolidating the precincts established for general elections in the district to a number not exceeding six general precincts for each such special bond election precinct, and shall designate a polling place and appoint one inspector, one judge, and one clerk for each of the special bond election precincts.

In all particulars not recited in the ordinance, the special bond election shall be held as nearly as practicable in conformity with the general election laws of the state.

The board shall cause a map or maps to be prepared covering a general description of the work to be done, which map shall show the location of the proposed works and improvements and shall cause the map to be posted in a prominent place in the county courthouse for public inspection for at least 30 days before the date fixed for the

election.

The ordinance calling for the special bond election shall, prior to the date set for the election, be published in a newspaper of general circulation circulated in each affected zone and participating zone for six consecutive times if published in a daily newspaper of general circulation, or two times if published in a weekly newspaper of general circulation. The last publication of the ordinance shall be at least 14 days before the election, and if there be no such newspaper, then the ordinance shall be posted in five public places designated by the board, in each zone and participating zone for at least 30 days before the date fixed for the election. No other notice of the election need be given nor need sample ballots or polling place cards be issued.

Any defect or irregularity in the proceedings prior to the calling of the special bond election shall not affect the validity of the bonds authorized by the election. Where a project affects a single zone only, if at the election two-thirds of the votes cast in the zone on the proposition of incurring a bonded indebtedness are in favor thereof, then bonds for that zone for the amount stated in the proceedings shall be issued and sold as provided in this act. Where the incurring of bonded indebtedness by participating zones is to be determined at the election, no bonds for any of the participating zones shall be issued or sold unless two-thirds of the votes cast on the proposition in each participating zone are in favor of incurring the bonded indebtedness to be undertaken by that zone.

SEC. 16. The board shall, subject to the provisions of this act, prescribe by resolution the form of the bonds, which shall include a designation of the zone or participating zone affected, and of the interest coupons attached thereto. The bonds shall be payable annually or semiannually at the discretion of the board each and every year on a day and date and at a place to be fixed by the board, and designated in the bonds, together with the interest on all sums unpaid on the date until the whole of the indebtedness shall have been paid.

The board may divide the principal amount of any issue into two or more series and fix different dates for the bonds of each series. The bonds on one series may be made payable at different times from those of any other series. The maturity of each series shall comply with this section. The board may fix a date, not more than two years from the date of issuance, for the earliest maturity of each issue or series of bonds. Beginning with the date of the earliest maturity of each issue or series, not less than one-fortieth of the indebtedness of that issue or series shall be paid every year. The final maturity date shall not exceed 40 years from the time of incurring the indebtedness evidenced by each issue or series.

The bonds shall be issued in such denomination as the board may determine, except that no bonds shall be of a lower denomination than one hundred dollars ($100), or of a higher denomination than ten thousand dollars ($10,000), and shall be payable on the days and

at the place fixed in the bonds, and with interest at the rate specified in the bonds, and shall be made payable annually or semiannually, and the bonds shall be numbered consecutively and shall be signed by the chairman of the board, and countersigned by the auditor of the district, and the seal of the district shall be affixed thereto by the clerk of the board. Either or both of the signatures may be printed, engraved, or lithographed. The interest coupons of the bonds shall be numbered consecutively and signed by the auditor by his printed, engraved, or lithographed signature. In case any of the officers whose signatures or countersignatures appear on the bonds or coupons shall cease to be an officer before the delivery of the bonds to the purchaser, the bonds and coupons, and signatures or countersignatures, shall nevertheless be valid and sufficient for all purposes the same as if the officer had remained in office until the delivery of the bonds.

SEC. 17. The board may issue and sell the authorized bonds of any zones at not less than par value. Before selling the bonds, or any part thereof, the board shall give notice not less than 10 days prior to the date of sale by publication in a newspaper of general circulation circulating in the district inviting sealed bids in such manner as the board shall prescribe. If satisfactory bids are received, the bonds offered for sale shall be awarded to the highest responsible bidder. If no bids are received, or if the board determines that the bids received are not satisfactory as to price or responsibility of the bidders, the board may reject all bids received, if any, and either readvertise or sell the bonds at private sale. The proceeds of the sale of the bonds shall be placed in the Treasury of the County of Merced to the credit of the district and the respective participating zones thereof, for the uses and purposes of the zone or zones voting on the bonds; and the proper record of the transactions shall be placed upon the books of the county treasurer, and the respective zone funds shall be applied exclusively to the purposes and objects mentioned in the ordinance calling for the special bond election as aforesaid, subject to the provisions of this act. Payments from the zone funds shall be made upon demands prepared, presented, allowed, and audited in the same manner as demands upon the funds of the County of Merced.

SEC. 17.5. In addition to the authority for issuance of bonds under Sections 15, 16, and 17, the district may, in any year, issue improvement bonds in accordance with and pursuant to the provisions and procedures of 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), the Municipal Improvement Act of 1913 (Division 12 (commencing with Section 10000) of the Streets and Highways Code), or the Refunding Assessment Bond Act of 1935 (Chapter 732 of the Statutes of 1935).

SEC. 18. Any bonds issued under the provisions of this act, and

the interest thereon, shall be paid by revenue derived from an annual assessment levied as provided in clause (a) or (b) of subdivision 2 of Section 14. No zone nor the property therein shall be liable for the bonded indebtedness of any other zone, nor shall any moneys derived from assessments in any of the several zones be used in payment of principal or interest or otherwise of the bonded indebtedness chargeable to any other zone.

SEC. 19. The board shall levy an assessment each year sufficient to pay the interest and the portion of the principal of the bonds that is due or is to become due before the time for making the next general assessment. The assessments shall be levied and collected in the respective zones of issuance together with and not separately from taxes for county purposes, and when collected shall be paid into the County Treasury of Merced County to the credit of the zone of issuance, and be used for the payment of the principal and interest on the bonds, and for no other purpose. The principal and interest on the bonds shall be paid by the County Treasurer of Merced County in the manner provided by law for the payment of principal and interest on bonds of the county.

SEC. 20. Whenever bonds have been authorized by any zone or participating zone of the district and the bonds have been issued as authorized by this act, and if the board by resolution determines that additional bonds should be issued for carrying out the work of flood control or for any of the purposes of this act, the board may again proceed as provided in this act and submit to the qualified voters of the zone or participating zone, the question of issuing additional bonds in the same manner and with like procedure as hereinbefore provided, and all the provisions of this act for the issuing and sale of the bonds, and for the expenditure of the proceeds thereof, shall apply to the issue of the additional bonds.

SEC. 21. Should a proposition for issuing bonds for any zone or participating zone submitted at any election under this act fail to receive the requisite number of votes of the qualified electors voting at the election to incur the indebtedness, the board shall not, for six months after such election, call or order another election in the zone or participating zone for incurring indebtedness and issuing bonds under the terms of this act for the same objects and purposes.

SEC. 22. The board may, with the consent of any holder or holders of outstanding bonds of the district, exchange refunding bonds bearing a lower rate of interest for the outstanding bonds.

Whenever any holder of an outstanding bond or bonds has consented to an exchange, the board may, by resolution entered in its minutes, order the refunding of the bonds. The resolution shall designate the numbers, denominations, dates of maturity, and aggregate principal amounts of the bonds to be refunded and shall provide for the issuance of refunding bonds in exchange therefor, the form, numbers, denominations, dates of maturity, and aggregate principal amounts of which shall be the same as the bonds to be refunded. The resolution shall also fix the rate of interest the

refunding bonds shall bear, which rate shall be less than the rate provided in the bonds to be refunded. The resolution shall also fix the form of the interest coupons attached to the refunding bonds, which shall be the same as the bonds to be refunded, excepting that the rate and amounts of interest shall be less.

The refunding bonds shall be signed by the chairman of the board or such other member of the board as the board may, be resolution, designate and shall be countersigned by the treasurer of the district and the seal of the district shall be affixed thereto. The interest coupons shall be numbered consecutively and signed by the treasurer of the district by his printed, engraved, or lithographed signature. In case any officer whose signature or countersignature appears on the bonds or coupons shall cease to be an officer before the delivery of the bonds to the purchaser, the signature or countersignature shall nevertheless be valid and sufficient for all purposes the same as if the officer had remained in office until the delivery of the bonds.

Each refunding bond may be exchanged for its corresponding outstanding bond as the board, by agreement with the holder of such outstanding bond, may determine, except that in effecting the exchange, any and all matured coupons on refunding bonds shall be detached and canceled and the principal and accrued interest of both issues shall be accepted at par value and the district shall pay the holder, in cash out of moneys in the bond interest fund of the district, an amount equal to the difference between the interest on the oustanding bond and on the refunding bond accrued to the date of the exchange.

When any refunding bonds have been exchanged, assessments shall be levied and collected to pay the principal and interest thereof as provided by Section 19 and all the provisions of that section shall apply to the refunding bonds to the same extent as to original issues.

The refunding bonds shall also be legal investments for fiduciaries and others as provided in Section 25.

SEC. 23. The provisions of law of this state, prescribing the time and manner of levying, assessing, equalizing, and collecting county property taxes, including the sale of property for delinquency, and the redemption from that sale, and the duties of the several county officers with respect thereto, are, insofar as they are applicable to the assessments levied hereunder and not in conflict with the specific provisions of this act, hereby adopted and made a part hereof. The officers shall be liable upon their several official bonds for the faithful discharge of the duties imposed upon them by this act. All property exempt from taxation for county purposes under the provisions of the California Constitution and the Revenue and Taxation Code is exempt from assessment for the purposes of this act.

SEC. 24. A zone formed or proposed to be formed under this act, or the acquisition of any property or the construction of any improvement thereby, shall not be subject to any of the provisions of the District Organization Law, Chapter 1 (commencing with

Section 58000) of Division 2 of Title 6 of the Government Code.

SEC. 25. The bonds of the district issued for any zone thereof pursuant to this act shall be legal investments for all trust funds, and for the funds of all insurance companies, banks, both commercial and savings, and trust companies, and for the state school funds, and whenever any money or funds may by law now or hereafter enacted be invested in bonds of cities, cities and counties, counties, school districts, or municipalities in the State of California, the money or funds may be invested in the bonds of the district issued in accordance with the provisions of this act, and whenever bonds of cities, cities and counties, school districts, or municipalities, may, by any law now or hereafter enacted, be used as security for the performance of any act, the bonds of the district may be so used.

SEC. 26. All bonds issued by the district under the provisions of this act shall be free and exempt from all taxation within the State of California.

SEC. 27. Any improvement or unit of work when the cost thereof, according to the estimate of the engineer, will exceed six thousand five hundred dollars ($6,500), shall be done by contract and shall be let to the lowest responsible bidder or bidders in the manner hereinafter provided. The board shall first determine whether the contract shall be let as a single unit for the whole of the work, or shall be divided into severable convenient parts, or both, according to the best interests of the district. The board shall make call for bids and advertise the call by three insertions in a daily newspaper of general circulation or by two insertions in a weekly newspaper of general circulation printed in the district inviting sealed proposals for the construction or performance of the improvement or work before any contract is made therefor. The call for bids shall state whether the work is to be performed as a unit for the whole thereof or shall be divided into severable convenient specific parts, or both, as stated in the call. The board may let the work by single contract for the whole thereof as a unit or it may divide the work into severable convenient parts by separate contracts, as stated in the call, according to the best interests of the district. The board shall require the successful bidder or bidders to file with the board a good and sufficient bond, to be approved by the board, conditioned upon the payment of their claims for labor and material in connection therewith. The bond shall contain the terms and conditions set forth in Chapter 3 of Division 5 of Title 1 of the Government Code and be subject to the provisions of that chapter. The board may reject any and all bids and readvertise for new bids, or by a two-thirds vote may elect to undertake the work by force account. If no proposals are received pursuant to advertisement therefor, or the estimated cost of the work does not exceed the sum of six thousand five hundred dollars ($6,500), or the work consists of channel protection, or maintenance work, or emergency work when necessary in order to protect life and property from impending flood damage, the board of supervisors may, without advertising for bids therefor, have the work done by

employees of the district, by day labor, under the direction of the board, by contract, or by a combination thereof. The district may acquire in the open market, without advertising for bids therefor, materials, equipment, and supplies for use in any work or for any other purpose; provided, however, that materials and supplies for use in any new construction work or improvement, except work referred to in the preceding sentence, may not be purchased if the cost thereof exceeds six thousand five hundred dollars ($6,500), without advertising for bids and awarding the contract therefor to the lowest responsible bidder.

SEC. 28. Any improvement for which bonds are voted under this act, shall be made in conformity with the report, plans, specifications, and adopted map provided for by this act, unless the doing of any of the work described in the report shall be prohibited by law, or be rendered contrary to the best interests of the district by some change of conditions in relation thereto, subsequent to the date of filing the report, plans, specifications, and map, in which event the board of supervisors may order necessary changes made in the proposed work or improvements and may cause any plans and specifications to be made and adopted therefor.

SEC. 28.5. A district may issue negotiable promissory notes pursuant to this section to acquire funds for any district purposes. The promissory notes shall bear interest at a rate not to exceed 12 percent per year. They shall be payable from assessments levied for purposes of the district other than the payment of principal and interest on any bonded debt of the district or of a zone therein. The maturity of the promissory notes shall not be later than five years from the date thereof. The total aggregate amount of the notes outstanding, at any one time, shall not exceed 3 percent of the county auditor's estimate of the assessed valuation of the taxable property in the district evidenced by his certificate.

SEC. 29. The repeal or amendment of this act shall not in any way affect or release any of the property in the district or any zone thereof from the obligations of any outstanding bonds or indebtedness until all of the bonds and outstanding indebtedness have been fully paid and discharged.

SEC. 30. All claims for money or damages against the district are 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 therein or by other statutes or regulations expressly applicable thereto.

SEC. 31. The legal title to all property acquired under this act shall immediately and by operation of law vest in the district, and shall be held by the district, in trust for, and is hereby dedicated and set apart to, the uses and purposes set forth in this act. The board may hold, use, acquire, manage, occupy, and possess the property, as herein provided; and the board may determine, by resolution duly entered in their minutes that any property, real or personal, held by the district is no longer necessary to be retained for the uses and

purposes thereof, and may thereafter sell, lease, or otherwise dispose of the property in the manner prescribed by law for such action by counties.

SEC. 32. The district formed under this act, in order to determine the legality of its existence, may institute a proceeding therefor in the superior court of this state, in and for the County of Merced, by filing with the clerk of that county a complaint setting forth the name of the district, its exterior boundaries, the date of its organization, and a prayer that it be adjudged a legal flood control district formed under this act. The summons in that proceeding shall be served by publishing a copy thereof once a week for four weeks in a newspaper of general circulation published in that county. Within 30 days after proof of publication of the summons shall have been filed in the proceeding, the state, any property owner or resident in the district, or any person interested may appear as a defendant in the action by serving and filing an answer to the complaint, in which case the answer shall set forth the facts relied upon to show the invalidity of the district and shall be served upon the county counsel before being filed in the proceeding. The proceeding is hereby declared to be a proceeding in rem and the final judgment rendered therein shall be conclusive against all persons whomsoever, including the district and the State of California.

SEC. 33. The board may require any officer or employee to give bond for the faithful performance of the duties of his or her office, in such penal sum as may be fixed by the board. When deemed expedient by the board, a master bond may be used which shall provide coverage on more than one officer, employee, or agent of the district who is required by the district to give bond. The bond shall be in the form and for the term which is approved by the board. The premium for the bond shall be paid by the district.

SEC. 34. Notwithstanding any provisions of this act to the contrary, in the event the proceeds from the sale of bonds of any zone are invested temporarily in United States Bonds, notes, or certificates of indebtedness, or in other legal investments, pending the expenditure of the funds for the purpose or purposes for which the indebtedness was incurred, any revenue or interest received or accruing therefrom may be used to pay the annual or semiannual installments of principal or interest on the bonds as they become due.

SEC. 35. This act, and every part thereof, shall be liberally construed to promote the object thereof and to carry out its intents and purposes.

SEC. 36. If any provision of this act, or the application thereof to any person or circumstance, is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances, shall not be affected thereby.

SEC. 37. Neither the establishment of the district nor anything in this act shall affect, restrict, control, or supersede the existence, property, rights, or powers of any county water district, reclamation district, irrigation district, water conservation district, protection

district, municipality, flood control district, or other district or political subdivision of the state established in or partially within the limits of the district for the purpose or purposes in whole or in part of flood control.

SEC. 38. The formation of the district or the enactment of this act shall not impair the vested right of any person, association, corporation, public district of any kind, or political subdivision of the state, in or to water or the use thereof.

SEC. 100. No appropriation is made and no reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution or Section 2231 or 2234 of the Revenue and Taxation Code because this act is in accordance with the request of a local agency or school district which desired legislative authority to carry out the program specified in this act.

CHAPTER 1312

An act to amend Section 19823 of, and to add and repeal Chapter 8.7 (commencing with Section 19610) to Part 2 of Division 5 of Title 2 of, the Government Code, relating to state employees.

[Approved by Governor September 22, 1982. Filed with Secretary of State September 23, 1982.]

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

SECTION 1. Chapter 8.7 (commencing with Section 19610) is added to Part 2 of Division 5 of Title 2 of the Government Code, to read:

CHAPTER 8.7. SHARED SAVINGS PROGRAM

19610. The purposes of this chapter are to establish a program for improving the services which state government provides the public and to increase the productivity of state employees. These purposes can best be achieved by involving program managers and state employees in the design and implementation of plans for reviewing the methods by which services are provided to the public and for improving the work process in order to increase productivity, and by establishing a procedure for rewarding groups of state employees which attain measurable increases in productivity.

19611. As used in this chapter:

(a) "State agency" means any state office, department, division, bureau, board, or commission.

(b) "Organizational unit" means any group of employees within a state agency having responsibility for carrying out a set of tasks directly related to the accomplishment of the goals described in the agency's program statement.

(c) "Head of a state agency" means the chief executive officer of an executive branch state agency including, but not limited to, the director of a department or the executive secretary of a board or commission.

(d) "Program" means a group of tasks which comprises a single government function or service or a logically consistent set of functions or services within an agency.

(e) "Goal" means a statement of the annual mission of the state agency.

(f) "Long-term goal" means a statement of the ultimate public purpose of a program.

(g) "Task" means an undertaking of the agency which is conducted to further a program goal.

(h) "Objective" means the annual goal toward which particular program tasks are directed.

(i) "Target level of tasks" means the level of quality and quantity of tasks performed by an agency in order to reach the program objectives.

19612. Any state agency responsible for the administration of one or more programs may contract with the Department of Finance, subject to Section 19616, to improve the methods by which services are provided under the program and to increase the productivity of state employees involved in its administration.

19613. The head of each state agency may notify agency employees or their employee organizations or both of the provisions of this chapter and may encourage them to participate in establishing shared savings programs.

19614. The head of each state agency may prepare an inventory of all programs for which the agency has responsibility, identifying its basis in law, the goal of each program and the services the program performs. This inventory document shall be loaned to employees who request it, or placed in a location where it may be read by employees.

19615. (a) If an organizational unit responsible for a program or part of a program desires to apply for a share of savings under provisions of this chapter, and it receives the approval of the head of the agency, the manager and employees of the unit shall prepare a plan for achieving the goals and objectives of the program.

(b) The plan shall include all of the following:

(1) The goals of the program and the services it provides.

(2) The program objectives of the organizational unit.

(3) The tasks the unit must complete in order to reach the objectives within a specified period of time.

(4) The target level of the tasks to be completed.

(5) The personnel required to enable the unit to complete the tasks up to the level specified.

(6) The methods which will be used to measure the unit's output.

19616. Upon approval by the head of the state agency, the plan shall be transmitted to the Department of Finance which shall

review the plan and determine whether the elements of the plan contain provisions to enable the agency and the Department of Finance to measure the performance of the organizational unit and to determine whether this performance has resulted in budget savings. The Department of Finance may limit the number of organizational units participating in the shared savings program to five or less during the first year of operation in order to evaluate results.

19617. The head of the state agency shall submit a report at the end of the fiscal year to the Department of Finance identifying any net savings and requesting that they be designated as cost savings pursuant to this chapter.

19618. The Department of Finance shall determine if budget savings can be attributed to increased productivity pursuant to this chapter by considering whether:

(a) Actual results exceeded the target level of the tasks.

(b) The agency has increased its ability to achieve long-term program goals.

(c) The savings have not resulted from changes in program activities which will cause additional program costs in subsequent years.

19619. (a) The Director of Finance may authorize expenditures under this chapter not sooner than 30 days after notifying in writing the chairperson of the fiscal committee in each house and the Chairperson of the Joint Legislative Budget Committee. Any award authorized by the Department of Finance under the provisions of this chapter shall be paid from the appropriation available for the support of the affected state agency for the fiscal year in which the warrant is issued by the Controller.

(b) Budget savings derived from productivity increases identified pursuant to this chapter shall be distributed in the following manner:

(1) (A) Thirty-five percent shall be retained in, or returned to, the fund or funds from which the state agency's appropriation was drawn.

(1) Thirty-five percent shall be allocated in an interest bearing account to be known as the Productivity Account, which is hereby created in the State Treasury. The funds in this account may be utilized by the Legislature from time to time to defray an increase in the personal exemption credit of state taxpayers which shall be granted by the Franchise Tax Board in any current tax year at the direction of, and in such amounts as are determined by, the Legislature, for the following state taxpayers: a husband and wife filing jointly, a single individual, a head of household, a surviving spouse, or a married person filing a separate return.

(2) Twenty-five percent shall be distributed to the employees, including supervisors and managers, in the unit.

(3) Five percent of the net savings shall be made available to the state agency for administrative costs and legitimate state expenses connected with the shared savings program, provided those

expenditures do not result in any future-year costs to the state.

19620. No person shall be eligible to receive both an award under Section 19823 and an award under this chapter for the same idea, work method, process, or procedure.

19621. Any award granted under this chapter shall be limited to three thousand dollars ($3,000) per employee in an organizational unit of a state agency unless a larger award is approved by concurrent resolution of the Legislature.

19622. If the provisions of this chapter are in conflict with the provisions of a memorandum of understanding reached pursuant to the State Employer-Employee Relations Act (SEERA), commencing with Section 3512 of the Government Code, the memorandum of understanding shall be controlling without further legislative action, except that if such provisions of a memorandum of understanding require the expenditure of funds, the provisions shall not become effective unless approved by the Legislature in the annual Budget Act.

This chapter shall remain in effect only until January 1, 1985, and as of that date is repealed, unless a later enacted statute, which is chaptered before January 1, 1985, deletes or extends that date.

SEC. 2. Section 19823 of the Government Code is amended to read:

19823. The department may make awards to current or retired state employees who:

(a) Propose procedures or ideas which hereafter have been adopted and which will result in eliminating or reducing state expenditures or improving operations; provided, such proposals are placed in effect; or

(b) Perform special acts or special services in the public interest; or

(c) By their superior accomplishments, make exceptional contributions to the efficiency, economy or other improvement in the operations of the state government.

Awards for superior accomplishments shall be made in accordance with procedures and standards established by the department.

Any award made by the department under the provisions of this section may be paid from the appropriation available to the state agency affected by the award.

The director may adopt rules and regulations to carry out the provisions of this section, and may appoint merit award boards made up of state officers, employees, or citizens to consider employee proposals, special acts, special services, or superior accomplishments, and to make recommendations to the department as to the merits of the proposals, special acts, special services, or superior accomplishments, and whether or not the proposals, special acts, special services, or superior accomplishments justify an award.

Any award granted under the provisions of this section shall be limited to three thousand dollars ($3,000) unless a larger award is approved by concurrent resolution of the Legislature.

Any expenditures made or costs incurred heretofore or hereafter by the director for the purposes of this section may be paid from funds available for the support of the department.

If the provisions of this section are in conflict with the provisions of a memorandum of understanding reached pursuant to Chapter 12 (commencing with Section 3560) of Division 4 of Title 1, the memorandum of understanding shall be controlling without further legislative action, except that if such provisions of a memorandum of understanding require the expenditure of funds, the provision shall not become effective unless approved by the Legislature in the annual Budget Act.

CHAPTER 1313

An act to amend Sections 99247, 120050, 120100, 120222, 120223, and 120224 of, and to add Sections 120224.1, 120224.2, and 120224.3 to, the Public Utilities Code, relating to transportation.

[Approved by Governor September 22, 1982. Filed with Secretary of State September 23, 1982.]

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

SECTION 1. Section 99247 of the Public Utilities Code is amended to read:

99247. For purposes of Section 99246:

(a) "Operating cost" means all costs in the operating expense object classes exclusive of the costs in the depreciation and amortization expense object class of the uniform system of accounts and records adopted by the Controller pursuant to Section 99243, and exclusive of all subsidies for commuter rail services operated under the jurisdiction of the Interstate Commerce Commission and of all direct costs for providing charter services, and exclusive of all vehicle lease costs.

(b) "Operating cost per passenger" means the operating cost divided by the total passengers.

(c) "Operating cost per vehicle service hour" means the operating cost divided by the vehicle service hours.

(d) "Passengers per vehicle service hour" means the total passengers divided by the vehicle service hours.

(e) "Passengers per vehicle service mile" means the total passengers divided by the vehicle service miles.

(f) "Total passengers" means the number of boarding passengers, whether revenue producing or not, carried by the public transportation system.

(g) "Transit vehicle" means a vehicle, including, but not limited to, one operated on rails or tracks, which is used for public transportation services funded, in whole or in part, under this

chapter.

(h) "Vehicle service hours" means the total number of hours that each transit vehicle is in revenue service, including layover time.

(i) "Vehicle service miles" means the total number of miles that each transit vehicle is in revenue service.

(j) "Vehicle service hours per employee" means the vehicle service hours divided by the number of employees employed in connection with the public transportation system, based on the assumption that 2,000 person-hours of work in one year constitute one employee. The count of employees shall also include those individuals employed by the operator which provide services to the agency of the operator responsible for the operation of the public transportation system even though not employed in that agency.

SEC. 2. Section 120050 of the Public Utilities Code, as amended by Chapter 265 of the Statutes of 1982, is amended to read:

120050. There is hereby created the San Diego Metropolitan Transit Development Board in that portion of the County of San Diego as described in Section 120052 and, if the board assumes the operation of the San Diego Transit Corporation, Section 120054.

The board shall consist of eight members selected as follows:

(a) One member of the County of San Diego Board of Supervisors appointed by the board of supervisors.

(b) Four members of the City Council of the City of San Diego, one of whom may be the mayor, appointed by the city council.

(c) One councilman appointed jointly by the City Councils of the Cities of Chula Vista, Imperial Beach, and National City from their membership.

(d) One councilman appointed jointly by the City Councils of the Cities of El Cajon, La Mesa, and Lemon Grove from their membership.

(e) One member, a resident of San Diego County, appointed by the Governor, with the advice and consent of the Senate.

SEC. 3. Section 120100 of the Public Utilities Code is amended to read:

120100. (a) The board at its first meeting, and thereafter annually at the first meeting in January, shall elect a chairman who shall preside at all meetings, and a vice chairman who shall preside in the absence of the chairman. In the event of the absence or inability to act by the chairman or vice chairman, the members present, by an order entered in the minutes, shall select one of their members to act as chairman pro tem, who, while so acting, shall have all of the authority of the chairman.

(b) No member shall serve as chairman for more than two successive terms.

SEC. 4. Section 120222 of the Public Utilities Code is amended to read:

120222. Contracts for the purchase of supplies, equipment, and materials in excess of ten thousand dollars ($10,000) shall be awarded to the lowest responsible bidder submitting a responsive bid after

competitive bidding, except in emergency declared by the vote of two-thirds of the membership of the board. When the expected purchase contract exceeds one thousand dollars ($1,000) and does not exceed ten thousand dollars ($10,000), the board shall seek a minimum of three quotations, either written or oral, which permit prices and other terms to be compared.

SEC. 5. Section 120223 of the Public Utilities Code is amended to read:

120223. (a) If, after rejecting bids received under Section 120222, the board determines and declares by a two-thirds vote of all of its members that, in its opinion, the supplies, equipment, or materials may be purchased at a lower price in the open market, the board may proceed to purchase these supplies, equipment, or materials in the open market without further observance of the provisions regarding contracts, bids, or advertisements.

(b) If, after solicitation of bids under Section 120222, the board determines and declares by a majority vote that it has not received a responsive bid, the board may proceed to purchase the supplies, equipment, or materials in the open market without further observance of the provisions regarding contracts, bids, or advertisements.

SEC. 6. Section 120224 of the Public Utilities Code is amended to read:

120224. Contracts for the construction in excess of twenty thousand dollars ($20,000) shall be awarded to the lowest responsible bidder submitting a responsible bid after competitive bidding, except in emergency declared by the vote of two-thirds of the membership of the board. When the expected construction contract exceeds one thousand dollars ($1,000) and does not exceed twenty thousand dollars ($20,000), the board shall seek a minimum of three quotations, either written or oral, which permit prices and other terms to be compared.

SEC. 7. Section 120224.1 is added to the Public Utilities Code, to read:

120224.1. (a) Upon determining that immediate remedial measures to avert or alleviate damage to, or to repair or restore damaged or destroyed property of, the board are necessary in order to insure that the facilities of the board are available to serve the transportation needs of the general public, and upon determining that available remedial measures, including procurement in compliance with Sections 120222, 120223, and 120224, are inadequate, the general manager may authorize the expenditure of money previously appropriated by the board specifically for the direct purchases of goods and services, without observance of the provisions of those sections.

(b) The general manager, after any such expenditure, shall submit to the board a full report explaining the necessity for that action.

SEC. 8. Section 120224.2 is added to the Public Utilities Code, to

read:

120224.2. Notwithstanding Section 120222 and upon a finding by two-thirds of all members of the board that a purchase in compliance with Sections 120222 and 120223 does not constitute a method of procurement adequate for the operation of board facilities or equipment, the board may direct the procurement of prototype equipment or modifications in an amount sufficient to conduct and evaluate operational testing without further observance of any provisions requiring contracts, bids, or advertisements.

SEC. 9. Section 120224.3 is added to the Public Utilities Code, to read:

120224.3. Notwithstanding Section 120222, the board may direct the purchase of any supply, equipment, or materials without observance of any provision requiring contracts, bids, or advertisements upon a finding by two-thirds of all members of the board that there is only a single source of procurement therefor and that the purchase is for the sole purpose of duplicating or replacing supply, equipment, or material which is in use.

SEC. 10. No appropriation is made and no reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution or Section 2231 or 2234 of the Revenue and Taxation Code because the Legislature finds and declares that there are savings as well as costs in this act which, in the aggregate, do not result in additional net costs.

CHAPTER 1314

An act to amend Sections 22401, 23902, 23905.1, and 23910 of, to amend, repeal, and add Section 44986 of, to add Sections 22131.5, 22218.5, 23910.1, 23910.2, 24100.5, and 44986.1 to, and to repeal Section 23904 of, the Education Code, relating to the State Teachers' Retirement System.

[Approved by Governor September 22, 1982 Filed with Secretary of State September 23, 1982]

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

SECTION 1. Section 22131.5 is added to the Education Code, to read:

22131.5. "Indexed final compensation" means final compensation upon which a disability allowance was based, adjusted annually from the school year in which an allowance begins to accrue by the rate of change in the average compensation earnable as determined by the board.

SEC. 1.5. Section 22218.5 is added to the Education Code, to read:

22218.5. The board shall include in the annual report required by Section 22218, a brief summary of the costs or savings which result

from the enactment of Assembly Bill 3749 of the 1981–82 Regular Session of the Legislature.

SEC. 2. Section 22401 of the Education Code is amended to read:

22401. Each member shall file a statement with the board, at the option of, and upon the form furnished by, the board, giving:

(a) His or her date of birth.

(b) All service previously performed by him or her in a position requiring membership in the system or its predecessors.

Each person becoming a member on or after January 1, 1983, shall include in the health resume required by the Teacher Preparation and Licensing Agency all information which shall verify any and all handicaps and disabling conditions existing at the time of application. Upon request by the system, this information shall be made available when a person applies for a disability allowance.

SEC. 3. Section 23902 of the Education Code is amended to read:

23902. A member may apply for a disability allowance if the member has five or more years of credited service and if all of the following requirements are met:

(a) At least four years were credited for actual service performed in a position requiring membership in the system. Credit received because of workers' compensation payments shall be counted toward the four-year requirement.

(b) The last five years of credited service have been served in this state.

(c) At least one year was credited for service performed subsequent to the date on which the member was reinstated to membership under Section 23913.

(d) At least one year was credited for service performed subsequent to the most recent refund of accumulated retirement contributions.

(e) The member has not attained age 60 years, or has unused sick leave with sufficient days to have the member receive salary on account of sick leave to age 60 years.

Nothing in this section shall affect the right of a member to a disability allowance if the reason that the member has less than four years of actual service is due to an on-the-job injury or disease in a position requiring membership in the system.

(f) The member is not applying for a disability allowance because of a physical or mental condition known to exist at the time the most recent membership in this system commenced and remains substantially unchanged at the time of the application.

SEC. 4. Section 23904 of the Education Code is repealed.

SEC. 5. Section 23905.1 of the Education Code is amended to read:

23905.1. Any member qualifying for a disability allowance pursuant to Section 23902 who is determined by the board to have a mental, physical, or vocational rehabilitation potential that could be expected to restore ability to perform the member's usual duties or those of a comparable level shall participate in an appropriate

program approved by the board. The board shall pay all reasonable costs of the approved program. Willful failure to initiate and continue participation in such a program shall cause the disability allowance to be terminated. In determining whether a member has good cause for failure to participate in such a program the board shall take into account whether such participation would abridge the member's right to the free exercise of religion.

Any cost for the approved rehabilitation program prescribed by the board shall be paid directly by the system.

SEC. 6. Section 23910 of the Education Code is amended to read:

23910. If a person who begins to receive a disability allowance after June 30, 1972, is employed, or is self-employed in any capacity in which the average earnings for any prior continuous six months amount to 66⅔ percent of the indexed final compensation, the person shall be presumed capable of performing gainful employment and no longer disabled. The disability allowance shall be terminated on the first day of the month following the six-month period as specified above. Any allowance paid thereafter shall be considered an overpayment and recovery shall be made.

SEC. 7. Section 23910.1 is added to the Education Code, to read:

23910.1. For any one or more months in which a disabilitant's allowance, exclusive of amounts payable on account of minor children or full-time students, and earnings exceed 100 percent of indexed final compensation, the disability allowance shall be considered overpaid and recovery shall be made.

This action does not apply to disabilitants who have allowances terminated under Section 23910 or who are enrolled in an approved rehabilitation program.

SEC. 8. Section 23910.2 is added to the Education Code, to read:

23910.2. If a person who began receiving a disability allowance after June 30, 1972, is enrolled in an approved rehabilitation program and the disability allowance, exclusive of amounts payable on account of minor children or full-time students, and earnings exceed 100 percent of indexed final compensation, 50 percent of the amount in excess shall be considered as overpayment and recovery shall be made.

SEC. 9. Section 24100.5 is added to the Education Code, to read:

24100.5. A member who qualifies for a disability allowance under Section 23902 and who has reached age 45, but who is not yet age 60, shall have his or her own allowance also calculated upon service with each year of credited California service providing 5 percent of final compensation. The disabilitant shall receive the lesser of this benefit or that provided by Section 24100 for the disabilitant's own allowance. The benefits for dependent children shall be as in Section 24100.

SEC. 10. Section 44986 of the Education Code is amended to read:

44986. The governing board of a school district shall grant a leave of absence to any certificated employee who has applied for disability allowance, not to exceed 30 days beyond final

determination of the disability allowance by the State Teachers' Retirement System. If the employee is determined to be eligible for the disability allowance by the system, such leave shall be extended for the term of disability, but not more than 39 months from the date of approval of the disability allowance.

Governing boards of school districts shall classify as temporary employees those persons employed to fill vacancies caused by the absence of certificated employees who are classified as permanent and are receiving a disability or insurance allowance or benefit from the system or from a group insurance plan for which the employer is paying the cost or deducting the cost from the employees' salaries.

For purposes of this section, the term of employment of the temporary employee shall be equal to the number of days of absence of the employee receiving the disability allowance.

If the term of employment extends beyond this period, the employee shall be credited for all days served as a probationary employee.

This section shall remain in effect only until January 1, 1989, and as of such date is repealed, unless a later enacted statute, which is chaptered before January 1, 1989, deletes or extends such date.

SEC. 11. Section 44986 is added to the Education Code, to read:

44986. The governing board of a school district may grant a leave of absence to any certificated employee who has applied for disability allowance, not to exceed 30 days beyond final determination of the disability allowance by the State Teachers' Retirement System. If the employee is determined to be eligible for the disability allowance by the system, such leave shall be extended for the term of disability, but not more than 39 months.

Governing boards of school districts shall classify as temporary employees those persons employed to fill vacancies caused by the absence of certificated employees who are classified as permanent and are receiving a disability or insurance allowance or benefit from the system or from a group insurance plan for which the employer is paying the cost or deducting the cost from the employees' salaries.

For purposes of this section, the term of employment of the temporary employee shall be equal to the number of days of absence of the employee receiving the disability allowance.

If the term of employment extends beyond this period, the employee shall be credited for all days served as a probationary employee.

SEC. 12. Section 44986.1 is added to the Education Code, to read:

44986.1. Any member for whom the employer makes application for disability allowance and whom the State Teachers' Retirement System finds not to be disabled under this chapter, shall be reinstated to the former position upon receipt by the employer of notification from the system of the denial of the disability allowance.

SEC. 13. Notwithstanding Section 6 of Article XIII B of the California Constitution and Section 2231 or 2234 of the Revenue and Taxation Code, no appropriation is made by this act for the purpose

of making reimbursement pursuant to these sections. It is recognized, however, that a local agency or school district may pursue any remedies to obtain reimbursement available to it under Chapter 3 (commencing with Section 2201) of Part 4 of Division 1 of that code.

CHAPTER 1315

An act to amend Section 13401.5 of the Corporations Code, relating to professional corporations.

[Approved by Governor September 22, 1982. Filed with Secretary of State September 23, 1982]

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

SECTION 1. Section 13401.5 of the Corporations Code is amended to read:

13401.5. Notwithstanding subdivision (c) of Section 13401 and any other provision of law, the following licensed persons may be shareholders, officers, directors or professional employees of the professional corporations designated in this section so long as the sum of all shares owned by such licensed persons does not exceed 49 percent of the total number of shares of the professional corporation so designated herein and so long as the number of such licensed persons owning shares in the professional corporation so designated herein does not exceed the number of persons licensed by the governmental agency regulating the designated professional corporation:

(a) Medical corporation.
(1) Licensed podiatrists.
(2) Licensed psychologists.
(3) Registered nurses.
(4) Optometrists.
(5) Licensed marriage, family and child counselors.
(6) Licensed clinical social workers.
(b) Podiatry corporation.
(1) Licensed physicians and surgeons.
(2) Licensed psychologists.
(3) Registered nurses.
(4) Optometrists.
(c) Psychological corporation.
(1) Licensed physicians and surgeons.
(2) Licensed podiatrists.
(3) Registered nurses.
(4) Optometrists.
(5) Licensed marriage, family and child counselors.
(6) Licensed clinical social workers.

(d) Speech pathology corporation.
(1) Licensed audiologist.
(e) Audiology corporation.
(1) Licensed speech pathologist.
(f) Nursing corporation.
(1) Licensed physicians and surgeons.
(2) Licensed podiatrists.
(3) Licensed psychologists.
(4) Optometrists.
(5) Licensed marriage, family and child counselors.
(6) Licensed clinical social workers.
(g) Marriage, family and child counseling corporation.
(1) Licensed physicians and surgeons.
(2) Licensed psychologists.
(3) Licensed clinical social workers.
(4) Registered nurses.
(h) Licensed clinical social worker corporation.
(1) Licensed physicians and surgeons.
(2) Licensed psychologists.
(3) Licensed marriage, family and child counselors.
(4) Registered nurses.

CHAPTER 1316

An act to amend Sections 114, 1248.5, and 34120 of the Health and Safety Code, relating to general welfare.

[Approved by Governor September 22, 1982. Filed with Secretary of State September 23, 1982.]

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

SECTION 1. Section 114 of the Health and Safety Code is amended to read:

114. (a) The fees or charges for a record search or for the issuance of any certificate, permit, registration, or any other document pursuant to Sections 26840 and 26859 of the Government Code, or Sections 10375, 10376.8, 10400, 10420, 10430, 10433.3, 10450, 10455, 10470, 10475, 10500, 10550, 10575, 10605, 10606, 10610, 10610.2, 10612, 10613, 10614, 10615, 10616, 10617, 10618, and 10619 of this code, may be adjusted annually by the percentage change determined pursuant to Section 113.

The base amount to be adjusted shall be the statutory base amount of the fee or charge plus the sum of the prior adjustments to the statutory base amount. Whenever the statutory base amount is amended, the base amount shall be the new statutory base amount plus the sum of adjustments to the new statutory base amount calculated subsequent to the statutory base amendment. The actual

dollar fee or charge shall be rounded to the next highest whole dollar.

(b) The Legislative Analyst shall review any proposed adjustments pursuant to this section, and submit written comments on such proposed adjustments to the Legislature.

(c) Beginning January 1, 1983, the state department shall annually publish a list of the actual numerical fee charges as adjusted pursuant to this section. This adjustment of fees and the publication of the fee list shall not be subject to the requirements of Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

SEC. 2. Section 1248.5 of the Health and Safety Code is amended to read:

1248.5. It is the intent of the Legislature to prevent the potential loss of needed community health services and to maintain the health care services now provided by community clinics and free clinics by making annual appropriations for the purposes of this article. In addition to the amounts regularly appropriated for purposes of this article, the state department shall seek supplementary funding from the federal government and private sources. Costs of administration of this article shall not exceed an amount equal to 5 percent of the total amount appropriated for the grants-in-aid program during the fiscal year. The Legislative Analyst shall review and comment on this percentage figure during the budget process.

It is the intent of the Legislature that if in future fiscal years the funding for this program is significantly increased, the state department shall reduce its administrative cost to the extent feasible.

SEC. 3. Section 34120 of the Health and Safety Code is amended to read:

34120. (a) The legislative body may, at the time of the adoption of an ordinance declaring that there is a need for a commission to function in the community or at any time thereafter, by adoption of an ordinance, declare itself to be the commission in which case, all the rights, powers, duties, privileges and immunities, vested by this part in a commission, except as otherwise provided in this part, shall be vested in the legislative body of the community.

However, in any community in San Bernardino County which is a charter city, the adoption of any order or resolution by the legislative body acting as the commission shall be governed by the same procedures as are set forth in the provisions of the charter, and the mayor shall be chairman of the commission, having the same power and authority in the conduct of the commission and the meetings of the legislative body acting as the commission, that the mayor has in the conduct of the affairs of the city, except that the mayor shall not have a veto power over any order or resolution of the commission.

(b) If the legislative body has declared itself to be the commission, the legislative body shall appoint two additional commissioners who are tenants of the housing authority if the housing authority has tenants. One such tenant commissioner shall be over 62 years of age

if the housing authority has tenants of such age. If the housing authority does not have tenants, the legislative body shall, by ordinance, provide for the appointment to the commission of two tenants of the housing authority, one of whom shall be over 62 years of age if the housing authority has tenants of such age, within one year after the housing authority first does have tenants. The term of any tenant appointed pursuant to this subdivision shall be two years from the date of appointment. If a tenant commissioner ceases to be a tenant of the housing authority, he or she shall be disqualified from serving as a commissioner and another tenant of the housing authority shall be appointed to the remainder of the unexpired term. A tenant commissioner shall have all the powers, duties, privileges, and immunities of any other commissioner.

(c) As an alternative to the appointment of tenants of the housing authority as commissioners pursuant to subdivision (b), if a community development committee is created as provided in Section 34120.5, the governing body may make tenant appointments pursuant to subdivision (b) to the committee, rather than to the commission.

SEC. 4 The Legislature hereby finds and declares that a special situation is presented in San Bernardino County which would cause uncertainty and disruption to the housing market, extensive litigation, and disruption of coordination of redevelopment plans in charter cities in San Bernardino County if not remedied by legislation. The Legislature further finds and declares that a general act cannot be made applicable to this special situation and that it is, therefore, necessary to enact this special act with respect to redevelopment in charter cities in San Bernardino County.

SEC. 5. No appropriation is made and no reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution or Section 2231 or 2234 of the Revenue and Taxation Code because this act is in accordance with the request of a local agency or school district which desired legislative authority to carry out the program specified in this act.

CHAPTER 1317

An act to amend Section 19849.7 of, and to add Sections 7506, 7506.5, 12480, and 12481 to, the Government Code, relating to state officers and employees.

[Approved by Governor September 22, 1982 Filed with Secretary of State September 23, 1982.]

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

SECTION 1. Section 7506 is added to the Government Code, to read:

7506. Notwithstanding any other provision of law, any person entitled to the receipt of benefits from any state retirement system may authorize the payment of the benefits to be directly deposited by electronic fund transfer into the person's account at the financial institution of his or her choice under a program for direct deposit by electronic transfer established by the Controller pursuant to Section 7506.5. The direct deposit shall discharge the state agency's obligation in respect to that payment.

SEC. 2. Section 7506.5 is added to the Government Code, to read:

7506.5. The Controller may make an agreement with one or more financial institutions participating in the Automated Clearing House pursuant to the local rules, and may establish a program, for the direct deposit by electronic fund transfer of the benefits, after any withholding required by law and authorized deductions, of any person entitled to the receipt of benefits from any state retirement system who authorizes the direct deposit thereof by electronic fund transfer into the person's account at the financial institution of his or her choice.

SEC. 3. Section 12480 is added to the Government Code, to read:

12480. Officers and employees of the state may authorize the direct deposit by electronic fund transfer of their salary or wages, after any withholding required by law and authorized deductions, into an account at the financial institution of their choice under a program for direct deposit by electronic transfer established pursuant to Section 12481. The direct deposit shall discharge the obligation of the Controller with respect to the drawing and issuance of warrants for the salaries or wages of the state officers and employees authorizing the direct deposit.

SEC. 4. Section 12481 is added to the Government Code, to read:

12481. (a) Notwithstanding any other provision of law, the Controller may make an agreement with one or more financial institutions participating in the Automated Clearing House pursuant to the local rules, and may establish a program, for direct deposit by electronic fund transfer of the salary or wages, after any withholding required by law and authorized deductions, of officers and employees of the state who authorize the direct deposit thereof by electronic fund transfer into the person's account at the financial institution of his or her choice.

(b) The direct deposit of state payroll pursuant to this section shall be known as the State of California SurePay Plan.

SEC. 5. Section 19849.7 of the Government Code is amended to read:

19849.7. Each state agency shall at the time of each payment of salary or wages furnish each employee an itemized statement in writing showing all deductions made from such salary or wages. Where an employee has authorized, pursuant to Section 12480, the direct deposit by electronic fund transfer of salary, or wages, after

any withholding required by law and authorized deductions, an itemized statement required by this section or an itemized statement required by Section 226 of the Labor Code shall be furnished on a quarterly basis.

SEC. 6. The Auditor General shall investigate the feasibility, costs, and savings of establishing direct deposit by electronic fund transfer of state retirement system benefits and payment of salaries and wages of officers and employees of the state. The Auditor General shall report the findings of the investigation to the Legislature no later than January 1, 1983.

CHAPTER 1318

An act to amend and renumber Section 70683 of the Food and Agricultural Code, and to amend Sections 384a, 384c, and 384i of the Penal Code, relating to trees, shrubs, and native plants.

[Approved by Governor September 22, 1982. Filed with Secretary of State September 23, 1982]

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

SECTION 1. Section 70683 of the Food and Agricultural Code is amended and renumbered to read:

70683.1. No person shall knowingly make any false statement on any application for permits, wood receipts, or tags and seals. The application shall contain the following information:

(a) The name, address, and telephone number of the applicant.

(b) The amount and species of native plants to be transported.

(c) The name of the county from which the native plants are to be removed.

(d) A description sufficient to identify the real property from which the native plants are to be removed, and such other information or documents as the issuing agency may require to identify the general boundaries of the property.

(e) The name, address, and telephone number of each landowner from whose property the native plants are to be removed.

(f) The applicant's timber operator permit number, if the harvesting of the native plants is subject to the Z'berg-Nejedly Forest Practice Act of 1973 (Chapter 8 (commencing with Section 4511) of Part 2 of Division 4 of the Public Resources Code).

(g) The proposed date or dates of the transportation.

(h) The location of the office of the peace officer who will validate the tag or tags.

(i) The destination of the native plants.

(j) The ultimate use of the native plants, such as for use as landscaping or decorative material, or for use as a raw material in the manufacture or processing of a product.

(k) Make, model, and license number of the transportation vehicle.

(*l*) Such other information as may be required by the agency issuing the permit.

Every applicant shall, at the time of making the application, show his or her proof of ownership of the native plants. The application forms, tags, seals, and wood receipts shall be produced by the department, and distributed to the agricultural commissioner of each county subject to Section 70502.

SEC. 2. Section 384a of the Penal Code is amended to read:

384a. Every person who within the State of California willfully or negligently cuts, destroys, mutilates, or removes any tree or shrub, or fern or herb or bulb or cactus or flower, or huckleberry or redwood greens, or portion of any tree or shrub, or fern or herb or bulb or cactus or flower, or huckleberry or redwood greens, growing upon state or county highway rights-of-way, or who removes leaf mold thereon; provided, however, that the provisions of this section shall not be construed to apply to any employee of the state or of any political subdivision thereof engaged in work upon any state, county, or public road or highway while performing work under the supervision of the state or of any political subdivision thereof, and every person who willfully or negligently cuts, destroys, mutilates, or removes any tree or shrub, or fern or herb or bulb or cactus or flower, or huckleberry or redwood greens, or portions of any tree or shrub, or fern or herb or bulb or cactus or flower, or huckleberry or redwood greens, growing upon public land or upon land not his or her own, or leaf mold on the surface of public land, or upon land not his or her own, without a written permit from the owner of the land signed by the owner or the owner's authorized agent, and every person who knowingly sells, offers, or exposes for sale, or transports for sale, any tree or shrub, or fern or herb or bulb or cactus or flower, or huckleberry or redwood greens, or portion of any tree or shrub, or fern or herb or bulb or cactus or flower, or huckleberry or redwood greens, or leaf mold, so cut or removed from state or county highway rights-of-way, or removed from public land or from land not owned by the person who cut or removed the same without the written permit from the owner of the land, signed by the owner or the owner's authorized agent, is guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not more than five hundred dollars ($500) or by imprisonment in a county jail for not more than six months or by both fine and imprisonment.

The written permit required under this section shall be signed by the landowner, or the landowner's authorized agent, and acknowledged before a notary public, or other person authorized by law to take acknowledgments. The permit shall contain the number and species of trees and amount of shrubs or ferns or herbs or bulbs or cacti or flowers, or huckleberry or redwood greens, or portions of any tree or shrub and shall contain the legal description of the real property as usually found in deeds and conveyances of the land on

which cutting or removal, or both, shall take place. One copy of the permit shall be filed in the office of the sheriff of the county in which the land described in the permit is located. The permit shall be filed prior to commencement of cutting of the trees or shrub or fern or herb or bulb or cactus or flower or huckleberry or redwood green or portions of any tree or shrub authorized by the permit. The permit required by this section need not be notarized or filed with the office of the sheriff of the county where trees are to be removed when five or less trees or five or less pounds of shrubs or boughs are to be cut or removed.

Any county or state firewarden, or personnel of the Department of Forestry as designated by the Director of Forestry, and personnel of the United States Forest Service as designated by the Regional Forester, Region 5, of the United States Forest Service, or any peace officer of the State of California, may enforce the provisions hereof and may confiscate any and all such shrubs, trees, ferns or herbs or bulbs or cacti or flowers, or huckleberry or redwood greens or leaf mold, or parts thereof unlawfully cut or removed or knowingly sold, offered, or exposed or transported for sale as provided in this section.

The provisions of this section do not apply to any tree or shrub, or fern or herb or bulb or cactus or flower, or greens declared by law to be a public nuisance.

The provisions of this section do not apply to the necessary cutting or trimming of any trees, shrubs, or ferns or herbs or bulbs or cacti or flowers, or greens if done for the purpose of protecting or maintaining an electric powerline, telephone line, or other property of a public utility.

The provisions of this section do not apply to persons engaged in logging operations, or in suppressing fires.

SEC. 3. Section 384c of the Penal Code is amended to read:

384c. Persons purchasing trees, shrubs, or boughs from harvesters thereof shall not transport more than five trees or more than five pounds of shrubs or boughs on the public roads or highways without obtaining from the seller of the trees, shrubs, or boughs and having validated as provided in Section 384d a transportation tag for each load of the trees, shrubs, or boughs.

Unless a valid transportation tag issued in California for a tree, shrub, or bough has already been obtained, persons who harvest trees, shrubs, or boughs from their own land or the land of another or who are in possession of trees, shrubs, or boughs shall, before transporting on the public roads or highways or selling or consigning for removal and transportation over the public roads and highways more than five trees or more than five pounds of other shrubs or boughs, file with the sheriff of each county in which the trees, shrubs, or boughs are to be harvested an application for transportation tags and obtain a supply of these transportation tags sufficient to provide one tag for each load of trees, shrubs, or boughs to be so transported or sold.

No person shall knowingly make any false statement on any

application for the transportation tags and the application shall contain, but is not limited to, the following information:

(a) The name and address of the applicant.

(b) The amount and species of trees, shrubs, or boughs to be transported.

(c) The name of the county from which the trees, shrubs, or boughs are to be removed.

(d) A legal description of the real property from which the trees, shrubs, or boughs are to be removed.

(e) The name or names of the owner of the real property from which the trees, shrubs, or boughs are to be removed.

(f) The applicant's timber operator permit number, if the harvesting of the trees, shrubs, or boughs is subject to the Z'berg-Nejedly Forest Practice Act of 1973 (Chapter 8 (commencing with Section 4511) of Part 2 of Division 4 of the Public Resources Code).

(g) The destination of the trees, shrubs, or boughs.

(h) The proposed date or dates of the transportation.

Every applicant shall, at the time of application, show to the sheriff his or her permit or proof of ownership of the trees, shrubs, or boughs. The application forms and transportation tags shall be printed and distributed by the sheriff of each county.

SEC. 4. Section 384i of the Penal Code is amended to read:

384i. (a) Sections 384a to 384f, inclusive, shall not apply to maintenance and construction activities of public agencies and their employees.

(b) Sections 384b to 384f, inclusive, shall not apply to native desert plants described in subdivision (b) of Section 384b, that have been propagated and cultivated by human beings and which are being transported under Section 6922 or 6923 of the Food and Agricultural Code, pursuant to a valid nursery stock certificate.

(c) Sections 384a to 384f, inclusive, shall not apply to any act regulated by the provisions of Division 23 (commencing with Section 70500).

SEC. 5. Notwithstanding Section 2231.5 of the Revenue and Taxation Code, this act does not contain a repealer, as required by that section; therefore, the provisions of this act shall remain in effect unless and until they are amended or repealed by a later enacted act.

SEC. 6. Notwithstanding Section 6 of Article XIII B of the California Constitution and Section 2231 or 2234 of the Revenue and Taxation Code, no appropriation is made by this act for the purpose of making reimbursement pursuant to these sections. It is recognized, however, that a local agency or school district may pursue any remedies to obtain reimbursement available to it under Chapter 3 (commencing with Section 2201) of Part 4 of Division 1 of that code.

CHAPTER 1319

An act to add Section 988 to the Civil Code, relating to works of art.

[Approved by Governor September 22, 1982. Filed with Secretary of State September 23, 1982.]

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

SECTION 1. Section 988 is added to the Civil Code, to read:

988. (a) For the purpose of this section:

(1) The term "artist" means the creator of a work of art.

(2) The term "work of art" means any work of visual or graphic art of any media including, but not limited to, a painting, print, drawing, sculpture, craft, photograph, or film.

(b) Whenever an exclusive or nonexclusive conveyance of any right to reproduce, prepare derivative works based on, distribute copies of, publicly perform, or publicly display a work of art is made by or on behalf of the artist who created it or the owner at the time of the conveyance, ownership of the physical work of art shall remain with and be reserved to the artist or owner, as the case may be, unless such right of ownership is expressly transferred by an instrument, note, memorandum, or other writing, signed by the artist, the owner, or their duly authorized agent.

(c) Whenever an exclusive or nonexclusive conveyance of any right to reproduce, prepare derivative works based on, distribute copies of, publicly perform, or publicly display a work of art is made by or on behalf of the artist who created it or the owner at the time of the conveyance, any ambiguity with respect to the nature or extent of the rights conveyed shall be resolved in favor of the reservation of rights by the artist or owner, unless in any given case the federal copyright law provides to the contrary.

CHAPTER 1320

An act to amend Sections 1740, 1741, 1742, and 1745 of, to add Sections 1742.6, 1744.7, 1744.9, and 1745.5 to, to repeal Section 1743 of, and to repeal and add Section 1744 of, the Civil Code, relating to fine art.

[Approved by Governor September 22, 1982. Filed with Secretary of State September 23, 1982.]

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

SECTION 1. Section 1740 of the Civil Code is amended to read:

1740. As used in this title:

(a) "Fine art multiple" or "multiple" for the purposes of this title means any fine print, photograph (positive or negative), sculpture cast, collage, or similar art object produced in more than one copy. Pages or sheets taken from books and magazines and offered for sale or sold as art objects shall be included, but books and magazines shall be excluded.

(b) "Fine print" or "print" means a multiple produced by, but not limited to, engraving, etching, woodcutting, lithography, and serigraphy, and means multiples produced or developed from photographic negatives, or any combination thereof.

(c) "Master" is used in lieu of and has the same meaning as a printing plate, stone, block, screen, photographic negative, or mold or other process as to a sculpture, which contains an image used to produce fine art objects in multiples.

(d) "Artist" means the person who created the image which is contained in, or constitutes, the master or conceived of, and approved the image which is contained in, or constitutes, the master.

(e) Whether a multiple is "signed" or "unsigned" as these terms are used in this title relating to prints and photographs, depends upon whether or not the multiple was autographed by the artist's own hand, and not by mechanical means, after the multiple was produced, irrespective of whether it was signed or unsigned in the plate.

(f) "Impression" means each individual fine art multiple made by printing, stamping, casting, or any other process.

(g) "Art dealer" means a person who is in the business of dealing, exclusively or nonexclusively, in the fine art multiples to which this title is applicable, or a person who by his or her occupation holds himself or herself out as having knowledge or skill peculiar to these works, or to whom that knowledge or skill may be attributed by his or her employment of an agent or other intermediary who by his or her occupation holds himself or herself out as having that knowledge or skill. The term "art dealer" includes an auctioneer who sells such works at public auction, but excludes persons, not otherwise defined or treated as art dealers herein, who are consignors or principals of auctioneers.

(h) "Limited edition" means fine art multiples produced from a master, all of which are the same image and bear numbers or other markings to denote the limited production thereof to a stated maximum number of multiples, or are otherwise held out as limited to a maximum number of multiples.

(i) "Proofs" means multiples which are the same as, and which are produced from the same master as, the multiples in a limited edition, but which, whether so designated or not, are set aside from and are in addition to the limited edition to which they relate.

(j) "Written instrument" means a written or printed agreement, bill of sale, invoice, certificate of authenticity, catalogue, or any other written or printed note or memorandum or label describing the multiple which is to be sold, exchanged, or consigned by an art

dealer.

(k) "Person" means an individual, partnership, corporation, association, or other entity, however organized.

SEC. 2. Section 1741 of the Civil Code is amended to read:

1741. This title shall apply to any fine art multiple when offered for sale or sold at wholesale or retail for one hundred dollars ($100) or more, exclusive of any frame.

SEC. 3. Section 1742 of the Civil Code is amended to read:

1742. (a) An art dealer shall not sell or consign a multiple into or from this state unless a written instrument is furnished to the purchaser or consignee, at his or her request, or in any event prior to a sale or consignment, which sets forth as to each multiple, the descriptive information required by Section 1744 for any period. If a prospective purchaser so requests, the information shall be transmitted to him or her prior to the payment or placing of an order for a multiple. If payment is made by a purchaser prior to delivery of such a multiple, this information shall be supplied at the time of or prior to delivery. With respect to auctions, this information may be furnished in catalogues or other written materials which are made readily available for consultation and purchase prior to sale, provided that a bill of sale, receipt, or invoice describing the transaction is then provided which makes reference to the catalogue and lot number in which this information is supplied. Information supplied pursuant to this subdivision shall be clearly, specifically and distinctly addressed to each of the items listed in Section 1744 unless the required data is not applicable. This section is applicable to transactions by and between art dealers and others considered to be art dealers for the purposes of this title.

(b) An art dealer shall not cause a catalogue, prospectus, flyer, or other written material or advertisement to be distributed in, into, or from this state which solicits a direct sale, by inviting transmittal of payment for a specific multiple, unless it clearly sets forth, in close physical proximity to the place in such material where the multiple is described, the descriptive information required by Section 1744 for any time period. In lieu of this required information, the written material or advertising may set forth the material contained in the following quoted passage, or the passage itself, if the art dealer then supplies the required information prior to or with delivery of the multiple. The nonobservance of the terms within the following passage shall constitute a violation of this title:

"California law provides for disclosure in writing of information concerning certain fine prints, photographs, and sculptures prior to effecting a sale of them. This law requires disclosure of such matters as the identity of the artist, the artist's signature, the medium, whether the multiple is a reproduction, the time when the multiple was produced, use of the plate which produced the multiple, and the number of multiples in a "limited edition." If a prospective purchaser so requests, the information shall be transmitted to him or her prior to payment, or the placing of an order for a multiple. If

payment is made by a purchaser prior to delivery of the multiple, this information will be supplied at the time of or prior to delivery, in which case the purchaser is entitled to a refund if, for reasons related to matter contained in such information, he or she returns the multiple in the condition in which received, within 30 days of receiving it. In addition, if after payment and delivery, it is ascertained that the information provided is incorrect, the purchaser may be entitled to certain remedies, including refund upon return of the multiple in the condition in which received."

This requirement is not applicable to general written material or advertising which does not constitute an offer to effect a specific sale.

(c) In each place of business in the state where an art dealer is regularly engaged in sales of multiples, the art dealer shall post in a conspicuous place, a sign which, in a legible format, contains the information included in the following passage:

"California law provides for the disclosure in writing of certain information concerning prints, photographs, and sculpture casts. This information is available to you, and you may request to receive it prior to purchase."

(d) If an art dealer offering multiples by means of a catalogue, prospectus, flyer or other written material or advertisement distributed in, into or from this state disclaims knowledge as to any relevant detail referred to in Section 1744, he or she shall so state specifically and categorically with regard to each such detail to the end that the purchaser shall be enabled to judge the degree of uniqueness or scarcity of each multiple contained in the edition so offered. Describing the edition as an edition of "reproductions" eliminates the need to furnish further informational details unless the edition was allegedly published in a signed, numbered, or limited edition, or any combination thereof, in which case all of the informational details are required to be furnished.

(e) Whenever an artist sells or consigns a multiple of his or her own creation or conception, the artist shall disclose the information required by Section 1744, but an artist shall not otherwise be regarded as an art dealer.

SEC. 4. Section 1742.6 is added to the Civil Code, to read:

1742.6. Any charitable organization which conducts a sale or auction of fine art multiples shall be exempt from the disclosure requirements of this title if it posts in a conspicuous place, at the site of the sale or auction, a disclaimer of any knowledge of the information specified in Section 1744, and includes such a disclaimer in a catalogue, if any, distributed by the organization with respect to the sale or auction of fine art multiples. If a charitable organization uses or employs an art dealer to conduct a sale or auction of fine art multiples, the art dealer shall be subject to all disclosure requirements otherwise required of an art dealer under this title.

SEC. 4.2. Section 1743 of the Civil Code is repealed.

SEC. 4.5. Section 1744 of the Civil Code is repealed.

SEC. 5. Section 1744 is added to the Civil Code, to read:

1744. (a) Except as provided in subdivisions (c), (d), (e), and otherwise in this title, the following informational details shall be required to be supplied in all transactions covered by subdivisions (a), (b), and (e) of Section 1742:

(1) The name of the artist.

(2) If the artist's name appears on the multiple, a statement whether the multiple was signed by the artist.

If the multiple was not signed by the artist, a statement of the source of the artist's name on the multiple, such as whether the artist placed his signature on the multiple or on the master, whether his name was stamped or estate stamped on the multiple or on the master, or was from some other source or in some other manner placed on the multiple or on the master.

(3) A description of the medium or process, and where pertinent to photographic processes, the material used in producing the multiple, such as whether the multiple was produced through the etching, engraving, lithographic, serigraphic, or a particular method or material used in photographic developing processes. If an established term, in accordance with the usage of the trade, cannot be employed accurately to describe the medium or process, a brief, clear description shall be made.

(4) If the multiple or the image on or in the master constitutes, as to prints and photographs, a photomechanical or photographic type of reproduction, or as to sculptures a surmoulage or other form of reproduction of sculpture cases, of an image produced in a different medium, for a purpose other than the creation of the multiple being described, a statement of this information and the respective mediums.

(5) If paragraph (4) is applicable, and the multiple is not signed, a statement whether the artist authorized or approved in writing the multiple or the edition of which the multiple being described is one.

(6) If the purported artist was deceased at the time the master was made which produced the multiple, this shall be stated.

(7) If the multiple is a "posthumous" multiple, that is, if the master was created during the life of the artist but the multiple was produced after the artist's death, this shall be stated.

(8) If the multiple was made from a master which produced a prior limited edition, or from a master which constitutes or was made from a reproduction or surmoulage of a prior multiple or the master which produced the prior limited edition, this shall be stated as shall the total number of multiples, including proofs, of all other editions produced from that master.

(9) As to multiples produced after 1949, the year, or approximate year, the multiple was produced shall be stated. As to multiples produced prior to 1950, state the year, approximate year or period when the master was made which produced the multiple and when the particular multiple being described was produced. The requirements of this subdivision shall be satisfied when the year stated is approximately accurate.

(10) Whether the edition is being offered as a limited edition, and if so: (i) the authorized maximum number of signed or numbered impressions, or both, in the edition; (ii) the authorized maximum number of unsigned or unnumbered impressions, or both, in the edition; (iii) the authorized maximum number of artist's, publisher's or other proofs, if any, outside of the regular edition; and (iv) the total size of the edition.

(11) Whether or not the master has been destroyed, effaced, altered, defaced, or canceled after the current edition.

(b) If the multiple is part of a limited edition, and was printed after January 1, 1983, the statement of the size of the limited edition, as stated pursuant to paragraph (10) of subdivision (a) of Section 1744 shall also constitute an express warranty that no additional multiples of the same image, including proofs, have been produced in this or in any other limited edition.

(c) If the multiple was produced in the period from 1950 to the effective date of this section, the information required to be supplied need not include the information required by paragraphs (5) and (8) of subdivision (a).

(d) If the multiple was produced in the period from 1900 to 1949, the information required to be supplied need only consist of the information required by paragraphs (1), (2), (3), and (9) of subdivision (a).

(e) If the multiple was produced before the year 1900, the information to be supplied need only consist of the information required by paragraphs (1), (3), and (9) of subdivision (a).

SEC. 6. Section 1744.7 is added to the Civil Code, to read:

1744.7. Whenever an art dealer furnishes the name of the artist pursuant to Section 1744 for any time period after 1949, and otherwise furnishes information required by any of the subdivisions of Section 1744 for any time period, as to transactions including offers, sales, or consignments made to other than art dealers, and to other art dealers, such information shall be a part of the basis of the bargain and shall create express warranties as to the information provided. Such warranties shall not be negated or limited because the art dealer in the written instrument did not use formal words such as "warrant" or "guarantee" or because the art dealer did not have a specific intention or authorization to make a warranty or because any required statement is, or purports to be, or is capable of being merely the seller's opinion. The existence of a basis in fact for information warranted by virtue of this subdivision shall not be a defense in an action to enforce such warranty. However, with respect to photographs and sculptures produced prior to 1950, and other multiples produced prior to 1900, as to information required by paragraphs (3), (4), (5), and (6) of subdivision (a) of Section 1744, the art dealer shall be deemed to have satisfied this section if a reasonable basis in fact existed for the information provided. When information is not supplied as to any subdivision or paragraph of Section 1744 because not applicable, this shall constitute the express

warranty that the paragraph is not applicable.

Whenever an art dealer disclaims knowledge as to a particular item about which information is required, such disclaimer shall be ineffective unless clearly, specifically, and categorically stated as to the particular item and contained in the physical context of other language setting forth the required information as to a specific multiple.

SEC. 7. Section 1744.9 is added to the Civil Code, to read:

1744.9. (a) An artist or art dealer who consigns a multiple to an art dealer for the purpose of effecting a sale of the multiple, shall have no liability to a purchaser under this article if the consignor, as to the consignee, has complied with the provisions of this title.

(b) When an art dealer has agreed to sell a multiple on behalf of a consignor, who is not an art dealer, or an artist has not consigned a multiple to an art dealer but the art dealer has agreed to act as the agent for an artist for the purpose of supplying the information required by this title, the art dealer shall incur the liabilities of other art dealers prescribed by this title, as to a purchaser.

SEC. 8. Section 1745 of the Civil Code is amended to read:

1745. (a) An art dealer, including a dealer consignee, who offers or sells a multiple in, into or from this state without providing the information required in Sections 1742 and 1744 of this title for any time period, or who provides information which is mistaken, erroneous or untrue, except for harmless errors, such as typographical errors, shall be liable to the purchaser of the multiple. The art dealer's liability shall consist of the consideration paid by the purchaser for the multiple, with interest at the legal rate thereon, upon the return of the multiple in the condition in which received by the purchaser.

(b) In any case in which an art dealer, including a dealer consignee, willfully offers or sells a multiple in violation of this title, the person purchasing such multiple may recover from the art dealer, including a dealer consignee, who offers or sells such multiple an amount equal to three times the amount required under subdivision (a).

(c) No action shall be maintained to enforce any liability under this section unless brought within one year after discovery of the violation upon which it is based and in no event more than three years after the multiple was sold.

(d) In any action to enforce any provision of this title, the court may allow the prevailing purchaser the costs of the action together with reasonable attorneys' and expert witnesses' fees. In the event, however, the court determines that an action to enforce was brought in bad faith, it may allow such expenses to the seller as it deems appropriate.

(e) These remedies shall not bar or be deemed inconsistent with a claim for damages or with the exercise of additional remedies otherwise available to the purchaser.

(f) In any proceeding in which an art dealer relies upon a

disclaimer of knowledge as to any relevant information set forth in Section 1744 for any time period, such disclaimer shall be effective unless the claimant is able to establish that the art dealer failed to make reasonable inquiries, according to the custom and usage of the trade, to ascertain the relevant information or that such relevant information would have been ascertained as a result of such reasonable inquiries.

SEC. 9. Section 1745.5 is added to the Civil Code, to read:

1745.5. (a) Any person performing or proposing to perform an act in violation of this title within this state may be enjoined in any court of competent jurisdiction.

(b) Actions for injunction pursuant to this title may be prosecuted by the following persons:

(1) The Attorney General.

(2) Any district attorney.

(3) Any city attorney.

(4) With the consent of the district attorney, a city prosecutor in any city or city and county having a full-time city prosecutor in the name of the people of the State of California upon their own complaint, or upon the complaint of any board, officer, person, corporation or association.

(5) Any person acting in his or her own interests, or in the interests of the members of a corporation or association, or in the interests of the general public.

(c) Any person who violates any provision of this title may also be liable for a civil penalty not to exceed five hundred dollars ($500) for each violation, which may be assessed and recovered in a civil action brought in the name of the people of the State of California by the Attorney General or by any district attorney or any city attorney, and, with the consent of the district attorney, by a city prosecutor in any city or city and county having a full-time city prosecutor in any court of competent jurisdiction.

If the action is brought by the Attorney General, one-half of the penalty collected shall be paid to the treasurer of the county in which the judgment was entered, and one-half to the General Fund. If brought by a district attorney, the penalty collected shall be paid to the treasurer of the county in which the judgment was entered. If brought by a city attorney or city prosecutor, one-half of the penalty 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.

SEC. 10. The Legislature hereby finds and declares that the sale of fine art multiples affects large segments of the public, and that the marketing, in both volume and monetary value, of these objects, has substantially increased during the past two decades. Those affected by this development include a broad spectrum of individuals, as well as corporate and institutional purchasers. This expansion is stimulated in part by the convergence of several factors, including an intensified interest in and appreciation of aesthetic qualities in art

and cultural and artistic pursuits and the felt need to acquire art.

The Legislature further finds that among the main questions to be answered, and about which information is necessary, in determining the value of multiples, in addition to recognized and established intrinsic aesthetic merit, are: (a) whether the multiple is properly attributed to the named artist; (b) whether the multiple was signed by the artist after it was produced; (c) whether the multiple is a reproduction of a work formerly created by the artist in a different medium; (d) whether the purported number of multiples in a "limited edition" is the actual number; and (e) whether there are other editions of the same or virtually the same image.

CHAPTER 1321

An act to amend Section 12001 of the Penal Code, relating to weapons.

[Approved by Governor September 22, 1982 Filed with Secretary of State September 23, 1982.]

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

SECTION 1. Section 12001 of the Penal Code is amended to read:

12001. (a) As used in this chapter, the terms "pistol," "revolver," and "firearm capable of being concealed upon the person" shall apply to and include any device, designed to be used as a weapon, from which is expelled a projectile by the force of any explosion, or other form of combustion, and which has a barrel less than 12 inches in length. These terms also include any device which has a barrel 12 inches or more in length which is designed to be interchanged with a barrel less than 12 inches in length.

(b) As used in Sections 12021, 12072, and 12073, the terms "pistol," "revolver," and "firearm capable of being concealed upon the person" include the frame or receiver of any such weapon.

(c) For the purpose of Sections 12025 and 12031 the term "firearm" shall also include any rocket, rocket propelled projectile launcher or similar device containing any explosive or incendiary material whether or not such device is designed for emergency or distress signaling purposes.

SEC. 2. No appropriation is made and no reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution or Section 2231 or 2234 of the Revenue and Taxation Code because the only costs which may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, changes the definition of a crime or infraction, changes the penalty for a crime or infraction, or eliminates a crime or infraction.

CHAPTER 1322

An act to amend Section 53292 of the Government Code, and to amend Sections 13144.1 and 13144.2 of the Health and Safety Code, relating to fire safety.

[Approved by Governor September 22, 1982. Filed with Secretary of State September 23, 1982.]

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

SECTION 1. Section 53292 of the Government Code is amended to read:

53292. Whenever a fire protection district or city fire department is dissolved or the area it serves is decreased by reason of a consolidation, merger, incorporation, annexation, or contract, and the fire protection district or city fire department taking over the duties of the dissolved or decreased district or department decides to hire additional firemen, it shall give first choice for the positions to be filled to firemen employed by the dissolved or decreased district or department. As nearly as possible, such employees who are hired shall be given positions with a rank comparable to that which they held in the dissolved or decreased district or department. No employee shall be hired who is over the mandatory retirement age of the fire protection district or city fire department which is taking over the duties of the dissolved or decreased district or department.

Notwithstanding any other provision of law, where such employees are hired as a result of such consolidation, merger, incorporation, annexation, or contract, the seniority or other employment rights of the employees of the fire protection district or fire department taking over the duties of the dissolved or decreased district or department shall not be impaired as a result of such consolidation, merger, incorporation, annexation, or contract, except as otherwise agreed upon in a county, other than a county of the first class, in a memorandum of understanding with each employee organization, which has been recognized pursuant to Chapter 10 (commencing with Section 3500) of Division 4 of Title 1, and which represents employees of the district or department taking over the duties of the dissolved or decreased district or department who are in classes affected by such consolidation, merger, incorporation, annexation, or contract.

SEC. 2. Section 13144.1 of the Health and Safety Code is amended to read:

13144.1. (a) Except as provided in Sections 18930 and 18933, the State Fire Marshal shall biennially prepare and publish listings of construction materials and equipment and methods of construction and of installation of equipment, together with the name of any person, firm, corporation, association, or similar organization designated as the manufacturer, representative, or supplier, which

are in conformity with building standards relating to fire and panic safety adopted and published in the State Building Standards Code and other fire and panic safety requirements adopted by the State Fire Marshal and published in Title 19 of the California Administrative Code. The State Fire Marshal shall in alternate years prepare and publish revisions to the listings.

Copies of such listings or revisions shall be distributed by the State Fire Marshal at the costs incurred by him for the printing and distribution of such listings or revisions to persons who have submitted written requests for such approved listings or revisions.

The purpose of this section is to provide enforcement authorities, architects, engineers, contractors, local building officials, and any other interested persons, with a reliable and readily available source of information of construction materials, equipment, methods of construction, and installation of equipment which meet the minimum requirements established or enforced by the State Fire Marshal, pursuant to Sections 13108 and 13143. No person, firm, corporation, association, or similar organization shall be denied listing if the material to be listed is approved by a testing organization using testing procedures approved by the State Fire Marshal.

It shall not be construed that because a material, assemblies of materials, method of construction and installation of equipment has not been listed, as provided by this section, that such a material, assemblies of materials, method of construction and installation of equipment does not conform to the fire and panic safety requirements as published in the State Building Standards Code or in Title 19 of the California Administrative Code.

(b) The State Fire Marshal may evaluate, test, approve, disapprove, and list any other fire safety product not covered in subdivision (a).

SEC. 3. Section 13144.2 of the Health and Safety Code is amended to read:

13144.2. Any person, firm, corporation, association, or similar organization desiring listing pursuant to Section 13144.1 shall, prior to placement on any list or revision thereto, make an original or annual renewal application to the State Fire Marshal on forms provided by the State Fire Marshal. Original applications shall be accompanied by both an application fee and a listing fee. Renewal applications shall be accompanied by a listing fee. An application for revision shall be accompanied by a revision fee.

Failure to submit an annual renewal application and listing fee shall automatically cause removal of the material, equipment, method of construction, or installation of equipment from the listings or revision thereto.

The original application fee, the listing fee and the revision fee shall be as follows:

(a) Except as provided in subdivisions (b), (c), and (d), the original application fee for evaluation of a construction material,

assembly of materials, equipment (including fire alarm control units), method of construction, or method of installation of equipment for any person, firm, corporation, association, or similar organization shall be one hundred dollars ($100). The listing fee for each construction material, assembly of materials, equipment (including fire alarm control units), method of construction, or method of installation of equipment for any person, firm, corporation, association, or similar organization shall be seventy dollars ($70).

(b) The original application fee for evaluation of a fire alarm or automatic sprinkler device for any person, firm, corporation, association, or similar organization shall be fifty dollars ($50). The listing fee for each fire alarm or automatic sprinkler device for any person, firm, corporation, association, or similar organization shall be fifty dollars ($50).

(c) The State Fire Marshal may establish and collect a fee to cover the costs incurred pursuant to subdivision (b) of Section 13144.1 for evaluation or testing, or both, of any fire safety product. The listing fee for any fire safety product evaluated or tested, or both, pursuant to subdivision (b) of Section 13144.1 shall be seventy dollars ($70).

(d) The application for revision of any listing shall be accompanied by a revision fee in the amount of one-half of the original application fee, except the fee for the revision of a listing of a fire safety product listed pursuant to subdivision (b) of Section 13144.1 shall be established by the State Fire Marshal.

The State Fire Marshal may designate in generic terms, without application or fee, materials or assemblies of materials classed by him as industrywide, by regulations adopted pursuant to Sections 13108 and 13143.

SEC. 4. The Legislature finds and declares that the fees authorized pursuant to the provision of this act are necessary for the evaluation, testing, approval, disapproval and listing by the State Fire Marshal of fire safety products. It is the intent of the Legislature that the increased revenue derived from the provisions of this act be used as a source of funding to cover costs incurred by the State Fire Marshal as a result of Section 13144.1 of the Health and Safety Code, including contracting with testing organizations and adding additional personnel to the Office of the State Fire Marshal.

CHAPTER 1323

An act to amend Sections 1356 and 1376 of the Health and Safety Code, relating to health care service plans.

[Approved by Governor September 22, 1982. Filed with Secretary of State September 23, 1982.]

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

SECTION 1. Section 1356 of the Health and Safety Code is amended to read:

1356. (a) Each plan applying for licensure under this chapter shall pay to the commissioner a nonrefundable application fee in the amount of four thousand dollars ($4000) or, if the applicant is to offer only one type of specialized plan contract, two thousand five hundred dollars ($2,500) at the time of submission of the application.

(b) In addition to other fees and reimbursements required to be paid under this chapter, each licensed plan shall pay to the commissioner on or before the 15th day of December of each year, as a reimbursement of its share of all costs and expenses, including overhead, reasonably incurred in the administration of this chapter and not otherwise recovered by the commissioner under this chapter or from the General Fund, an amount as estimated by the commissioner for the ensuing year. The amount paid by each plan shall be five hundred dollars ($500) plus an amount up to but not exceeding twenty-six cents ($0.26) for each family unit enrolled in its plan in this state as of the preceding June 30th, and shall be fixed by the commissioner by notice to all licensed plans on or before November 15th of each year. In determining the amount assessed, the commissioner shall consider all appropriations from the General Fund for the support of this chapter and all reimbursements provided for in this chapter. For the purpose of this section, a family unit is a household composed of one or more individuals.

SEC. 2. Section 1376 of the Health and Safety Code is amended to read:

1376. (a) No plan shall conduct any activity regulated by this chapter in contravention of such rules and regulations as the commissioner may prescribe as necessary or appropriate in the public interest or for the protection of plans, subscribers, and enrollees to provide safeguards with respect to the financial responsibility of plans. Such rules and regulations may require a minimum capital, or net worth, limitations on indebtedness, procedures for the handling of funds or assets, including segregation of funds, assets and net worth, the maintenance of appropriate insurance and a fidelity bond and the maintenance of a surety bond in an amount not exceeding fifty thousand dollars ($50,000).

(b) The surety bond referred to in subdivision (a) shall be conditioned upon compliance by the licensee with the provisions of this chapter and the rules and regulations adopted pursuant to this chapter and orders issued under this chapter. Such bond, unless previously canceled, shall apply to the entire period that the license is in effect. Every surety bond shall provide that no suit may be maintained to enforce any liability thereon unless brought within two years after the act upon which such suit is based, and shall also provide that the liability of the surety on such bond to all persons aggrieved shall, in no event, exceed in the aggregate the amount

thereof. Every such bond shall also contain a provision authorizing the surety thereon to cancel the bond upon 30 days' written notice to the licensee and to the commissioner; except that such cancellation shall not affect any liability incurred or accrued prior to the effective date of such cancellation.

(c) Any appropriate deposits of cash or securities shall be accepted in lieu of the surety bond required pursuant to subdivision (a).

(d) For purposes of computing any minimum capital requirement which may be prescribed by the rules and regulations of the commissioner under subdivision (a), any operating cost assistance or direct loan made to a plan by the United States Department of Health and Human Services pursuant to Public Law 93-222, as amended, may be treated as a subordinated loan, notwithstanding any express terms thereof to the contrary.

(e) Each solicitor and solicitor firm shall handle funds received for the account of plans, subscribers, or groups in accordance with such rules as the commissioner may adopt pursuant to this subdivision.

(f) The commissioner may, by regulation, designate requirements of this section or regulations adopted pursuant to this section, from which public entities and political subdivisions of the state shall be exempt.

CHAPTER 1324

An act to add Section 12403.8 to the Penal Code, relating to tear gas weapons.

[Approved by Governor September 22, 1982. Filed with Secretary of State September 23, 1982.]

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

SECTION 1. Section 12403.8 is added to the Penal Code, to read:

12403.8. (a) Notwithstanding the provisions of paragraph (4) of subdivision (a) of Section 12403.7, a minor who has attained the age of 16 may purchase, possess, and use tear gas or tear gas weapons pursuant to the provisions of this chapter if he or she has completed a course of instruction certified by the Department of Justice and has obtained the written consent of his or her parent or guardian.

(b) Notwithstanding the provisions of paragraph (3) of subdivision (a) of Section 12403.7, a person may sell or furnish tear gas or a tear gas weapon to a minor who has attained the age of 16 and who presents a valid identification card containing a statement of consent to the purchase signed by the minor's parent or guardian and indicating that the minor has completed a course certified by the Department of Justice in the use of tear gas and tear gas weapons.

(c) The Department of Justice shall prescribe the form of the

identification card required by subdivision (b). The card shall be issued as provided in Section 12403.7.

CHAPTER 1325

An act to amend Sections 234, 662, 763, 1205, 1221, 1223, 1224, 1225, 1231, and 1756 of, and to repeal Sections 770 and 1237 of, the Financial Code, relating to commercial banks.

[Approved by Governor September 22, 1982 Filed with Secretary of State September 23, 1982]

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

SECTION 1. Section 234 of the Financial Code is amended to read:

234. Neither the superintendent nor any deputy or employee of the department shall do or be any of the following with respect to any bank supervised by the department:

(a) Be indebted, directly or indirectly, as borrower, endorser, surety, or guarantor to any such bank.

(b) Be an officer, director, or employee of any such bank.

(c) Own or deal in directly or indirectly, the shares or obligations of any such bank.

(d) Be interested in or, directly or indirectly, receive from any such bank or any officer, director, or employee thereof, any salary, fee, compensation, or other valuable thing by way of gift, credit, compensation for services, or otherwise.

(e) Be interested in or engage in the negotiation of any loan to, obligation of, or accommodation for another person to or with any such bank.

Notwithstanding the foregoing the superintendent and any deputy or employee may have and maintain one or more commercial or savings accounts in any bank in this state and may maintain with any bank in this state a loan which is secured by a lien on his or her own home and which was not obtained in violation of this section.

A violation of this section by any person shall constitute sufficient grounds for his removal or discharge.

SEC. 2. Section 662 of the Financial Code is amended to read:

662. (a) Whenever it appears that the contributed capital of a bank or trust company is impaired, the superintendent shall order the bank to correct such impairment within 60 days of the date of his or her order.

(b) The bank or trust company to which an order is issued pursuant to subdivision (a), unless the impairment of contributed capital is otherwise corrected, shall levy and collect an assessment upon its common shares pursuant to Section 423 of the Corporations

Code. The date on which the bank or trust company levies the assessment shall be not more than 60 days after the date of the order; the date on which the assessment is payable shall be not more than 60 days after the date of the levy of the assessment; the date on which the assessment becomes delinquent if not paid shall be not later than the time prescribed in Section 423 of the Corporations Code; and the date on which delinquent shares are sold shall be not later than the time prescribed in Section 423 of the Corporations Code. However, the superintendent may, for good cause, shorten any such time period.

(c) The common shares of every corporation doing a banking business in this state are subject to assessment as provided in this section, whether or not the fact that the shares are subject to such assessment is noted on the certificates representing such shares, and if the shares are subject to assessment only upon order of the superintendent as provided in this section no statement of that fact need be noted on the certificates.

SEC. 3. Section 763 of the Financial Code is amended to read:

763. The amount of funds of a bank or trust company which are deposited in any other financial institution (except a Federal Reserve bank) shall not at any time exceed 10 percent of the sum of the shareholders' equity, allowance for loan losses, capital notes, and debentures of the depositing bank or trust company unless the financial institution has been designated as a depositary for the funds of the depositing bank or trust company by the vote of a majority of the directors of the depositing bank or trust company, and unless the financial institution has been approved by the superintendent as a depositary for the purposes of this section. The superintendent may in his discretion revoke his approval of any such depositary and may in his discretion limit the amount of funds that may be deposited by any bank or trust company with any other financial institution. A deposit by one bank or trust company with another financial insitution shall not be regarded as a loan.

SEC. 4. Section 770 of the Financial Code is repealed.

SEC. 5. Section 1205 of the Financial Code is amended to read:

1205. A commercial bank may rediscount with, borrow money from, or hypothecate its assets as security for money borrowed from a Federal Reserve bank or the Federal Deposit Insurance Corporation.

SEC. 6. Section 1221 of the Financial Code is amended to read:

1221. The obligations, as defined in Section 1220, excepting the obligations described in Section 1226 and the obligations described in Section 1224, of any one person owing to a commercial bank at any one time shall not exceed the following limitations:

(a) Obligations which are unsecured shall not exceed 10 percent of the sum of the shareholders' equity, allowance for loan losses, capital notes, and debentures of the bank.

(b) Obligations, secured and unsecured, in all shall not exceed 20 percent of the sum of the shareholders' equity, allowance for loan

losses, capital notes, and debentures of the bank.

Obligations arising out of the discount of commercial or business paper actually owned by the person negotiating the same and endorsed by such person without limitation, together with the secured and unsecured obligations, if any, of such person, shall not exceed 40 percent of the sum of the shareholders' equity, allowance for loan losses, capital notes, and debentures of the bank.

No commercial bank shall be required, solely by reason of the amendments of this article, to dispose of or reduce any loan which complied with the applicable limitations of this division at the time such loan was made, nor shall any such bank be prevented solely by reason of the provisions of this article from renewing any such loan from time to time.

SEC. 7. Section 1223 of the Financial Code is amended to read:

1223. An obligation shall not be deemed secured by personal property or collateral unless the personal property or collateral held as security is of a kind which has not been declared ineligible by the superintendent and unless it has a market value at least 15 percent greater than the amount of the obligations secured thereby or, if the security is a bank deposit, it shall have a face value at least equal to the amount of the obligations secured thereby. The superintendent may by general regulation declare any particular kinds or classes of personal property ineligible as security. An obligation shall not be deemed secured by real property unless the obligation and the lien securing the same conform to the provisions of Section 1227, 1228, 1236, 1238, or 1239 or the first sentence of Section 1235. Secured and unsecured loans shall be represented by separate notes and shall not be combined in any way within one note or notes.

SEC. 8. Section 1224 of the Financial Code is amended to read:

1224. In addition to the limitations contained in Section 1221 a commercial bank may issue letters of credit and a commercial bank may accept drafts or bills of exchange drawn upon it having not more than six months' sight to run, exclusive of days of grace, which grow out of transactions involving the importation or exportation of goods, or which grow out of transactions involving the domestic shipment of goods; provided, shipping documents conveying or securing title are attached at the time of acceptance, or which are secured at the time of acceptance by a warehouse receipt or other such document conveying or securing title covering readily marketable staples. A commercial bank shall not accept such drafts or bills in the aggregate to an amount exceeding 50 percent of the sum of its shareholders' equity, allowance for loan losses, capital notes, and debentures or, when authorized by the superintendent, to an amount exceeding 100 percent of the sum of its shareholders' equity, allowance for loan losses, capital notes, and debentures nor accept such drafts or bills for any one person to an amount exceeding 10 percent of the sum of its shareholders' equity, allowance for loan losses, capital notes, and debentures, unless the bank is and remains secured by either attached documents or some other actual security growing out of the

same transaction as the acceptance.

SEC. 9. Section 1225 of the Financial Code is amended to read:

1225. With the approval of the superintendent a commercial bank may accept drafts or bills of exchange drawn upon it having not more than three months' sight to run, exclusive of days of grace, drawn by banks or bankers in foreign countries for the purpose of furnishing dollar exchange as required by the usages of trade in the respective countries; provided, no commercial bank shall accept such drafts or bills of exchange for any one bank to any amount exceeding 10 percent of the sum of the shareholders' equity, allowance for loan losses, capital notes, and debentures of the accepting bank unless the draft or bill of exchange is accompanied by documents conveying or securing title or unless the bank is secured by some other adequate security. A commercial bank shall not accept such drafts or bills, whether secured or unsecured, in the aggregate to an amount exceeding 50 percent of the sum of its shareholders' equity, allowance for loan losses, capital notes, and debentures.

SEC. 10. Section 1231 of the Financial Code is amended to read:

1231. No loan shall be made by any commercial bank upon the securities of one or more corporations, the payment of which loan is undertaken, in whole or in part, severally, but not jointly, by two or more persons in any of the following circumstances:

(a) If the borrowers or underwriters are obligated absolutely or contingently to purchase the securities, or any of them, collateral to the loan, unless the borrowers or underwriters have paid on account of the purchase of the securities an amount in cash, or its equivalent, equal to at least 25 percent of the several amounts for which they remain obligated in completing the purchase of the securities.

(b) If the commercial bank making the loan is liable, directly or indirectly, or contingently, for the repayment of the loan or any part thereof.

(c) If its term, including any renewal thereof by agreement, express or implied, exceeds the period of one year.

(d) Or to an amount under any circumstances in excess of 25 percent of the sum of the commercial bank's shareholders' equity, allowance for loan losses, capital notes, and debentures.

SEC. 11. Section 1237 of the Financial Code is repealed.

SEC. 12. Section 1756 of the Financial Code is amended to read:

1756. (a) In addition to other provisions of this division which are otherwise applicable to or with respect to foreign (other nation) banks licensed to maintain nondepositary agencies, the following provisions of this division shall apply to or with respect to each foreign (other nation) bank licensed to maintain a nondepositary agency with respect to its business in this state as if such bank were a commercial bank organized under the laws of this state:

(1) Article 5 (commencing with Section 270) of Chapter 2.

(2) Chapter 13 (commencing with Section 1650).

(3) Article 3 (commencing with Section 1951) of Chapter 15.

(4) Articles 3 (commencing with Section 3160), 4 (commencing with Section 3180), and 7 (commencing with Section 3240) of Chapter 17.

(5) Article 1 (commencing with Section 3350) of Chapter 18.

(6) Chapter 20 (commencing with Section 3600).

(7) Chapter 22 (commencing with Section 3800).

(b) In addition to other provisions of this division which are otherwise applicable to or with respect to foreign (other nation) banks licensed to maintain depositary agencies or branch offices, the following provisions of this division shall apply to or with respect to each foreign (other nation) bank licensed to maintain a depositary agency or branch office with respect to its business in this state as if such bank were a commercial bank organized under the laws of this state:

(1) Article 5 (commencing with Section 270) of Chapter 2.

(2) Chapter 6 (commencing with Section 750).

(3) Chapter 7 (commencing with Section 850).

(4) Chapter 8 (commencing with Section 952).

(5) Chapter 10 (commencing with Section 1200).

(6) Chapter 13 (commencing with Section 1650).

(7) Article 3 (commencing with Section 1951) of Chapter 15.

(8) Article 1 (commencing with Section 2050) but excluding Section 2059, of Chapter 16, subject to the following:

(A) In the case of a purchase and sale where the seller is a bank organized under the laws of this state or a national bank headquartered in this state, no foreign (other nation) bank other than a foreign (other nation) bank which is licensed to maintain a retail branch office may be the purchaser.

(B) In the case of a purchase and sale where the sale of a foreign (other nation) bank's business in this state to another foreign (other nation) bank is incidental to the sale of a larger part or the whole of the former bank's business to the latter bank, no provision of Article 1 of Chapter 16 (other than Sections 2056 and 2057) shall apply; for purposes of Section 2057, it shall not be required that any agreement of purchase and sale be approved by the superintendent, and the time at which the purchase and sale is consummated shall be deemed to be the time at which the superintendent's approval would be effective.

(9) Articles 3 (commencing with Section 3160), 4 (commencing with Section 3180), and 7 (commencing with Section 3240) of Chapter 17.

(10) Article 1 (commencing with Section 3350) of Chapter 18.

(11) Section 3513 and Articles 2 (commencing with Section 3560), 3 (commencing with Section 3570), and 4 (commencing with Section 3580) of Chapter 19.

(12) Chapter 20 (commencing with Section 3600).

(13) Chapter 22 (commencing with Section 3800).

(c) Whenever any provision of this chapter or of any regulation or order issued under this chapter which is applicable to or with

respect to foreign (other nation) banks licensed to transact business in this state is inconsistent with any provision of any other chapter of this division which is applicable to or with respect to such banks, the former provision shall apply, and the latter provision shall not apply.

(d) (1) Whenever any provision of this division (other than the provisions of this chapter) is applicable to or with respect to foreign (other nation) banks licensed to transact business in this state, such provision shall be applied with any changes in points of detail as may be necessary or appropriate.

(2) Without limiting the provisions of paragraph (1), for purposes of any provision of this division (other than the provisions of this chapter) which is applicable to or with respect to a foreign (other nation) bank licensed to transact business in this state:

(A) "Approved by (or approval of) the board" means approved or ratified by the board of the bank, by a committee of such board authorized to exercise the powers of the board with respect to the particular matter, or by an officer of the bank who is assigned to the head office of the bank and who has authority over the bank's business in this state, including authority to approve or ratify the particular matter.

(B) "Head office" means the primary office of the bank.

(C) "Shareholders' equity" means the shareholders' equity of the bank or, if the bank has no shareholders' equity, the closest equivalent account or accounts.

(e) Whenever any provision of this division (other than the provisions of this chapter) which is applicable to or with respect to a foreign (other nation) bank licensed to transact business in this state limits the amount of any assets or liabilities of such bank (including, by way of example, the amount of borrowings of, obligations to, or investments of the bank), for purposes of calculating the amount of such assets or liabilities, only the assets or liabilities of the agencies or branch offices of the bank shall be included, and the assets and liabilities of offices of the bank outside this state shall be excluded.

CHAPTER 1326

An act to amend Sections 12016, 13300, 13302, 13303, 13337, 13338, and 13339 of, and to repeal Chapter 12 (commencing with Section 8870) of Division 1 of Title 2 of, the Government Code, relating to fiscal affairs.

[Approved by Governor September 22, 1982. Filed with Secretary of State September 23, 1982.]

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

SECTION 1. Chapter 12 (commencing with Section 8870) of Division 1 of Title 2 of the Government Code, as added by Chapter 965 of the Statutes of 1981, is repealed.

SEC. 2. Section 12016 of the Government Code is amended to read:

12016. (a) The Budget required by the State Constitution to be submitted by the Governor at each regular session of the Legislature shall be submitted within the first 10 days thereof and shall contain a complete plan and itemized statement of all proposed expenditures of the state provided by existing law or recommended by him or her, and all of its institutions, departments, boards, bureaus, commissions, officers, employees and other agencies, and of all estimated revenues, for the ensuing fiscal year, together with a comparison, as to each item of revenues and expenditures, with the actual revenues and expenditures for the last completed fiscal year and the estimated revenues and expenditures for the existing fiscal year.

(b) The Governor, or the Department of Finance acting on his or her behalf, shall make appropriate changes in his or her budget request to reflect any modification in the organization or functions of state government proposed under Article 7.5 (commencing with Section 12080) of Chapter 1 of this part prior to the passage of the Budget.

(c) The provisions of this section shall apply to the budgets for all the following departments and agencies only with respect to the budgets of these departments and agencies for the 1979–80, 1980–81, and 1981–82 fiscal years:

(1) Employment Development Department.
(2) State Department of Education.
(3) California State University.
(4) Department of Water Resources.
(5) Department of Transportation.
(6) State Department of Health Services.
(7) State Department of Social Services.
(8) Department of Motor Vehicles.

(d) The provisions of this section shall apply to the budgets of all other state entities only with respect to the budgets of those entities until the time the provisions of Sections 12412.1, 13300, 13337, and 13338 become applicable to those entities.

The California State University shall not be subject to the provisions of Sections 12412.1, 13300, 13337 and 13338 related to the implementation of the California Fiscal Information System until the 1985–86 fiscal year.

This section shall remain in effect only until the provisions of Sections 12412.1, 13300, 13337, and 13338 become applicable to those other state entities, and as of that date is repealed, unless a later enacted statute which is chaptered before that date, deletes or extends the date.

SEC. 3. Section 13300 of the Government Code is amended to read:

13300. (a) The department shall devise, install, supervise, and, at its discretion, revise and modify, a modern and complete accounting system for each agency of the state permitted or charged by law with the handling of public money or its equivalent, to the end that all revenues, expenditures, receipts, disbursements, resources, obligations, and property of the state be properly, accurately, and systematically accounted for and that there shall be obtained accurate and comparable records, reports, and statements of all the financial affairs of the state.

(b) This system shall be of a nature so as to permit a comparison of budgeted expenditures, actual expenditures and encumbrances and payables, as defined by the California Fiscal Advisory Board, and estimated revenue to actual revenue, on a monthly basis which is compatible with a budget coding system, developed by the department. In addition, the system shall provide for a federal revenue accounting system with cross-references of federal fund sources to state programs.

(c) This system shall include a program cost accounting system which accounts for expenditures by line item, program, governmental unit and fund source. The system and the accounts maintained by the several agencies of the state shall be coordinated with the central accounts maintained by the Controller, and shall provide the Controller with all information necessary to the maintenance by the Controller of a comprehensive system of central accounts for the entire state government. The Controller or the Director of Finance may submit to the State Board of Control and the State Board of Control shall consider and adopt any rule or regulation required to implement this section.

The amendments made to subdivisions (b) and (c) of this section during the 1977–78 Regular Session of the Legislature shall apply to the departments and agencies specified in subdivision (c) of Section 12016 commencing with the 1982–83 fiscal year and to all other state entities commencing with the second fiscal year following the fiscal year for which funds are appropriated by the Legislature to implement the provisions of this section. The department shall adopt guidelines and instructions to implement the application of this section to the departments and agencies specified in subdivision (c) of Section 12016 by June 30, 1981, and to all other state entities by no later than June 30 of the fiscal year for which funds are appropriated by the Legislature to implement the provisions of this section.

SEC. 4. Section 13302 of the Government Code is amended to read:

13302. The accounting system devised as provided in Section 13300 shall provide, with respect to the General Fund and other governmental funds, for:

(a) The accrual of expenditures as of the end of each fiscal year on the basis of payables incurred, including accrued interest on

bonded indebtedness; and,

(b) The accounting for revenues as being earned when received, except that cash in agency trust accounts within the centralized State Treasury system which is "in transit" to the Treasury, accrued interest receivable, and accounts receivable shall be accrued as of the end of each fiscal year.

(c) For the purposes of financial reporting:

(1) A payable exists when goods or services have been delivered and the state is required to pay for those goods or services, and an encumbrance exists when a valid obligation against an appropriation has been created.

(2) All funds appropriated shall be identified as either expended, payable, encumbered (exclusive of payables), or unencumbered, as further defined by the California Fiscal Advisory Board, and the total of these shall equal the total appropriation.

SEC. 5. Section 13303 of the Government Code is amended to read:

13303. Notwithstanding any other provision of law, all accounts, special accounts and funds established by statute in the General Fund to reserve specific revenues for a particular department, activity, purpose, or program for an indefinite period of time shall, for accounting and budgeting purposes, on and after July 1, 1978, be excluded in determining, estimating or reporting revenues and transfers, expenditures, receipts, disbursements, assets, liabilities, surplus, or reserves in any balance sheet, budget, or other statement of the financial operations or condition of the General Fund.

SEC. 6. Section 13337 of the Government Code is amended to read:

13337. (a) The budget required by the State Constitution to be submitted by the Governor at each regular session of the Legislature shall be submitted within the first 10 days thereof and shall contain a complete plan and itemized statement of all proposed expenditures of the state provided by existing law or recommended by him or her, and all of its institutions, departments, boards, bureaus, commissions, officers, employees and other agencies, and of all estimated revenues, for the ensuing fiscal year, together with a comparison, as to each item of revenues and expenditures, with the actual revenues and expenditures for the last completed fiscal year, the estimated revenues and expenditures for the existing fiscal year and the budgeted revenue and expenditures for the next fiscal year.

(b) The Governor, or the Department of Finance acting on his or her behalf, shall make appropriate changes in the budget request to reflect any modification in the organization or functions of state government proposed under Article 7.5 (commencing with Section 12080) of Chapter 1 prior to the passage of the budget.

(c) The Governor's Budget shall be prepared as a program budget in accordance with guidelines and instructions adopted by the Department of Finance pursuant to Sections 13335 and 13336.

(d) In order to provide meaningful comparisons, the Governor's

Budget shall be prepared in such a manner that the elements and components of each program shall be set forth in the same manner each year.

(e) The Department of Finance shall submit to the committee in each house which considers appropriations and to the Joint Legislative Budget Committee copies of budget material submitted to it by agencies pursuant to the provisions of Article 2 (commencing with Section 13320).

(f) The Governor's Budget shall also include a coding structure which indicates the types of activities being performed by each state entity so that similar or identical activities being performed by different entities may be identified and compared.

(g) Each state entity shall also prepare a supplemental report after July 1, but before August 15, of each year which indicates, for that fiscal year, a monthly expenditure plan for the state entity by program or element.

(h) Prior to the submission of the Governor's Budget to the Legislature, the Department of Finance may conduct public hearings regarding any portion of any budget.

(i) The Governor, or the Department of Finance acting on his or her behalf, shall, at the same time the Governor's Budget is submitted to the Legislature, submit to the Legislature copies of the material for the purposes of subdivision (j).

(j) The Department of Finance shall develop a fiscal information system which will provide timely and uniform fiscal data needed to formulate and monitor the Budget, including, but not limited to, on-line inquiry capacity and the ability to simulate budget expenditures and forecast revenues. This system shall include, among other things, an accounting for encumbrances and expenditures by line item, program, governmental unit, and fund source. This system shall also include a coding structure which indicates the types of activities being performed by each state entity so that similar or identical activities being performed by the same or different entities may be identified and compared. This system and the data shall be available to both the legislative and executive branches. The system may contain separate programs accessible by only one branch, designed to provide for distinct application of the data, but the basic system data shall be available on an equal basis to both the legislative and executive branches.

(k) The provisions of this section shall apply to the budgets for all departments and agencies specified in subdivision (c) of Section 12016 commencing with the 1982–83 fiscal year and to each fiscal year thereafter. The provisions of this section shall apply to the budgets of all other state entities commencing with the second fiscal year following the fiscal year for which funds are appropriated by the Legislature to implement the provisions of this section and to each fiscal year thereafter.

SEC. 7. Section 13338 of the Government Code is amended to read:

13338. (a) The Budget Bill shall be prepared in a manner so that it reflects, and follows as closely as possible, the Governor's Budget, including programs itemized therein.

(b) The Budget Bill shall also utilize a coding scheme compatible with the Governor's Budget and with the records of the Controller.

(c) The Budget Bill shall provide for the appropriation of federal funds received by the state and deposited in the State Treasury. The provisions of this subdivision shall apply commencing with the 1981–82 fiscal year, and to each fiscal year thereafter, except as otherwise provided in Section 13338.5.

(d) The provisions of subdivisions (a) and (b) shall be implemented for the budgets of departments and agencies commencing with the second fiscal year following the fiscal year in which the California Fiscal Advisory Board recommends to the Department of Finance that the implementation be reflected in the Budget Bill.

SEC. 8. Section 13339 of the Government Code is amended to read:

13339. (a) There is hereby created a California Fiscal Advisory Board consisting of the following members, or their representatives:

(1) Chairman of the committee in each house which considers appropriations.

(2) Chairman of the Joint Legislative Budget Committee.

(3) Chairman of the Joint Legislative Audit Committee.

(4) State Treasurer.

(5) State Controller.

(6) Director of Finance, who shall serve as chairman of the board.

(b) The board shall monitor and advise the legislative and executive branches regarding the implementation of this chapter. The board shall also make recommendations as to any further legislation that may be necessary in order to further the objectives of this chapter.

(c) In addition thereto, the advisory board shall review the budgeting and accounting process for the purpose of improving the preparation, legislative review and execution of the budget considering, but not limited to, the following subjects:

(1) The budget cycle.

(2) Adequate time for legislative review.

(3) Increased public participation.

(4) The basis of accounting revenues, expenditures, payables, and encumbrances.

(5) A recommended schedule for implementing the provisions of subdivisions (a) and (b) of Section 13338.

The advisory board shall make a preliminary report of its recommendations by March 1, 1981, and a final report prior to the time subdivisions (a) and (b) of Section 13338 are implemented pursuant to subdivision (d) of Section 13338.

This section shall remain in effect only until the time the provisions of Sections 12412.1, 13300, 13337, and 13338 become applicable to

those state entities specified in subdivision (d) of Section 12016, and as of that date is repealed, unless a later enacted statute, which is chaptered before that date, deletes or extends the date.

CHAPTER 1327

An act to amend Section 9407 of the Commercial Code, relating to secured transactions.

[Approved by Governor September 22, 1982. Filed with Secretary of State September 23, 1982]

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

SECTION 1. Section 9407 of the Commercial Code is amended to read:

9407. (1) If the person filing any financing statement, amendment, termination statement, statement of assignment, continuation statement, or statement of release, furnishes the filing officer a copy thereof, the filing officer shall upon request note upon the copy of a financing statement the file number and upon the copy of any of such statements the date and time of the filing of the original and deliver or send the copy to such person.

(2) Upon request of any person, the filing officer shall issue his or her certificate showing whether there is on file on the date and time stated therein, any presently effective financing statement naming a particular debtor and any statement of assignment thereof and if there is, giving the date and time of filing of each such statement and the names and addresses of each secured party therein. The certificate shall not include any statement as to the possibility of insolvency proceedings which might have the effect of preventing the lapse of effectiveness of a filed financing statement pursuant to Section 9403 whether actual insolvency proceedings are known or unknown to the filing officer. The uniform fee for such a certificate shall be set by the filing officer in an amount which covers actual costs but which in no event exceeds fifteen dollars ($15). Upon request the filing officer shall furnish a copy of any filed financing statement or related filings for a uniform fee of one dollar ($1) for the first page and fifty cents ($0.50) for each page thereafter.

(3) Fees to be charged by the Secretary of State for daily or less frequent summaries or compilations of filings, which he or she may furnish, shall be sufficient to pay at least the actual cost of such service. Fees shall be determined by the Secretary of State with the approval of the Department of Finance. Such summaries or compilations may be in the form of microfilm copies or such other form as may be provided for the required information.

CHAPTER 1328

An act to amend Sections 26469, 26569.11, 26569.13, 26569.15, 26569.16, 26569.17, 26850.5, and 26850.6 of, and to repeal and add Section 26569.12 of, the Health and Safety Code, relating to organic foods.

[Approved by Governor September 22, 1982 Filed with Secretary of State September 23, 1982]

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

SECTION 1. Section 26469 of the Health and Safety Code is amended to read:

26469. It is unlawful to use the terms "organic," "organically grown," "naturally grown," "wild," "ecologically grown," or "biologically grown," when advertising or otherwise making representations with respect to a raw agricultural commodity, processed food product, or meat, poultry, fish, or milk, in violation of Section 26569.11.

The prohibition of this section shall not apply to the term "wild" when such term is used to describe a flavor of a food or a plant variety.

The prohibition of this section shall not apply to the term "natural."

SEC. 2. Section 26569.11 of the Health and Safety Code is amended to read:

26569.11. Except as otherwise provided in this division, the terms "organic," "organically grown," "naturally grown," "wild," "ecologically grown," or "biologically grown" shall be used after January 1, 1981, in the labeling or advertising of a food only for any of the following:

(a) Raw agricultural commodities in the unpeeled natural form, except rapid heating or chilling, and without applied coloring or synthetically compounded materials by the grower, processor, or other handler, and which meet the following requirements:

(1) Are produced, harvested, distributed, stored, processed, and packaged without application of synthetically compounded fertilizers, pesticides, or growth regulators.

(2) Additionally, in the case of perennial crops, no synthetically compounded fertilizers, pesticides, or growth regulators shall be applied by the grower to the field or area in which the commodity is grown for 12 months prior to the appearance of flower buds and throughout the entire growing and harvest season of the particular commodity.

(3) Additionally, in the case of annual crops and two-year crops, no synthetically compounded fertilizers, pesticides, or growth regulators shall be applied by the grower to the field or area in which the commodity is grown for 12 months prior to seed planting or

transplanting and throughout the entire growing and harvest season for the particular commodity.

Only microorganisms, microbiological products, and materials consisting of, or derived or extracted solely from, plant, animal, or mineral-bearing rock substances, may be applied by the grower, processor, or other handler in the production, storing, display area, processing, harvesting, or packaging of raw agricultural commodities, other than seeds for planting, in order to meet the requirements of this subdivision. However, before harvest, the application of bordeaux mixes and trace elements for known deficiencies as determined by soil testing, soluble aquatic plant products, botanicals, lime-sulphur, gypsum, dormant oils, summer oils, fish emulsion, soap, and detergent are permitted, except that the application of aromatic petroleum solvents, diesel, and other petroleum fractions, used as weed or carrot oils, are prohibited. For purposes of this subdivision, "synthetically compounded" means those products formulated by a process which chemically changes a material or substance extracted from naturally occurring plant, animal, or mineral sources, excepting microbiological processes.

(b) Processed foods manufactured only from raw agricultural commodities as described in subdivision (a). The use of ascorbic acid, sodium ascorbate, calcium ascorbate, and citric acid as an antioxidant or chelate is permitted in processed foods under this subdivision.

(c) Processed foods manufactured only from raw agricultural commodities as described in subdivision (a) and processed foods as described in subdivision (b).

(d) Meat, poultry, or fish produced without the use of any chemical or drug to stimulate or regulate growth or tenderness and without any drugs or antibiotics administered or introduced to such animal by injection or ingestion, except for treatment of a specific disease or malady and in no event administered or introduced within 90 days of the slaughter of such animal; at least the final 60 percent of the sale weight of each animal, bird, or fish shall have been raised on feed without medication which complies with subdivision (a).

(e) Milk from animals, which are raised for at least 12 months continuously and thereafter on feed without medication, which feed complies with the provisions of subdivision (a) or (b) and into which animal no drugs or antibiotics have been administered or introduced to such animal by injection or ingestion, except for treatment of a specific disease or malady and in no event administered or introduced within 30 days prior to the production of such milk.

(f) No product shall be labeled or advertised as a "wild" product unless such product is wholly derived from an undomesticated or uncultivated source and complies with the provisions of subdivision (a).

(g) No claim or implication shall be made in the advertising or promotion of a food product that the food product is organic, organically grown, naturally grown, wild, ecologically grown, or biologically grown, unless it conforms to the requirements of this

section.

(h) This section shall not apply to the term "natural" when used in the labeling or advertising of a food.

This section shall not apply to the term "wild" when such term is used to describe a flavor of a food or a plant variety.

SEC. 3. Section 26569.12 of the Health and Safety Code is repealed.

SEC. 4. Section 26569.12 is added to the Health and Safety Code, to read:

26569.12. (a) Except as otherwise provided in this division, no food product shall be labeled as "organic," "organically grown," "naturally grown," "wild," "ecologically grown," or "biologically grown," which has any pesticide residue in excess of 10 percent of the level regarded as safe by the federal Food and Drug Administration.

(b) Where legally mandated application of prohibited substances, as defined in subdivision (a) of Section 26569.11, are applied to raw agricultural commodities, these commodities shall not be labeled as "organic," "organically grown," "naturally grown," "wild," "ecologically grown," or "biologically grown" unless these commodities are otherwise in compliance with subdivision (a) of Section 26569.12.

Additionally, such commodities in compliance, or products derived thereof, shall be prominently labeled that the known substance was applied to the crop. Raw agricultural commodities need not be individually labeled to meet this requirement.

(c) The prohibition of this section shall not apply to the term "wild" when such term is used to describe a flavor of a food or a plant variety.

The prohibition of this section shall not apply to the term natural.

SEC. 4. Section 26569.13 of the Health and Safety Code is amended to read:

26569.13. (a) Except as otherwise provided in this division, the terms "organic," "organically grown," "naturally grown," "wild," "ecologically grown," or "biologically grown" shall not be used for the advertising or labeling of a raw agricultural commodity, processed food product, or meat, poultry, fish, or milk, unless it complies with the provisions of Section 26569.11 and is prominently labeled as follows, or with substantially similar language:

(1) For raw agricultural food products:
ORGANICALLY GROWN IN ACCORDANCE WITH SECTION 26569.11 OF THE CALIFORNIA HEALTH AND SAFETY CODE

(2) For processed food products:
ORGANICALLY GROWN AND PROCESSED IN ACCORDANCE WITH SECTION 26569.11 OF THE CALIFORNIA HEALTH AND SAFETY CODE

(3) For meat, poultry, fish, or milk:
ORGANICALLY PRODUCED IN ACCORDANCE WITH SECTION 26569.11 OF THE CALIFORNIA HEALTH AND

SAFETY CODE

(b) For unpackaged foods, the requirements of subdivision (a) relating to labeling shall be deemed to have been met if such labeling appears prominently on or over the bin or container holding the food.

The prohibition of this section shall not apply to the term "wild" when such term is used to describe a flavor of a food or a plant variety.

The prohibition of this section shall not apply to the term "natural."

SEC. 5. Section 26569.15 of the Health and Safety Code is amended to read:

26569.15. When a food product subject to the provisions of Section 26569.11 is labeled as "certified," the name of the person or organization which provides such certification shall be listed on the label.

SEC. 6. Section 26569.16 of the Health and Safety Code is amended to read:

26569.16. (a) All growers who sell farm products identified as "organic," "organically grown," "naturally grown," "wild," "ecologically grown," or "biologically grown" shall keep accurate records of the location of the acreage used for growing such products and the additions, excluding water, made to the soil or applied to the plants or added to irrigation water. Such records shall be retained for two years after the crop is sold and delivered by the grower.

(b) All persons who process or manufacture food products which are sold identified as "organic," "organically grown," "naturally grown," "wild," "ecologically grown," or "biologically grown" shall keep accurate records as to the ingredients of the product and the names and addresses of persons from whom the ingredients were purchased. Such records shall be retained for two years after the food product is sold and delivered.

(c) All persons who sell such food products shall keep accurate records of the names and addresses of persons from whom such products were purchased. Such records shall be retained for two years after the food product is sold and delivered.

(d) Growers, manufacturers, and sellers of such products shall provide the department, upon demand, with the relevant information from the records required pursuant to this section.

(e) The department shall, upon request, provide copies of any information collected pursuant to this section to any person or entity. The department shall collect information kept by a grower, manufacturer, or seller pursuant to this section upon request of any person or entity. In providing such copies, the department may charge such requesting person or entity a fee for the cost of reproducing such information.

(f) The provisions of this section shall not apply to the term "wild" when such term is used to describe a flavor of a food or a plant variety.

This section shall not apply to the term "natural."

SEC. 7. Section 26569.17 of the Health and Safety Code is amended to read:

26569.17. The prohibitions or requirements contained in Sections 26569.11 and 26569.12 shall not apply to persons engaged in business as wholesale or retail distributors of the commodities referred to in Sections 26569.11 and 26569.12 except to the extent that such persons:

(1) Are engaged in the manufacturing, packaging, or labeling of such commodities, except that the prohibitions or requirements contained in Sections 26569.11 and 26569.12 shall not apply to any such wholesale or retail distributor who in good faith makes the same representations on a package or label as have been made in writing or printed advertising or labeling by the manufacturer, distributor, or other person providing the product to such wholesale or retail distributor.

(2) Prescribe or specify by the specific means in violation of Sections 26569.11 to 26569.16, inclusive, the manner in which such commodities are manufactured, packaged, or labeled.

(3) Have knowledge of the violation of any provisions of Sections 26569.11 to 26569.16, inclusive, by any specific batch of such commodities and continue to sell or distribute such specific batch of such commodity.

SEC. 8. Section 26850.5 of the Health and Safety Code is amended to read:

26850.5. (a) Notwithstanding the provisions of Section 26850 or any other provision of law, any person, organization, or public or private entity, may bring an action in superior court pursuant to this section and such court shall have jurisdiction upon hearing and for cause shown, to grant a temporary or permanent injunction restraining any person from violating any provision of Sections 26569.11 to 26569.16, inclusive. Any proceeding under the provisions of this section shall conform to the requirements of Chapter 3 (commencing with Section 525) of Title 7 of Part 2 of the Code of Civil Procedure, except that such person, organization, or entity shall not be required to allege facts necessary to show, or tending to show, lack of adequate remedy at law, or to show, or tending to show, irreparable damage or loss, or to show, or tending to show, unique or special individual injury or damages.

(b) In addition to the injunctive relief provided in subdivision (a), the court may award to such person, organization, or entity reasonable attorney's fees as determined by the court.

(c) The provisions of this section shall not be construed to limit or alter the powers of the department and its authorized agents to bring an action to enforce the provisions of this chapter pursuant to Section 26850 or any other provision of law.

SEC. 9. Section 26850.6 of the Health and Safety Code is amended to read:

26850.6. Notwithstanding any provision of this division, including, but not limited to, Sections 26200, 26202, 26205, 26206,

26207, 26208, 26210, 26230, 26232, 26409, 26433, 26434, 26436, 26438, 26559, 26561, 26564, 26569.9, 26581, 26582, and 26590, and Article 2 (commencing with Section 26811), Article 3 (commencing with Section 26830), or Article 4 (commencing with Section 26850) of Chapter 8, or any other provision of law, no state agency shall have any affirmative obligation to adopt regulations or otherwise to enforce the provisions of the Organic Foods Act of 1979, including but not limited to, the provisions of Section 26569.11.

This section shall remain in effect only until January 31, 1985, and as of such date is repealed, unless a later enacted statute, which is chaptered on or before January 31, 1985, deletes or extends such date.

SEC. 10. No appropriation is made and no reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution or Section 2231 or 2234 of the Revenue and Taxation Code because the only costs which may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, changes the definition of a crime or infraction, changes the penalty for a crime or infraction, or eliminates a crime or infraction.

CHAPTER 1329

An act to amend Sections 52302.3, 52520, and 78016 of, and to add Section 8285.5 to, the Education Code, to add Division 8 (commencing with Section 15000) to, to repeal Section 10524 of, and to repeal Chapter 3 (commencing with Section 10000) of Part 1 of Division 3 of, the Unemployment Insurance Code, and to amend Section 11200 of, and to repeal and add Section 11205 to, the Welfare and Institutions Code, relating to public social services.

[Approved by Governor September 22, 1982. Filed with Secretary of State September 23, 1982.]

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

SECTION 1. It is the intent of the Legislature to modify provisions relating to public social services programs.

SEC. 2. Section 8285.5 is added to the Education Code, to read:

8285.5. (a) Notwithstanding any other provision of this chapter, at such times as the Superintendent of Public Instruction proposes to expand child care and development services either within an existing facility or within a newly established child care and development facility, he or she shall submit a written proposal to the county private industry council, established pursuant to Division 8 (commencing with Section 15000) of the Unemployment Insurance Code, for each county wherein the proposed expansion is to occur.

(b) The written proposal shall describe the proposed number of additional children to be served, the proposed location of these

services, the amount of additional funding to be allocated within the county, and any other pertinent information the superintendent may deem useful and necessary.

(c) Following the review of the written proposal by the county private industry council, the Superintendent of Public Instruction shall receive comments submitted by each county's private industry council, and shall, to the maximum extent feasible, incorporate the findings and recommendations of each county council into the actual planned expansion of child care services to be implemented within the county.

(d) Nothing herein shall be construed to preclude the Superintendent of Public Instruction from contacting a county's private industry council prior to the development of any expansion proposal in order to obtain the council's advice and recommendations relating to child care and development services needs occurring within the county.

(e) For the purposes of this section, the term "expansion of child care and development services" means any increase during a calendar year in a county's aggregate average daily enrollment of children receiving subsidized child care services pursuant to the provisions of this chapter above the aggregate average daily enrollment which exists in a county on January 1 of that year.

SEC. 3. Section 52302.3 of the Education Code is amended to read:

52302.3. (a) Every vocational course or program offered by a school district or community college district or districts or county superintendent or superintendents sponsoring a regional occupational center or program shall be reviewed every two years by the appropriate governing body to assure that each such course or program does all of the following:

(1) Meets a documented labor market demand.

(2) Does not represent unnecessary duplication of other manpower training programs in the area.

(3) Is of demonstrated effectiveness as measured by the employment and completion success of its students.

(b) Any course or program that does not meet the requirements of subdivision (a) and the standards promulgated by the governing body shall be terminated within one year.

(c) The review process required by this section shall include the review and comments by the county private industry council established pursuant to Division 8 (commencing with Section 15000) of the Unemployment Insurance Code, which review and comments shall occur prior to any decision by the appropriate governing body.

(d) The provisions of this section shall apply to each course or program commenced subsequent to the effective date of this section.

SEC. 4. Section 52520 of the Education Code is amended to read:

52520. (a) Every vocational or occupational training program for adults offered by any high school district or unified school district shall be reviewed every two years by the governing board to assure

that each such program does all of the following:

(1) Meets a documented labor market demand.

(2) Does not represent unnecessary duplication of other manpower training programs in the area.

(3) Is of demonstrated effectiveness as measured by the employment and completion success of its students.

(b) Any program that does not meet the requirements of subdivision (a) and the standards promulgated by the governing board shall be terminated within one year.

(c) The review process required by this section shall include the review and comments by the County Private Industry Council established pursuant to Division 8 (commencing with Section 15000) of the Unemployment Insurance Code, which review and comments shall occur prior to any decision by the appropriate governing body.

(d) The provisions of this section shall apply to each program commenced subsequent to the effective date of this section.

SEC. 5. Section 78016 of the Education Code is amended to read:

78016. (a) Every vocational or occupational training program offered by a community college district shall be reviewed every two years by the governing board of the district to assure that each such program does all of the following:

(1) Meets a documented labor market demand.

(2) Does not represent unnecessary duplication of other manpower training programs in the area.

(3) Is of demonstrated effectiveness as measured by the employment and completion success of its students.

(b) Any program that does not meet the requirements of subdivision (a) and the standards promulgated by the governing board shall be terminated within one year.

(c) The review process required by this section shall include the review and comments by the County Private Industry Council established pursuant to Division 8 (commencing with Section 15000) of the Unemployment Insurance Code, which review and comments shall occur prior to any decision by the appropriate governing body.

(d) The provisions of this section shall apply to each program commenced subsequent to the effective date of this section.

SEC. 6. Chapter 3 (commencing with Section 10000) of Part 1 of Division 3 of the Unemployment Insurance Code is repealed.

SEC. 7. Section 10524 of the Unemployment Insurance Code is repealed.

SEC. 8. Division 8 (commencing with Section 15000) is added to the Unemployment Insurance Code, to read:

DIVISION 8. FAMILY ECONOMIC SECURITY. JOB PREPARATION AND TRAINING SERVICES

CHAPTER 1. GENERAL PROVISIONS

15000. The Legislature finds and declares that many

economically disadvantaged persons, including heads of welfare families and out-of-school youths, are unable to take their place in the mainstream of our economy because they lack the preparation and training necessary to obtain and retain productive private sector jobs. Recognizing that government-sponsored job preparation, training and placement services form a unique juncture of public sector responsibilities with private sector interests, it is only with the proper alignment of these responsibilities and interests that there will be achieved the critical goals of economic growth, improved work force productivity and deterrence of family dependency on public funds. Therefore, in order for economically disadvantaged persons to obtain and retain private sector employment, it is essential that government and the private sector enlist in a cooperative partnership to provide such persons with appropriate job training to the extent that there are a reasonable number of jobs available in the community. To be successful, such training must be designed and administered at the local level in close cooperation with local private sector employers, labor unions, vocational educators, recipient organizations, legal service organizations for the poor, and other officials, and in accordance with the unique economic conditions and employment needs of each locality.

The Legislature further recognizes that existing state and federal programs addressing the employment needs of the economically disadvantaged have proved to be multiple, uncoordinated responses to these needs. A successful program will require a comprehensive, unified set of services designed and administered at the local level and organized to address local conditions. It will also require that such a program be an integral part of the state's overall business and economic development and employability improvement strategies.

15001. It is the purpose of this division to establish a program of job preparation, training, and placement services which enable economically disadvantaged persons to participate fully in the mainstream of our economy and thereby promote the economic security of families they now head or will in the future head, and which carries out the objectives, purposes and provisions of the Aid to Families with Dependent Children (AFDC) program established pursuant to Chapter 2 (commencing with Section 11200) of Part 3 of Division 9 of the Welfare and Institutions Code. To achieve these purposes it is the intent of the Legislature that a service system be implemented which incorporates the following elements:

(a) Integration of benefits and services under the Aid to Families with Dependent Children program with employment services, including the following:

(1) Application and screening of eligible participants.

(2) Assessment of each participant's employment potential and training needs.

(3) Immediate job search assistance and imparting of self-help job search skills for employment in unsubsidized jobs.

(4) Placement in appropriate training programs for those

participants not otherwise job ready.

(b) Integration of those state and federal job training programs now authorized by law and designed to serve persons eligible under this division.

(c) Overall program direction by the Employment Development Department, whose functions under this division shall include:

(1) Overall direction, under the guidance of the State Jobs Training Council, of the statewide programs operated by counties under this division, including establishment of basic program standards consistent with the provisions of this division and the provisions of Chapter 2 (commencing with Section 11200) of Part 3 of Division 9 of the Welfare and Institutions Code, review and approval of county plans, allocation and distribution to counties of funds from the block grant established pursuant to Chapter 8 (commencing with Section 15080), and assessment of county performance based on standards that measure results rather than process.

(2) Administration, either directly or by contract with another entity, of these statewide programs in counties that request the state to assume this function.

(3) Administration of demonstration programs testing innovative approaches to assisting clients eligible under this division to find unsubsidized employment.

(4) Administration of special assistance programs to areas facing urgent employment and training needs that cross county lines or that result from major plant closures, arrival and resettlement of a significant number of refugees, or comparable circumstances.

(d) Local administration and operation of the statewide programs under this division, in accordance with an approved county plan.

(e) Planning, design, and local oversight of the county's job preparation and training services system by local private industry councils established by county boards, which councils shall ensure that the county plan responds appropriately to local economic conditions, local employment needs, and business and economic development strategies planned or being implemented within the area, as well as complies with the basic standards and provisions of this division.

(f) Streamlining of the funding for programs authorized under this division, in accordance with the following principles:

(1) Consolidation into a single block grant, for distribution to the counties to carry out their approved plans, of:

(A) Those federal and state funds heretofore appropriated on a categorical basis for various programs authorized to provide job preparation, training, and placement services, which programs are integrated by this division into the county operated statewide programs.

(B) Other funds that the federal government may make available or the Legislature may appropriate for the statewide programs.

(2) Retention by the Employment Development Department of

the following funding sources:

(A) The county's share of block grant funds distributed under paragraph (1), to support provision of services to county residents eligible under this division, in those counties where the state assumes this function in accordance with paragraph (2) of subdivision (c).

(B) Federal and state funds received for the operation of demonstration and special assistance programs serving persons eligible under this division. When a demonstration program and its funding level become suitable for statewide institutionalization, local administrative responsibility for the program shall be assigned to the counties and its funding shall be moved to the block grant established under paragraph (1).

15002. The following definitions shall govern the construction of this division.

(a) "Director" means the Director of the Employment Development Department.

(b) "Department" means the Employment Development Department.

(c) "Local council" means the private industry council established by a county in accordance with the provisions of this division.

(d) "State council" means the State Job Training Council established under Chapter 4.5 (commencing with Section 15035) of Division 8.

(e) "Job preparation and training services" means that system of services, activities and procedures developed by each county to provide eligible participants with the skills and knowledge needed to obtain and retain adequately paying jobs in the private sector.

(f) "County plan" means that statement prepared by counties describing the methods and processes for carrying out job preparation and training services, the objectives to be achieved by such methods and processes, the manner in which funds will be used to achieve those objectives, and the level of performance achieved.

(g) "Performance standards" means those indicators used to measure levels of achievement by county programs.

CHAPTER 2. ELIGIBILITY

15010. Persons eligible to receive services provided under the provisions of this division shall be limited to the following:

(a) Members of families which are receiving, or which would be eligible to receive, in the absence of services provided under this division, benefits provided by the Aid to Families with Dependent Children program pursuant to Chapter 2 (commencing with Section 11200) of Part 3 of Division 9 of the Welfare and Institutions Code.

(b) Persons under the age of 22 who have, or are members of a family which has, received a total family income for the six-month period prior to application for services under this division, exclusive of unemployment insurance benefits, child support payments, and

public assistance payments, which, in relation to family size, was not in excess of the higher of the poverty level or 70 percent of the lower living standard income level as promulgated by the Secretary of the United States Department of Labor. Services provided to persons eligible under this section shall be directed to those persons with the most severe barriers to employment.

(c) Persons who are receiving or who, in the absence of services provided under this division, would be eligible to receive food stamps pursuant to Chapter 10 (commencing with Section 18900) of Part 6 of Division 9 of the Welfare and Institutions Code.

(d) Persons who are receiving or would, in the absence of services provided under this division, qualify in the county of application for benefits under that county's general assistance program pursuant to Part 5 (commencing with Section 17000) of Division 9 of the Welfare and Institutions Code.

(e) Persons other than those specified herein, including handicapped persons, on the basis of a county's determination that these persons are in need of, and can reasonably be expected to benefit from, services available under this division, may be eligible for those services, provided that: (1) the county plan fully describes these persons and their needs and (2) not more than 10 percent of a county's allocation of funds received under this division are expended on these persons.

15011. (a) In the event that available funding is not sufficient to provide the full range of services authorized under this division to all those meeting the eligibility standards specified in Section 15010, the department shall establish general criteria, subject to the approval of the state council, to be used by counties in determining both of the following:

(1) The priority order among eligible persons for access to services.

(2) The priority order among the types of services to be provided.

These criteria shall provide counties with sufficient flexibility in order that county plans can respond to the needs of eligible groups for programs developed in response to local conditions.

(b) In establishing priority criteria, the department may establish proportions of funding that may be used for groups of eligible participants and for types of services, or the department may establish proportions of eligible groups to be served, or both.

(c) To the extent feasible, the priority order of eligible persons shall be in accordance with the order of eligibility set forth in Section 15010. In establishing priorities for services, special priority emphasis shall be given to those women who are the sole heads of families with minor children.

CHAPTER 3. COUNTY RESPONSIBILITIES

15020. There shall be established in each county, subject to the direction of the county board of supervisors acting in accordance

with the provisions of this division, a system for providing job preparation, training and placement services to persons eligible under the provisions of this division. Elements of services to be provided by the system shall include, but are not necessarily limited to:

(a) Receiving applications for services and screening the applicants in accordance with priorities and services provided pursuant to a county plan.

(b) Assessment of an eligible participant's employment potential and training needs.

(c) Immediate job search assistance which provides applicants and recipients of public assistance with self-help job search skills and other job finding services which promote quick entry into unsubsidized jobs, with special emphasis on nontraditional jobs in the private sector for women.

(d) Basic and remedial education for those participants who have not received a secondary school diploma or a certificate from a program of equivalency for such a diploma.

(e) Job training services for those participants who without such training would be unable to obtain unsubsidized employment within a reasonable period of time.

(f) Job placement services for participants completing training programs.

15021. Each county shall determine the organization and structure necessary to administer the system of services provided pursuant to Section 15020. The county's administrative structure, however, shall provide for the integration of the application of and access to employment and training services with the county's organizational structure for administering benefits under the Aid to Families with Dependent Children program and other public assistance programs. In addition, the county shall, to the extent feasible, promote the integration of employment and training resources available within the county to eligible participants into a comprehensive employment services system.

15022. All programs, services, policies, and procedures established by the county pursuant to the requirements of this division, including the expenditures of all public funds, shall be in accordance with the county's plan, prepared in accordance with the provisions of Chapter 5 (commencing with Section 15040) and as approved by the department.

15023. In its administration and management of the services system established under this chapter, the county shall act in a manner which promotes and supports the powers, duties, and functions of the county's private industry council as set forth in Chapter 4 (commencing with Section 15030).

15024. The county may contract with state departments or public and private agencies or organizations for the provision of services to persons eligible under this division who need or would benefit from such services. In selecting facilities for job training, institutional

training or work experience programs under this division, the county shall determine whether existing private and public community facilities in the area are being utilized to the fullest extent before establishing any new facilities at public expense and shall document this determination within its annual plan prepared pursuant to Section 15043. In order to assure that the maximum utilization of existing facilities is accomplished where appropriate, the county shall notify all the facilities in the area prior to establishing new job training, institutional training, and work experience programs.

15025. Where it is determined to be impractical because of population size or geographical remoteness for an individual county to establish a services system pursuant to this division, or where counties share common interests, needs, and resources, those counties are hereby authorized to establish through a joint powers agreement a consortium of counties empowered to fulfill the requirements of this division. The consortium shall conform to the provisions of this division. The department shall give its full cooperation and assistance in assuring the effective, efficient formulation and operations of the consortium.

15026. (a) In order to assure the proper and efficient management of the job preparation and training services system, counties shall establish and maintain such management information and fiscal accounting systems as are necessary to meet federal, state, and county information, auditing, and control requirements. Counties shall provide to the department such reports containing such information as the department, with the approval of the state council, requires. The reporting requirements shall be determined with the assistance of counties.

(b) The information systems established pursuant to this section shall, where appropriate, complement the centralized delivery system authorized in Chapter 4.1 (commencing with Section 10815) of Part 2 of Division 9 of the Welfare and Institutions Code.

15027. Each county, to the extent feasible and to the extent that employment and training services are available, shall provide employment and training services to Work Incentive Program registrants who have been assessed and appraised by the Work Incentive Program as requiring employment and training services which are not available to the registrants under the Work Incentive Program or the Employment Preparation Program.

15028. If the director finds that a county, or other entity designated by the Governor pursuant to federal law to administer employment and training services in a service delivery area, is failing to comply with the provisions of this division, he or she may notify the state council and request a hearing concerning whether funds should be withheld from the county or other entity. The director shall notify the subject county or other entity of any such request. The state council shall set the matter for hearing within 60 days after the receipt of the request by the director, and shall recommend to the Governor what action should be taken, if any, within 30 days after

the conclusion of the hearing.

If the state council recommends that funding should be withheld from the county or other entity it shall also recommend an entity or entities to provide employment and training services within the county or other service delivery area until the county or other entity offers reasonable assurances of its intention and ability to comply with the requirements of this division. If the director's findings involve fraud or misappropriation of funds, he or she may immediately withhold funds from the subject county or other entity pending the hearing by the state council and decision by the Governor.

15029. The director shall investigate and shall make a formal declaration of findings regarding a complaint filed with the director by a recipient organization or a number of participants that present evidence of the county's failure to comply with provisions of this division. This declaration shall be made within 60 days of the complaint being filed.

CHAPTER 4. PRIVATE INDUSTRY COUNCILS

15030. In order to assure a more cooperative relationship between government and the private sector, a relationship that promotes a system of job preparation and training services most responsive to the needs and interests of the private sector and the participants, each county shall establish a private industry council.

15031. (a) The county's private industry council shall consist of not more than 29 members appointed by the board of supervisors as follows:

(1) A majority of the members shall represent both large and small businesses in the private sector, who shall be owners of business concerns, chief executives or chief operating officers of business concerns who have or have had profit and loss responsibility for an autonomous part of a business, or their designees.

(2) The remaining members shall represent the vocational education programs provided by the community college district or district operating within the county, the vocational education programs provided by the school district or districts operating within the county, private proprietary schools within the county, the employment services functions provided by local offices of the department operating within the county, organized labor groups, private nonprofit community-based organizations, participants of services under the county's services plan, actual recipients of public assistance or representatives of local recipient organizations, and the county board of supervisors.

(3) The composition of the private industry council shall, to the extent feasible, represent the racial and ethnic characteristics of the county.

(b) Private industry representatives on the council shall initially be selected from among individuals nominated by general purpose

business organizations operating within the county.

(c) Each member of the private industry council shall serve for terms of four years, except that, as determined by each county board of supervisors, the terms of the original members shall be as follows:

(1) One-quarter of the members shall be appointed for one year.

(2) One-quarter of the members shall be appointed for two years.

(3) One-quarter of the members shall be appointed for three years.

(4) One-quarter of the members shall be appointed for four years.

(d) All vacancies occurring subsequent to the initial appointments to the private industry council shall be filled within 30 days of their occurrence by the board of supervisors.

15032. It shall be the duty of the council to:

(a) Design and plan the program of job preparation and training services for the county, subject to the department's approval and in accordance with its established criteria, including:

(1) Establishing the county's eligibility and services priorities.

(2) Determining the types of services and training to be provided.

(3) Determining the industries and occupations for training.

(4) Establishing criteria for the content and quality of training.

(5) Determining the entities which will deliver the training and services.

(6) Determining the annual utilization of available funds and resources and preparing the program budget.

(b) Survey local employment needs and local economic conditions, including a description of:

(1) Unemployed, underemployed and "discouraged" workers.

(2) Jobs lost and jobs created in the region.

(3) Local labor market supplies and migratory patterns.

(4) Labor force training needs and skills assessment.

(5) Linkages with small businesses.

(6) Economic development strategies, implemented or planned for the region and their employment impact.

(7) Employment by private industry receiving contracts, loans, industrial revenue bonds, grants, tax abatements or preferential zoning from the local governing body.

(c) Guide the development of the county's plan prepared in accordance with the provisions of Chapter 5 (commencing with Section 15040) to assure that it conforms with the priorities, criteria and standards set forth by the council pursuant to subdivision (a).

(d) Monitor the performance of the job preparation and training services system to assure its compliance with the county's plan, and through utilization of performance criteria established pursuant to this division, assess the levels of success achieved by the system. Where the system's performance is not up to standard, the council shall propose modifications which maximize successful outcomes.

(e) Assure that the system is fully responsive to the employment needs of the private sector, program participants, and the economic conditions occurring within the county, and assure that the system

is compatible with and supportive of federal, state and local business and economic development activities occurring within the county.

(f) Promote the integration of the system with all other job training, vocational education, and employment services resources available within the county, including the review of annual plans prepared by the department's local offices for employment services including the Work Incentive Program, and local educational agencies for vocational education programs pursuant to the provisions of Chapter 7 (commencing with Section 15070).

(g) Promote the transition of participants served by the system into full-time unsubsidized jobs with special emphasis on nontraditional jobs in the private sector for women.

15032.5. In the event the Governor also designates another unit of general government within the county as a service delivery area pursuant to federal law, one joint private industry council shall be established to perform the duties specified in this chapter for both the county and the other service delivery area. Any such joint council shall include representation from the unit of general local government designated as a service delivery area in addition to the representation required pursuant to subdivision (a) of Section 15031, and appointments to the joint council shall be made jointly by the board of supervisors of the county and the governing body of the other unit of general government.

15033. The council shall select annually from among its membership a chairman, vice chairman and any other officers as the council may deem necessary.

15034. Members of the council shall be reimbursed only for their necessary and actual expenses incurred in the performance of their official duties.

CHAPTER 4.5. STATE JOB TRAINING COUNCIL

15035. To promote integration of employment and training programs and resources at the state level, to further cooperation between government and the private sector in meeting California employers' needs for well-trained workers and California workers' needs for good jobs, and to provide oversight of programs operated pursuant to this division, a state job training council is established.

15036. The state council shall consist of 40 members, appointed by the Governor, the Senate Rules Committee, and the Speaker of the Assembly, as follows:

(a) Twenty-one members shall be representatives of large and small businesses in the private sector. Fifteen of these members shall be owners of business concerns, chief executives or chief operating officers of business concerns who have or have had profit and loss responsibility for an autonomous part of a business, or their designees. Five of these 15 members shall be appointed by the Governor, five shall be appointed by the Senate Rules Committee, and five shall be appointed by the Speaker of the Assembly.

Of the remaining six members:

(1) Three shall be selected from general purpose organizations representing business interests; one of whom shall be selected by the Governor, one by the Speaker of the Assembly, and one by the Senate Rules Committee.

(2) Three shall be business representatives selected from local private industry councils; one of whom shall be selected by the Governor, one by the Speaker of the Assembly, and one by the Senate Rules Committee.

(b) Three members shall be representatives of public assistance recipients' organizations, one appointed by the Governor, one appointed by the Senate Rules Committee, and one appointed by the Speaker of the Assembly.

(c) The remaining 16 members shall be appointed by the Governor, with one member representing each of the following parties or entities, with all county and client representatives being chosen from different counties:

(1) Organized labor.

(2) County supervisors.

(3) County welfare directors.

(4) County councils.

(5) Youth.

(6) Veterans.

(7) Nonprofit community-based organizations that provide employment and training services.

(8) The Department of Social Services.

(9) The Department of Industrial Relations.

(10) The Department of Education.

(11) The Chancellor's office of the California Community Colleges.

(12) The Department of Economic and Business Development.

(13) The Employment Development Department.

(14) The Department of Rehabilitation.

(15) Private proprietary schools.

(16) Cities.

15037. The council shall:

(a) Recommend to the Governor and the Legislature policies for the administration of employment and training programs and services, and statewide priorities for program planning and services.

(b) To the extent permitted by federal law, review and approve:

(1) County plans.

(2) Standards, criteria and reporting requirements established by the department pursuant to this division with respect to county plans.

(3) The allocation formula to be used for the distribution of funds for county plans.

(4) The distribution of other federal funds allocated to the state for those employment and training services provided pursuant to this division.

(c) Consider and advise the director on all matters connected with the administration of this code as submitted to it by the director, and may upon its own initiative recommend such changes in administration as it deems necessary.

(d) Review and comment to the Governor and the Legislature on the annual report prepared in accordance with Section 15064, and the employment and training plan prepared in accordance with Sections 10522 and 10523.

(e) Serve as the body responsible for making recommendations to the Governor when the director proposes to withdraw funding pursuant to Section 15028.

15038. Members of the state council shall be reimbursed only for their necessary and actual expenses incurred in the performance of their official duties.

15039. The state council shall succeed to the Employment Services Board and the former state employment and training council created under Section 10524.

15039.5. The state council may employ personnel necessary to carry out its responsibilities. All personnel of the council shall be under the supervision of the chairperson or an executive director to whom he or she delegates this responsibility. All personnel shall be appointed pursuant to the State Civil Service Act established pursuant to Part 1 (commencing with Section 18000) of Division 5 of Title 2 of the Government Code, except the executive director who shall be exempt.

CHAPTER 5. COUNTY PLANS

15040. Each county shall prepare and submit to the director an annual job preparation and training services plan, which shall conform to the provisions of this division and the criteria, rules, and procedures established pursuant to this division.

15041. To receive any federal and state funds appropriated for the purposes and requirements of this division, a county shall operate under and adhere to a county plan approved by the department.

15042. Counties shall develop and submit their plans to the director in accordance with a time schedule set forth by the department, which shall, to the extent feasible, allow for the integration of cost and services needs information contained in the counties' plans with the development of the Governor's annual State Budget proposal.

15043. The content of county plans shall include, but is not necessarily limited to, the following:

(a) A description of the county's system for administering and delivering services including private industry council membership.

(b) A description of, and the rationale for, the county's eligibility and services priorities, the types of services and training provided, the industries and occupations of training, the criteria for the content and quality of training, the entities delivering services, and the

performance measures used.

(c) A description of the coordination with and the uses made of other agencies and organizations within the county providing job training, vocational education, client advocacy, and employment services, which shows the value of these other resources in addressing the needs reflected in the county plan.

(d) A proposed budget for the forthcoming fiscal year describing program objectives, services to be provided for the purpose of achieving those objectives, the sources and amounts of funds to be allocated to each type of service, and estimates of the number of persons in each eligibility category in need and the number of persons in each eligibility category to be served by each type of service. The budget shall also describe administrative objectives, the purpose and rationale for such objectives, and the sources and amounts of funds to be allocated to each objective.

(e) A status report on the activities of the current fiscal year describing progress toward achieving program and administrative objectives as well as other legislative requirements imposed by the current year's budget, including the current status and financial condition of the federal and state funds allocated to the county and their capacity to meet current year objectives.

(f) A description of the activities, financial condition and accomplishments of the county's job preparation and training services program for the preceding fiscal year, including a description of the extent to which program and administrative objectives set forth for that year were realized, and a description of expenditures by sources of funds for services provided pursuant to this division in that year.

(g) A description of the condition of job preparation and training services taking place in the county, including an analysis of issues confronting the program and recommendations appropriate to resolve such issues.

15044. Jobs provided pursuant to the county plan shall, to the extent possible, offer net income sufficient to meet the family's necessary expenses for food, housing, utilities, child care, and transportation.

15045. The opportunity shall be provided for public review and comment on the county's annual plan prior to the county's final approval and in accordance with procedures which the board of supervisors determine are reasonable and appropriate which shall provide all of the following:

(a) A public hearing on the proposed county plan prior to submission to the board of supervisors for which public notice is provided 30 days in advance.

(b) A 30 day posthearing comment period prior to final adoption of the plan by the council and submission to the county board of supervisors.

(c) A requirement that the council or the county or both respond in writing to any comments submitted concerning the plan as a part

of the plan to be submitted to the department.

15046. Each county's annual plan shall require the approval of both the board of supervisors and the county's private industry council, and the plan submitted to the director shall so indicate this joint approval.

15047. In the event the Governor also designates another unit of general government within the county a service delivery area pursuant to federal law, the county and other unit of general government shall prepare and submit to the director a joint plan for services within the county which meets the criteria specified in this chapter. Any such joint plan shall require the approval of the governing body of the unit of general government designated a service delivery area, as well as of the board of supervisors and private industry council.

CHAPTER 6. STATE RESPONSIBILITIES

15050. The Employment Development Department shall be the state entity responsible for administering the provisions of this division.

The department's functions shall include:

(a) Overall direction, under the guidance of the state council of the statewide programs operated by counties under this division.

(b) Administration, either directly or by contract with another entity, of these statewide programs in counties that request the state to assume this function.

(c) Administration of demonstration programs testing innovative approaches to assisting clients eligible under this division to find unsubsidized employment, which include but are not limited to:

(1) The Employment Preparation Program, as authorized by Article 3.5 (commencing with Section 11325) of Chapter 2 of Part 3 of Division 9 of the Welfare and Institutions Code.

(2) The Employment Training Program for unemployed parents in families that qualify for assistance under paragraph (2) of subdivision (a) of Section 11201 of the Welfare and Institutions Code, as authorized by Article 3.6 (commencing with Section 11335) of Chapter 2 of Part 3 of Division 9 of the Welfare and Institutions Code.

(3) The Supported Work Program, as authorized by Article 3.3 (commencing with Section 11321) of Chapter 2 of Part 3 of Division 9 of the Welfare and Institutions Code.

(4) The California Welfare Employment Skills Training Act, as authorized by Article 3.7 (commencing with Section 11340) of Chapter 2 of Part 3 of Division 9 of the Welfare and Institutions Code.

(5) The Youth Employment and Development Act, as authorized by Chapter 2.5 (commencing with Chapter 9800) of Division 3.

To the extent feasible, in implementing demonstration programs designed for eventual merger into the statewide programs operated by counties under this division, the department shall involve appropriate county agencies in program planning and operation

within the demonstration sites. Once such demonstration programs are completed, if they have proven to be effective in achieving the intent and objectives of this division, the department shall take the steps necessary to ensure their implementation and integration wherever appropriate within the statewide employment and training programs operated by the counties.

(d) Administration of special assistance programs to areas facing urgent employment and training needs that cross county lines or result from major plant closures, arrival and resettlement of significant numbers of refugees, or comparable circumstances. Nothing in this section shall be construed as modifying the manner in which federal Office of Refugee Resettlement Funds are used in this state.

15051. The department shall establish, subject to the approval of the state council, such rules, regulations, and procedures as are necessary to govern the administration of the provisions of this division and to assure that the legislative purposes and intent are carried out. The regulations shall include:

(a) Standards and criteria for determining eligibility and services priorities pursuant to Section 15011. These shall include, but are not limited to, standards for insuring that a county plan gives appropriate priority to public assistance recipients.

(b) Standards for determining appropriate and allowable services and training activities, and entities providing services and training. These shall include, but are not limited to, insuring that all occupational skill training correspond to area labor market demand, insuring that any training entity providing services has a demonstrated record of past performances in training and placing person in unsubsidized private sector employment, and prohibiting contracting with entities whose officers have been convicted of fraud or misappropriation of funds within the last two years.

(c) Standards and criteria to be used by counties in developing county plans. These shall include, but are not limited to, appropriate placement goals and requirements for adequate public notice and opportunity for public involvement in the development of county plans.

(d) Standards, criteria, and procedures to be used by the department in evaluating and approving county plans. Reasons for rejection of a county plan shall include, but are not limited to, unacceptably low placement goals, excessively high average cost per placement, and administrative costs exceeding 15 percent of the total county allocation.

(e) Standards for assuring adequate, efficient county administration including standards for assuring efficient county management information and financial accounting systems.

(f) Standards and criteria for assuring effective coordination and linkages with other agencies that deliver training and employment-related services.

15052. The department shall review and recommend to the state

council approval of county plans in accordance with established standards and criteria for determining the adequacy of a county plan and shall allocate federal and state funds to a county only upon approval of its plan.

15053. The department shall allocate to each county an amount of the federal and state funds annually appropriated for the purposes and requirements of this division as is determined by a formula. The allocation formula shall be recommended by the department for approval by the state council after consultation with the counties, and shall include such factors as the incidence of eligible populations, as defined in Section 15010, and state priorities assigned to the various categories of eligibles. The director may allocate up to 25 percent of the funds available for allocation to counties on the basis of performance, which shall be measured by the percentage attained in excess of approved goals for placements lasting at least 30 days, for public assistance savings reasonably attributed to operation of this program.

15054. The department shall conduct such planning activities as are required to assess job preparation and training services needs, availability of resources to address that need and private sector employment needs. The purpose of such planning is to provide the department with information necessary to establish the standards, criteria priorities, and formulas required by the provisions of this chapter.

15055. The department shall, with the assistance of the counties and approval of the state council, develop standards whereby the performance of county programs can be measured. The department shall provide each county with these performance standards in order that county private industry councils can assess their county's program achievements. The standards shall:

(a) Recognize that performance may vary among the counties due to economic conditions and to the employability barriers confronting their eligible populations.

(b) Be based on participant outcome measures that are related to the services provided, including obtaining unsubsidized employment, tenure of employment, adequacy of wages received, comparisons of wages before and after training, and other such measures as the department may determine appropriate.

(c) Be able to measure the avoidance of costs that would have occurred had the employment and training services not been provided in comparison with the costs of providing such services.

15056. In accordance with its established standards, the department shall monitor and evaluate the performance of county programs including assessments of efficiencies of administration, effectiveness of coordination and linkages with other training and employment services resources. The department shall also determine levels of county achievement. The purpose of these monitoring and evaluation activities is to determine reasons for high and low levels of program performance, administrative efficiencies,

and program coordination, and to determine the appropriate allocation of performance-based county funding pursuant to Section 15053. Based on these determinations, the department shall provide technical assistance and training to counties which promote the development of county programs reflecting models of demonstrated success.

15057. The department shall assure that the services and resources provided by its labor exchange function, labor market information system, and employment services network, including job agents, are fully supportive of each county's job preparation and training services system. The department shall assure that its local offices develop operational plans which are coordinated with and support the development and operation of county plans prepared pursuant to this division.

15058. The department shall make every effort to assure the maximum cooperation by other state departments and agencies and to assure that resources and services provided by the other state departments and agencies shall be, to the maximum extent possible, coordinated with county plans and made available to participants served by those plans.

15060. The rules, regulations, and procedures established by the department shall conform to federal laws and regulations to the extent necessary to assure continued receipt of federal funds available for the purposes and requirements of this division. In the event there is a compelling statewide need to depart from federal law and regulations, and it is determined necessary to do so in order to carry out legislative intent and purposes, the director is hereby authorized to secure such federal waivers of law and regulation as may be required in order to continue receiving the maximum level of federal funds.

15061. The department shall develop and maintain those fiscal control, accounting, auditing, and debt collection procedures which are necessary to assure proper disbursal of and accounting for the state and federal funds appropriated for the purposes and requirements of this division.

15062. The department shall establish procedures to assure that the rights and privileges of applicants for or recipients of services provided under this division are not abridged. The department's monitoring and evaluation activities shall determine whether participants are being treated with fairness, equity, and courtesy.

15063. The department, with the advice of the State Department of Social Services, county welfare departments, and the State Job Training Council, shall develop intake and assessment forms and procedures for the Work Incentive Program to make them compatible with the requirements of the local employment and training programs pursuant to this division in order to eliminate the duplication of administrative costs for Work Incentive Program registrants who are provided employment and training services by the local employment and training program.

15064. The department, in cooperation with the State Department of Social Services, shall report to the Legislature, not later than February 1 of each year, on the effectiveness of the program established under this division. The department's reports shall detail any economic and other advantages to the people of this state which have resulted from the program including the effect upon state costs, the performance by recipients of public assistance in terms of the payment of wages, as opposed to cash grants, and the taxes paid by such persons.

CHAPTER 7. COORDINATION OF SERVICES AND RESOURCES

15070. The Legislature recognizes that available funding for a program of job preparation and training services to economically disadvantaged persons is severely limited, that other programs providing employment-related training, educational, support, and placement services offer additional essential resources to such persons, and that only with the proper coordination of these additional resources with the program of services established under this division, will it be possible to avoid costly duplication and achieve the objectives and purposes of this division. Therefore, it is the intent of the Legislature that the State Department of Education, State Department of Social Services, the Department of Rehabilitation, the Chancellor's office of the Community Colleges, and the employment services components of the Employment Development Department offer their full cooperation and assistance to assure that vocational education programs, and employment services and supportive social services, including child care services, are, to the maximum extent possible, available to support county plans operating pursuant to this division.

15071. To assure compliance with legislative intent regarding the content and availability of vocational education programs provided by community colleges, school districts, and regional occupational centers and programs, each county's private industry council shall for programs provided in the county, review and comment on the vocational education courses or programs subject to review pursuant to Sections 52302.3, 52520, and 78016 of the Education Code. The council shall conduct its review prior to the review of the appropriate governing body as required by Section 52302.3 of the Education Code and the council shall notify the governing body of its determinations.

15072. To assure compliance with legislative intent regarding the content and availability of employment services provided by the department, each county's private industry council shall review and comment upon the employment services and training plans prepared pursuant to Division 3 (commencing with Section 9000) by local offices of the department operating within the county. The council shall conduct its review prior to the submission of the local plan to department headquarters and the council shall notify the

director of its determinations.

15073. To assure compliance with legislative intent regarding the availability of subsidized child care services provided through programs administered by the Superintendent of Public Instruction, each county's private industry council shall review and comment on proposals for expansion of child care services within the county submitted to the council by the Superintendent of Public Instruction pursuant to Section 8285.5 of the Education Code. The council's comments shall include a description of ways whereby child care services can be expanded to assure that such services are directed to participants of services under this division with the greatest need for child care.

CHAPTER 8. FISCAL PROVISIONS

15080. The funding for services authorized under this division is to be administered through:

(a) A Consolidated Work Program Fund combining state and, to the extent permitted by federal law, federal funds received for the support of county-administered statewide programs.

(b) Appropriate state and federal categorical funds for demonstration and special assistance programs administered by the department.

15081. The Consolidated Work Program Fund shall provide a single source of funding to be allocated by the department to counties in accordance with the requirements of Section 15053 for funding services provided pursuant to county plans and the provisions of this division. The purpose of the Consolidated Work Program Fund is to assure more efficient, equitable, and appropriate use of available resources and to provide greater flexibility in responding to the needs of persons receiving services under county plans.

15082. Federal and state funds to be transferred to the Consolidated Work Program Fund shall include:

(a) That portion of the federal employment and training funds received by the state that is designated for the purpose of local delivery of employment and training services.

(b) Moneys heretofore appropriated to the:

(1) Work Incentive Program authorized under Division 2 (commencing with Section 5000) of this code and Article 3 (commencing with Section 11300) of Chapter 2 of Part 3 of Division 9 of the Welfare and Institutions Code. These funds shall not be placed into the consolidated fund until July 1, 1984, contingent upon the feasibility report required by Section 12 of Assembly Bill 3424 as enacted during the 1982 portion of the 1981–82 Regular Session, recommending the transfer and a later enacted statute requiring such a transfer.

(2) Employment services to food stamp recipients as authorized by federal law pursuant to Public Law 95-113.

(c) Reinvestment of a portion of state public assistance grant savings reasonably attributable to the operation of this program. The Governor's Budget shall annually identify such savings resulting from the prior fiscal year's program operations and recommend the portion, if any, to be applied toward program funding during the budget year.

15083. That portion of the Consolidated Work Program Fund consisting of funds granted to the state by the federal government shall be identified and used in ways consistent with the purposes of this division and the provisions of federal law. To the extent federal law and regulations impede the efficient and appropriate uses of the Consolidated Work Program Fund, the director shall seek to obtain waivers from such law and regulations which allow fullest flexible use of federal funds for the purposes of this division.

15084. The Legislature shall annually appropriate to the Consolidated Work Program Fund such funds as it would otherwise have appropriated to programs and services specified in Section 15082. To the extent permitted by federal law, all federal funds previously allocated to these same programs and services shall also be appropriated annually to the consolidated fund. Nothing herein shall be construed to prevent the Legislature from appropriating additional General Fund moneys or allocating new federal funds received by the state to the Consolidated Work Program Fund.

15085. As determined annually through the Budget Act, the Legislature shall provide necessary funding from the Consolidated Work Program Fund or any other state or federal funds made available for this purpose to support the department's and state council's responsibilities under this division.

15086. The department shall administer federal and state funds appropriated for the support of demonstration and special assistance programs serving persons eligible under this division, including but not limited to, all of the following:

(a) The Youth Employment and Development Act, as authorized by Chapter 2.5 (commencing with Section 9900) of Division 3.

(b) The Supported Work Program, as authorized by Article 3.3 (commencing with Section 11321) of Chapter 2 of Part 3 of Division 9 of the Welfare and Institutions Code.

(c) The Employment Preparation Program, as authorized by Article 3.5 (commencing with Section 11325) of Chapter 2 of Part 3 of Division 9 of the Welfare and Institutions Code.

(d) The Employment Training Program for unemployed parents in families that qualify for assistance under paragraph (2) of subdivision (a) of Section 11201 of the Welfare and Institutions Code, as authorized by Article 3.6 (commencing with Section 11335) of Chapter 2 of Part 3 of Division 9 of the Welfare and Institutions Code.

(e) The California Welfare Employment Skills Training Act, as authorized by Article 3.7 (commencing with Section 11340) of Chapter 2 of Part 3 of Division 9 of the Welfare and Institutions Code.

(f) Reemployment assistance for displaced workers.

15087. Upon completion of demonstration programs which it has administered, the department shall take all steps necessary to ensure the implementation and integration within the counties' employment and training services programs of those demonstration models of proven effectiveness for achieving the intent and objectives of this division.

SEC. 9. Section 11200 of the Welfare and Institutions Code is amended to read:

11200. This chapter shall be known and may be cited as the Family Economic Security Act of 1982.

SEC. 10. Section 11205 of the Welfare and Institutions Code is repealed.

SEC. 11. Section 11205 is added to the Welfare and Institutions Code, to read:

11205. The Legislature finds and declares that the family unit is of fundamental importance to society in nurturing its members, passing on values, averting potential social problems, and providing the secure structure in which citizens live out their lives. Each family unit has the right and responsibility to provide for its own economic security by full participation in the work force to the extent possible. Each family has the right and responsibility to provide sufficient support and protection of its children, to raise them according to its values and to provide every opportunity for educational and social progress.

SEC. 12. To the extent that the objectives and purposes expressed in this act are not reflected in current law, the State Department of Social Services, in consultation with the county welfare departments and recipient organizations, and in consultation with the Employment Development Department on issues affecting employment and training, shall conduct a study to identify needed improvements in the interrelationship between existing employment and public assistance delivery systems, and shall develop an action plan for the improvement of the identified deficiencies in the context of the employment and job preparation provisions proposed in Section 8 of this act. Items to be examined in this study and the subsequent action plan shall include, but not be limited to, the following issues:

(a) The establishment of an effective screening and work assessment function in the state's public assistance delivery system. The objective of this effort will be to develop an improved method for determining which public assistance applicants or recipients should be expected and required to find work or enter employment training programs, and which should not. This shall also include the feasibility of creating the function of an employment adviser who would be responsible for certifying the employable status of public assistance applicants or recipients, and the feasibility and cost/benefit of revising current work registration exemptions, in particular for single parents with children under age six.

(b) Appropriate sanctions for noncooperation with the work

requirements of the various public assistance programs, such as AFDC and food stamps, including the feasibility of developing common sanction provisions for the different programs.

(c) The most effective approach for meeting the needs of public assistance applicants after an employability assessment has been completed. The department shall explore the need for changes in the current payment system to differentiate between payments to those who have been determined to be employable and those who have not, such as by using training stipends and interim income support payments. This would also deal with the best method for meeting the training related costs of the employment or training services, and the use of disregards for employed persons.

(d) Recommendations for the implementation of these provisions at the local level through the integrated employment and job preparation system described in this act. This shall include a definition of the proper lines of authority between the state and the counties in the respective areas of public assistance and employment services.

(e) Recommendations for the integration of various employment strategies to meet the intent and objectives of the Legislature as expressed in this act. These may include, but need not be limited to, job search assistance programs, supported work projects, and work experience assignments.

(f) Recommendations on how to achieve the intent of these provisions while ensuring maximum federal financial participation. The department shall identify federal waivers that may be necessary to meet the intent of these provisions.

(g) Transfer of the moneys appropriated to the Work Incentive Program to the Consolidated Work Fund by July 1, 1984.

(h) Expansion of the Employment Preparation Program services as set forth in Article 3.5 (commencing with Section 11325) of Chapter 2 of Part 3 of Division 9 of the Welfare and Institutions Code in all counties to be funded from the Consolidated Work Fund.

(i) A strategy for the implementation of these provisions, detailing those actions that can be accomplished by revising state regulations, and those requiring legislative action at the state or federal level.

The department shall complete this action plan and develop proposed legislative language for enacting its contents, to be submitted to the appropriate policy committees of each house of the Legislature by July 1, 1983. Implementation of the proposed provisions would commence no later than July 1, 1984, to the extent feasible, contingent upon passage of enabling legislation.

SEC. 13. The Governor's Advisory Committee on Child Development Programs, in consultation with the State Department of Social Services and the State Department of Education, shall develop recommendations for the targeting or expansion of child care services to ensure maximum participation in employment and job preparation programs. To the extent possible, these

recommendations shall discuss methods by which a portion of the program savings achieved from the provisions contained in this act could be utilized to improve and expand existing child care services. The recommendations required by this section shall be completed and submitted to the State Department of Social Services for inclusion in the report required under Section 12.

SEC. 14. It is the intent of the Legislature that resources and personnel necessary for the implementation of this act be drawn from existing resources and personnel within the State Department of Social Services and the Employment Development Department, except to the extent that federal funds are available to defray the costs of the activities mandated under Section 12.

SEC. 15. The Employment Development Department and the State Department of Social Services shall seek such waivers as are necessary from the federal government for purposes of implementation of this act.

SEC. 16. If any provision of this act or the application thereof to any person or circumstance is held invalid by reason of the federal government's unwillingness to grant the waivers necessary to implement that provision, the invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and in this respect the provisions of this act are severable. If any provision held invalid because of failure to receive necessary federal waivers, the program shall be operated as consistently as feasible with the legislative intent related to that provision within the requirements of federal law.

SEC. 17. The Family Economic Security Program: Job Preparation and Training Services shall be in effect in all counties of this state by December 31, 1983.

SEC. 18. The Legislature presumes that Congress will enact federal employment and training funding legislation consistent with the provisions contained herein. Unless and until the legislation is enacted, and for so long as the federal Comprehensive Employment and Training Act of 1973, as amended, remains in effect, the provisions of this act shall remain inoperative.

SEC. 19. Nothing in this act shall be construed so as to hold counties liable for the costs of implementing any new duty or higher level of service provided for under this act.

CHAPTER 1330

An act to amend, add, and repeal Section 1023 of, and to add and repeal Section 1012.3 of, the Military and Veterans Code, relating to veterans, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 22, 1982. Filed with Secretary of State September 23, 1982.]

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

SECTION 1. Section 1012.3 is added to the Military and Veterans Code, to read:

1012.3. (a) Members of the home shall pay such fees and charges as may be determined by the department, except that the total of the fees and charges for any fiscal year shall not exceed an amount which is in excess of 18 percent of the state's General Fund cost of operating the home for that year.

(b) This section shall remain in effect only until January 1, 1986, and as of that date is repealed, unless a later enacted statute, which is chaptered before January 1, 1986, deletes or extends that date.

SEC. 2. Section 1023 of the Military and Veterans Code, as amended by Chapter 327 of the Statutes of 1982, is amended to read:

1023. (a) The department may sue and be sued in any of the courts of this state. All property held by the department for the home shall be held in trust for the state and for the use and benefit of the home. The commandant shall manage the home, and administer its affairs, and subject to the direction of the Director of Veterans Affairs adopt rules and regulations for the government of the home, in conformity as nearly as possible, to the rules and regulations of the United States Veterans' Administration for their facilities.

(b) The Director of General Services, with the consent of the Director of Veterans Affairs, is authorized and empowered to lease or let any real property held by the department for the home, and not needed for any direct or immediate purpose of the home, to entities or persons and upon terms and conditions which are deemed to be in the best interests of the home. In any leasing or letting, primary consideration shall be given to the use of real property for agricultural purposes, and all money received in connection therein shall be placed in the General Fund to the credit of, and shall augment the current appropriation for, the support of the home.

(c) This section shall remain in effect only until January 1, 1986, and as of that date is repealed, unless a later enacted statute, which is chaptered before January 1, 1986, deletes or extends that date.

SEC. 3. Section 1023 is added to the Military and Veterans Code, to read:

1023. (a) The department may sue and be sued in any of the courts of this state. All property held by the department for the home shall be held in trust for the state and for the use and benefit of the home. The commandant shall manage the home and administer its affairs, and, subject to the direction of the Director of Veterans Affairs, adopt rules and regulations for the government of the home, in conformity as nearly as possible to the rules and regulations of the United States Veterans' Administration for their facilities.

(b) The Director of General Services is authorized and

empowered to lease or let any real property held by the department for the home, and not needed for any direct or immediate purpose of the home, to entities or persons and upon terms and conditions which are deemed to be in the best interests of the home. In any leasing or letting, primary consideration shall be given to the use of real property for agricultural purposes, and all money received in connection therein shall be placed in the General Fund to the credit of and shall augment the current appropriation for the support of the home.

(c) This section shall become operative on January 1, 1986.

SEC. 4. (a) The Legislature finds and declares that, since federal veterans' hospitals are not subject to the requirements for a certificate of need issued by the Office of Statewide Health Planning and Development authorizing the construction or certain enlargements or expansions of services or facilities in a health facility, and since the Veterans' Home of California receives a substantial portion of its funding from the federal government and is unique in this regard as a health facility, the provisions of this section applicable only to the Veterans' Home of California are therefore necessary.

(b) The Master Plan of the Veterans' Home of California, as authorized by the Legislature in Item 197-301-036 of the Budget Act of 1981 (Chapter 99, Statutes of 1981), shall not be reviewable by the Office of Statewide Health Planning and Development pursuant to Part 1.5 (commencing with Section 437) of Division 1 of the Health and Safety Code.

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 alleviate financial hardships experienced by members of the Veterans' Home of California and to allow the relief afforded by this act to become available as soon as possible, and in order to relieve the home of the application process for its master plan and to improve the leasing procedures of land at the home, it is necessary that this act take effect immediately.

CHAPTER 1331

An act to amend and repeal Sections 2725.1, 3502.1, and 4037.1 of the Business and Professions Code, to amend Section 429.77 of the Health and Safety Code, and to add Section 5615.5 to the Welfare and Institutions Code, relating to health, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 22, 1982 Filed with Secretary of State September 23, 1982]

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

SECTION 1. Section 2725.1 of the Business and Professions Code is amended to read:

2725.1. The scope of practice of a registered nurse shall include the prescribing, dispensing, and administration of drugs or devices when the nurse is engaged in an experimental health manpower project authorized under Article 18 (commencing with Section 429.70) Chapter 2 of Part 1 of Division 1 of the Health and Safety Code and is acting within the scope of such project as defined by the Office of Statewide Health Planning and Development. No registered nurse shall prescribe drugs except under the general supervision of a licensed physician and surgeon.

This section shall remain in effect only until July 1, 1983, and as of such date is repealed, unless a later enacted statute which is chaptered before July 1, 1983, deletes or extends such date.

SEC. 2. Section 3502.1 of the Business and Professions Code is amended to read:

3502.1. A physician's assistant is authorized to prescribe, dispense, and administer drugs or devices when the physician's assistant is engaged in an experimental health manpower project authorized under Article 18 (commencing with Section 429.70) of Chapter 2 of Part 1 of Division 1 of the Health and Safety Code and is acting within the scope of such project as defined by the Office of Statewide Health Planning and Development. No physician's assistant shall prescribe drugs except under the general supervision of a licensed physician and surgeon.

This section shall remain in effect only until July 1, 1983, and as of such date is repealed, unless a later enacted statute which is chaptered before July 1, 1983, deletes or extends such date.

SEC. 3. Section 4037.1 of the Business and Professions Code is amended to read:

4037.1. The scope of practice of a registered pharmacist shall include the prescribing, dispensing, and administration of drugs or devices when the pharmacist is engaged in an experimental health manpower project authorized under Article 18 (commencing with Section 429.70) of Chapter 2 of Part 1 of Division 1 of the Health and Safety Code and is acting within the scope of such project as defined by the Office of Statewide Health Planning and Development. No pharmacist shall prescribe drugs except under the general supervision of a licensed physician and surgeon. This section shall remain in effect only until July 1, 1983, and as of such date is repealed, unless a later enacted statute which is chaptered before July 1, 1983, deletes or extends such date.

SEC. 4. Section 429.77 of the Health and Safety Code is amended to read:

429.77. (a) Pilot projects may be approved in the following fields:

(1) Expanded role medical auxiliaries.

(2) Expanded role nursing.
(3) Expanded role dental auxiliaries.
(4) Maternal child care personnel.
(5) Pharmacy personnel.
(6) Mental health personnel.

(7) The prescribing and dispensing of drugs or devices by registered nurses, physician's assistants, or pharmacists. No pilot project involving such prescription or dispensing by registered nurses, physician's assistants, or pharmacists shall be approved after January 1, 1983, unless it is otherwise within the scope of licensure of such personnel. Prescribing by registered nurses, physician's assistants, or pharmacists shall be specifically approved or denied as within the scope of any pilot project authorized after January 1, 1978, and until January 1, 1983. If prescribing of drugs or devices is authorized, any excluded drugs or devices shall be specified. No registered nurse, physician's assistant, or pharmacist shall be authorized to prescribe any controlled substances included in Schedule I, II, or III as defined in Section 11054, 11055, or 11056 of this code, or any narcotic drug in Schedule IV or V as defined in Section 11057 or 11058 of this code, or any poison as defined in Section 4160 of the Business and Professions Code. No more than two projects for pharmacists, three projects for physician's assistants, or five projects for registered nurses shall be approved under this paragraph. All statutory and regulatory requirements relating to proper storage, security, recordkeeping, labeling, and otherwise safely handling drugs and devices shall be complied with by any persons authorized to prescribe or dispense drugs or devices pursuant to this paragraph.

Until December 31, 1980, the requirements, conditions, and limitations of this paragraph do not apply to projects for which an application was under review by the office prior to January 1, 1978, and approved prior to January 1, 1979.

No new projects shall be approved after January 1, 1983, and no trainees shall be added after September 30, 1982.

In cases in which the office has made an extension of the project to July 1, 1983, the office shall limit its monitoring and reporting requirements after January 1, 1983, to those requirements which are necessary to assess the quality of care provided by the trainees.

This paragraph shall remain in effect only until July 1, 1983, and shall have no force or effect on or after such date, unless a later enacted statute, which is chaptered before July 1, 1983, deletes or extends such date.

(8) Other health care personnel including, but not limited to, veterinary personnel, chiropractic personnel, podiatric personnel, geriatric care personnel, therapy personnel, and health care technicians.

(b) Projects shall be given priority which operate in rural and central city areas.

SEC. 5. Section 5615.5 is added to the Welfare and Institutions

Code, to read:

5615.5. Any city which operates a Short-Doyle program (as defined by Section 5615) shall receive advanced quarterly payments under the Short-Doyle program based on a quarterly estimate of expenditure.

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 achieve the intended results at the earliest possible time, it is necessary that this act take effect immediately.

CHAPTER 1332

An act to amend Section 3351.5 of the Labor Code, and to amend Section 621 of, and to add Section 686 to, the Unemployment Insurance Code, relating to employment of artists.

[Approved by Governor September 22, 1982. Filed with Secretary of State September 23, 1982.]

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

SECTION 1. Section 3351.5 of the Labor Code is amended to read:

3351.5. "Employee" includes:

(a) Any person whose employment training is arranged by the State Department of Rehabilitation with any employer. Such person shall be deemed an employee of such employer for workers' compensation purposes; provided that, the department shall bear the full amount of any additional workers' compensation insurance premium expense incurred by the employer due to the provisions of this section.

(b) Any person defined in subdivision (d) of Section 3351 who performs domestic service comprising in-home supportive services under Article 7 (commencing with Section 12300), Chapter 3, Part 3, Division 9 of the Welfare and Institutions Code. For purposes of Section 3352, such person shall be deemed an employee of the recipient of such services for workers' compensation purposes if the state or county makes or provides for direct payment to such person or to the recipient of in-home supportive services for the purchase of services, subject to the provisions of Section 12302.2 of the Welfare and Institutions Code.

(c) Any person while engaged by contract for the creation of a specially ordered or commissioned work of authorship in which the parties expressly agree in a written instrument signed by them that the work shall be considered a work made for hire, as defined in Section 101 of Title 17 of the United States Code, and the ordering

or commissioning party obtains ownership of all the rights comprised in the copyright in the work.

SEC. 2. Section 621 of the Unemployment Insurance Code is amended to read:

621. "Employee" means all of the following:

(a) Any officer of a corporation.

(b) Any individual who, under the usual common law rules applicable in determining the employer-employee relationship, has the status of an employee.

(c) (1) Any individual, other than an individual who is an employee under subdivision (a) or (b), who performs services for remuneration for any employing unit if the contract of service contemplates that substantially all of such services are to be performed personally by such individual either:

(A) As an agent-driver or commission-driver engaged in distributing meat products, vegetable products, fruit products, bakery products, beverages (other than milk), or laundry or drycleaning services, for his or her principal.

(B) As a traveling or city salesperson, other than as an agent-driver or commission-driver, engaged upon a full-time basis in the solicitation on behalf of, and the transmission to, his or her principal (except for sideline sales activities on behalf of some other person) of orders from wholesalers, retailers, contractors, or operators of hotels, restaurants, or other similar establishments for merchandise for resale or supplies for use in their business operations.

(C) As a home worker performing work, according to specifications furnished by the person for whom the services are performed, on materials or goods furnished by such person which are required to be returned to such person or a person designated by him or her.

(2) An individual shall not be included in the term "employee" under the provisions of this subdivision if such individual has a substantial investment in facilities used in connection with the performance of such services, other than in facilities for transportation, or if the services are in the nature of a single transaction not part of a continuing relationship with the employing unit for whom the services are performed.

(d) Any individual who is an employee pursuant to Section 601.5, 680, 681, or 686.

(e) Any individual whose services are in subject employment pursuant to an election for coverage under any provision of Article 4 (commencing with Section 701) of this chapter.

SEC. 2.3. Section 621 of the Unemployment Insurance Code is amended to read:

621. "Employee" means all of the following:

(a) Any officer of a corporation.

(b) Any individual who, under the usual common law rules applicable in determining the employer-employee relationship, has

the status of an employee.

(c) (1) Any individual, other than an individual who is an employee under subdivision (a) or (b), who performs services for remuneration for any employing unit if the contract of service contemplates that substantially all of such services are to be performed personally by such individual either:

(A) As an agent-driver or commission-driver engaged in distributing meat products, vegetable products, fruit products, bakery products, beverages (other than milk), or laundry or drycleaning services, for his or her principal.

(B) As a traveling or city salesperson, other than as an agent-driver or commission-driver, engaged upon a full-time basis in the solicitation on behalf of, and the transmission to, his or her principal (except for sideline sales activities on behalf of some other person) of orders from wholesalers, retailers, contractors, or operators of hotels, restaurants, or other similar establishments for merchandise for resale or supplies for use in their business operations.

(C) As a home worker performing work, according to specifications furnished by the person for whom the services are performed, on materials or goods furnished by such person which are required to be returned to such person or a person designated by him or her.

(2) An individual shall not be included in the term "employee" under the provisions of this subdivision if such individual has a substantial investment in facilities used in connection with the performance of such services, other than in facilities for transportation, or if the services are in the nature of a single transaction not part of a continuing relationship with the employing unit for whom the services are performed.

(d) Any individual who is an employee pursuant to Section 601.5 or 686.

(e) Any individual whose services are in subject employment pursuant to an election for coverage under any provision of Article 4 (commencing with Section 701) of this chapter.

SEC. 2.5. Section 621 of the Unemployment Insurance Code is amended to read:

621. "Employee" means all of the following:

(a) Any officer of a corporation.

(b) Any individual who, under the usual common law rules applicable in determining the employer-employee relationship, has the status of an employee.

(c) (1) Any individual, other than an individual who is an employee under subdivision (a) or (b), who performs services for remuneration for any employing unit if the contract of service contemplates that substantially all of such services are to be performed personally by such individual either:

(A) As an agent-driver or commission-driver engaged in distributing meat products, vegetable products, fruit products,

bakery products, beverages (other than milk), or laundry or drycleaning services, for his or her principal.

(B) As a traveling or city salesperson, other than as an agent-driver or commission-driver, engaged upon a full-time basis in the solicitation on behalf of, and the transmission to, his or her principal (except for sideline sales activities on behalf of some other person) of orders from wholesalers, retailers, contractors, or operators of hotels, restaurants, or other similar establishments for merchandise for resale or supplies for use in their business operations.

(C) As a home worker performing work exclusively for his or her principal, according to specifications furnished by the person for whom the services are performed, on materials or goods furnished by such person which are required to be returned to such person or a person designated by him or her.

(2) An individual shall not be included in the term "employee" under the provisions of this subdivision if such individual has a substantial investment in facilities used in connection with the performance of such services, other than in facilities for transportation, or if the services are in the nature of a single transaction not part of a continuing relationship with the employing unit for whom the services are performed.

(d) Any individual who is an employee pursuant to Section 601.5, 680, 681, or 686.

(e) Any individual whose services are in subject employment pursuant to an election for coverage under any provision of Article 4 (commencing with Section 701) of this chapter.

SEC. 2.7. Section 621 of the Unemployment Insurance Code is amended to read:

621. "Employee" means all of the following:

(a) Any officer of a corporation.

(b) Any individual who, under the usual common law rules applicable in determining the employer-employee relationship, has the status of an employee.

(c) (1) Any individual, other than an individual who is an employee under subdivision (a) or (b), who performs services for remuneration for any employing unit if the contract of service contemplates that substantially all of such services are to be performed personally by such individual either:

(A) As an agent-driver or commission-driver engaged in distributing meat products, vegetable products, fruit products, bakery products, beverages (other than milk), or laundry or drycleaning services, for his or her principal.

(B) As a traveling or city salesperson, other than as an agent-driver or commission-driver, engaged upon a full-time basis in the solicitation on behalf of, and the transmission to, his or her principal (except for sideline sales activities on behalf of some other person) of orders from wholesalers, retailers, contractors, or operators of hotels, restaurants, or other similar establishments for

merchandise for resale or supplies for use in their business operations.

(C) As a home worker performing work exclusively for his or her principal, according to specifications furnished by the person for whom the services are performed, on materials or goods furnished by such person which are required to be returned to such person or a person designated by him or her.

(2) An individual shall not be included in the term "employee" under the provisions of this subdivision if such individual has a substantial investment in facilities used in connection with the performance of such services, other than in facilities for transportation, or if the services are in the nature of a single transaction not part of a continuing relationship with the employing unit for whom the services are performed.

(d) Any individual who is an employee pursuant to Section 601.5 or 686.

(e) Any individual whose services are in subject employment pursuant to an election for coverage under any provision of Article 4 (commencing with Section 701) of this chapter.

SEC. 3. Section 686 is added to the Unemployment Insurance Code, to read:

686. "Employer" also means any person contracting for the creation of a specially ordered or commissioned work of authorship when the parties expressly agree in a written instrument signed by them that the work shall be considered a work made for hire, as defined in Section 101 of Title 17 of the United States Code, and the ordering or commissioning party obtains ownership of all of the rights comprised in the copyright in the work. The ordering or commissioning party shall be the employer of the author of the work for the purposes of this part.

SEC. 4. It is the intent of the Legislature that if this bill and Assembly Bill 3027 or Senate Bill 2033, or both, are chaptered and become effective January 1, 1983, each of the bills amend Section 621 of the Unemployment Insurance Code, and this bill is chaptered last, that amendments proposed by each of the bills which are chaptered be given effect as follows:

(1) If this bill and Assembly Bill 3027 are both chaptered and become effective January 1, 1983, both bills amend Section 621 of the Unemployment Insurance Code, but Senate Bill 2033 is not chaptered or as chaptered does not amend that section, and this bill is chaptered after Assembly Bill 3027, the amendments proposed by both bills shall be given effect and incorporated in Section 621 in the form set forth in Section 2.3 of this act. Therefore, if this bill and Assembly Bill 3027 are both chaptered and become effective January 1, 1983, both bills amend Section 621, this bill is chaptered after Assembly Bill 3027, and Senate Bill 2033 is not chaptered or as chaptered does not amend that section, Section 2.3 of this act shall be operative and Section 2, 2.5, and 2.7 of this act shall not become operative.

(2) If this bill and Senate Bill 2033 are both chaptered and become effective January 1, 1983, both bills amend Section 621 of the Unemployment Insurance Code, but Assembly Bill 3027 is not chaptered or as chaptered does not amend that section, and this bill is chaptered after Senate Bill 2033, the amendments proposed by both bills shall be given effect and incorporated in Section 621 in the form set forth in Section 2.5 of this act. Therefore, if this bill and Senate Bill 2033 are both chaptered and become effective January 1, 1983, both bills amend Section 621, this bill is chaptered after Senate Bill 2033, and Assembly Bill 3027 is not chaptered or as chaptered does not amend that section, Section 2.5 of this act shall be operative and Sections 2, 2.3, and 2.7 of this act shall not become operative.

(3) If this bill and Assembly Bill 3027 and Senate Bill 2033 are all chaptered and become effective January 1, 1983, all three bills amend Section 621 of the Unemployment Insurance Code, and this bill is chaptered after Assembly Bill 3027 and Senate Bill 2033, the amendments proposed by all three bills shall be given effect and incorporated in Section 621 in the form set forth in Section 2.7 of this act. Therefore, if this bill and Assembly Bill 3027 and Senate Bill 2033 are all chaptered and become effective January 1, 1983, all three bills amend Section 621 of the Unemployment Insurance Code, and this bill is chaptered after Assembly Bill 3027 and Senate Bill 2033, Section 2.7 of this act shall be operative and Sections 2, 2.3, and 2.5 of this act shall not become operative.

CHAPTER 1333

An act to add Section 66784.3 to the Government Code, to amend Section 13005 of the Health and Safety Code, and to amend Sections 4372, 4437, 4438, 4439, 4440, 4441, 4442, and 4442.5 of, to repeal and add Sections 4371, 4373, and 4374 of, and to add Sections 4376 and 4414.5 to, and to repeal Section 4375 of, the Public Resources Code, relating to fire.

[Approved by Governor September 22, 1982. Filed with Secretary of State September 23, 1982.]

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

SECTION 1. Section 66784.3 is added to the Government Code, to read:

66784.3. Any solid waste facility, located outside the exterior boundaries of any city, shall be maintained in compliance with the flammable clearance provisions of Chapter 5 (commencing with Section 4371) of Part 2 of Division 4 of the Public Resources Code.

SEC. 2. Section 13005 of the Health and Safety Code is amended to read:

13005. Every person is guilty of a misdemeanor who·

(a) Sells, offers for sale, leases, or rents to any person any tractor, engine, machine, or truck equipped with an internal combustion engine that uses hydrocarbon fuels, if either:

(1) It is specifically designed for use in harvesting or moving grain or hay or for use on land covered with any other flammable agricultural crop, unless the exhaust system of the engine is equipped with a spark arrester in effective working order or the engine is constructed, equipped, and maintained for the prevention of fire pursuant to Section 4443 of the Public Resources Code.

(2) It is not specifically designed for any of the uses described in paragraph (1) but could be used for any of those uses, unless the person provides written notice to the purchaser or bailee at the time of sale or at the time of entering into the lease or rental contract stating that the use or operation of the engine on any flammable agricultural cropland is a violation of subdivision (b), unless the exhaust system is equipped with a spark arrester in effective working order or the engine is constructed, equipped, and maintained for the prevention of fire pursuant to Section 4443 of the Public Resources Code.

(b) Operates or causes to be operated any tractor, engine, machine, or truck equipped with an internal combustion engine that uses hydrocarbon fuels in harvesting or moving grain or hay, or on land covered with any other flammable agricultural crop, unless the engine is equipped with a spark arrester maintained in effective working order or the engine is constructed, equipped, and maintained for the prevention of fire pursuant to Section 4443 of the Public Resources Code.

Spark arrester, as used in this section, is as defined in Section 4442 of the Public Resources Code.

Spark arresters attached to the exhaust system of engines on equipment or vehicles, as described in this section, shall not be placed or mounted in such a manner as to allow flames or heat from the exhaust system to ignite any flammable material.

Motortrucks, truck tractors, buses, and passenger vehicles, except motorcycles, are not subject to the provisions of paragraph (2) of subdivision (a) if the exhaust system is equipped with a muffler as defined in the Vehicle Code.

SEC. 3. Section 4371 of the Public Resources Code is repealed.

SEC. 4. Section 4371 is added to the Public Resources Code, to read:

4371. The definitions in this section shall govern the construction of this chapter.

(a) "Fire protection agency" means the California Department of Forestry on all lands designated as state responsibility areas pursuant to Section 4125, and it means the applicable fire protection district, service district, county fire department, or federal agency on all other lands.

(b) "Solid waste" means solid waste as defined in Section 66719 of the Government Code.

(c) "Solid waste facility" means solid waste facility as defined in Section 66720.1 of the Government Code.

(d) "Flammable material" does not include any structure or building maintained as an integral part of any solid waste facility.

SEC. 5. Section 4372 of the Public Resources Code is amended to read:

4372. A person shall maintain any solid waste facility outside of the exterior boundaries of any city in strict accordance with the terms and conditions prescribed by Sections 4373 and 4374.

SEC. 6. Section 4373 of the Public Resources Code is repealed.

SEC. 7. Section 4373 is added to the Public Resources Code, to read:

4373. Any solid waste facility, for which a permit is required pursuant to Section 66796.30 of the Government Code, shall be maintained with a clearance of flammable material for a minimum distance of 45.7 meters (150 feet) from the periphery of any exposed flammable solid waste.

(a) Any structure, building, or part of any structure or building located within 45.7 meters (150 feet) of the periphery of any exposed flammable solid waste shall also be maintained with a clearance of flammable material for a minimum of 45.7 meters (150 feet) from the periphery of the structure or building.

(b) Sound and living trees may be left standing within the areas required to be cleared of flammable material, provided the following requirements are met:

(1) Wildfire cannot travel into the canopy of any tree left standing.

(2) Any tree left standing does not pose a fire safety threat or prevent fire equipment access to and near the exposed flammable solid waste.

(3) All dead limbs, and all limbs within 3 meters (10 feet) of the ground are removed from any tree left standing.

(c) Selected and isolated shrubs may remain within the areas required to be cleared of flammable material if all dead material is removed and each shrub is trimmed up so that fire cannot travel through the shrub canopy or pose a fire safety threat.

SEC. 8. Section 4374 of the Public Resources Code is repealed.

SEC. 9. Section 4374 is added to the Public Resources Code, to read:

4374. Any solid waste facility, for which a permit is not required pursuant to Section 66796.31 of the Government Code, shall be maintained with a clearance of flammable material for a minimum distance of 9.45 meters (30 feet) from the periphery of any exposed flammable solid waste.

(a) Any structure, building, or part of a structure or building which is located within 9.45 meters (30 feet) of the periphery of any exposed flammable solid waste shall also be maintained with a clearance of flammable material for a minimum distance of 9.45 meters (30 feet) from the periphery of the structure or building.

(b) The fire protection agency may, in writing, require additional minimum flammable clearance provisions not to exceed any of the minimum clearance provisions of Section 4373. A reasonable time for compliance with the additional clearance provisions shall be specified in the written notice.

SEC. 10. Section 4375 of the Public Resources Code is repealed.

SEC. 11. Section 4376 is added to the Public Resources Code, to read:

4376. Any person who maintains any solid waste facility in violation of this chapter is guilty of a misdemeanor, and shall be punished for a first conviction by a fine not to exceed two hundred fifty dollars ($250), and, for a second or subsequent conviction within five years of a prior conviction of a violation of this chapter, by a fine not less than two hundred fifty dollars ($250) or more than one thousand dollars ($1,000) or imprisonment in the county jail for a period not to exceed 30 days, or both that fine and imprisonment. Each and every day of violation is a separate and distinct offense.

SEC. 12. Section 4414.5 is added to the Public Resources Code, to read:

4414.5. "Residue" means flammable wood fiber byproducts or waste, including, but not limited to, sawdust, bark, chips, slabs, trimmings, and hogged particles from a sawmill or plant engaged in processing or converting forest products into lumber, shook, ties, poles, posts, veneer, shakes, shingles, and planed or milled products.

SEC. 13. Section 4437 of the Public Resources Code is amended to read:

4437. (a) Outside the exterior boundaries of cities, every processor of forest products shall exercise due diligence in the disposal of flammable material incident to the processing, so that the material does not cause the inception or spread of uncontrolled fire.

(b) Every person, copartnership, firm, corporation, or company that operates a sawmill or plant engaged in the processing or converting of forest products into lumber, shook, ties, poles, posts, veneer, shakes, shingles, and planed or milled products, shall dispose of flammable material incident to that operation. If such flammable material is not to be used as fuel, or as a byproduct, within the operation, it shall be disposed of by burning or by other alternative methods which effectively prevent the flammable material from constituting a fire hazard. The disposal or storage of flammable waste material or residue shall be made in any of the ways which are prescribed in Section 4438, 4439, or 4440.

(c) The director may establish regulations for the storage, disposal, or use of forest product waste or residue on land as a soil amendment or soil protection measure or for its disposal by fire. Regulations shall be adopted by the director in accordance with the provisions of Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code for the purpose of eliminating the potential of fire resulting from spontaneous combustion, other ignition sources, or wildfire escaping the forest

product waste or residue storage, use, or disposal areas.

SEC. 14. Section 4438 of the Public Resources Code is amended to read:

4438. Flammable forest product waste material may be disposed of by means of fire in an enclosed device effective in preventing the spread of sparks or fire, situated in an area cleared of grass, grain, brush, slash, litter, and snags for a distance of 30.5 meters (100 feet) surrounding the device or by landfill or other methods which meet applicable state and local fire safety, air, and water quality standards.

A burning permit shall be obtained for the use of the device pursuant to Section 4423 and all other provisions of law.

SEC. 15. Section 4439 of the Public Resources Code is amended to read:

4439. (a) Flammable forest product waste material may be disposed of by means of fire in an area which is cleared of grass, grain, brush, slash, litter, snags and forest cover for a distance of 121.9 meters (400 feet) from the periphery of the fire and for any greater distance necessary to provide 30.5 meters (100 feet) of cleared area around any lumber pile or structure which may be situated within 121.9 meters (400 feet) of the fire.

(b) Sound and living trees beyond 30.5 meters (100 feet) from the periphery of the fire may be left standing within the area required to be cleared, provided the following requirements are met:

(1) Wildfire cannot travel into the canopy of any tree left standing.

(2) Any tree left standing does not pose a fire safety threat or prevent fire equipment access to and near the flammable forest waste material.

(3) All dead limbs, and all limbs within 3 meters (10 feet) of the ground are removed from any tree left standing.

(c) The disposal by fire in the cleared area is the responsibility of the operator or landowner, or of the operator and landowner, jointly, and shall be in conformance with Section 4423 and all other provisions of law.

SEC. 16. Section 4440 of the Public Resources Code is amended to read:

4440. (a) Flammable forest product residue may be accumulated in piles, within any state responsibility area, within any area receiving fire protection by the director by contract, or upon federal lands administered by the United States Department of Agriculture or the Department of Interior, when the area surrounding the piles is cleared and kept clear of all flammable vegetation and debris, including trees, snags, brush, grass, slash, and litter in accordance with one of the following procedures:

(1) Clearing to a distance of 45.7 meters (150 feet) from the periphery of the piles of flammable residue and all structures and lumber piles which are situated within 15.2 meters (50 feet) of the residue piles.

(2) Clearing to a distance of 30.5 meters (100 feet) from the

periphery of the piles of flammable residue and all structures and lumber piles which are situated within 15.2 meters (50 feet) of the residue piles, and maintaining at all times a firebreak three meters (10 feet) or more in width cleared of all flammable material and constructed in a continuous line surrounding the accumulation at a distance of not less than 15.2 meters (50 feet) nor more than 91.4 meters (300 feet) from the periphery of the clearing surrounding the accumulation. All snags and dead trees between the firebreak and the periphery of the clearing shall be felled.

(3) Sound and living trees may be left standing within the areas required to be cleared of flammable residue, provided the following requirements are met:

(A) Wildfire cannot travel into the canopy of any tree left standing.

(B) Any tree left standing does not pose a fire safety threat or prevent fire equipment access to and near the flammable forest waste material.

(C) All dead limbs, and all limbs within 3 meters (10 feet) of the ground are removed from any tree left standing.

(D) Diseased or dead trees are removed entirely.

(b) Disposal by fire, if contemplated, is a responsibility of the operator or landowner or the operator and landowner, jointly, and shall be accomplished in conformance with Section 4423 and all other applicable provisions of law.

SEC. 17. Section 4441 of the Public Resources Code is amended to read:

4441. Any person who permits or allows accumulation of waste material or residue in violation of the provisions of Sections 4437 to 4440, inclusive, is guilty of a misdemeanor and shall be punished for a first conviction, by a fine not to exceed two hundred fifty dollars ($250), and, for a second or subsequent conviction within five years of a prior conviction of a violation of one of those provisions, by a fine not less than two hundred fifty dollars ($250) or more than one thousand dollars ($1,000) or imprisonment in the county jail for a period not to exceed 30 days, or both that fine and imprisonment. Each and every day of violation is a separate and distinct offense.

SEC. 18. Section 4442 of the Public Resources Code is amended to read:

4442. (a) Except as otherwise provided in this section, no person shall use, operate, or allow to be used or operated, any internal combustion engine which uses hydrocarbon fuels on any forest-covered land, brush-covered land, or grass-covered land unless the engine is equipped with a spark arrester, as defined in subdivision (c), maintained in effective working order or the engine is constructed, equipped, and maintained for the prevention of fire pursuant to Section 4443.

(b) Spark arresters affixed to the exhaust system of engines or vehicles subject to this section shall not be placed or mounted in such a manner as to allow flames or heat from the exhaust system to ignite

any flammable material.

(c) A spark arrester is a device constructed of nonflammable materials specifically for the purpose of removing and retaining carbon and other flammable particles over 0.0232 of an inch in size from the exhaust flow of an internal combustion engine that uses hydrocarbon fuels or which is qualified and rated by the United States Forest Service.

(d) Engines used to provide motive power for trucks, truck tractors, buses, and passenger vehicles, except motorcycles, are not subject to this section if the exhaust system is equipped with a muffler as defined in the Vehicle Code.

(e) Turbocharged engines are not subject to this section if all exhausted gases pass through the rotating turbine wheel, there is no exhaust bypass to the atmosphere, and the turbocharger is in effective mechanical condition.

(f) Motor vehicles when being operated in an organized racing or competitive event upon a closed course are not subject to this section if the event is conducted under the auspices of a recognized sanctioning body and by permit issued by the fire protection authority having jurisdiction.

SEC. 19. Section 4442.5 of the Public Resources Code is amended to read:

4442.5. No person shall sell, offer for sale, lease, or rent to any person any internal combustion engine subject to Section 4442 or 4443, and not subject to Section 13005 of the Health and Safety Code, unless the person provides a written notice to the purchaser or bailee, at the time of sale or at the time of entering into the lease or rental contract, stating that it is a violation of Section 4442 or 4443 to use or operate the engine on any forest-covered, brush-covered, or grass-covered land unless the engine is equipped with a spark arrester, as defined in Section 4442, maintained in effective working order or the engine is constructed, equipped, and maintained for the prevention of fire pursuant to Section 4443.

SEC. 20. No appropriation is made and no reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution or Section 2231 or 2234 of the Revenue and Taxation Code because the local agency or school district has the authority to levy service charges, fees, or asessments sufficient to pay for the program or level of service mandated by this act or because the only costs which may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, changes the definition of a crime or infraction, changes the penalty for a crime or infraction, or eliminates a crime or infraction.

CHAPTER 1334

An act to amend Sections 56320, 56327, and 56345 of, and to add Sections 44265.5, 56026.5, 56136, and 56364.1 to, the Education Code, relating to special education.

[Approved by Governor September 22, 1982. Filed with Secretary of State September 23, 1982.]

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

SECTION 1. Section 44265.5 is added to the Education Code, to read:

44265.5. (a) Pupils who are visually handicapped shall be taught by teachers who are credentialed pursuant to subdivision (e) of Section 44265.

(b) Pupils who are hearing handicapped shall be taught by teachers who are credentialed pursuant to subdivision (d) of Section 44265.

(c) Pupils who are severely orthopedically handicapped shall be taught by teachers who are credentialed pursuant to subdivision (d) of Section 44265.

SEC. 2. Section 56026.5 is added to the Education Code, to read:

56026.5. "Low incidence disability" means a severe handicapping condition with an expected incidence rate of less than one percent of the total statewide enrollment in kindergarten through grade 12. For purposes of this definition, severe handicapping conditions are hearing impairments, vision impairments, and severe orthopedic impairments, or any combination thereof.

SEC. 2.5. Section 56136 is added to the Education Code, to read:

56136. The superintendent shall develop guidelines for each low incidence disability area and provide technical assistance to parents, teachers, and administrators regarding the implementation of the guidelines. The guidelines shall clarify the identification, assessment, planning of, and the provision of, specialized services to pupils with low incidence disabilities. The superintendent shall consider the guidelines when monitoring programs serving pupils with low incidence disabilities pursuant to Section 56825. The adopted guidelines shall be promulgated for the purpose of establishing recommended guidelines and shall not operate to impose minimum state requirements.

SEC. 3. Section 56320 of the Education Code is amended to read:

56320. Before any action is taken with respect to the initial placement of an individual with exceptional needs in special education instruction, an individual assessment of the pupil's educational needs shall be conducted, by qualified persons, in accordance with requirements including, but not limited to, all the following:

(a) Testing and assessment materials and procedures used for the

purposes of assessment and placement of individuals with exceptional needs are selected and administered so as not to be racially, culturally, or sexually discriminatory.

(b) Tests and other assessment materials meet all the following requirements:

(1) Are provided and administered in the pupil's primary language or other mode of communication, unless the assessment plan indicates reasons why such provision and administration are not clearly feasible.

(2) Have been validated for the specific purpose for which they are used.

(3) Are administered by trained personnel in conformance with the instructions provided by the producer of such tests and other assessment materials, except that individually administered tests of intellectual or emotional functioning shall be administered by a psychometrist or credentialed school psychologist where available. It is not the intent of the Legislature to require that new personnel be hired for this purpose.

(c) Tests and other assessment materials include those tailored to assess specific areas of educational need and not merely those which are designed to provide a single general intelligence quotient.

(d) Tests are selected and administered to best ensure that when a test administered to a pupil with impaired sensory, manual, or speaking skills produces test results that accurately reflect the pupil's aptitude, achievement level, or any other factors the test purports to measure and not the pupil's impaired sensory, manual, or speaking skills unless those skills are the factors the test purports to measure.

(e) No single procedure is used as the sole criterion for determining an appropriate educational program for an individual with exceptional needs.

(f) The pupil is assessed in all areas related to the suspected disability including, where appropriate, health and development, vision, including low vision, hearing, motor abilities, language function, general ability, academic performance, self-help, orientation and mobility skills, communication skills, and social and emotional status. A developmental history is obtained, when appropriate. For pupils with residual vision, a low vision assessment shall be provided in accordance with guidelines established pursuant to Section 56136.

(g) The assessment of a pupil, including the assessment of a pupil with a suspected low incidence disability, shall be conducted by persons knowledgeable of that disability. Special attention shall be given to the unique educational needs including, but not limited to, skills and the need for specialized services, materials, and equipment consistent with guidelines established pursuant to Section 56136.

SEC. 3.5. Section 56320 of the Education Code, as amended by Senate Bill 1345, is amended to read:

56320. Before any action is taken with respect to the initial placement of an individual with exceptional needs in special

education instruction, an individual assessment of the pupil's educational needs shall be conducted, by qualified persons, in accordance with requirements including, but not limited to, all the following:

(a) Testing and assessment materials and procedures used for the purposes of assessment and placement of individuals with exceptional needs are selected and administered so as not to be racially, culturally, or sexually discriminatory.

(b) Tests and other assessment materials meet all the following requirements:

(1) Are provided and administered in the pupil's primary language or other mode of communication, unless the assessment plan indicates reasons why such provision and administration are not clearly feasible.

(2) Have been validated for the specific purpose for which they are used.

(3) Are administered by trained personnel in conformance with the instructions provided by the producer of such tests and other assessment materials, except that individually administered tests of intellectual or emotional functioning shall be administered by a psychometrist or credentialed school psychologist where available. It is not the intent of the Legislature to require that new personnel be hired for this purpose.

(c) Tests and other assessment materials include those tailored to assess specific areas of educational need and not merely those which are designed to provide a single general intelligence quotient.

(d) Tests are selected and administered to best ensure that when a test administered to a pupil with impaired sensory, manual, or speaking skills produces test results that accurately reflect the pupil's aptitude, achievement level, or any other factors the test purports to measure and not the pupil's impaired sensory, manual, or speaking skills unless those skills are the factors the test purports to measure.

(e) No single procedure is used as the sole criterion for determining an appropriate educational program for an individual with exceptional needs.

(f) The pupil is assessed in all areas related to the suspected disability including, where appropriate, health and development, vision, including low vision, hearing, motor abilities, language function, general ability, academic performance, self-help, orientation and mobility skills, career and vocational abilities and interests, and social and emotional status. A developmental history is obtained, when appropriate. For pupils with residual vision, a low vision assessment shall be provided in accordance with guidelines established pursuant to Section 56136.

(g) The assessment of a pupil, including the assessment of a pupil with a suspected low incidence disability, shall be conducted by persons knowledgeable of that disability. Special attention shall be given to the unique educational needs, including, but not limited to, skills and the need for specialized services, materials, and equipment

consistent with guidelines established pursuant to Section 56136.

SEC. 4. Section 56327 of the Education Code is amended to read:

56327. The personnel who assess the pupil shall prepare a written report, or reports, as appropriate, of the results of each assessment. The report shall include, but not be limited to, all the following:

(a) Whether the pupil may need special education and related services.

(b) The basis for making the determination.

(c) The relevant behavior noted during the observation of the pupil in an appropriate setting.

(d) The relationship of that behavior to the pupil's academic and social functioning.

(e) The educationally relevant health and development, and medical findings, if any.

(f) For pupils with learning disabilities, whether there is such a discrepancy between achievement and ability that it cannot be corrected without special education and related services.

(g) A determination concerning the effects of environmental, cultural, or economic disadvantage, where appropriate.

(h) The need for specialized services, materials, and equipment for pupils with low incidence disabilities, consistent with guidelines established pursuant to Section 56136.

SEC. 5. Section 56345 of the Education Code is amended to read:

56345. (a) The individualized education program is a written statement determined in a meeting of the individualized education program team and shall include, but not be limited to, all of the following:

(1) The present levels of the pupil's educational performance.

(2) The annual goals, including short-term instructional objectives.

(3) The specific special educational instruction and related services required by the pupil.

(4) The extent to which the pupil will be able to participate in regular educational programs.

(5) The projected date for initiation and the anticipated duration of such programs and services.

(6) Appropriate objective criteria, evaluation procedures, and schedules for determining, on at least an annual basis, whether the short-term instructional objectives are being achieved.

(b) When appropriate, the individualized education program shall also include, but not be limited to, all of the following:

(1) For secondary grade level pupils, specially designed vocational education and career development, with emphasis on vocational training and preparation for remunerative employment, additional vocational training, or additional career development opportunities, as appropriate.

(2) For secondary grade level pupils, any alternative means and modes necessary for the pupil to complete the district's prescribed course of study and to meet or exceed proficiency standards for

graduation, in accordance with Section 51225.

(3) For individuals whose primary language is other than English, linguistically appropriate goals, objectives, programs and services.

(4) Extended school year services when needed, as determined by the individualized education program team.

(5) Provision for the transition into the regular class program if the pupil is to be transferred from a special class or center, or nonpublic, nonsectarian school into a regular class in a public school for any part of the schoolday.

(6) For pupils with low incidence disabilities, specialized services, materials, and equipment, consistent with guidelines established pursuant to Section 56136.

(c) It is the intent of the Legislature in requiring individualized education programs that the district, special education services region, or county office is responsible for providing the services delineated in the individualized education program. However, the Legislature recognizes that some pupils may not meet or exceed the growth projected in the annual goals and objectives of the pupil's individualized education program.

(d) Pursuant to subdivision (d) of Section 51215, a pupil's individualized education program shall also include the determination of the individualized education program team as to whether differential proficiency standards shall be developed for the pupil. If differential proficiency standards are to be developed, the individualized education program shall include these standards.

SEC. 5.5. Section 56345 of the Education Code, as amended by Senate Bill 1345, is amended to read:

56345. (a) The individualized education program is a written statement determined in a meeting of the individualized education program team and shall include, but not be limited to, all of the following:

(1) The present levels of the pupil's educational performance.

(2) The annual goals, including short-term instructional objectives.

(3) The specific special educational instruction and related services required by the pupil.

(4) The extent to which the pupil will be able to participate in regular educational programs.

(5) The projected date for initiation and the anticipated duration of such programs and services.

(6) Appropriate objective criteria, evaluation procedures, and schedules for determining, on at least an annual basis, whether the short-term instructional objectives are being achieved.

(b) When appropriate, the individualized education program shall also include, but not be limited to, all of the following:

(1) Prevocational career education for pupils in kindergarten and grades 1 to 6, inclusive, or pupils of comparable chronological age.

(2) Vocational education, career education or work experience education, or any combination thereof, in preparation for

remunerative employment, including independent living skill training for pupils in grades 7 to 12, inclusive, or comparable chronological age, who require differential proficiency standards pursuant to Section 51215.

(3) For pupils in grades 7 to 12, inclusive, any alternative means and modes necessary for the pupil to complete the district's prescribed course of study and to meet or exceed proficiency standards for graduation in accordance with Section 51215.

(4) For individuals whose primary language is other than English, linguistically appropriate goals, objectives, programs and services.

(5) Extended school year services when needed, as determined by the individualized education program team.

(6) Provision for the transition into the regular class program if the pupil is to be transferred from a special class or center, or nonpublic, nonsectarian school into a regular class in a public school for any part of the schoolday.

(7) For pupils with low incidence disabilities, specialized services, materials, and equipment, consistent with guidelines established pursuant to Section 56136.

(c) It is the intent of the Legislature in requiring individualized education programs that the district, special education services region, or county office is responsible for providing the services delineated in the individualized education program. However, the Legislature recognizes that some pupils may not meet or exceed the growth projected in the annual goals and objectives of the pupil's individualized education program.

(d) Pursuant to subdivision (d) of Section 51215, a pupil's individualized education program shall also include the determination of the individualized education program team as to whether differential proficiency standards shall be developed for the pupil. If differential proficiency standards are to be developed, the individualized education program shall include these standards.

SEC. 6. Section 56364.1 is added to the Education Code, to read:

56364.1. Notwithstanding the provisions of Section 56364, pupils with low incidence disabilities may receive all or a portion of their instruction in the regular classroom and may also be enrolled in special classes taught by appropriately credentialed teachers who serve these pupils at one or more school sites. The instruction shall be provided in a manner which is consistent with the guidelines adopted pursuant to Section 56136 and in accordance with the individualized education program.

SEC. 7. It is the intent of the Legislature, if this bill and Senate Bill 1345 are both chaptered and become effective on or before January 1, 1983, both bills amend Section 56345 of the Education Code, and this bill is chaptered after Senate Bill 1345, that Section 56345 of the Education Code, as amended by Section 15 of Senate Bill 1345, be further amended on the effective date of this act in the form set forth in Section 5.5 of this act to incorporate the changes in Section 56345 proposed by this bill. Therefore, if this bill and Senate

Bill 1345 are both chaptered and become effective on or before January 1, 1983, and Senate Bill 1345 is chaptered before this bill and amends Section 56345, Section 5.5 of this act shall become operative on the effective date of this act and Section 5 of this act shall not become operative.

SEC. 8. It is the intent of the Legislature, if this bill and Senate Bill 1345 are both chaptered and become effective on or before January 1, 1983, both bills amend Section 56320 of the Education Code, and this bill is chaptered after Senate Bill 1345, that Section 56320 of the Education Code, as amended by Section 23 of Senate Bill 1345, be further amended on the effective date of this act in the form set forth in Section 3.5 of this act to incorporate the changes in Section 56320 proposed by this bill. Therefore, if this bill and Senate Bill 1345 are both chaptered and become effective on or before January 1, 1983, and Senate Bill 1345 is chaptered before this bill and amends Section 56320, Section 3.5 of this act shall become operative on the effective date of this act and Section 3 of this act shall not become operative.

SEC. 9. Notwithstanding Section 6 of Article XIII B of the California Constitution and Section 2231 or 2234 of the Revenue and Taxation Code, no appropriation is made by this act for the purpose of making reimbursement pursuant to these sections. It is recognized, however, that a local agency or school district may pursue any remedies to obtain reimbursement available to it under Chapter 3 (commencing with Section 2201) of Part 4 of Division 1 of that code.

SEC. 10. Notwithstanding Section 2231.5 of the Revenue and Taxation Code, this act does not contain a repealer, as required by that section; therefore, the provisions of this act shall remain in effect unless and until they are amended or repealed by a later enacted act.

CHAPTER 1335

An act to amend Section 31108 of the Government Code, relating to counties.

[Approved by Governor September 22, 1982. Filed with Secretary of State September 24, 1982.]

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

SECTION 1. Section 31108 of the Government Code is amended to read:

31108. (a) Any ordinance adopted pursuant to this part shall include substantially the following provisions:

(1) Any officer or employee in the classified civil service may be dismissed, suspended, or reduced in rank or compensation by the appointing authority after appointment or promotion is complete by

a written order, stating specifically the reasons for the action. The order shall be filed with the clerk of the board of supervisors or, if there is a county personnel officer, the order shall be filed with the county personnel officer and a copy thereof shall be furnished to the person to be dismissed, suspended, or reduced.

(2) The officer or employee may reply in writing to the order within 10 days from the date of its filing with the clerk of the board of supervisors or county personnel officer. The officer or employee may within seven days after presentation to him or her of the order appeal through the clerk of the board of supervisors or county personnel officer to the civil service commission from the order. Upon the filing of the appeal, the clerk of the board of supervisors or county personnel officer shall forthwith transmit the order and appeal to the civil service commission for hearing.

(3) Within 20 days from the filing of the appeal the commission shall commence a hearing, and either affirm, modify, or revoke the order. The appellant may appear personally, produce evidence, and have counsel and a public hearing.

(4) The findings and decision of the commission shall be certified to the department head or officer whose action was the subject of the hearing and forthwith enforced and followed by him or her.

(b) Alternatively, the board of supervisors may provide by ordinance or resolution by simple majority vote that an officer or employee who is dismissed, suspended, or reduced in rank or compensation may elect in writing to appeal under the terms of any grievance procedure established pursuant to a legally binding memorandum of understanding between the local agency governing board and an employee organization recognized pursuant to applicable law, which may include final binding arbitration.

CHAPTER 1336

An act to amend Sections 202, 355, 1050, 1051, 1055, 7860, and 8842 of, to repeal and add Section 7862 to, and to repeal, add, and repeal Article 4.5 (commencing with Section 8230) of Chapter 2 of Part 3 of Division 6 of, the Fish and Game Code, to amend Sections 5093.66 and 34000 of the Public Resources Code, and to amend Section 1 of Chapter 706 of the Statutes of 1981, relating to resources, and making an appropriation therefor.

[Approved by Governor September 22, 1982. Filed with Secretary of State September 24, 1982.]

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

SECTION 1. Section 202 of the Fish and Game Code is amended to read:

202. The commission shall exercise its powers under this article

by regulations made and promulgated pursuant to this article. Regulations adopted pursuant to this acticle shall not be subject to the time periods for the adoption, amendment, or repeal of regulations prescribed in Sections 11346.2, 11346.4, and 11346.8 of the Government Code.

SEC. 2. Section 355 of the Fish and Game Code is amended to read:

355. The commission may, annually, promulgate regulations pertaining to migratory birds to conform with or to further restrict the rules and regulations prescribed pursuant to the Migratory Bird Treaty Act.

Regulations adopted under this section are not subject to Sections 11346.1, 11346.2, 11346.4, and 11346.8 of the Government Code.

Every regulation of the commission made pursuant to this article shall be filed with the Secretary of State, and shall become effective upon filing unless otherwise specified in the regulations.

SEC. 3. Section 1050 of the Fish and Game Code is amended to read:

1050. All licenses, certificates, permits, and license tags authorized by this code shall be prepared and issued by the department.

The commission shall determine the form of all licenses, license tags, and certificates and the method of carrying and displaying all licenses, and may require and prescribe the form of applications therefor, and the form of any contrivance to be used in connection therewith.

Whenever under any of the provisions of this code a permit, certificate, or license is provided for, the commission shall, in accordance with the provisions, prescribe the terms and conditions under which the permit, certificate, or license shall be issued and the department shall issue the permit, certificate, or license in accordance therewith and with the applicable provisions of law.

Whenever this code does not specify whether a fee is to be collected, or does not specify the amount of a fee to be collected for the issuance of any license, license tag, certificate, permit, or other entitlement, the commission may establish a fee or the amount thereof by regulation. The commission may also provide for the change in the amount of the fee in accordance with the provisions of Section 713. However, no fee may exceed the reasonable costs incurred by the department in implementing and administering the program or activity to which the license, license tag, certificate, permit, or other entitlement is related.

SEC. 4. Section 1051 of the Fish and Game Code is amended to read:

1051. Licenses and license tags of each class shall be consecutively numbered. Every license and license tag shall contain its expiration date and the amount of the fee for which it is issued. If no fee is either required by this code or established by the commission pursuant to Section 1050, the license or license tag shall so indicate.

SEC. 5. Section 1055 of the Fish and Game Code is amended to read:

1055. The department may issue and may authorize any person except a commissioner or a person employed in the department to sell licenses and license tags. It may deliver licenses and license tags to persons so authorized without receiving full payment therefor, upon application of the person, and upon the giving of a bond as provided in this article.

The person shall be allowed as compensation 5 percent of the amount collected and accounted for by him or her on the sales of the licenses or tags. However, the compensation shall not exceed twenty cents ($0.20) per sport fishing or hunting license, fifty cents ($0.50) per commercial fishing license or commercial passenger fishing boat license, fifteen cents ($0.15) per hunting license tag or permit, or hunting stamp or permit, two dollars ($2) per certificate of boat registration, or one dollar ($1) per commercial salmon vessel permit. He or she may retain the compensation out of the fees received by him or her for sales of licenses or tags, and shall remit the balance of the fees to the department within 10 days following the last day of each calendar month.

The amendments to this section enacted at the 1977–78 Regular Session of the Legislature shall become operative April 1, 1979, for commercial passenger fishing boat licenses and certificates of boat registration, and July 1, 1979, for hunting permits.

SEC. 6. Section 7860 of the Fish and Game Code is amended to read:

7860. In addition to the fee authorized for a commercial fishing salmon stamp by Section 7852.5, the amount of the fee for that salmon stamp shall be increased by fifty-five dollars ($55) beginning on May 2, 1982, and shall remain at the increased amount except as provided in this section during 1983 and thereafter. For any commercial salmon season preceded by a commercial salmon season in which the commercial troll salmon landings in this state equal or exceed six million pounds dressed weight, the fee shall be increased by a ten dollar ($10) increment for every one-quarter million pounds of dressed weight landings up to a maximum of two hundred fifteen dollars ($215). This section shall not apply to licensees who are 70 years of age or older on April 15 of the year for which the license is issued.

SEC. 7. Section 7862 of the Fish and Game Code is repealed.

SEC. 8. Section 7862 is added to the Fish and Game Code, to read:

7862. A Commercial Salmon Trollers Advisory Committee shall be established consisting of five members selected by the director. One member shall be chosen from the personnel of the department. Four persons shall be selected, with alternates, from a list submitted by a fishermen's organization deemed to represent the commercial salmon fishermen of California. The term of appointment to the committee shall be for two years. Necessary and proper expenses, if any, and per diem shall be paid committee members from the special

account created pursuant to Section 7861. The rate of per diem shall be the same as the rate established pursuant to Section 8902 of the Government Code.

The committee shall recommend programs and a budget from the special account to the department. The department shall review the programs and the budget and shall include its recommendations regarding these items in the Governor's Budget and submit to the Legislature an annual report on the sale of stamps, the expenditure of funds, and a status report of the programs funded pursuant to Section 7861. The department shall not recommend funding for any program not contained in the committee's recommendations.

SEC. 9. Article 4.5 (commencing with Section 8230) of Chapter 2 of Part 3 of Division 6 of the Fish and Game Code is repealed.

SEC. 10. Article 4.5 (commencing with Section 8230) is added to Chapter 2 of Part 3 of Division 6 of the Fish and Game Code, to read:

Article 4.5. Commercial Salmon Permit

8230. The Legislature finds and declares that commercial salmon fishing is affected with a public interest and that the preservation of commercial salmon fishing directly affects the health and welfare of the public. The Legislature further finds and declares that due to past declines in salmon stocks, the increase in the number of persons participating in commercial salmon fishing, and the increase in the salmon fishing potential of the commercial salmon fishing fleet it is necessary and proper to limit the persons who are eligible to take salmon for commercial purposes and to regulate the amount of salmon that may be taken by restricting the number and salmon fishing potential of the vessels in the commercial salmon fishing fleet in order to preserve and rebuild the salmon resource, to protect commercial salmon fishing, and thereby protect the health and welfare of the public.

8231. The following definitions apply to the provisions of this article:

(a) "Commercial salmon permit" means a nontransferable, revocable permit which was issued by the department during the calendar year 1980, 1981, or 1982 to an individual engaged in the taking and landing of salmon in California waters for commercial purposes.

(b) "Operator" means an individual who is designated in writing on the federal documentation papers of a vessel as master or alternate master, on a boat registration statement provided by the department pursuant to Sections 7887 to 7890, inclusive, as the operator of the vessel, or by written proof including landing receipts submitted to and approved by the review board that the individual did operate a vessel engaged in the taking of salmon.

(c) "Owner" means an individual who is designated in writing on a boat registration statement provided by the department pursuant to Sections 7887 to 7890, inclusive, as the owner of the vessel.

(d) "Review board" means the Commercial Salmon Fishing Review Board created pursuant to Section 8244.

(e) "Vessel permit" means a commercial salmon vessel permit created pursuant to Section 8232.

8232. A commercial salmon vessel permit shall be issued by the department to the following:

(a) Upon application, to the owner or owners of a vessel which was registered pursuant to Sections 7887 to 7890 and was used to take and land salmon commercially in California during the 1980, 1981, or before August 11th of the 1982 commercial salmon season as evidenced by a salmon landing receipt issued to a commercial salmon permittee with that vessel's Department of Fish and Game registration number on it pursuant to Article 6 (commencing with Section 8010) of Chapter 1.

(b) Upon application, to the owner of a vessel, when upon approval of the review board notwithstanding subdivision (b) of Section 8231, the requesting individual possessed a commercial salmon permit and has prior to August 11, 1982, under construction, reconstruction, contracted for construction, or purchased, a vessel with good faith anticipation, as determined by the review board, of that vessel's entry into the California salmon fishery.

(c) Upon application, to a natural person seeking new entry into the commercial fishery pursuant to Section 8240.

8233. Application for a vessel permit shall be made on such forms and contain such information reasonably related to this article as the department may require. Vessel permit applications made pursuant to Section 8232, except as provided in Section 8240, shall be received by the department no later than May 1, 1983.

8234. The vessel permit shall remain with the vessel upon change of ownership and shall not be transferred to another vessel.

8235. If a vessel, licensed under a salmon vessel permit, is lost, destroyed, or permanently retired from the commercial salmon fishery, that vessel permit shall be reissued by the department to the vessel owner of the lost, destroyed, or retired vessel, but the permit shall only be placed on another vessel within one year after reissuance and only on a vessel having a salmon fishing potential, as determined by a majority of the review board, no greater than that of the lost, destroyed, or retired vessel. The department shall not reissue a vessel permit to a vessel owner who lost or destroyed a vessel by fraudulent means.

8236. A vessel permit shall be renewed annually by June 1. The department shall set a fee to be charged for a vessel permit which shall not exceed the reasonable costs of implementing and administering the provisions of this article.

8237. The commercial fishing privilege of an individual may be suspended or revoked by the commission for violation and conviction of any of the provisions pertaining to commercial salmon fishing. The commission may revoke or suspend a vessel permit issued pursuant to this article that was obtained by fraudulent means.

8238. No salmon shall be taken aboard or landed from any vessel for commercial purposes except those vessels licensed pursuant to this article.

8239. A vessel may not be used to take salmon for commercial purposes and sport purposes in the same calendar year. However, boats licensed as commercial passenger fishing boats pursuant to Section 7920 and engaged in that business, may be used to take salmon for commercial purposes, but not on the same day that sport fishing passengers are carried on the vessel.

8240. (a) A natural person seeking to gain new entry into the commercial salmon fishery may obtain a vessel permit by either purchasing a vessel already licensed under a vessel permit, or obtaining a new vessel permit issued by the department.

(b) Eligibility for new vessel permits shall be established by the review board under the terms of, but not limited to, Sections 8241, 8242, and 8243, and shall be published and included in the annual report to the Legislature. Factors including, but not limited to, crew experience, and experience in other fisheries, may be included as criteria for establishing eligibility. The review board shall also consider the viability of the commercial salmon fishery in determining how many, if any, new permits shall be recommended for issue. The review board may establish a points system for determining eligibility for new permits.

8241. The commission, upon recommendation of the department and the review board, shall determine the number of new vessel permits to be issued annually as necessary to protect the resource and insure efficient and economic operation of the fishery. Whenever there are more applicants than there are new vessel permits available to individuals with equal qualifications, a drawing shall be held to determine which of the eligible applicants shall receive permits. When new permits are issued, the selection or drawing of permits shall be held on the first Monday of February in the year in which the new permits will be issued.

8242. No new vessel permits shall be issued to other than a natural person or be issued to any person owning or having an interest in a vessel holding a salmon permit.

8243. Any applicant whose name is drawn or selected for a new vessel permit, shall purchase an interim vessel permit by June 1 of the year in which the applicant's name was selected or drawn and shall submit a statement to the department designating which vessel shall be licensed under the interim vessel permit by April 1 of the following year. The designated vessel shall remain licensed under the permit in the applicant's name and operated by the applicant for a period of not less than two consecutive salmon seasons, at which time a permanent vessel permit shall be issued. Transfer of ownership during the interim period shall cancel the permit status.

8244. There is hereby established in the department a Commercial Salmon Fishing Review Board which shall consist of the director or his or her designee and four commercial salmon vessel

owners and three alternate vessel owners, selected by the director from a list submitted by an association deemed to represent the majority of commercial salmon vessel owners.

The board shall be limited to factual determinations as specified by this article and shall render determinations based upon substantial evidence by a majority vote of the full board.

8245. The Legislature declares that individuals appointed as members of the review board shall be chosen from the commercial salmon fishing industry in order to represent and further the interests of the industry, and this representation serves the general public interest. Thus, the members of the review board are exempt from Section 87100 of the Government Code, unless the results of their actions taken as board members have a material financial effect on them distinguishable from their effect on other members of their industry generally.

8246. The review board shall:

(a) Consider and render decisions on all appeals of vessel permit denials.

(b) Make recommendations to the department in any revocation of vessel permit proceedings brought pursuant to Section 8237.

(c) Consider and render decisions on the removal, issuance, or reissuance of vessel permits pursuant to subdivision (b) of Section 8232, and Sections 8234, 8235, and 8242.

(d) Recommend to the department the number of new vessel permits to be issued annually, which will be based on the health and status of the salmon resource, and the economic stability of the commercial salmon industry.

(e) Issue an annual report to the Legislature on the effectiveness of the provisions of this article. The report shall include any requirements for eligibility proposed pursuant to Section 8240 prior to their implementation and the recommended number of new vessel permits, if any, to be issued that year.

(f) Recommend to the department whether an examination should be held for permits granted pursuant to Section 8240, and if an examination is recommended, what criteria should be considered in such an examination. The recommendation shall be made to the department before April 1, 1983. The department shall transmit the review board recommendations on an examination along with any recommendations of the department to the Legislature no later than April 15, 1983.

8247. The term of appointment to the review board shall be for four years. However, with respect to the members initially appointed, the director shall designate one member to serve for a term of one year, one member to serve for a term of two years, one member to serve for a term of three years, and the remaining members to serve the term of four years. Necessary and proper expenses shall be paid to review board members; the rate of per diem shall be the same as the rate established pursuant to Section 8902 of the Government Code. The director may adopt standards and

criteria that shall be applied by the board in carrying out its activities under this article.

8248. The vessel permit shall be physically attached to the vessel and clearly visible at all times. The permit shall be of a size, color and other specification as the review board shall establish.

8249. This article shall remain in effect only until January 1, 1988, and as of that date is repealed unless a later enacted statute, which is chaptered before January 1, 1988, deletes or extends that date.

SEC. 11. Section 8842 of the Fish and Game Code is amended to read:

8842. Trawl nets of such design as may be prescribed by the commission may be used or possessed to take shrimps or prawns under a revocable permit issued by the department and under such regulations as the commission shall prescribe.

Sections 8831, 8833, 8835, and 8836 shall not apply to trawl nets used or possessed under permit issued pursuant to this section. When fishing for pink shrimp under a permit as provided in this section, it is unlawful to possess in excess of 1,500 pounds of incidentally taken fish per calendar day of a fishing trip, except Pacific whiting, shortbelly rockfish, and arrowtooth flounder, which may be taken in any amount. When fishing for ridgeback prawn and spotted prawn pursuant to this section, it is unlawful to possess in excess of 1,000 pounds of incidentally taken fish per trip, except for sea cucumbers which may be taken in any amount. Salmon may only be taken subject to Sections 8210 to 8225, inclusive.

SEC. 12. Section 5093.66 of the Public Resources Code, as added by Chapter 14 of the Statutes of 1982, is amended to read:

5093.66. (a) The Legislature hereby finds and declares that the enactment of this section is necessary in order to allow extraction and refinement of strategic metals at a site on Gasquet Mountain within the Smith River watershed.

(b) Notwithstanding subdivision (c) of Section 5093.54 or any other provisions of this chapter, Hardscrabble Creek and all of its tributaries, a tributary of the Smith River, are excluded from the system.

(c) Notwithstanding subdivision (a) of Section 5093.58 or any other provision of this chapter, Copper Creek and all of its tributaries, a tributary to the Smith River, located in Sections 26, 27, 28, 34, and 35 of Township 18 North, Range 1 East, within the County of Del Norte, are classified as recreational.

(d) In order to protect extraordinary scenic, recreational, fishery, or wildlife values within one-quarter mile of the north fork of the Smith River located in the County of Del Norte, no mining activity shall be permitted which would result in a significant adverse effect to these values within one-quarter mile of the north fork of the Smith River.

(e) Nothing in this section or Section 5093.67 is intended to modify or limit the regulatory authority of any state agency under any other provision of law.

SEC. 13. Section 34000 of the Public Resources Code is amended to read:

34000. Money deposited in the Bosco-Keene Renewable Resources Investment Fund created by former Section 7150.6 of the Fish and Game Code may be encumbered, pursuant to appropriation by the Legislature, only for the following purposes:

(a) Salmon and steelhead hatchery expansion and fish habitat improvement.

(b) Forest resource improvement projects pursuant to the California Forest Improvement Act of 1978.

(c) Urban forestry projects pursuant to the California Urban Forestry Act of 1978.

(d) Agricultural soil drainage programs which will retard desertification and protect agricultural productivity.

(e) Support of technical assistance programs which will prevent soil erosion.

(f) Agricultural, industrial, and urban water conservation programs.

(g) Wildland fire prevention programs pursuant to the Wildland Fire Protection and Resources Management Act of 1978, Article 1 (commencing with Section 4461) and Article 2 (commencing with Section 4475) of Chapter 7 of Part 2 of Division 4.

(h) Coastal resource enhancement projects pursuant to Chapter 6 (commencing with Section 31251) of Division 21.

SEC. 14. Section 1 of Chapter 706 of the Statutes of 1981, is amended to read:

Section 1. The Director of Fish and Game shall appoint a Klamath and Trinity Salmon Restoration Advisory Committee. The committee shall consist of not more than nine persons representing the Indian tribes of the Klamath River, the ocean commercial salmon fishery, the recreational salmon fishery, and major landowners in the Klamath-Trinity basin including the United States Forest Service. The committee shall advise the director on restoration programs and assist the Department of Fish and Game in the establishment and coordination of these programs.

The reasonable and necessary expenses of committee members incurred in the performance of their official duties shall be payable by the Department of Fish and Game from funds available to the department. However, members shall not receive any per diem for serving on the committee.

This section shall remain in effect only until January 1, 1985, and as of that date is repealed, unless a later enacted statute, which is chaptered before January 1, 1985, deletes or extends that date.

SEC. 15. The State Coastal Conservancy, in cooperation with the Department of Fish and Game, the Department of Boating and Waterways, the California Coastal Commission, and the Joint Committee on Fisheries and Aquaculture, shall prepare and submit to the Legislature a report on the adequacy of existing and planned wharfs, harbors, off-loading facilities, and other onshore support

facilities needed by the California commerical fishing industry. The report shall be based on the planning work already completed in the preparation and certification of port master plans and local coastal programs. The report shall include detailed recommendations of possible locations and financing of needed facilities, and of other actions which may be necessary consistent with the economic health of the industry. The conservancy shall submit an interim report to the Legislature no later than February 1, 1983, and a final report no later than June 1, 1983.

SEC. 16. No appropriation is made and no reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution or Section 2231 or 2234 of the Revenue and Taxation Code because the only costs which may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, changes the definition of a crime or infraction, changes the penalty for a crime or infraction, or eliminates a crime or infraction.

CHAPTER 1337

An act to amend Sections 23152 and 23153 of the Vehicle Code, relating to offenses.

[Approved by Governor September 23, 1982. Filed with Secretary of State September 24, 1982.]

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

SECTION 1. Section 23152 of the Vehicle Code, as amended by Chapter 53 of the Statutes of 1982, is amended to read:

23152. (a) It is unlawful for any person who is under the influence of an alcoholic beverage or any drug, or under the combined influence of an alcoholic beverage and any drug, to drive a vehicle.

(b) It is unlawful for any person who has 0.10 percent or more, by weight, of alcohol in his or her blood to drive a vehicle.

For purposes of this subdivision, percent, by weight, of alcohol shall be based upon grams of alcohol per 100 milliliters of blood.

In any prosecution under this subdivision, it is a rebuttable presumption that the person had 0.10 percent or more, by weight, of alcohol in his or her blood at the time of driving the vehicle if the person had 0.10 percent or more, by weight, of alcohol in his or her blood at the time of the performance of a chemical test within three hours after the driving.

(c) It is unlawful for any person who is addicted to the use of any drug to drive a vehicle. This subdivision shall not apply to a person who is participating in a methadone maintenance treatment program approved pursuant to Article 3 (commencing with Section

4350) of Chapter 1 of Part 1 of Division 4 of the Welfare and Institutions Code.

SEC. 2. Section 23153 of the Vehicle Code, as amended by Chapter 53 of the Statutes of 1982, is amended to read:

23153. (a) It is unlawful for any person, while under the influence of an alcoholic beverage or any drug, or under the combined influence of an alcoholic beverage and any drug, to drive a vehicle and, when so driving, do any act forbidden by law or neglect any duty imposed by law in the driving of the vehicle, which act or neglect proximately causes death or bodily injury to any person other than the driver.

(b) It is unlawful for any person, while having 0.10 percent or more, by weight, of alcohol in his or her blood to drive a vehicle and, when so driving, do any act forbidden by law or neglect any duty imposed by law in the driving of the vehicle, which act or neglect proximately causes death or bodily injury to any person other than the driver.

For purposes of this subdivision, percent, by weight, of alcohol shall be based upon grams of alcohol per 100 milliliters of blood.

In any prosecution under this subdivision, it is a rebuttable presumption that the person had 0.10 percent or more, by weight, of alcohol in his or her blood at the time of driving the vehicle if the person had 0.10 percent or more, by weight, of alcohol in his or her blood at the time of the performance of a chemical test within three hours after the driving.

(c) In proving the person neglected any duty imposed by law in the driving of the vehicle, it is not necessary to prove that any specific section of this code was violated.

CHAPTER 1338

An act to amend Sections 11837, 11837.1, 11837.2, 11837.3, and 11837.4 of the Health and Safety Code, and to amend Sections 13352.5, 23166, 23167, 23168, 23186, and 23187 of the Vehicle Code, relating to vehicles.

[Approved by Governor September 23, 1982. Filed with Secretary of State September 24, 1982.]

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

SECTION 1. Section 11837 of the Health and Safety Code, as amended by Chapter 53 of the Statutes of 1982, is amended to read:

11837. (a) Pursuant to the provisions of law relating to suspension of a person's privilege to operate a motor vehicle upon conviction for driving while under the influence of an alcoholic beverage or under the combined influence of an alcoholic beverage and any drug, as set forth in paragraph (3) or (4) of subdivision (a)

of Section 13352 of the Vehicle Code, the Department of Motor Vehicles shall restrict the driving privilege pursuant to Section 13352.5 of the Vehicle Code, if the court has notified the department pursuant to Section 13352.5 of the Vehicle Code that the person convicted of that offense has consented to participate for at least one year in a program designed to offer alcohol services to problem drinkers that is approved pursuant to this chapter.

(b) In determining whether to refer such a person to an approved program, the court may consider any relevant information about the person made available pursuant to a presentence investigation, which is permitted but not required under Section 23205 of the Vehicle Code, or other screening procedure. No such information may be furnished, however, by any person who also provides services in a privately operated, approved program or who has any direct interest in a privately operated, approved program. In addition, the court shall obtain from the Department of Motor Vehicles a copy of the person's driving record to determine whether the person is eligible to participate in an approved program pursuant to the provisions of this chapter.

(c) The court may, subject to the provisions of Sections 11837.3 and 11838.2 and as a condition of probation, refer a person to an approved program, even though the person's privilege to operate a motor vehicle is restricted, suspended, or revoked.

(d) As used in this chapter, "program" means all the elements of the program described in the amendment to the county alcohol program plan submitted pursuant to subdivision (c) of Section 11837.6.

SEC. 2. Section 11837.1 of the Health and Safety Code, as amended by Chapter 53 of the Statutes of 1982, is amended to read:

11837.1. (a) In utilizing any such program, the court shall require periodic reports concerning the performance of each person referred to and participating in a program. The program shall also provide the court, the Department of Motor Vehicles, and the person referred to and participating in a program, with an immediate report of any failure of the person to comply with the program's rules and regulations. If, at any time after entry into or while participating in a program, a participant fails to comply with the rules and regulations of the program, and that fact is reported, the Department of Motor Vehicles shall revoke or suspend the privilege of that person to operate a motor vehicle for the period prescribed by law in accordance with Section 13352.5 of the Vehicle Code, except as otherwise provided in this section. The Department of Motor Vehicles shall notify the person and the court of its intended action and shall inform the person of the opportunity to be reinstated in the program and to avoid suspension of the driving privilege.

(b) Notwithstanding the provisions of subdivision (a), the Department of Motor Vehicles shall not suspend the driving privilege pursuant to subdivision (a) if the court, upon the petition of the person, determines that the person should be reinstated in the

program. The determination by the court shall be made within 45 days of the notice from the department of the intended action or such additional time, not to exceed an additional 45 days, for the determination as is required, ordered, and transmitted to the Department of Motor Vehicles by the court, which additional time is not caused by any action or failure to act by the person. Upon timely presentation by the person to the Department of Motor Vehicles of evidence satisfactory to the Department of Motor Vehicles that the court of jurisdiction has consented to the person's reinstatement in the program and that the person is currently participating in the program, the Department of Motor Vehicles shall continue in effect the restriction of the driving privilege prescribed by Section 13352.5 of the Vehicle Code unless the person has previously been reinstated in the program on two or more prior occasions, in which case the department shall suspend or revoke the driving privilege for the time prescribed in paragraph (3) or (4) of subdivision (a) of Section 13352 of the Vehicle Code. If the court fails to grant the person's petition for reinstatement in the program, the court shall suspend the person's driving privilege until the time the person's driving privilege is suspended or revoked by the Department of Motor Vehicles pursuant to subdivision (d) of Section 13352.5 of the Vehicle Code.

(c) If, at any time after referral to or while participating in a program, a participant refuses, for any reason, to consent to a chemical test that he or she is required to submit to pursuant to Section 13353 of the Vehicle Code, his or her participation in the program shall be terminated and the Department of Motor Vehicles shall immediately suspend or revoke his or her privilege to operate a motor vehicle for the period prescribed in Section 13352 of the Vehicle Code, according to the offense for which he or she was convicted immediately prior to referral to the program. The period of suspension or revocation shall be in addition to the period of suspension imposed by the Department of Motor Vehicles pursuant to Section 13353 of the Vehicle Code.

(d) In the event the department withdraws approval of a program, the department shall immediately notify the Department of Motor Vehicles of those persons who do not commence participation in an approved program within 21 days from the date of the withdrawal of approval of the program in which the persons were previously participating. The Department of Motor Vehicles shall suspend or revoke, for the period prescribed by law, the privilege to operate a motor vehicle of each of these persons.

SEC. 3. Section 11837.2 of the Health and Safety Code is amended to read:

11837.2. (a) The court may, subject to the provisions of Section 11838.2, refer persons only to approved programs. Subject to such provisions, a person is eligible to participate in such a program if it is operating in (1) the county where such person is convicted, or (2) the county where such person resides, or (3) a county that has an

agreement with such person's county of residence pursuant to Section 11851, or (4) a county to which a person may request transfer pursuant to subdivision (d). If such person cannot be referred to an approved program pursuant to this section, the provisions of Section 13352 of the Vehicle Code shall apply.

(b) Subject to the provisions of Section 11838.2, if a person has consented to participate in an approved program and the county where such person is convicted is the same county in which such person resides, the court may order such person to participate in an approved program within such county or, if such county does not have an approved program, the court may order such person to participate in such program within another county, pursuant to the provisions of Section 11838.

(c) Subject to the provisions of Section 11838.2, if a person has consented to participate in an approved program in the county in which such person resides or in a county in which such person's county of residence has an agreement pursuant to Section 11837, and the county where such person is convicted is not the county where such person resides, and if the court grants such person summary probation, the court may order the person to participate in an approved program in such county. In lieu of summary probation, the court may utilize the probation officer to implement the orders of the court. If the county in which such person resides does not have an approved program or an agreement with another county pursuant to Section 11838 and such person consents, the court may order such person to participate in an approved program within the county where such person is convicted, or a county in which such county has an agreement pursuant to Section 11838.

(d) Except as otherwise provided in subdivision (e), subsequent to a person's commencement of participation in a program, such person may request transfer to another approved program (1) in the same county in which such person has commenced participation in such program, upon approval of such county's alcohol program administrator, or (2) in a county other than the county in which such person has commenced participation in such program, upon approval of the alcohol program administrator of the county in which such person is participating and the county in which such person is requesting transfer.

(e) Subdivision (d) shall not be applicable (1) if the court has ordered the person to participate in a specific approved program, unless such court orders the transfer or, (2) if the person is under formal probation, unless the probation officer consents to the transfer. The department shall establish reporting forms and procedures to ensure that the court receives notice of any program transfer pursuant to this subdivision or subdivision (d).

(f) Jurisdiction of all post-conviction matters arising pursuant to this section may be retained by the court of conviction.

(g) The department, in cooperation with the Department of Motor Vehicles and alcohol program administrators, shall establish

procedures to ensure the effective implementation of this section.

SEC. 4. Section 11837.3 of the Health and Safety Code, as amended by Chapter 53 of the Statutes of 1982, is amended to read:

11837.3. No person shall be referred or rereferred into a program pursuant to this chapter until four years after that person ceases his or her prior participation in such a program. The four-year period shall commence either on the date the person successfully completes the program or on the date on which a suspension or revocation was imposed by the Department of Motor Vehicles for failure to comply with the program's rules and regulations, whichever is later. With respect to any person convicted for a violation of Section 23152 or 23153 of the Vehicle Code subsequent to the commencement of a four-year period, that person's eligibility to participate in the program again shall be determined on the basis of the date on which the person is alleged to have committed that offense.

SEC. 5. Section 11837.4 of the Health and Safety Code is amended to read:

11837.4. (a) The department shall have sole authority to approve programs pursuant to this chapter. No program, regardless of how it is funded, may be approved unless it meets the standards established by the department, which shall include, but need not be limited to, the following:

(1) Each program shall provide for close and regular supervision of the person, including face-to-face interviews at least once every other calendar week, regarding the person's progress in the program. The interviews shall be conducted individually with each person being supervised and shall occur at times other than when the person is participating in any group or other activities of the program. No program activity in which the person is participating shall be interrupted in order to conduct the individual interviews.

(2) The department shall approve all fee schedules for the programs and shall require that each program make provision for persons who cannot afford the fees in order to enable such persons to participate. The department shall ensure that the fees are set at amounts which will enable programs to provide adequately for the services required pursuant to this chapter. The fees shall be used only for the purposes set forth in this chapter, except that any profit or surplus, that does not exceed the maximum level established by the department, may be utilized for any purposes allowable under any other provisions of law. In its standards, the department shall define, for the purposes of this paragraph, the terms profits and surplus. The department may not approve any program if the department finds that any element of the administration of the program does not assure the fiscal integrity of the program.

(3) Each program shall include a variety of alcohol services for problem drinkers and alcoholics or shall have the capability of referring the persons to, and regularly and closely supervising the persons while in, appropriate alcohol services for their problem drinking. In addition to the requirements of paragraph (1) of this

subdivision, the department shall prescribe in its standards what other services the program shall provide its participants, which services may include lectures, classes, group discussions, individual counseling in addition to the interviews required by paragraph (1), or any combination thereof. However, any class or group discussion, other than lectures, shall not exceed 15 persons at any one meeting.

(4) In order to assure program effectiveness, the department shall require, whenever appropriate, that the program provides services to ethnic minorities, women, youth, or any other group that has particular needs relating to the program.

(5) The goal of each program shall be to assist persons participating in the program to recognize their problem drinking and to assist them to recover.

(6) Each program shall establish a method by which the court, the Department of Motor Vehicles, and the person are notified in a timely manner of the person's failure to comply with the program's rules and regulations.

(b) Each program may be an extension of an existing program or a new program. No such program may be approved, however, unless the county complies with the requirements of subdivision (b) of Section 11812.

(c) A county or program may not prescribe additional program requirements unless the requirements are specifically approved by the department.

(d) The department may approve a program on a provisional basis.

SEC. 6. Section 13352.5 of the Vehicle Code, as amended by Chapter 53 of the Statutes of 1982, is amended to read:

13352.5. (a) Unless ordered to do so by the court upon a finding that the terms and conditions of probation were violated, the department shall not suspend or revoke, pursuant to paragraph (3) or (4) of subdivision (a) of Section 13352, but shall restrict the privilege of any person to operate a motor vehicle upon a conviction or finding that the person violated Section 23152 or 23153, but only if the court has certified to the department that the court has granted probation to the person on conditions which include the conditions specified in subdivision (b) of Section 23166 or subdivision (b) of Section 23186.

(b) The restriction of the driving privilege under subdivision (a) shall become effective 30 days from the date on which the person consented to participate in the program specified in subdivision (a), excluding any time of imprisonment ordered by the court, but only if the person presents evidence satisfactory to the department that he or she is participating in the program specified in subdivision (b) of Section 23166 or subdivision (b) of Section 23186 and pays fees to the department of fifteen dollars ($15) upon application for the restricted license and twenty dollars ($20) upon completion of the treatment program or upon application for an unrestricted license, whichever is sooner. If the person fails to pay the fee for a restricted

license or the fee at the completion of the program or upon application for an unrestricted license, the Department of Motor Vehicles shall not issue a license. If the person fails to show evidence of participation within 30 days, excluding the time of imprisonment ordered by the court, the department shall suspend or revoke the driving privilege of the person for the time prescribed in paragraph (3) or (4) of subdivision (a) of Section 13352.

(c) The driving privilege restricted under subdivision (a) shall be limited to the hours for driving to and from the place of employment and during the course of employment and driving to and from activities required in an alcohol treatment program specified in subdivision (b) of Section 23166 or subdivision (b) of Section 23186. The department may set forth the times and days of restricted operation established by the court either on a special restricted license or upon the usual license form. The restriction shall continue in full force and effect until the person presents evidence satisfactory to the department that the person has completed the alcohol treatment program and has given proof of ability to respond in damages as defined in Section 16430. Except as provided in Section 23168, in no event shall the length of the restriction be for a period less than the applicable time period of suspension or revocation under paragraph (3) or (4) of subdivision (a) of Section 13352.

(d) Except as provided in this subdivision, the department shall suspend or revoke the driving privilege for the time prescribed in paragraph (3) or (4) of subdivision (a) of Section 13352, 60 days from the date that the department notifies the person and the court of the intended action pursuant to subdivision (a) of Section 11837.1 of the Health and Safety Code, or the date ending the additional time ordered by the court under this subdivision, whichever is later. If the person presents evidence satisfactory to the department that the court of jurisdiction has consented to the person's reinstatement in the program, the department shall continue in effect the restriction granted under subdivision (c), unless the person has previously been reinstated in the program on two or more occasions, in which case the department shall suspend or revoke the driving privilege for the time prescribed in paragraph (3) or (4) of subdivision (a) of Section 13352. The evidence shall be presented within 45 days of the notice from the department of the intended action or such additional time, not to exceed an additional 45 days, for the determination as is required, ordered, and transmitted to the department by the court, which additional time is not caused by any action or failure to act by the person.

(e) All abstracts of record showing a conviction that are forwarded to the department pursuant to Section 1803 shall state whether the court has granted probation to the person on conditions which include the conditions specified in subdivision (b) of Section 23166 or subdivision (b) of Section 23186, and the abstracts shall state the date on which the person consented to participate in the program.

(f) The department, in cooperation with the State Department of Alcohol and Drug Programs, shall adopt such regulations as it deems necessary to implement this section.

SEC. 7. Section 13352.5 of the Vehicle Code, as amended by Section 6 of Assembly Bill No. 3405 of the 1981–82 Regular Session, is amended to read:

13352.5. (a) Unless ordered to do so by the court upon a finding that the terms and conditions of probation were violated, the department shall not suspend, pursuant to paragraph (3) of subdivision (a) of Section 13352, but shall restrict, the privilege of any person to operate a motor vehicle upon a conviction or finding that the person violated Section 23152, but only if the court has certified to the department that the court has granted probation to the person on conditions which include the conditions specified in subdivision (b) of Section 23166 and the court has restricted the privilege to operate a motor vehicle as provided in that subdivision.

(b) Unless ordered to do so by the court upon a finding that the terms and conditions of probation were violated, the department shall not revoke, pursuant to paragraph (4) of subdivision (a) of Section 13352, but shall suspend for one year and, thereafter, restrict for two additional years, the privilege of any person to operate a motor vehicle upon a conviction or finding that the person violated Section 23153, but only if the court has certified to the department that the court has granted probation to the person on conditions which include the conditions specified in subdivision (b) of Section 23186, and the court has ordered the department to suspend the privilege to operate a motor vehicle as provided in that subdivision.

(c) The restriction of the driving privilege under subdivision (a) shall become effective 30 days from the date on which the person consented to participate in the program specified in subdivision (a), excluding any time of imprisonment ordered by the court, but only if the person presents evidence satisfactory to the department that he or she is participating in the program specified in subdivision (b) of Section 23166 and pays fees to the department of fifteen dollars ($15) upon application for the restricted license and twenty dollars ($20) upon completion of the treatment program or upon application for an unrestricted license, whichever is sooner. If the person fails to pay the fee for a restricted license or the fee at the completion of the program or upon application for an unrestricted license, the Department of Motor Vehicles shall not issue a license. If the person fails to show evidence of participation within 30 days, excluding the time of imprisionment ordered by the court, the department shall suspend the driving privilege of the person for the time prescribed in paragraph (3) of subdivision (a) of Section 13352.

(d) The restriction of the driving privilege under subdivision (b) shall become effective 30 days from the end of the period of suspension, but only if the person presents evidence satisfactory to the department that he or she is participating in the program specified in subdivision (b) of Section 23186 and pays fees to the

department of fifteen dollars ($15) upon application for the restricted license and twenty dollars ($20) upon completion of the treatment program or upon application for an unrestricted license, whichever is sooner. If the person fails to pay the fee for a restricted license or the fee at the completion of the program or upon application for an unrestricted license, the Department of Motor Vehicles shall not issue a license. If the person fails to show evidence of participation within 30 days from the end of the period of suspension, excluding any time of imprisonment ordered by the court to be served after the end of the period of suspension, the department shall revoke the driving privilege of the person for the time prescribed in paragraph (4) of subdivision (a) of Section 13352.

(e) The driving privilege restricted under subdivision (a) or (b) shall be limited to the hours for driving to and from the place of employment and during the course of employment and driving to and from activities required in an alcohol treatment program specified in subdivision (b) of Section 23166 or subdivision (b) of Section 23186. The department may set forth the times and days of restricted operation established by the court either on a special restricted license or upon the usual license form. The restriction shall continue in full force and effect until the person presents evidence satisfactory to the department that the person has completed the alcohol treatment program and has given proof of ability to respond in damages as defined in Section 16430. Except as provided in Section 23168, in no event shall the length of the restriction under subdivision (b) of Section 23166 or the total time of suspension and restriction under subdivision (b) of Section 23186 be for a period less than the applicable time period of suspension or revocation under paragraph (3) or (4) of subdivision (a) of Section 13352.

(f) Except as provided in this subdivision, the department shall suspend or revoke the driving privilege, for the time prescribed in paragraph (3) or (4) of subdivision (a) of Section 13352, 60 days from the date that the department notifies the person and the court of the intended action pursuant to subdivision (a) of Section 11837.1 of the Health and Safety Code, or the date ending the additional time ordered by the court under this subdivision, whichever is later. If the person presents evidence satisfactory to the department that the court of jurisdiction has consented to the person's reinstatement in the program, the department shall continue in effect the restriction granted under subdivision (c), unless the person has previously been reinstated in the program on two or more occasions, in which case the department shall suspend or revoke the driving privilege for the time prescribed in paragraph (3) or (4) of subdivision (a) of Section 13352. The evidence shall be presented within 45 days of the notice from the department of the intended action or such additional time, not to exceed an additional 45 days, for the determination as is required, ordered, and transmitted to the department by the court, which additional time is not caused by any action or failure to act by the person.

(g) All abstracts of record showing a conviction that are forwarded to the department pursuant to Section 1803 shall state whether the court has granted probation to the person on conditions which include the conditions specified in subdivision (b) of Section 23166 or subdivision (b) of Section 23186 and state the date on which the person consented to participate in the program.

(h) The department, in cooperation with the State Department of Alcohol and Drug Programs, shall adopt such regulations as it deems necessary to implement this section.

SEC. 8. Section 23166 of the Vehicle Code, as amended by Chapter 53 of the Statutes of 1982, is amended to read:

23166. If the court grants probation to any person punished under Section 23165, in addition to the provisions of Section 23206 and any other terms and conditions imposed by the court, the court shall impose as conditions of probation that the person be subject to all of the provisions of 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 seventy-five dollars ($375) 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.

(b) All of the following:

(1) Be confined in the county jail for at least 48 hours but not more than one year.

(2) Pay a fine of at least three hundred seventy-five dollars ($375) but not more than one thousand dollars ($1,000).

(3) Have the privilege to operate a motor vehicle be restricted pursuant to Section 13352.5 for one year to necessary travel to and from that person's place of employment and to and from the treatment program described in paragraph (4) and, if driving a motor vehicle is necessary to perform the duties of the person's employment, restricted to driving in that person's scope of employment. The Department of Motor Vehicles shall not suspend the person's privilege to operate a motor vehicle under Section 13352, as provided in Section 13352.5.

(4) Participate, for at least one year and in a manner satisfactory to the court, in a program approved pursuant to Chapter 9 (commencing with Section 11837) of Part 2 of Division 10.5 of the Health and Safety Code, as designated by the court.

SEC. 9. Section 23167 of the Vehicle Code is amended to read:

23167. Notwithstanding the provisions of Section 23207, if any person has been granted probation under the conditions of subdivision (b) of Section 23166 and fails at any time to participate successfully in the treatment program described in paragraph (4) of that subdivision, the court shall revoke or terminate the probation, and the court may revoke or terminate the probation if the person failed to comply with any other term or condition of probation, and the court shall proceed under either of the following provisions:

(a) Revoke suspension of sentence and proceed as provided in subdivision (c) of Section 1203.2 of the Penal Code and order the Department of Motor Vehicles to suspend the person's privilege to operate a motor vehicle pursuant to paragraph (3) of subdivision (a) of Section 13352 from the date of the rder revoking or terminating probation.

(b) Grant a new term of probation on the condition that the person be confined in the county jail for at least 30 days and order the Department of Motor Vehicles to suspend the person's privilege to operate a motor vehicle pursuant to paragraph (3) of subdivision (a) of Section 13352 from the date of the new grant of probation.

SEC. 10. Section 23168 of the Vehicle Code is amended to read:

23168. Any person who has been granted probation under the conditions of subdivision (b) of Section 23166, may, after six months have elapsed since the commencement of participation in the treatment program, petition the court to have the restriction on that person's privilege to operate a motor vehicle removed, and the court may, for good cause shown, order the Department of Motor Vehicles to remove the restrictions upon a showing that the person has successfully participated in the treatment program and complied with the terms and conditions of probation and has given proof of ability to respond in damages as defined in Section 16430.

SEC. 11. Section 23186 of the Vehicle Code, as amended by Chapter 53 of the Statutes of 1982, is amended to read:

23186. If the court grants probation to any person punished under Section 23185, in addition to the provisions of Section 23206 and any other terms and conditions imposed by the court, the court shall impose as conditions of probation that the person be subject to all of the provisions of 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 seventy-five dollars ($375) 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.

(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 seventy-five dollars ($375) but not more than one thousand dollars ($1,000).

(3) Have the privilege to operate a motor vehicle be restricted pursuant to Section 13352.5 for three years to necessary travel to and from that person's place of employment, and to and from the treatment program described in paragraph (4) and, if driving a motor vehicle is necessary to perform the duties of the person's employment, restricted to driving in that person's scope of employment. The Department of Motor Vehicles shall not revoke the person's privilege to operate a motor vehicle under Section 13352, as provided in Section 13352.5.

(4) Participate, for at least one year and in a manner satisfactory to the court, in a program approved pursuant to Chapter 9 (commencing with Section 11837) of Part 2 of Division 10.5 of the Health and Safety Code, as designated by the court.

SEC. 12. Section 23186 of the Vehicle Code, as amended by Section 25 of Assembly Bill No. 3405 of the 1981–82 Regular Session, is amended to read:

23186. If the court grants probation to any person punished under Section 23185, in addition to the provisions of Section 23206 and any other terms and conditions imposed by the court, the court shall impose as conditions of probation that the person be subject to all of the provisions of 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 seventy-five dollars ($375) 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.

(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 seventy-five dollars ($375) but not more than one thousand dollars ($1,000).

(3) Pursuant to Section 13352.5, have the privilege to operate a motor vehicle be suspended for one year by the Department of Motor Vehicles and, after that one-year period, have the privilege restricted by the department for two additional years to necessary travel to and from that person's place of employment, and to and from the treatment program described in paragraph (4) and, if driving a motor vehicle is necessary to perform the duties of the person's employment, restricted to driving in that person's scope of employment. The Department of Motor Vehicles shall not revoke the person's privilege to operate a motor vehicle under Section 13352, as provided in Section 13352.5.

(4) Participate, for at least one year and in a manner satisfactory to the court, in a program approved pursuant to Chapter 9 (commencing with Section 11837) of Part 2 of Division 10.5 of the Health and Safety Code, as designated by the court.

SEC. 13. Section 23187 of the Vehicle Code is amended to read:

23187. Notwithstanding the provisions of Section 23207, if any person has been granted probation under the conditions of subdivision (b) of Section 23186 and fails at any time to participate successfully in the treatment program described in paragraph (4) of that subdivision, the court shall revoke or terminate the probation, and the court may revoke or terminate the probation if the person failed to comply with any other term or condition of probation, and the court shall proceed under either of the following provisions:

(a) Revoke suspension of sentence and proceed as provided in subdivision (c) of Section 1203.2 of the Penal Code and order the

Department of Motor Vehicles to revoke the person's privilege to operate a motor vehicle pursuant to paragraph (4) of subdivision (a) of Section 13352 from the date of the order revoking or terminating probation.

(b) Grant a new term of probation on the condition that the person be confined in the county jail for at least 90 days and order the Department of Motor Vehicles to suspend the person's privilege to operate a motor vehicle pursuant to paragraph (4) of subdivision (a) of Section 13352 from the date of the new grant of probation.

SEC. 14. This act shall become operative on July 1, 1983.

SEC. 15. Notwithstanding Section 6 of Article XIII B of the California Constitution and Section 2231 or 2234 of the Revenue and Taxation Code, no appropriation is made by this act for the purpose of making reimbursement pursuant to these sections. It is recognized, however, that a local agency or school district may pursue any remedies to obtain reimbursement available to it under Chapter 3 (commencing with Section 2201) of Part 4 of Division 1 of that code.

SEC. 16. It is the intent of the Legislature, if this bill and Assembly Bill 3405 are both chaptered and become effective on or before January 1, 1983, both bills amend Section 13352.5 of the Vehicle Code, and this bill is chaptered after Assembly Bill 3405, that Section 13352.5 of the Vehicle Code, as amended by Section 6 of Assembly Bill 3405, be further amended on the operative date of this act in the form set forth in Section 7 of this act to incorporate the changes in Section 13352.5 of the Vehicle Code proposed by this bill. Therefore, if this bill and Assembly Bill 3405 are both chaptered and become effective on or before January 1, 1983, and Assembly Bill 3405 is chaptered before this bill and amends Section 13352.5 of the Vehicle Code, Section 7 of this act shall become operative on the operative date of this act, July 1, 1983, and Section 6 of this act shall not become operative.

SEC. 17. It is the intent of the Legislature, if this bill and Assembly Bill 3405 are both chaptered and become effective on or before January 1, 1983, both bills amend Section 23186 of the Vehicle Code, and this bill is chaptered after Assembly Bill 3405, that Section 23186 of the Vehicle Code, as amended by Section 25 of Assembly Bill 3405, be further amended on the operative date of this act in the form set forth in Section 12 of this act to incorporate the changes in Section 23186 of the Vehicle Code proposed by this bill. Therefore, if this bill and Assembly Bill 3405 are both chaptered and become effective on or before January 1, 1983, and Assembly Bill 3405 is chaptered before this bill and amends Section 23186 of the Vehicle Code, Section 12 of this act shall become operative on the operative date of this act, July 1, 1983, and Section 11 of this act shall not become operative.

CHAPTER 1339

An act to amend Section 1463.14 of the Penal code, and to amend Sections 12805, 13352.5, 13353, 13354, 13361, 13800, 14601, 14601.1, 14601.2, 23160, 23161, 23165, 23166, 23170, 23171, 23180, 23181, 23185, 23186, 23190, 23191, and 23211 of, and to add Sections 1660.5, 1660.6, and 23213 to, and to add and repeal Sections 1660.7 and 1660.8 of, the Vehicle Code, relating to driving offenses, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 23, 1982. Filed with Secretary of State September 24, 1982.]

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

SECTION 1. Section 1463.14 of the Penal Code, as amended by Chapter 331 of the Statutes of 1982, is amended to read:

1463.14. Notwithstanding the provisions of Section 1463, of the moneys deposited with the county treasurer pursuant to Section 1463, fifty dollars ($50) for each conviction of a violation of Section 23103, 23104, 23152, or 23153 of the Vehicle Code shall be deposited in a special account which shall be used exclusively to pay for the cost of performing for the county, or a city within the county, analysis of blood, breath or urine for alcohol content or for the presence of drugs, or for services related to that testing. The sum shall not exceed the reasonable cost of providing the services for which the sum is intended.

On November 1 of each year, the treasurer of each county shall determine those moneys in the special account which were not expended during the preceding fiscal year, and shall transfer those moneys into the general fund of the county. The county may retain an amount of that money equal to its administrative cost incurred pursuant to this section, and shall distribute the remainder pursuant to Section 1463.

The Department of Justice shall promulgate rules and regulations to implement the provisions of this section.

SEC. 1.5. Section 1660.5 is added to the Vehicle Code, to read:

1660.5. The Legislature finds that past research about the effectiveness of programs for persons convicted of a first offense of driving under the influence of an alcoholic beverage or any drug has, thus far, not provided information that would justify mandating any particular program design. For this reason, counties have been given autonomous responsibility for these first offender programs, so that a variety of program designs can be developed and evaluated. It is further the Legislature's finding that a statewide evaluation of these first offender programs is essential to determining and improving their effectiveness at increasing the safety of the people of California.

SEC. 2. Section 1660.6 is added to the Vehicle Code, to read:

1660.6. The Governor's Interdepartmental Advisory Council on

Alcohol, Drugs, and Traffic Safety shall conduct an evaluation, with component studies, of first offender programs. The council shall develop requests for proposals for the evaluation and shall report its findings to the Legislature on or before December 30, 1985. The council shall also complete and submit to the Legislature an interim report, on or before December 30, 1983, which summarizes the number of first offender programs by county, number of participants, cost per participant, and program design.

SEC. 3. Section 1660.7 is added to the Vehicle Code, to read:

1660.7. (a) The evaluation required by Section 1660.6 shall be funded exclusively through fees paid for participation in first offender programs. On and after July 1, 1983, each person attending such a program, in addition to any other fees, shall pay a fee to the county in an amount determined by the Office of Traffic Safety, as recommended by the Governor's Interdepartmental Advisory Council on Alcohol, Drugs, and Traffic Safety, to be sufficient to pay the costs of the evaluation, but not to exceed five dollars ($5). The fees collected by the county shall be transferred to, and deposited in, the First Offender Program Evaluation Fund, which is hereby created in the General Fund. The moneys in the First Offender Program Evaluation Fund shall be available upon appropriation by the Legislature to pay the costs of the evaluation by the Governor's council and the administration of the fund by the Office of Traffic Safety.

(b) Any other fees charged by a county for participation in a first offender program pursuant to subdivision (b) of Section 23161 or subdivision (b) of Section 23181, shall not be used by the county as a revenue source for any other service. Except as provided in subdivision (a), a county may charge and receive from persons participating in a first offender program or from providers of the program only the actual cost of direct service, supervision, and regulation of the first offender program in that county and any other general county levies, including, but not limited to, taxes, assessments, service charges and fees, which are levied on all or other persons and businesses in the county pursuant to other provisions of law.

(c) This section shall remain in effect only until July 1, 1986, and as of that date is repealed, unless a later enacted statute, which is chaptered before July 1, 1986, deletes or extends that date.

SEC. 4. Section 1660.8 is added to the Vehicle Code, to read:

1660.8. The money in the First Offender Program Evaluation Fund shall be used exclusively for purposes of evaluating first offender programs and the administration of the fund, and may be spent only upon appropriation of the Legislature through the Budget Act.

This section shall remain in effect only until July 1, 1986, and as of that date is repealed. Any remaining moneys in the fund at that time shall be transferred to the General Fund.

SEC. 5. Section 12805 of the Vehicle Code is amended to read:

12805. The department shall not issue a driver's license to, or renew a driver's license of, any person:

(a) Who is not of legal age to receive such license.

(b) Who, because of alcoholism or excessive and chronic use of alcoholic liquors, is incapable of safely operating a motor vehicle, or who is addicted to the use of, or is an habitual user of, any drug to a degree that the person is rendered incapable of safely operating a motor vehicle.

(c) Who has a disorder characterized by lapses of consciousness.

(d) Who is unable as shown by examination to understand traffic signs or signals or who does not have a reasonable knowledge of the provisions of this code governing the operations of vehicles upon the highways.

(e) When it is determined, by examination or other evidence, that the person is unable to safely operate a motor vehicle upon a highway (1) because of experiencing, within the last three years, either a lapse of consciousness or an episode of marked confusion caused by any condition which may bring about recurrent lapses or (2) because of any other disability, disease, or disorder or (3) because of lack of skill.

(f) Who is unable to read and understand simple English used in highway traffic and directional signs. The provisions of this subdivision shall not apply to any person holding an operator's or chauffeur's license issued by this state and valid on September 11, 1957.

(g) Who holds a valid driver's license issued by a foreign jurisdiction unless he surrenders that license to the department.

(h) Who has ever held, or is the holder of, a license to drive issued by another state, territory, or possession of the United States, the District of Columbia, or the Commonwealth of Puerto Rico, and that license has been suspended by reason, in whole or in part, of a conviction of a traffic violation, until the suspension period has terminated, except as provided in subdivision (c) of Section 12806.

(i) Who has ever held, or is the holder of a license to drive issued by another state, territory, or possession of the United States, the District of Columbia, or the Commonwealth of Puerto Rico, and that license has been revoked by reason, in whole or in part, of a conviction of a traffic violation until the revocation has been terminated or after the expiration of one year from the date the license was revoked, whichever occurs first, except as provided in subdivision (c) of Section 12806.

SEC. 6. Section 13352.5 of the Vehicle Code, as amended by Chapter 53 of the Statutes of 1982, is amended to read:

13352.5. (a) Unless ordered to do so by the court upon a finding that the terms and conditions of probation were violated, the department shall not suspend, pursuant to paragraph (3) of subdivision (a) of Section 13352, the privilege of any person to operate a motor vehicle upon a conviction or finding that the person violated Section 23152, but only if the court has certified to the

department that the court has granted probation to the person on conditions which include the conditions specified in subdivision (b) of Section 23166 and the court has restricted the privilege to operate a motor vehicle as provided in that subdivision.

(b) Unless ordered to do so by the court upon a finding that the terms and conditions of probation were violated, the department shall not revoke, pursuant to paragraph (4) of subdivision (a) of Section 13352, but shall suspend for one year, the privilege of any person to operate a motor vehicle upon a conviction or finding that the person violated Section 23153, but only if the court has certified to the department that the court has granted probation to the person on conditions which include the conditions specified in subdivision (b) of Section 23186, and the court has ordered the department to suspend the privilege to operate a motor vehicle as provided in that subdivision.

(c) All abstracts of record showing a conviction that are forwarded to the department pursuant to Section 1803 shall indicate whether the court has granted probation to the person on conditions which include the conditions specified in subdivision (b) of Section 23166 or subdivision (b) of Section 23186 and the court has restricted, or ordered the suspension of, the privilege to operate a motor vehicle as provided in those subdivisions.

SEC. 7. Section 13352.5 of the Vehicle Code, as amended by Section 6 of this act, is amended to read:

13352.5. (a) Unless ordered to do so by the court upon a finding that the terms and conditions of probation were violated, the department shall not suspend, pursuant to paragraph (3) of subdivision (a) of Section 13352, but shall restrict the privilege of any person to operate a motor vehicle upon a conviction or finding that the person violated Section 23152, but only if the court has certified to the department that the court has granted probation to the person on conditions which include the conditions specified in subdivision (b) of Section 23166 and the court has restricted the privilege to operate a motor vehicle as provided in that subdivision.

(b) Unless ordered to do so by the court upon a finding that the terms and conditions of probation were violated, the department shall not revoke, pursuant to paragraph (4) of subdivision (a) of Section 13352, but shall suspend for one year and, thereafter, restrict for two additional years, the privilege of any person to operate a motor vehicle upon a conviction or finding that the person violated Section 23153, but only if the court has certified to the department that the court has granted probation to the person on conditions which include the conditions specified in subdivision (b) of Section 23186, and the court has ordered the department to suspend the privilege to operate a motor vehicle as provided in that subdivision.

(c) The restriction of the driving privilege under subdivision (a) shall become effective 30 days from the date on which the person consented to participate in the program specified in subdivision (a), excluding any time of imprisonment ordered by the court, but only

if the person presents evidence satisfactory to the department that he or she is participating in the program specified in subdivision (b) of Section 23166 and pays fees to the department of fifteen dollars ($15) upon application for the restricted license and twenty dollars ($20) upon completion of the treatment program or upon application for an unrestricted license, whichever is sooner. If the person fails to pay the fee for a restricted license or the fee at the completion of the program or upon application for an unrestricted license, the Department of Motor Vehicles shall not issue a license. If the person fails to show evidence of participation within 30 days, excluding the time of imprisonment ordered by the court, the department shall suspend the driving privilege of the person for the time prescribed in paragraph (3) of subdivision (a) of Section 13352.

(d) The restriction of the driving privilege under subdivision (b) shall become effective 30 days from the end of the period of suspension, but only if the person presents evidence satisfactory to the department that he or she is participating in the program specified in subdivision (b) of Section 23186 and pays fees to the department of fifteen dollars ($15) upon application for the restricted license and twenty dollars ($20) upon completion of the treatment program or upon application for an unrestricted license, whichever is sooner. If the person fails to pay the fee for a restricted license or the fee at the completion of the program or upon application for an unrestricted license, the Department of Motor Vehicles shall not issue a license. If the person fails to show evidence of participation within 30 days from the end of the period of suspension, excluding any time of imprisonment ordered by the court to be served after the end of the period of suspension, the department shall revoke the driving privilege of the person for the time prescribed in paragraph (4) of subdivision (a) of Section 13352.

(e) The driving privilege restricted under subdivision (a) or (b) shall be limited to the hours for driving to and from the place of employment and during the course of employment and driving to and from activities required in an alcohol treatment program specified in subdivision (b) of Section 23166 or subdivision (b) of Section 23186. The department may set forth the times and days of restricted operation established by the court either on a special restricted license or upon the usual license form. The restriction shall continue in full force and effect until the person presents evidence satisfactory to the department that the person has completed the alcohol treatment program and has given proof of ability to respond in damages as defined in Section 16430. Except as provided in Section 23168, in no event shall the length of the restriction under subdivision (b) of Section 23166 or the total time of suspension and restriction under subdivision (b) of Section 23186 be for a period less than the applicable time period of suspension or revocation under paragraph (3) or (4) of subdivision (a) of Section 13352.

(f) Except as provided in this subdivision, the department shall suspend or revoke the driving privilege for the time prescribed in

paragraph (3) or (4) of subdivision (a) of Section 13352, 60 days from the date that the department notifies the person and the court of the intended action pursuant to subdivision (a) of Section 11837.1 of the Health and Safety Code, or the date ending the additional time ordered by the court under this subdivision, whichever is later. If the person presents evidence satisfactory to the department that the court of jurisdiction has consented to the person's reinstatement in the program, the department shall continue in effect the restriction granted under subdivision (c), unless the person has previously been reinstated in the program on two or more occasions, in which case the department shall suspend or revoke the driving privilege for the time prescribed in paragraph (3) or (4) of subdivision (a) of Section 13352. The evidence shall be presented within 45 days of the notice from the department of the intended action or such additional time, not to exceed an additional 45 days, for the determination as is required, ordered, and transmitted to the department by the court, which additional time is not caused by any action or failure to act by the person.

(g) All abstracts of record showing a conviction that are forwarded to the department pursuant to Section 1803 shall state whether the court has granted probation to the person on conditions which include the conditions specified in subdivision (b) of Section 23166 or subdivision (b) of Section 23186 and state the date on which the person consented to participate in the program.

(h) The department, in cooperation with the State Department of Alcohol and Drug Programs, shall adopt such regulations as it deems necessary to implement this section.

(i) This section shall become operative July 1, 1983.

SEC. 8. Section 13353 of the Vehicle Code, as amended by Chapter 53 of the Statutes of 1982, is amended to read:

13353. (a) (1) Any person who drives a motor vehicle shall be deemed to have given his or her consent to a chemical test of his or her blood, breath, or urine for the purpose of determining the alcoholic content of his or her blood if lawfully arrested for any offense allegedly committed in violation of Section 23152 or 23153. The test shall be incidental to a lawful arrest and administered at the direction of a peace officer having reasonable cause to believe the person was driving a motor vehicle in violation of Section 23152 or 23153. The person shall be told that his or her failure to submit to, or the noncompletion of, a chemical test will result in the suspension of the person's privilege to operate a motor vehicle for a period of six months, or for a period of one year if the person has previously been convicted of a violation of Section 23152, 23153, or 23103 as specified in Section 23103.5 within five years of the date of the refusal.

(2) The person arrested shall have the choice of whether the test shall be of his or her blood, breath, or urine, and the person shall be advised by the officer that he or she has such a choice. If the person arrested either is incapable, or states that he or she is incapable, of completing any chosen test, the person shall then have the choice of

submitting to and completing any of the remaining tests or test, and the person shall be advised by the officer that the person has that choice.

(3) If the person is lawfully arrested for an offense allegedly committed in violation of Section 23152 or 23153, and, because of the need for medical treatment, the person is first transported to a medical facility where it is not feasible to administer a particular test of, or to obtain a particular sample of, the person's blood, breath, or urine, the person shall have the choice of those tests which are available at the facility to which that person has been transported. In such an event, the officer shall advise the person of those tests which are available at the medical facility and that the person's choice is limited to those tests which are available.

(4) The person shall also be advised by the officer that he or she does not have the right to have an attorney present before stating whether he or she will submit to a test, before deciding which test to take, or during administration of the test chosen, and shall also be advised by the officer that, in the event of refusal to submit to a test, the refusal may be used against him or her in a court of law.

(5) Any person who is unconscious or otherwise in a condition rendering him or her incapable of refusal shall be deemed not to have withdrawn his or her consent and such a test may be administered whether or not the person is told that his or her failure to submit to, or the noncompletion of, the test will result in the suspension of his or her privilege to operate a motor vehicle. Any person who is dead shall be deemed not to have withdrawn his or her consent and such a test may be administered at the direction of a peace officer.

(b) If any person refuses the officer's request to submit to, or fails to complete, a chemical test, upon receipt of the officer's sworn statement that the officer had reasonable cause to believe the person had been driving a motor vehicle in violation of Section 23152 or 23153 and that the person had refused to submit to, or did not complete, the test after being requested by the officer, the department shall suspend the person's privilege to operate a motor vehicle for a period of six months, or for a period of one year if the person has previously been convicted of a violation of Section 23152, 23153, or 23103 as specified in Section 23103.5 within five years of the date of the refusal. The officer's sworn statement shall be submitted on a form furnished or approved by the department. No such suspension shall become effective until 10 days after the giving of written notice thereof, as provided for in subdivision (c).

(c) (1) The department shall immediately notify the person in writing of the action taken and, upon the person's request in writing and within 15 days from the date of receipt of that request, shall afford the person an opportunity for a hearing in the same manner and under the same conditions as provided in Article 3 (commencing with Section 14100) of Chapter 3. For the purposes of this section, the scope of the hearing shall cover the issues of whether the peace

officer had reasonable cause to believe the person had been driving a motor vehicle in violation of Section 23152 or 23153, whether the person was placed under arrest, whether the person refused to submit to, or did not complete, the test after being requested by a peace officer, and whether, except for the persons described in subdivision (a) who are incapable of refusing, the person had been told that his or her driving privilege would be suspended if he or she refused to submit to, or did not complete, the test.

(2) An application for a hearing made by the affected person within 10 days of receiving notice of the department's action shall operate to stay the suspension by the department for a period of 15 days during which time the department shall afford a hearing. If the department does not afford a hearing within 15 days, the suspension shall not take place until such time as the person is granted a hearing and is notified of the department's action as provided in paragraph (3). However, if the affected person requests that the hearing be continued to a date beyond the period of 15 days, the suspension shall become effective immediately upon receipt of the department's notice that the request for continuance has been granted.

(3) If the department determines upon a hearing of the matter to suspend the affected person's privilege to operate a motor vehicle, the suspension shall not become effective until five days after receipt by the person of the department's notification of that suspension.

(d) Any person who is afflicted with hemophilia shall be exempt from the blood test required by this section.

(e) Any person who is afflicted with a heart condition and is using an anticoagulant under the direction of a licensed physician and surgeon shall be exempt from the blood test required by this section.

(f) A person lawfully arrested for any offense allegedly committed while the person was driving a motor vehicle in violation of Section 23152 or 23153 may request the arresting officer to have a chemical test made of the arrested person's blood, breath, or urine for the purpose of determining the alcoholic content of that person's blood, and, if so requested, the arresting officer shall have the test performed.

SEC. 9. Section 13354 of the Vehicle Code is amended to read:

13354. (a) Only a physician, registered nurse, licensed vocational nurse, duly licensed clinical laboratory technologist or clinical laboratory bioanalyst, or certified paramedic acting at the request of a peace officer may withdraw blood for the purpose of determining the alcoholic content therein. This limitation shall not apply to the taking of breath specimens. An emergency call for paramedic services shall take precedence over a peace officer's request for a paramedic to withdraw blood for determining its alcoholic content. A certified paramedic shall not withdraw blood for this purpose unless authorized by his or her employer to do so.

(b) The person tested may, at his own expense, have a physician, registered nurse, licensed vocational nurse, duly licensed clinical laboratory technologist or clinical laboratory bioanalyst, or any other

person of his or her own choosing administer a test in addition to any test administered at the direction of a peace officer for the purpose of determining the amount of alcohol in his or her blood at the time alleged as shown by chemical analysis of his blood, breath, or urine. The failure or inability to obtain an additional test by a person shall not preclude the admissibility in evidence of the test taken at the direction of a peace officer.

(c) Upon the request of the person tested, full information concerning the test taken at the direction of the peace officer shall be made available to the person or the person's attorney.

(d) Notwithstanding any other provision of law, no physician, registered nurse, licensed vocational nurse, duly licensed clinical laboratory technologist or clinical laboratory bioanalyst, or certified paramedic, or hospital, laboratory, or clinic employing or utilizing the services of the physician, registered nurse, licensed vocational nurse, duly licensed laboratory technologist or clinical laboratory bioanalyst, or certified paramedic, owning or leasing the premises on which such tests are performed, shall incur any civil or criminal liability as a result of the administering of a blood test in a reasonable manner in a hospital, medical laboratory, or medical clinic environment, according to accepted medical practices, without violence by the person administering the test, and when requested in writing by a peace officer to administer such a test.

(e) If the test given under Section 13353 is a chemical test of urine, the person tested shall be given such privacy in the taking of the urine specimen as will ensure the accuracy of the specimen and, at the same time, maintain the dignity of the individual involved.

(f) The Department of the California Highway Patrol, in cooperation with the State Department of Health Services or any other appropriate agency, shall adopt uniform standards for the withdrawal, handling, and preservation of blood samples prior to analysis.

(g) As used in this section, "certified paramedic" does not include any employee of a fire department.

(h) Consent, waiver of liability, or the offering to, acceptance by or refusal of consent or waiver of liability by the person on whom such a test is administered, is not an issue or relevant to the immunity from liability for medical personnel or the medical facility under subdivision (d).

SEC. 10. Section 13361 of the Vehicle Code is amended to read:

13361. The department may suspend the privilege of any person to operate 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:

(a) Failure to stop in the event of an accident resulting in damage to property only, or otherwise failing to comply with the requirements of Section 20002.

(b) A second or subsequent conviction of reckless driving.

(c) Manslaughter resulting from the operation of a motor vehicle

as provided in paragraph (b) of subdivision 3 of Section 192 of the Penal Code.

In any case under this section the department is authorized to require proof of ability to respond in damages as defined in Section 16430.

SEC. 11. Section 13800 of the Vehicle Code is amended to read:

13800. The department may conduct an investigation to determine whether the privilege of any person to operate a motor vehicle should be suspended or revoked or whether terms or conditions of probation should be imposed upon receiving information or upon a showing by its records:

(a) That the licensee has been involved as a driver in any accident causing death or personal injury or serious damage to property.

(b) That the licensee has been involved in three or more accidents within a period of 12 consecutive months.

(c) That the person in three consecutive years has committed three or more offenses which have resulted in convictions involving the consumption of an alcoholic beverage or drug, or both, while operating a motor vehicle, including, but not limited to, offenses under Section 23103.5, 23152, 23153, 23222, or 23224; has been involved in three or more accidents in which the accident reports show that the person was driving and had consumed alcoholic beverages or drugs, or both; or had any combination of three or more of those offenses and accidents.

(d) That the licensee is a reckless, negligent, or incompetent driver of a motor vehicle.

(e) That the licensee has permitted an unlawful or fraudulent use of his driver's license.

(f) That any ground exists for which a license might be refused. The receipt by the department of an abstract of the record of conviction of any offense involving the use or possession of narcotic controlled substances under Division 10 (commencing with Section 11000) of the Health and Safety Code shall be a sufficient basis for an investigation by the department to determine whether grounds exist for which a license might be refused.

SEC. 12. Section 14601 of the Vehicle Code, as amended by Chapter 53 of the Statutes of 1982, is amended to read:

14601. (a) No person shall drive a motor vehicle at any time when that person's driving privilege is suspended or revoked for reckless driving in violation of Section 23103 or 23104, any reason listed in subdivisions (b) through (f) of Section 12805 requiring the department to refuse to issue a license, negligent or incompetent operation of a motor vehicle as prescribed in subdivision (e) of Section 12809, or negligent operation as prescribed in Section 12810, and when the person so driving has knowledge of the suspension or revocation. Knowledge shall be presumed if notice has been given by the department to the person. The presumption established by this subdivision is a presumption affecting the burden of proof.

(b) Any person convicted under this section shall be punished as

follows:

(1) Upon a first conviction, by imprisonment in the county jail for not less than five days nor more than six months and by fine of not more than five hundred dollars ($500).

(2) If the offense occurred within five years of a prior offense which resulted in a conviction of a violation of this section or Section 14601.1 or 14601.2, by imprisonment in the county jail for not less than 10 days nor more than one year and by fine of not more than one thousand dollars ($1,000).

(c) If the offense occurred within five years of a prior offense which resulted in a conviction of a violation of this section or Section 14601.1 or 14601.2 and is granted probation, the court shall impose as a condition of probation that the person be confined in the county jail for at least 10 days.

SEC. 13. Section 14601.1 of the Vehicle Code, as amended by Chapter 53 of the Statutes of 1982, is amended to read:

14601.1. (a) No person shall drive a motor vehicle when his or her driving privilege is suspended or revoked for any reason other than those listed in Section 14601 or 14601.2 and when the person so driving has knowledge of the suspension or revocation. Knowledge shall be presumed if notice has been given by the department to the person. The presumption established by this subdivision is a presumption affecting the burden of proof.

(b) Any person convicted under this section shall be punished as follows:

(1) Upon a first conviction, by imprisonment in the county jail for not more than six months or by a fine of not more than five hundred dollars ($500), or by both that fine and imprisonment.

(2) If the offense occurred within five years of a prior offense which resulted in a conviction of a violation of this section or Section 14601 or 14601.2, by imprisonment in the county jail for not less than five days nor more than one year and by a fine of not more than one thousand dollars ($1,000).

SEC. 14. Section 14601.2 of the Vehicle Code, as amended by Chapter 53 of the Statutes of 1982, is amended to read:

14601.2. (a) No person shall drive a motor vehicle at any time when that person's driving privilege is suspended or revoked for a conviction of a violation of Section 23152 or 23153, and when the person so driving has knowledge of the suspension or revocation.

(b) Except in full compliance with the restriction, no person shall drive a motor vehicle at any time when that person's driving privilege is restricted pursuant to Article 2 (commencing with Section 23151) of Chapter 12 of Division 11, and when the person so driving has knowledge of the restriction.

(c) Knowledge of suspension or revocation of the driving privilege shall be presumed if notice has been given by the department to the person and knowledge of restriction of the driving privilege shall be presumed if notice has been given by the court to the person. The presumption established by this subdivision is a

presumption affecting the burden of proof.

(d) Any person convicted of a violation of this section shall be punished as follows:

(1) Upon a first conviction, by imprisonment in the county jail for not less than 10 days nor more than six months and by a fine of not more than five hundred dollars ($500).

(2) If the offense occurred within five years of a prior offense which resulted in a conviction of a violation of this section or Section 14601, by imprisonment in the county jail for not less than 30 days nor more than one year and by a fine of not more than one thousand dollars ($1,000).

(e) If any person is convicted of a first offense under this section and is granted probation, the court shall impose as a condition of probation that the person be confined in the county jail for at least 10 days.

(f) If the offense occurred within five years of a prior offense which resulted in a conviction of a violation of this section or Section 14601 and is granted probation, the court shall impose as a condition of probation that the person be confined in the county jail for at least 30 days.

(g) If any person is convicted of a second or subsequent offense which results in a conviction of this section within seven years, but over five years, of a prior offense which resulted in a conviction of a violation of this section or Section 14601 or 14601.1 and is granted probation, the court shall impose as a condition of probation that the person be confined in the county jail for at least 10 days.

SEC. 15. Section 23160 of the Vehicle Code, as amended by Chapter 331 of the Statutes of 1982, is amended to read:

23160. (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 nor more than six months and by a fine of not less than three hundred ninety dollars ($390) nor more than five hundred dollars ($500).

(b) The court may order that any person punished under this section, 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.

(c) Except as provided in Section 23161, the court shall order the Department of Motor Vehicles to suspend the privilege to operate a motor vehicle of a person punished under this section for six months pursuant to paragraph (1) of subdivision (a) of Section 13352.

SEC. 16. Section 23161 of the Vehicle Code, as amended by Chapter 53 of the Statutes of 1982, is amended to read:

23161. (a) If the court grants probation to any person punished under Section 23160, in addition to the provisions of Section 23206 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 five hundred dollars ($500). The court may order the Department of Motor Vehicles to suspend the privilege to operate a motor vehicle pursuant to paragraph (1) of subdivision (a) of Section 13352 when this condition of probation is imposed.

(2) Pay a fine of at least three hundred ninety dollars ($390) but not more than five hundred dollars ($500) and 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 the treatment program described in subdivision (b) and, if driving a motor vehicle is necessary to perform the duties of the person's employment, restricted to driving in that person's scope of employment.

(b) 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 or drug education program, or both of these programs, as designated by the court.

(c) Each county which has approved and certified an alcohol or drug education program or programs shall make provision for persons who cannot afford the program fee, in order to enable those persons to participate.

(d) In order to assure effectiveness of the alcohol or drug education program, the county shall provide, as appropriate, services to ethnic minorities, women, youth, or any other group that has particular needs related to the program.

SEC. 17. Section 23165 of the Vehicle Code, as amended by Chapter 331 of the Statutes of 1982, is amended to read:

23165. If any person is convicted of a violation of Section 23152 and the offense occurred within five years of a prior offense which resulted in conviction of a violation of Section 23152 or 23153, or a prior offense which occurred on or after January 1, 1982, which resulted in a conviction of a violation of Section 23103 as specified in Section 23103.5, 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

SEC. 18. Section 23166 of the Vehicle Code, as amended by Chapter 53 of the Statutes of 1982, is amended to read:

23166. If the court grants probation to any person punished under Section 23165, in addition to the provisions of Section 23206 and any other terms and conditions imposed by the court, the court shall impose as conditions of probation that the person be subject to all of the provisions of 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.

(b) All of the following:

(1) Be confined in the county jail for at least 48 hours 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) Have the privilege to operate a motor vehicle be restricted for one year to necessary travel to and from that person's place of employment and to and from the treatment program described in paragraph (4) and, if driving a motor vehicle is necessary to perform the duties of the person's employment, restricted to driving in that person's scope of employment. The Department of Motor Vehicles shall not suspend the person's privilege to operate a motor vehicle under Section 13352, as provided in Section 13352.5.

(4) Participate, for at least one year and in a manner satisfactory to the court, in a program approved pursuant to Chapter 9 (commencing with Section 11837) of Part 2 of Division 10.5 of the Health and Safety Code, as designated by the court.

SEC. 19. Section 23166 of the Vehicle Code, as amended by Chapter 53 of the Statutes of 1982, is amended to read:

23166. If the court grants probation to any person punished under Section 23165, in addition to the provisions of Section 23206 and any other terms and conditions imposed by the court, the court shall impose as conditions of probation that the person be subject to all of the provisions of 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.

(b) All of the following:

(1) Be confined in the county jail for at least 48 hours 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) Have the privilege to operate a motor vehicle be restricted pursuant to Section 13352.5 for one year to necessary travel to and from that person's place of employment and to and from the treatment program described in paragraph (4) and, if driving a motor vehicle is necessary to perform the duties of the person's employment, restricted to driving in that person's scope of employment. The Department of Motor Vehicles shall not suspend the person's privilege to operate a motor vehicle under Section 13352, as provided in Section 13352.5.

(4) Participate, for at least one year and in a manner satisfactory to the court, in a program approved pursuant to Chapter 9 (commencing with Section 11837) of Part 2 of Division 10.5 of the Health and Safety Code, as designated by the court.

(c) This section shall become operative on July 1, 1983.

SEC. 20. Section 23170 of the Vehicle Code, as amended by Chapter 331 of the Statutes of 1982, is amended to read:

23170. If any person is convicted of a violation of Section 23152 and the offense occurred within five years of two or more prior offenses which resulted in convictions of violations of Section 23152 or 23153 or both, 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 pursuant to paragraph (5) of subdivision (a) of Section 13352.

SEC. 21. Section 23171 of the Vehicle Code, as amended by Chapter 53 of the Statutes of 1982, is amended to read:

23171. (a) If the court grants probation to any person punished under Section 23170, in addition to the provisions of Section 23206 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

(b) In addition to the provisions of Section 23206 and subdivision (a), if the court grants probation to any person punished under Section 23170 who has not previously successfully completed a treatment program pursuant to paragraph (4) of subdivision (b) of Section 23166 or paragraph (4) of subdivision (b) of Section 23186, the court shall impose as a condition of probation that the person participate, for a least one year and in a manner satisfactory to the court, in a program approved pursuant to Chapter 9 (commencing with Section 11837) of Part 2 of Division 10.5 of the Health and Safety Code, as designated by the court. Under no circumstances shall the additional condition of probation required pursuant to this subdivision be construed as a basis for reducing any other probation requirement in this section or Section 23206 or for avoiding the mandatory license revocation provisions of paragraph (5) of subdivision (a) of Section 13352.

SEC. 22. Section 23180 of the Vehicle Code, as amended by Chapter 331 of the Statutes of 1982, is amended to read:

23180. 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 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 (2) of subdivision (a) of Section 13352.

SEC. 23. Section 23181 of the Vehicle Code, as amended by Chapter 53 of the Statutes of 1982, is amended to read:

23181. (a) If the court grants probation to any person punished under Section 23180, in addition to the provisions of Section 23206 and any other terms and conditions imposed by the court, the court shall impose as a condition of probation that the person to 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.

(b) 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 or drug education program, as designated by the court.

(c) Each county which has approved and certified an alcohol or drug education program or programs shall make provision for persons who cannot afford the program fee, in order to enable those persons to participate.

(d) In order to assure effectiveness of the alcohol or drug education program, the county shall provide, as appropriate, services to ethnic minorities, women, youth, or any other group that has particular needs related to the program.

SEC. 24. Section 23185 of the Vehicle Code, as amended by Chapter 331 of the Statutes of 1982, is amended to read:

23185. If any person is convicted of a violation of Section 23153 and the offense occurred within five years of a prior offense which resulted in a conviction of a violation of Section 23152 or 23153, that person shall be punished by imprisonment in the state prison, or 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 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.

SEC. 25. Section 23186 of the Vehicle Code, as amended by Chapter 53 of the Statutes of 1982, is amended to read:

23186. If the court grants probation to any person punished under Section 23185, in addition to the provisions of Section 23206 and any other terms and conditions imposed by the court, the court shall impose as conditions of probation that the person be subject to

all of the provisions of 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.

(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) Have the privilege to operate a motor vehicle be suspended for one year by the Department of Motor Vehicles and, after that one-year period, have the privilege restricted for two additional years to necessary travel to and from that person's place of employment and to and from the treatment program described in paragraph (4) and, if driving a motor vehicle is necessary to perform the duties of the person's employment, restricted to driving in that person's scope of employment. The Department of Motor Vehicles shall not revoke the person's privilege to operate a motor vehicle under Section 13352, as provided in Section 13352.5.

(4) Participate, for at least one year and in a manner satisfactory to the court, in a program approved pursuant to Chapter 9 (commencing with Section 11837) of Part 2 of Division 10.5 of the Health and Safety Code, as designated by the court.

SEC. 26. Section 23186 of the Vehicle Code, as amended by Section 25, is amended to read:

23186. If the court grants probation to any person punished under Section 23185, in addition to the provisions of Section 23206 and any other terms and conditions imposed by the court, the court shall impose as conditions of probation that the person be subject to all of the provisions of 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.

(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) Pursuant to Section 13352.5, have the privilege to operate a motor vehicle be suspended for one year by the Department of Motor Vehicles and, after that one-year period, have the privilege restricted by the department for two additional years to necessary travel to and from that person's place of employment, and to and from the treatment program described in paragraph (4) and, if driving a motor vehicle is necessary to perform the duties of the

person's employment, restricted to driving in that person's scope of employment. The Department of Motor Vehicles shall not revoke the person's privilege to operate a motor vehicle under Section 13352, as provided in Section 13352.5.

(4) Participate, for at least one year and in a manner satisfactory to the court, in a program approved pursuant to Chapter 9 (commencing with Section 11837) of Part 2 of Division 10.5 of the Health and Safety Code, as designated by the court.

(c) This section shall become operative July 1, 1983.

SEC. 27. Section 23190 of the Vehicle Code, as amended by Chapter 331 of the Statutes of 1982, is amended to read:

23190. If any person is convicted of a violation of Section 23153 and the offense occurred within five years of two or more prior offenses which resulted in convictions of violations of Section 23152 or 23153 or both, 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.

SEC. 28. Section 23191 of the Vehicle Code, as amended by Chapter 53 of the Statutes of 1982, is amended to read:

23191. (a) If the court grants probation to any person punished under Section 23190, in addition to the provisions of Section 23206 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.

(b) In addition to the provisions of Section 23206 and subdivision (a), if the court grants probation to any person punished under Section 23190 who has not previously successfully completed a treatment program pursuant to paragraph (4) of subdivision (b) of Section 23166 or paragraph (4) of subdivision (b) of Section 23186, the court shall impose as a condition of probation that the person participate, for at least one year and in a manner satisfactory to the court, in a program approved pursuant to Chapter 9 (commencing with Section 11837) of Part 2 of Division 10.5 of the Health and Safety Code, as designated by the court. Under no circumstances shall the additional condition of probation required pursuant to this subdivision be construed as a basis for reducing any other probation requirement in this section or Section 23206 or for avoiding the mandatory license revocation provisions of paragraph (6) of subdivision (a) of Section 13352.

SEC. 29. Section 23211 of the Vehicle Code, as amended by

Chapter 53 of the Statutes of 1982, is amended to read:

23211. A court shall not order or refer any person to any program, including an alcohol or drug education program or a program approved pursuant to Chapter 9 (commencing with Section 11837) of Part 2 of Division 10.5 of the Health and Safety Code, or to a provider of such a program, in which any employee of the court has a direct or indirect economic interest.

SEC. 30. Section 23213 is added to the Vehicle Code, to read:

23213. No patient or other person residing in a social rehabilitation facility licensed pursuant to Chapter 3 (commencing with Section 1500) of Division 2 of the Health and Safety Code for the rehabilitation of persons who have abused alcohol or drugs, shall have a motor vehicle registered in the name of that patient or person on or near the premises of that facility unless the patient or person has an operator's license issued pursuant to this code which is not suspended or revoked.

SEC. 31. No appropriation is made and no reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution or Section 2231 or 2234 of the Revenue and Taxation Code because the only costs which may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, changes the definition of a crime or infraction, changes the penalty for a crime or infraction, or eliminates a crime or infraction.

SEC. 32. It is the intent of the Legislature, if this bill and Senate Bill 1601 are both chaptered and become effective on or before January 1, 1983, both bills amend Section 13352.5 of the Vehicle Code, and this bill is chaptered after Senate Bill 1601, that Section 13352.5 of the Vehicle Code, as amended by Section 6 of this act, shall remain operative until July 1, 1983, and that, on July 1, 1983, Section 13352.5 of the Vehicle Code, as amended by Section 6 of this act, be further amended in the form set forth in Section 7 of this act to incorporate the changes in Section 13352.5 proposed by Senate Bill 1601. Therefore, if this bill and Senate Bill 1601 are both chaptered and become effective on or before January 1, 1983, and Senate Bill 1601 is chaptered before this bill and amends Section 13352.5 of the Vehicle Code, Section 7 of this act shall become operative on July 1, 1983.

SEC. 33. It is the intent of the Legislature, if this bill and Senate Bill 1601 are both chaptered and become effective on or before January 1, 1983, both bills amend Section 23166 of the Vehicle Code, and this bill is chaptered after Senate Bill 1601, that Section 23166 of the Vehicle Code, as amended by Section 21 of this act, shall remain operative until July 1, 1983, and that on July 1, 1983, Section 23166 of the Vehicle Code, as amended by Section 18 of this act, be further amended in the form set forth in Section 19 of this act to incorporate the changes in Section 23166 proposed by Senate Bill 1601. Therefore, if this bill and Senate Bill 1601 are both chaptered and become effective on or before January 1, 1983, and Senate Bill 1601 is

chaptered before this bill and amends Section 23166 of the Vehicle Code, Section 19 of this act shall become operative on July 1, 1983.

SEC. 34. It is the intent of the Legislature, if this bill and Senate Bill 1601 are both chaptered and become effective on or before January 1, 1983, both bills amend Section 23186 of the Vehicle Code, and this bill is chaptered after Senate Bill 1601, that Section 23186 of the Vehicle Code, as amended by Section 25 of this act, shall remain operative until July 1, 1983, and that on July 1, 1983, Section 23186 of the Vehicle Code, as amended by Section 25 of this act, be further amended in the form set forth in Section 26 of this act to incorporate the changes in Section 23186 proposed by Senate Bill 1601. Therefore, if this bill and Senate Bill 1601 are both chaptered and become effective on or before January 1, 1983, and Senate Bill 1601 is chaptered before this bill and amends Section 23186 of the Vehicle Code, Section 26 of this act shall become operative on July 1, 1983.

SEC. 35. 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 deter persons from evading the blood alcohol tests as a means of evading prosecution for driving under the influence, and to correct erroneous emissions in prior urgency statutes, it is necessary that this bill take effect immediately.

CHAPTER 1340

An act to amend Section 13353 of the Vehicle Code, relating to vehicles.

[Approved by Governor September 23, 1982. Filed with Secretary of State September 24, 1982]

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

SECTION 1. Section 13353 of the Vehicle Code, as amended by Chapter 53 of the Statutes of 1982, is amended to read:

13353. (a) (1) Any person who drives a motor vehicle shall be deemed to have given his or her consent to chemical testing of his or her blood, breath, or urine for the purpose of determining the alcoholic content of his or her blood, and to have given his or her consent to chemical testing of his or her blood or urine for the purpose of determining the drug content of his or her blood, if lawfully arrested for any offense allegedly committed in violation of Section 23152 or 23153. The testing shall be incidental to a lawful arrest and administered at the direction of a peace officer having reasonable cause to believe the person was driving a motor vehicle in violation of Section 23152 or 23153. The person shall be told that his or her failure to submit to, or the noncompletion of, the required

chemical testing will result in the suspension of the person's privilege to operate a motor vehicle for a period of six months.

(2) (A) If the person is lawfully arrested for driving under the influence of an alcoholic beverage, the person shall have the choice of whether the test shall be of his or her blood, breath, or urine, and the person shall be advised by the officer that he or she has such a choice. If the person arrested either is incapable, or states that he or she is incapable, of completing any chosen test, the person shall then have the choice of submitting to and completing any of the remaining tests or test, and the person shall be advised by the officer that the person has that choice.

(B) If the person is lawfully arrested for driving under the influence of any drug or the combined influence of an alcoholic beverage and any drug, the person shall have the choice of whether the test shall be of his or her blood, breath, or urine, and the person shall be advised by the officer that he or she has that choice.

A person who chooses to submit to a breath test may also be required to submit to a blood or urine test if the officer has reasonable cause to believe that the person was driving under the influence of any drug or the combined influence of an alcoholic beverage and any drug and if the officer has a clear indication that a blood or urine test will reveal evidence of the person being under the influence. The officer shall state in his or her report the facts upon which that belief and that clear indication are based. The person shall have the choice of submitting to and completing a blood or urine test, and shall be advised by the officer that he or she is required to submit to an additional test and that he or she may choose a test of either blood or urine. If the person arrested either is incapable, or states that he or she is incapable, of completing either chosen test, the person shall then have the choice of submitting to and completing the other remaining test, and the person shall be advised by the officer that the person has that choice.

(3) If the person is lawfully arrested for an offense allegedly committed in violation of Section 23152 or 23153, and, because of the need for medical treatment, the person is first transported to a medical facility where it is not feasible to administer a particular test of, or to obtain a particular sample of, the person's blood, breath, or urine, the person shall have the choice of those tests which are available at the facility to which that person has been transported. In such an event, the officer shall advise the person of those tests which are available at the medical facility and that the person's choice is limited to those tests which are available.

(4) The person shall also be advised by the officer that he or she does not have the right to have an attorney present before stating whether he or she will submit to a test or tests, before deciding which test or tests to take, or during administration of the test or tests chosen, and shall also be advised by the officer that, in the event of refusal to submit to a test or tests, the refusal may be used against him or her in a court of law.

(5) Any person who is unconscious or otherwise in a condition rendering him or her incapable of refusal shall be deemed not to have withdrawn his or her consent and such a test or tests may be administered whether or not the person is told that his or her failure to submit to, or the noncompletion of, the test or tests will result in the suspension of his or her privilege to operate a motor vehicle. Any person who is dead shall be deemed not to have withdrawn his or her consent and such a test or tests may be administered at the direction of a peace officer.

(b) If any person refuses the officer's request to submit to, or fails to complete, a chemical test or tests, upon receipt of the officer's sworn statement that the officer had reasonable cause to believe the person had been driving a motor vehicle in violation of Section 23152 or 23153 and that the person had refused to submit to, or did not complete, the test or tests after being requested by the officer, the department shall suspend the person's privilege to operate a motor vehicle for a period of six months. The officer's sworn statement shall be submitted on a form furnished or approved by the department. No such suspension shall become effective until 10 days after the giving of written notice thereof, as provided for in subdivision (c).

(c) (1) The department shall immediately notify the person in writing of the action taken and, upon the person's request in writing and within 15 days from the date of receipt of that request, shall afford the person an opportunity for a hearing in the same manner and under the same conditions as provided in Article 3 (commencing with Section 14100) of Chapter 3. For the purposes of this section, the scope of the hearing shall cover the issues of whether the peace officer had reasonable cause to believe the person had been driving a motor vehicle in violation of Section 23152 or 23153, whether the person was placed under arrest, whether the person refused to submit to, or did not complete, the test or tests after being requested by a peace officer, and whether, except for the persons described in subdivision (a) who are incapable of refusing, the person had been told that his or her driving privilege would be suspended if he or she refused to submit to, or did not complete, the test or tests.

(2) An application for a hearing made by the affected person within 10 days of receiving notice of the department's action shall operate to stay the suspension by the department for a period of 15 days during which time the department shall afford a hearing. If the department does not afford a hearing within 15 days, the suspension shall not take place until such time as the person is granted a hearing and is notified of the department's action as provided in paragraph (3). However, if the affected person requests that the hearing be continued to a date beyond the 15-day period, the suspension shall become effective immediately upon receipt of the department's notice that the request for continuance has been granted.

(3) If the department determines upon a hearing of the matter to suspend the affected person's privilege to operate a motor vehicle, the suspension shall not become effective until five days after receipt

by the person of the department's notification of that suspension.

(d) Any person who is afflicted with hemophilia shall be exempt from the blood test required by this section.

(e) Any person who is afflicted with a heart condition and is using an anticoagulant under the direction of a licensed physician and surgeon shall be exempt from the blood test required by this section.

(f) A person lawfully arrested for any offense allegedly committed while the person was driving a motor vehicle in violation of Section 23152 or 23153 may request the arresting officer to have a chemical test made of the arrested person's blood, breath, or urine for the purpose of determining the alcoholic content of that person's blood, and, if so requested, the arresting officer shall have the test performed.

(g) This section shall become operative July 1, 1983.

CHAPTER 1341

An act to amend Section 13353 of the Vehicle Code, relating to drivers' licenses.

[Approved by Governor September 23, 1982. Filed with Secretary of State September 24, 1982]

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

SECTION 1. Section 13353 of the Vehicle Code, as amended by Chapter 53 of the Statutes of 1982, is amended to read:

13353. (a) (1) Any person who drives a motor vehicle shall be deemed to have given his or her consent to a chemical test of his or her blood, breath, or urine for the purpose of determining the alcoholic content of his or her blood if lawfully arrested for any offense allegedly committed in violation of Section 23152 or 23153. The test shall be incidental to a lawful arrest and administered at the direction of a peace officer having reasonable cause to believe the person was driving a motor vehicle in violation of Section 23152 or 23153. The person shall be told that his or her failure to submit to, or the noncompletion of, a chemical test will result in the suspension of the person's privilege to operate a motor vehicle for a period of six months.

(2) The person arrested shall have the choice of whether the test shall be of his or her blood, breath, or urine, and the person shall be advised by the officer that he or she has such a choice. If the person arrested either is incapable, or states that he or she is incapable, of completing any chosen test, the person shall then have the choice of submitting to and completing any of the remaining tests or test, and the person shall be advised by the officer that the person has that choice.

(3) If the person is lawfully arrested for an offense allegedly

committed in violation of Section 23152 or 23153, and, because of the need for medical treatment, the person is first transported to a medical facility where it is not feasible to administer a particular test of, or to obtain a particular sample of, the person's blood, breath, or urine, the person shall have the choice of those tests which are available at the facility to which that person has been transported. In such an event, the officer shall advise the person of those tests which are available at the medical facility and that the person's choice is limited to those tests which are available.

(4) The person shall also be advised by the officer that he or she does not have the right to have an attorney present before stating whether he or she will submit to a test, before deciding which test to take, or during administration of the test chosen, and shall also be advised by the officer that, in the event of refusal to submit to a test, the refusal may be used against him or her in a court of law.

(5) Any person who is unconscious or otherwise in a condition rendering him or her incapable of refusal shall be deemed not to have withdrawn his or her consent and such a test may be administered whether or not the person is told that his or her failure to submit to, or the noncompletion of, the test will result in the suspension of his or her privilege to operate a motor vehicle. Any person who is dead shall be deemed not to have withdrawn his or her consent and such a test may be administered at the direction of a peace officer.

(b) If any person refuses the officer's request to submit to, or fails to complete, a chemical test, upon receipt of the officer's sworn statement that the officer had reasonable cause to believe the person had been driving a motor vehicle in violation of Section 23152 or 23153 and that the person had refused to submit to, or did not complete, the test after being requested by the officer, the department shall suspend the person's privilege to operate a motor vehicle for a period of six months. The officer's sworn statement shall be submitted on a form furnished or approved by the department. No such suspension shall become effective until 10 days after the giving of written notice thereof, as provided for in subdivision (c).

(c) (1) The department shall immediately notify the person in writing of the action taken and, upon the person's request in writing and within 15 days from the date of receipt of that request, shall afford the person an opportunity for a hearing in the same manner and under the same conditions as provided in Article 3 (commencing with Section 14100) of Chapter 3, except as otherwise provided in this section. For the purposes of this section, the scope of the hearing shall cover the issues of whether the peace officer had reasonable cause to believe the person had been driving a motor vehicle in violation of Section 23152 or 23153, whether the person was placed under arrest, whether the person refused to submit to, or did not complete, the test after being requested by a peace officer, and whether, except for the persons described in subdivision (a) who are incapable of refusing, the person had been told that his or her driving

privilege would be suspended if he or she refused to submit to, or did not complete, the test.

(2) An application for a hearing made by the affected person within 10 days of receiving notice of the department's action shall operate to stay the suspension by the department for a period of 15 days. The department shall, within the period of 15 days, hold a hearing in the county in which the violation occurred. If the department does not afford a hearing within 15 days, the suspension shall not take place until such time as the person is granted a hearing and is notified of the department's action as provided in paragraph (3). If the county in which the violation occurred is also the county of the person's residence, and the person requests that the hearing be continued to a date beyond the period of 15 days, the suspension shall become effective immediately upon receipt of the department's notice that the request for continuance has been granted. If the hearing is to be held in a county other than the county of the person's residence, the department shall, upon request, grant the person a continuance of up to 15 days, and shall not suspend the license until after that time.

(3) If the department determines upon a hearing of the matter to suspend the affected person's privilege to operate a motor vehicle, the suspension shall not become effective until five days after receipt by the person of the department's notification of that suspension.

(d) Any person who is afflicted with hemophilia shall be exempt from the blood test required by this section.

(e) Any person who is afflicted with a heart condition and is using an anticoagulant under the direction of a licensed physician and surgeon shall be exempt from the blood test required by this section.

(f) A person lawfully arrested for any offense allegedly committed while the person was driving a motor vehicle in violation of Section 23152 or 23153 may request the arresting officer to have a chemical test made of the arrested person's blood, breath, or urine for the purpose of determining the alcoholic content of that person's blood, and, if so requested, the arresting officer shall have the test performed.

SEC. 2. Section 13353 of the Vehicle Code, as amended by Chapter 53 of the Statutes of 1982, is amended to read:

13353. (a) (1) Any person who drives a motor vehicle shall be deemed to have given his or her consent to chemical testing of his or her blood, breath, or urine for the purpose of determining the alcoholic content of his or her blood, and to have given his or her consent to chemical testing of his or her blood or urine for the purpose of determining the drug content of his or her blood, if lawfully arrested for any offense allegedly committed in violation of Section 23152 or 23153. The testing shall be incidental to a lawful arrest and administered at the direction of a peace officer having reasonable cause to believe the person was driving a motor vehicle in violation of Section 23152 or 23153. The person shall be told that his or her failure to submit to, or the noncompletion of, the required

chemical testing will result in the suspension of the person's privilege to operate a motor vehicle for a period of six months.

(2) (A) If the person is lawfully arrested for driving under the influence of an alcoholic beverage, the person shall have the choice of whether the test shall be of his or her blood, breath, or urine, and the person shall be advised by the officer that he or she has such a choice. If the person arrested either is incapable, or states that he or she is incapable, of completing any chosen test, the person shall then have the choice of submitting to and completing any of the remaining tests or test, and the person shall be advised by the officer that the person has that choice.

(B) If the person is lawfully arrested for driving under the influence of any drug or the combined influence of an alcoholic beverage and any drug, the person shall have the choice of whether the test shall be of his or her blood, breath, or urine, and the person shall be advised by the officer that he or she has that choice.

A person who chooses to submit to a breath test may also be required to submit to a blood or urine test if the officer has reasonable cause to believe that the person was driving under the influence of any drug or the combined influence of an alcoholic beverage and any drug and if the officer has a clear indication that a blood or urine test will reveal evidence of the person being under the influence. The officer shall state in his or her report the facts upon which that belief and that clear indication are based. The person shall have the choice of submitting to and completing a blood or urine test, and shall be advised by the officer that he or she is required to submit to an additional test and that he or she may choose a test of either blood or urine. If the person arrested either is incapable, or states that he or she is incapable, of completing either chosen test, the person shall then have the choice of submitting to and completing the other remaining test, and the person shall be advised by the officer that the person has that choice.

(3) If the person is lawfully arrested for an offense allegedly committed in violation of Section 23152 or 23153, and, because of the need for medical treatment, the person is first transported to a medical facility where it is not feasible to administer a particular test of, or to obtain a particular sample of, the person's blood, breath, or urine, the person shall have the choice of those tests which are available at the facility to which that person has been transported. In such an event, the officer shall advise the person of those tests which are available at the medical facility and that the person's choice is limited to those tests which are available.

(4) The person shall also be advised by the officer that he or she does not have the right to have an attorney present before stating whether he or she will submit to a test or tests, before deciding which test or tests to take, or during administration of the test or tests chosen, and shall also be advised by the officer that, in the event of refusal to submit to a test or tests, the refusal may be used against him or her in a court of law.

(5) Any person who is unconscious or otherwise in a condition rendering him or her incapable of refusal shall be deemed not to have withdrawn his or her consent and such a test or tests may be administered whether or not the person is told that his or her failure to submit to, or the noncompletion of, the test or tests will result in the suspension of his or her privilege to operate a motor vehicle. Any person who is dead shall be deemed not to have withdrawn his or her consent and such a test or tests may be administered at the direction of a peace officer.

(b) If any person refuses the officer's request to submit to, or fails to complete, a chemical test or tests, upon receipt of the officer's sworn statement that the officer had reasonable cause to believe the person had been driving a motor vehicle in violation of Section 23152 or 23153 and that the person had refused to submit to, or did not complete, the test or tests after being requested by the officer, the department shall suspend the person's privilege to operate a motor vehicle for a period of six months. The officer's sworn statement shall be submitted on a form furnished or approved by the department. No such suspension shall become effective until 10 days after the giving of written notice thereof, as provided for in subdivision (c).

(c) (1) The department shall immediately notify the person in writing of the action taken and, upon the person's request in writing and within 15 days from the date of receipt of that request, shall afford the person an opportunity for a hearing in the same manner and under the same conditions as provided in Article 3 (commencing with Section 14100) of Chapter 3, except as otherwise provided in this section. For the purposes of this section, the scope of the hearing shall cover the issues of whether the peace officer had reasonable cause to believe the person had been driving a motor vehicle in violation of Section 23152 or 23153, whether the person was placed under arrest, whether the person refused to submit to, or did not complete, the test or tests after being requested by a peace officer, and whether, except for the persons described in subdivision (a) who are incapable of refusing, the person had been told that his or her driving privilege would be suspended if he or she refused to submit to, or did not complete, the test or tests.

(2) An application for a hearing made by the affected person within 10 days of receiving notice of the department's action shall operate to stay the suspension by the department for a period of 15 days. The department shall, within the period of 15 days, hold a hearing in the county in which the violation occurred. If the department does not afford a hearing within 15 days, the suspension shall not take place until such time as the person is granted a hearing and is notified of the department's action as provided in paragraph (3). If the county in which the violation occurred is also the county of the person's residence, and the person requests that the hearing be continued to a date beyond the period of 15 days, the suspension shall become effective immediately upon receipt of the department's notice that the request for continuance has been

granted. If the hearing is to be held in a county other than the county of the person's residence, the department shall, upon request, grant the person a continuance of up to 15 days, and shall not suspend the license until after that time.

(3) If the department determines upon a hearing of the matter to suspend the affected person's privilege to operate a motor vehicle, the suspension shall not become effective until five days after receipt by the person of the department's notification of that suspension.

(d) Any person who is afflicted with hemophilia shall be exempt from the blood test required by this section.

(e) Any person who is afflicted with a heart condition and is using an anticoagulant under the direction of a licensed physician and surgeon shall be exempt from the blood test required by this section.

(f) A person lawfully arrested for any offense allegedly committed while the person was driving a motor vehicle in violation of Section 23152 or 23153 may request the arresting officer to have a chemical test made of the arrested person's blood, breath, or urine for the purpose of determining the alcoholic content of that person's blood, and, if so requested, the arresting officer shall have the test performed.

(g) This section shall become operative July 1, 1983.

SEC. 3. Section 13353 of the Vehicle Code, as amended by Chapter 53 of the Statutes of 1982, is amended to read:

13353. (a) (1) Any person who drives a motor vehicle shall be deemed to have given his or her consent to a chemical test of his or her blood, breath, or urine for the purpose of determining the alcoholic content of his or her blood if lawfully arrested for any offense allegedly committed in violation of Section 23152 or 23153. The test shall be incidental to a lawful arrest and administered at the direction of a peace officer having reasonable cause to believe the person was driving a motor vehicle in violation of Section 23152 or 23153. The person shall be told that his or her failure to submit to, or the noncompletion of, a chemical test will result in the suspension of the person's privilege to operate a motor vehicle for a period of six months, or for a period of one year if the person has previously been convicted of a violation of Section 23152, 23153, or 23103 as specified in Section 23103 5 within five years of the date of the refusal.

(2) The person arrested shall have the choice of whether the test shall be of his or her blood, breath, or urine, and the person shall be advised by the officer that he or she has such a choice. If the person arrested either is incapable, or states that he or she is incapable, of completing any chosen test, the person shall then have the choice of submitting to and completing any of the remaining tests or test, and the person shall be advised by the officer that the person has that choice.

(3) If the person is lawfully arrested for an offense allegedly committed in violation of Section 23152 or 23153, and, because of the need for medical treatment, the person is first transported to a medical facility where it is not feasible to administer a particular test

of, or to obtain a particular sample of, the person's blood, breath, or urine, the person shall have the choice of those tests which are available at the facility to which that person has been transported. In such an event, the officer shall advise the person of those tests which are available at the medical facility and that the person's choice is limited to those tests which are available.

(4) The person shall also be advised by the officer that he or she does not have the right to have an attorney present before stating whether he or she will submit to a test, before deciding which test to take, or during administration of the test chosen, and shall also be advised by the officer that, in the event of refusal to submit to a test, the refusal may be used against him or her in a court of law.

(5) Any person who is unconscious or otherwise in a condition rendering him or her incapable of refusal shall be deemed not to have withdrawn his or her consent and such a test may be administered whether or not the person is told that his or her failure to submit to, or the noncompletion of, the test will result in the suspension of his or her privilege to operate a motor vehicle. Any person who is dead shall be deemed not to have withdrawn his or her consent and such a test may be administered at the direction of a peace officer.

(b) If any person refuses the officer's request to submit to, or fails to complete, a chemical test, upon receipt of the officer's sworn statement that the officer had reasonable cause to believe the person had been driving a motor vehicle in violation of Section 23152 or 23153 and that the person had refused to submit to, or did not complete, the test after being requested by the officer, the department shall suspend the person's privilege to operate a motor vehicle for a period of six months, or for a period of one year if the person has previously been convicted of a violation of Section 23152, 23153, or 23103 as specified in Section 23103.5 within five years of the date of the refusal. The officer's sworn statement shall be submitted on a form furnished or approved by the department. No such suspension shall become effective until 10 days after the giving of written notice thereof, as provided for in subdivision (c).

(c) (1) The department shall immediately notify the person in writing of the action taken and, upon the person's request in writing and within 15 days from the date of receipt of that request, shall afford the person an opportunity for a hearing in the same manner and under the same conditions as provided in Article 3 (commencing with Section 14100) of Chapter 3, except as otherwise provided in this section. For the purposes of this section, the scope of the hearing shall cover the issues of whether the peace officer had reasonable cause to believe the person had been driving a motor vehicle in violation of Section 23152 or 23153, whether the person was placed under arrest, whether the person refused to submit to, or did not complete, the test after being requested by a peace officer, and whether, except for the persons described in subdivision (a) who are incapable of refusing, the person had been told that his or her driving

privilege would be suspended if he or she refused to submit to, or did not complete, the test.

(2) An application for a hearing made by the affected person within 10 days of receiving notice of the department's action shall operate to stay the suspension by the department for a period of 15 days. The department shall, within the period of 15 days, hold a hearing in the county in which the violation occurred. If the department does not afford a hearing within 15 days, the suspension shall not take place until such time as the person is granted a hearing and is notified of the department's action as provided in paragraph (3). If the county in which the violation occurred is also the county of the person's residence, and the person requests that the hearing be continued to a date beyond the period of 15 days, the suspension shall become effective immediately upon receipt of the department's notice that the request for continuance has been granted. If the hearing is to be held in a county other than the county of the person's residence, the department shall, upon request, grant the person a continuance of up to 15 days, and shall not suspend the license until after that time.

(3) If the department determines upon a hearing of the matter to suspend the affected person's privilege to operate a motor vehicle, the suspension shall not become effective until five days after receipt by the person of the department's notification of that suspension.

(d) Any person who is afflicted with hemophilia shall be exempt from the blood test required by this section.

(e) Any person who is afflicted with a heart condition and is using an anticoagulant under the direction of a licensed physician and surgeon shall be exempt from the blood test required by this section.

(f) A person lawfully arrested for any offense allegedly committed while the person was driving a motor vehicle in violation of Section 23152 or 23153 may request the arresting officer to have a chemical test made of the arrested person's blood, breath, or urine for the purpose of determining the alcoholic content of that person's blood, and, if so requested, the arresting officer shall have the test performed.

SEC. 4. Section 13353 of the Vehicle Code, as amended by Chapter 53 of the Statutes of 1982, is amended to read:

13353. (a) (1) Any person who drives a motor vehicle shall be deemed to have given his or her consent to chemical testing of his or her blood, breath, or urine for the purpose of determining the alcoholic content of his or her blood, and to have given his or her consent to chemical testing of his or her blood or urine for the purpose of determining the drug content of his or her blood, if lawfully arrested for any offense allegedly committed in violation of Section 23152 or 23153. The testing shall be incidental to a lawful arrest and administered at the direction of a peace officer having reasonable cause to believe the person was driving a motor vehicle in violation of Section 23152 or 23153. The person shall be told that his or her failure to submit to, or the noncompletion of, the required

chemical testing will result in the suspension of the person's privilege to operate a motor vehicle for a period of six months, or for a period of one year if the person has previously been convicted of a violation of Section 23152, 23153, or 23103 as specified in Section 23103.5 within five years of the date of the refusal.

(2) (A) If the person is lawfully arrested for driving under the influence of an alcoholic beverage, the person shall have the choice of whether the test shall be of his or her blood, breath, or urine, and the person shall be advised by the officer that he or she has such a choice. If the person arrested either is incapable, or states that he or she is incapable, of completing any chosen test, the person shall then have the choice of submitting to and completing any of the remaining tests or test, and the person shall be advised by the officer that the person has that choice.

(B) If the person is lawfully arrested for driving under the influence of any drug or the combined influence of an alcoholic beverage and any drug, the person shall have the choice of whether the test shall be of his or her blood, breath, or urine, and the person shall be advised by the officer that he or she has that choice.

A person who chooses to submit to a breath test may also be required to submit to a blood or urine test if the officer has reasonable cause to believe that the person was driving under the influence of any drug or the combined influence of an alcoholic beverage and any drug and if the officer has a clear indication that a blood or urine test will reveal evidence of the person being under the influence. The officer shall state in his or her report the facts upon which that belief and that clear indication are based. The person shall have the choice of submitting to and completing a blood or urine test, and shall be advised by the officer that he or she is required to submit to an additional test and that he or she may choose a test of either blood or urine. If the person arrested either is incapable, or states that he or she is incapable, of completing either chosen test, the person shall then have the choice of submitting to and completing the other remaining test, and the person shall be advised by the officer that the person has that choice.

(3) If the person is lawfully arrested for an offense allegedly committed in violation of Section 23152 or 23153, and, because of the need for medical treatment, the person is first transported to a medical facility where it is not feasible to administer a particular test of, or to obtain a particular sample of, the person's blood, breath, or urine, the person shall have the choice of those tests which are available at the facility to which that person has been transported. In such an event, the officer shall advise the person of those tests which are available at the medical facility and that the person's choice is limited to those tests which are available.

(4) The person shall also be advised by the officer that he or she does not have the right to have an attorney present before stating whether he or she will submit to a test or tests, before deciding which test or tests to take, or during administration of the test or tests

chosen, and shall also be advised by the officer that, in the event of refusal to submit to a test or tests, the refusal may be used against him or her in a court of law.

(5) Any person who is unconscious or otherwise in a condition rendering him or her incapable of refusal shall be deemed not to have withdrawn his or her consent and such a test or tests may be administered whether or not the person is told that his or her failure to submit to, or the noncompletion of, the test or tests will result in the suspension of his or her privilege to operate a motor vehicle. Any person who is dead shall be deemed not to have withdrawn his or her consent and such a test or tests may be administered at the direction of a peace officer.

(b) If any person refuses the officer's request to submit to, or fails to complete, a chemical test or tests, upon receipt of the officer's sworn statement that the officer had reasonable cause to believe the person had been driving a motor vehicle in violation of Section 23152 or 23153 and that the person had refused to submit to, or did not complete, the test or tests after being requested by the officer, the department shall suspend the person's privilege to operate a motor vehicle for a period of six months, or for a period of one year if the person has previously been convicted of a violation of Section 23152, 23153, or 23103 as specified in Section 23103.5 within five years of the date of the refusal. The officer's sworn statement shall be submitted on a form furnished or approved by the department. No such suspension shall become effective until 10 days after the giving of written notice thereof, as provided for in subdivision (c).

(c) (1) The department shall immediately notify the person in writing of the action taken and, upon the person's request in writing and within 15 days from the date of receipt of that request, shall afford the person an opportunity for a hearing in the same manner and under the same conditions as provided in Article 3 (commencing with Section 14100) of Chapter 3, except as otherwise provided in this section. For the purposes of this section, the scope of the hearing shall cover the issues of whether the peace officer had reasonable cause to believe the person had been driving a motor vehicle in violation of Section 23152 or 23153, whether the person was placed under arrest, whether the person refused to submit to, or did not complete, the test or tests after being requested by a peace officer, and whether, except for the persons described in subdivision (a) who are incapable of refusing, the person had been told that his or her driving privilege would be suspended if he or she refused to submit to, or did not complete, the test or tests.

(2) An application for a hearing made by the affected person within 10 days of receiving notice of the department's action shall operate to stay the suspension by the department for a period of 15 days. The department shall, within the period of 15 days, hold a hearing in the county in which the violation occurred. If the department does not afford a hearing within 15 days, the suspension shall not take place until such time as the person is granted a hearing

and is notified of the department's action as provided in paragraph (3). If the county in which the violation occurred is also the county of the person's residence, and the person requests that the hearing be continued to a date beyond the period of 15 days, the suspension shall become effective immediately upon receipt of the department's notice that the request for continuance has been granted. If the hearing is to be held in a county other than the county of the person's residence, the department shall, upon request, grant the person a continuance of up to 15 days, and shall not suspend the license until after that time.

(3) If the department determines upon a hearing of the matter to suspend the affected person's privilege to operate a motor vehicle, the suspension shall not become effective until five days after receipt by the person of the department's notification of that suspension.

(d) Any person who is afflicted with hemophilia shall be exempt from the blood test required by this section.

(e) Any person who is afflicted with a heart condition and is using an anticoagulant under the direction of a licensed physician and surgeon shall be exempt from the blood test required by this section.

(f) A person lawfully arrested for any offense allegedly committed while the person was driving a motor vehicle in violation of Section 23152 or 23153 may request the arresting officer to have a chemical test made of the arrested person's blood, breath, or urine for the purpose of determining the alcoholic content of that person's blood, and, if so requested, the arresting officer shall have the test performed.

(g) This section shall become operative July 1, 1983.

SEC. 5. It is the intent of the Legislature that if this bill and Assembly Bill 3348 or Assembly Bill 3405, or both, are chaptered and become effective on or before January 1, 1983, each of the bills amends Section 13353 of the Vehicle Code, and this bill is chaptered last, that amendments proposed by each of the bills which are chaptered be given effect as follows:

(1) If this bill and Assembly Bill 3348 are both chaptered and become effective January 1, 1983, both bills amend Section 13353 of the Vehicle Code, but Assembly Bill 3405 is not chaptered or as chaptered does not amend that section, and this bill is chaptered after Assembly Bill 3348, the amendments proposed by both bills shall be given effect and incorporated in Section 13353 in the form set forth in Section 2 of this act to become operative on the operative date of Assembly Bill 3348. Therefore, if this bill and Assembly Bill 3348 are both chaptered and become effective January 1, 1983, both bills amend Section 13353, this bill is chaptered after Assembly Bill 3348, and Assembly Bill 3405 is not chaptered or as chaptered does not amend that section, Section 1 of this act is repealed on July 1, 1983, Section 2 of this act shall become operative on July 1, 1983, and Sections 3 and 4 of this act shall not become operative.

(2) If this bill and Assembly Bill 3405 are both chaptered and become effective on or before January 1, 1983, both bills amend

Section 13353 of the Vehicle Code, but Assembly Bill 3348 is not chaptered or as chaptered does not amend that section, and this bill is chaptered after Assembly Bill 3405, the amendments proposed by both bills shall be given effect and incorporated in Section 13353 in the form set forth in Section 3 of this act. Therefore, if this bill and Assembly Bill 3405 are both chaptered and become effective on or before January 1, 1983, both bills amend Section 13353, this bill is chaptered after Assembly Bill 3405, and Assembly Bill 3348 is not chaptered or as chaptered does not amend that section, Section 3 shall become operative and Sections 1, 2, and 4 of this act shall not become operative.

(3) If this bill and Assembly Bill 3348 and Assembly Bill 3405 are all chaptered and become effective on or before January 1, 1983, all three bills amend Section 13353 of the Vehicle Code, and this bill is chaptered after Assembly Bill 3348 and Assembly Bill 3405, the amendments proposed by all three bills shall be given effect and incorporated in Section 13353 in the form set forth in Sections 3 and 4 of this act. Therefore, if this bill and Assembly Bill 3348 and Assembly Bill 3405 are all chaptered and become effective on or before January 1, 1983, all three bills amend Section 13353 of the Vehicle Code, and this bill is chaptered after Assembly Bill 3348 and Assembly Bill 3405, Section 3 of this act shall become operative and remain in effect until July 1, 1983, and on that date is repealed, Section 4 of this act shall become operative on July 1, 1983, and Sections 1 and 2 of this act shall not become operative.

CHAPTER 1342

An act to amend Section 593d of the Penal Code, relating to unauthorized cable television connections.

[Approved by Governor September 23, 1982. Filed with Secretary of State September 24, 1982.]

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

SECTION 1. Section 593d of the Penal Code is amended to read:

593d. (a) Every person who knowingly and willfully makes or maintains an unauthorized connection or connections, whether physically, electrically, or inductively, or purchases, possesses, attaches or maintains the attachment of any unauthorized device or devices to any cable, wire or other component of a franchised or otherwise duly licensed cable television system or to a television cable or set, or makes or maintains any modification or alteration to any device installed with the authorization of a franchised or otherwise duly licensed cable television system, for the purpose of intercepting or receiving any program or other service carried by a franchised or otherwise duly licensed cable television system which

such person is not authorized by that cable television system to receive, is guilty of a misdemeanor punishable by a fine not exceeding one thousand dollars ($1,000), or by imprisonment in the county jail not exceeding 90 days, or both. For the purposes of this section, each such purchase, possession, connection or attachment shall constitute a separate violation of this section.

(b) Every person who, without the express authorization of a franchised or other duly licensed cable television system, knowingly and willfully manufactures, imports into this state, distributes, sells, offers to sell, possesses for sale, or advertises for sale any device, or any plan or kit for a device or for a printed circuit, designed in whole or in part to decode, descramble or otherwise make intelligible any encoded, scrambled or other nonstandard signal carried by that cable television system, is guilty of a misdemeanor punishable by a fine not exceeding ten thousand dollars ($10,000) or by imprisonment in the county jail, or both. For the purpose of this subdivision, "encoded, scrambled or other nonstandard signal" shall include, without limitation, any type of signal or transmission that is not intended to produce an intelligible program or service without the aid of a decoder, descrambler, filter, trap or some similar device. A second or subsequent conviction is punishable by a fine not exceeding twenty thousand dollars ($20,000) or by imprisonment in the county jail for up to one year, or both.

(c) Any person who violates the provisions of this section shall be liable to the franchised or otherwise duly licensed cable television system for the greater of the following amounts:

(1) Five thousand dollars ($5,000).

(2) Three times the amount of actual damages, if any, sustained by the plaintiff, plus reasonable attorney's fees.

(d) Any franchised or otherwise duly licensed cable television system may, in accordance with the provisions of Chapter 3 (commencing with Section 525) of Title 7 of Part 2 of the Code of Civil Procedure, bring an action to enjoin and restrain any violation of this section, and may in the same action seek damages as provided in subdivision (c).

(e) It is not a necessary prerequisite to an action pursuant to this section that the plaintiff has suffered, or be threatened with, actual damages.

SEC. 2. No appropriation is made and no reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution or Section 2231 or 2234 of the Revenue and Taxation Code because the only costs which may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, changes the definition of a crime or infraction, changes the penalty for a crime or infraction, or eliminates a crime or infraction.

CHAPTER 1343

An act to amend Section 16367 of, to add and repeal Section 16367.2 of, and to add Article 7 (commencing with Section 53130) to Chapter 1 of Part 1 of Division 2 of Title 5 of, and to repeal and add Section 16366.7 to, the Government Code, relating to fiscal affairs.

[Approved by Governor September 23, 1982. Filed with Secretary of State September 24, 1982.]

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 federal government has enacted and is proposing significant changes in the structure and funding of social services by eliminating or greatly reducing many categorical grants and consolidating them into block grants to be administered by the state.

(b) Interim legislation for the receipt and distribution of federal block grants for the 1981–82 fiscal year was enacted by Chapter 1186 of the Statutes of 1981.

(c) Additional legislation for the 1982–83 fiscal year is necessary to aid in the continuing transition in the structure and funding of social services.

(d) This legislation must preserve quality services whenever possible, despite reductions in federal funding and economic downturns. Even though there may be drastic reductions in funds, there are not commensurate reductions in persons' needs.

(e) When reductions in service must be made, there must be an orderly, protective transition process which recognizes human dignity among both the service population and the workers who serve them. Both the service population and the workers must have a substantial role in targeting reductions and deciding how reductions will be implemented.

(f) It is necessary that the mechanism for the delivery of services be brought as close as possible to the people being served, provided that these services satisfy state standards and basic protections are observed.

(g) Critical data regarding numerous block grant programs does not exist at the present time. This information is essential before a major redistribution of block grant funds can be done on an informed basis.

SEC. 2. The Legislature directs the state to assume administrative responsibility for the following federal block grants in the 1982–83 state fiscal year:

(a) Preventative health and health services, effective July 1, 1982.

(b) Maternal and child health, effective July 1, 1982.

(c) Alcohol, drug abuse and mental health services, effective July 1, 1982.

(d) Community services, effective October 1, 1982.

(e) Community development block grant, effective October 1, 1982.

SEC. 3. Due to substantial state matching requirements, the Legislature directs the state to not assume the primary care block grant.

SEC. 4. To the extent it is not in conflict with the actions taken in the Budget Act of 1982, Section 16366.6 of the Government Code shall remain in effect during the 1982–83 fiscal year or until separate legislation is enacted.

SEC. 5. The assignment of administrative responsibilities to specific state departments shall be determined as part of the annual budget process.

SEC. 6. Section 16366.7 of the Government Code is repealed.

SEC. 7. Section 16366.7 is added to the Government Code, to read:

16366.7. Since federal block grant funds were reduced by an average of 26 percent during the 1981–82 fiscal year and are proposed for further reductions during the 1982–83 fiscal year, the Legislature declares that the state's administrative costs and processes must be reduced in order to insure that maximum funds are available to continue essential direct human services.

Therefore, notwithstanding any other provision of law, all of the following state procedures shall be implemented within 60 days after the effective date of this section:

(a) All state agencies, offices, or departments administering federal block grant funds shall have the authority, subject to the approval of the Department of Finance, to grant advance payments of federal funds to contractors or local governmental agencies in such amounts as the administering state department deems necessary for start-up or continued provision of services or program operation.

(b) Departmental service contracts utilizing federal block grant funds shall be exempt from approval by the Department of Finance and the State Department of General Services prior to their execution. Instead, the proper state fiscal controls over federal block grant funds shall be insured by all of the following provisions:

(1) State departments which award block grant funds to local agencies shall permit, as appropriate, to the extent that federal funds are available for this purpose, local agencies to provide for federally mandated financial and compliance audits of block grant awards in accordance with the federal audit provisions and standards promulgated by the Comptroller General of the United States, and consistent with the department's approved audit plan.

(2) The Department of Finance, in consultation with the Controller, shall establish fiscal reporting requirements for the departments to use on a quarterly basis with all providers

(3) In the event a contractor has not engaged in a contract for these program purposes before with the state, state administering departments shall have the authority to conduct a preaudit or fund

a preaudit by the Controller in order to certify the ability of the contractor to administer the funds.

(4) The Auditor General shall provide audit findings regarding each block grant to the Legislature no later than May 1 of each year.

(c) Each administering state department shall develop standard definitions for units of service, costs per unit of service, citizen participation processes, and due process notification for clients in relation to diminishing federal funds within 60 days after the effective date of this section and shall incorporate all of these elements into each agreement or contract.

(d) Administering state departments shall prepare a report to the Legislature each year no later than the date of the submission of the Governor's Budget proposal to the Legislature summarizing current year funding and allocations relative to their service populations, identify and analyze problems and develop a series of program options for the continued administration of federal block grant funds.

(e) The Health and Welfare Agency shall review departmental annual reports and shall develop an annual report to the Legislature each year no later than the date of the submission of the Governor's Budget proposal to the Legislature identifying options and recommendations for integrating block grants.

(f) To the extent possible, compliance with this section shall be consistent with federal policies and procedures. Reports required under this section shall be combined, where practical, with any other similar reports required by the Legislature and by the federal government.

SEC. 8. Section 16367 of the Government Code, as amended by Chapter 228 of the Statutes of 1982, is amended to read:

16367. (a) There is hereby established a block grant advisory task force, referred to in this article as the task force, which shall remain in existence until July 1, 1984.

(b) The membership of the task force shall be comprised of the following persons:

(1) The Chairperson of the Senate Committee on Finance.

(2) The Chairperson of the Assembly Committee on Ways and Means.

(3) The Director of Finance.

(4) Five persons appointed by the Senate Committee on Rules. Two of the persons appointed shall be registered with the majority political party of the membership of the Senate and one person appointed shall be registered with the largest minority political party of the membership of the Senate. One person shall be appointed who is disabled.

(5) Five persons appointed by the Speaker of the Assembly. Two of the persons appointed shall be registered with the majority political party of the membership of the Assembly and one person appointed shall be registered with the largest minority political party of the membership of the Assembly. One person shall be appointed who is over the age of 55.

(6) Five persons appointed by the Governor. Two of the persons appointed shall be registered with the same political party as the Governor and one person appointed shall be registered with the same political party of the candidate who received the second highest number of votes for Governor in the last gubernatorial election. One person shall be appointed who is an American Indian.

Three of each of the five appointments to be made by the Speaker of the Assembly, the Senate Committee on Rules, and the Governor shall be members of the populations currently served by categorical programs or board members of private nonprofit community-based organizations currently serving categorical populations, or both. The appointing powers shall ensure that the interests of counties are represented on the task force and may appoint county representatives to three of the remaining positions. Each appointee shall be knowledgeable in the administration and operation of the programs consolidated into block grants. In addition, each appointee shall be selected on the basis of expertise in a substantive area covered by block grants, so that each area is represented. The appointing powers shall ensure that there is geographic balance in determining the composition of the task force. Each appointed member of the task force shall serve at the pleasure of the respective appointing power of the member. Appointments made pursuant to paragraphs (4), (5), and (6) shall be made within 30 days of the effective date of the statute which enacted this section, or in the case of an amendment to this subdivision, 30 days from the effective date of the amendment.

(c) Within 30 days of the effective date of this article, the task force shall meet and elect a chairperson.

(d) The task force shall do all of the following:

(1) Gather information, provide communication outreach, and hold public hearings on program performance, service, population needs, delivery systems, and fiscal management.

(2) Solicit community input and gather information from organizations and community programs representing providers and consumers who are potential block grant fund recipients and hold public hearings on program performance, service, population needs, delivery systems, and fiscal management.

(3) Prepare recommendations for legislative policy deliberations no later than February 1, 1983, and February 1, 1984, which include all of the following subject items:

(A) Integration of block grant programs with existing state and local programs.

(B) Decisionmaking responsibility at both the state and local level, including involvement of community nonprofit agencies.

(C) Method of funding allocations.

(D) The coordination of the transfer of responsibility for administration of categorical programs from the federal to state government which shall include the transfer to the state of all information related to program management and categorical

population needs.

(E) Proposed use of block grant funds to be received by the state, pursuant to the requirement of Section 1742(a) of the federal Omnibus Budget Reconciliation Act of 1981 or subsequent federal block grant legislation, including all of the following:

(i) A statement of goals and objectives.

(ii) Information on the types of activities to be supported, geographic areas to be served, and categories or characteristics of individuals to be served.

(iii) The criteria and method established for the distribution of the funds, including details of how the distribution of funds will be targeted on the basis of need to achieve the purposes of the block grant funds and yearend reports regarding the expansion in which block grant funds were expended.

(F) As a special part of its 1983 and 1984 reports, the task force shall provide a detailed analysis of which level of government can perform the variety of administrative functions most effectively in relation to the needs of the population served. The reports shall include analyses on both a generalized as well as specific basis in relation to each block grant. Functions to be reviewed shall include, but not be limited to, planning, provider selection, contracts management, and fiscal as well as program monitoring and evaluation.

In preparation for these reports, the task force shall identify and consult with the communities, clients, and populations served by each block grant in order to identify models of effective program administration. The task force shall solicit for collection correspondence that identifies effective models of program administration from community programs, clients and populations served by each block grant.

(G) Effective methods of monitoring state and local agency compliance with this article.

(H) Options and appropriate actions related to transferring funds between and within block grants.

SEC. 9. Section 16367.2 is added to the Government Code, to read:

16367.2. (a) There is hereby created in the State Treasury the Federal Block Grant Fund, to which there is allocated one hundred thirty-five thousand dollars ($135,000) from those federal block grant funds designated by the Budget Act of 1982 for block grant administrative costs incurred by administering state agencies.

(b) The appropriation by the Budget Act of 1982 to each administering state agency for federal block grant administrative costs shall be reduced by a proportionate share for allocation to the Federal Block Grant Fund pursuant to subdivision (a), with the exception of the Education and Community Development block grants.

(c) The sum of one hundred thirty-five thousand dollars ($135,000) is hereby appropriated from the Federal Block Grant

Fund to the Controller for disbursement in support of the block grant advisory task force under Section 16367 during the 1982–83 fiscal year.

It is the intent of the Legislature that there exist an operating expense budget to cover the operational costs of the block grant advisory task force required pursuant to Article 1.7 (commencing with Section 16366.1). These costs shall include, but are not limited to, staffing, operating expenses, per diem, public notice, and printing costs.

(d) This section shall remain in effect only until July 1, 1984, and as of that date is repealed.

SEC. 10. Article 7 (commencing with Section 53130) is added to Chapter 1 of Part 1 of Division 2 of Title 5 of the Government Code, to read:

Article 7. Federally Mandated Audits of Block Grant Funds Allocated to Local Agencies

53130. In connection with federal block grant funds which require mandated financial and compliance auditing, the Legislature finds that there is limited coordination of audits among federal, state, and local auditors and independent public accountants auditing local agencies, which may result in overlaps and gaps in audit coverage.

The Legislature further finds that it is essential to establish audit procedures that conform to the standards of independence and quality contained within the federal Standards for Audit of Governmental Organizations, Programs, Activities and Functions.

Therefore, it is the intent of the Legislature to promote audit coordination by designating the agencies listed in Section 12430 as responsible for assuring that local agencies provide for or otherwise adhere to federally mandated financial and compliance audit requirements for block grant funds allocated to them.

53131. As used in this article:

(a) "Qualified state and local government auditors" means those auditors employed by state and local governments that meet the independence requirements set forth in the federal Standards for Audit of Governmental Organizations, Programs, Activities and Functions.

(b) "Independent public accountants" means a certified public accountant, or a public accountant who is licensed by the State Board of Accountancy who holds a valid permit to practice accountancy.

(c) "Local agency" means a city, county, city and county, special district, joint-powers agency, public corporation, nonprofit corporation, or any other agency that is eligible to receive federal block grant funds.

(d) "State department" means that state organization designated by law or agreement that allocates block grant funds to local agencies or is otherwise responsible for administering block grant funds.

(e) "Financial and compliance audit" means an audit that

complies with the financial and compliance audit requirements of the Standards for Audit of Governmental Organizations, Programs, Activities and Functions published by the United States General Accounting Office.

Organization-wide financial and compliance audits required by Federal Office of Management and Budget Circulars A-102 and A-110 are acceptable for this purpose.

53132. State departments shall identify and provide to the Controller listings of all agreements allocating block grant funds to local agencies.

53133. The Controller shall identify and make available to local agencies federally mandated financial and compliance block grant audit requirements.

53134. (a) Local agencies shall have the option, pursuant to the provisions of Section 53135, to provide for federally mandated financial and compliance audits of block grant funds received from state departments. If, however, a local agency does not elect to, or fails to provide for, federally mandated financial and compliance audits, or if it is determined by the administering state department that a local agency warrants assistance in this function, the state department shall notify the Controller, and the Controller shall identify appropriate methods for accomplishing federally required audits.

The decision of the Controller shall be based upon use of any existing state audit relationship, whenever appropriate in view of federal requirements, so as to avoid duplication and excess costs.

(b) The state shall rely on the audit arranged by the local agency if the audit is conducted in accordance with the standards promulgated by the state consistent with federal policy. Additional work shall not duplicate these audits and shall be conducted only upon approval of the Controller in consultation with the Department of Finance and the Auditor General.

(c) Audits performed pursuant to this article shall be conducted not less frequently than every two years, or as specified by federal law, by qualified state or local government auditors or independent public accountants in accordance with the financial and compliance requirements of federal Standards for Audit of Governmental Organizations, Programs, Activities and Functions. These audits shall be completed no later than six months after the close of the audit period. If the provisions of this subdivision have not been met, the Controller shall immediately notify the Governor and the Legislature as to what corrective actions it intends to take.

(d) The Controller shall annually report to the Legislature and the Governor the status of federally mandated financial and compliance audits of block grants allocated by state departments to local agencies.

53135. State agencies administering federal block grant programs shall prepare audit plans based on audit plan guidelines developed no later than December 1, 1982, by the agencies listed in Section

12430.

The audit plan guidelines shall include, but not be limited to, provisions for the contractor to obtain independent federally mandated audits of block grant funds, preaudit conditions, and compliance indicators. The departmental audit plans shall give preference to utilization of existing audit relationships where consistent with federal independence standards.

State agencies shall prepare their audit plans for review and approval by the agencies listed in Section 12430 in a timely fashion and contract provisions shall be incorporated into all existing contracts no later than February 1, 1983. Plans shall be adopted annually each fiscal year thereafter no later than October 1.

53136. The Controller shall assure that audits conducted in accordance with this article meet the federal audit requirements provided pursuant to block grant laws and regulations.

53137. The Controller shall review and monitor audit report findings to determine that both state and local entities have taken appropriate corrective action, or shall make recommendations to state departments for corrective action, including recovery and referral for legal action, as appropriate.

53138. The Controller, the Department of Finance, the Auditor General's office, or other state department auditors may perform audit activities pursuant to this article insofar as the standards of independence contained in the federal Standards for Audit of Governmental Organizations, Programs, Activities and Functions are met.

SEC. 11. Pursuant to the federal laws and regulations governing the state's administration of block grant funds, up to 1 percent of the funds for each federal block grant shall be made available for the purpose of financing the provisions of Article 7 (commencing with Section 53130) of Chapter 1 of Part 1 of Division 2 of Title 5 of the Government Code, including preaudits and federally mandated audits of block grant funds.

It is the intent of the Legislature that no additional state General Fund moneys shall be used for this purpose.

All expenditures of these funds shall be made upon the completion of the audits and audit-related activities prescribed in this act. However, the Department of Finance may waive this provision if undue hardship would be created to a local agency.

All planned disbursements for audit purposes to local agencies, as well as state costs for each block grant, shall be separately identified in the Governor's proposed Budget submitted to the Legislature each January.

SEC. 12. The provisions of this act shall not be construed as a limitation on individual state agencies to conduct additional audits to meet program needs, and the Legislature may appropriate any amount in the annual Budget which it deems necessary to carry out program audits.

CHAPTER 1344

An act to add Chapter 8.3 (commencing with Section 3700) to Division 2 of the Business and Professions Code, relating to respiratory therapists, and making an appropriation therefor.

[Approved by Governor September 23, 1982. Filed with Secretary of State September 24, 1982.]

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

SECTION 1. Chapter 8.3 (commencing with Section 3700) is added to Division 2 of the Business and Professions Code, to read:

CHAPTER 8.3. RESPIRATORY THERAPY

Article 1. General Provisions

3700. This chapter may be cited as the "Respiratory Care Practice Act."

3701. The Legislature finds and declares that the practice of respiratory care in California affects the public health, safety, and welfare and is to be subject to regulation and control in the public interest to protect the public from the unauthorized and unqualified practice of respiratory care and from unprofessional conduct by persons certified to practice respiratory care. The Legislature also recognizes the practice of respiratory care to be a dynamic and changing art and science, the practice of which is continually evolving to include newer ideas and more sophisticated techniques in patient care.

It is the intent of the Legislature in this chapter to provide clear legal authority for functions and procedures which have common acceptance and usage. It is the intent also to recognize the existence of overlapping functions between physicians and surgeons, registered nurses, physical therapists, respiratory care practitioners, and other licensed health care personnel, and to permit additional sharing of functions within organized health care systems. The organized health care systems include, but are not limited to, health facilities licensed pursuant to Chapter 2 (commencing with Section 1250) of Division 2 of the Health and Safety Code, clinics, home health agencies, physicians' offices, and public or community health services.

3702. Respiratory care as a practice means a health care profession employed under the supervision of a medical director in the therapy, management, rehabilitation, diagnostic evaluation, and care of patients with deficiencies and abnormalities which affect the pulmonary system and associated aspects of cardiopulmonary and other systems functions, and includes all of the following:

(a) Direct and indirect pulmonary care services that are safe,

aseptic, preventative, and restorative to the patient.

(b) Direct and indirect respiratory care services, including but not limited to, the administration of pharmacological and diagnostic and therapeutic agents related to respiratory care procedures necessary to implement a treatment, disease prevention, pulmonary rehabilitative or diagnostic regimen prescribed by a physician and surgeon.

(c) Observation and monitoring of signs and symptoms, general behavior, general physical response to respiratory care treatment and diagnostic testing and (1) determination of whether such signs, symptoms, reactions, behavior or general response exhibit abnormal characteristics; (2) implementation based on observed abnormalities of appropriate reporting or referral or respiratory care protocols, or changes in treatment regimen, pursuant to a prescription by a physician and surgeon or the initiation of emergency procedures.

(d) The diagnostic and theraputic use of any of the following, in accordance with the prescription of a physician and surgeon: administration of medical gases, exclusive of general anesthesia; aerosols; humidification; environmental control systems and baromedical therapy; pharmacologic agents related to respiratory care procedures; mechanical or physiological ventilatory support; bronchopulmonary hygiene; cardiopulmonary resuscitation; maintenance of the natural airways; insertion without cutting tissues and maintenance of artificial airways; diagnostic and testing techniques required for implementation of respiratory care protocols; collection of specimens of blood; collection of specimens from the respiratory tract; analysis of blood gases and respiratory secretions.

(e) The transcription and implementation of the written and verbal orders of a physician and surgeon pertaining to the practice of respiratory care.

"Respiratory care protocols" as used in this section means policies and protocols developed by a licensed health facility through collaboration, when appropriate, with administrators, physicians and surgeons, registered nurses, physical therapists, respiratory care practitioners, and other licensed health care practitioners.

3703. The practice of respiratory care may be performed in hospitals, ambulatory or in-home care, and other settings where respiratory care is provided under the supervision of a medical director in accordance with a prescription of a physician and surgeon. In addition, respiratory care can be provided during the transportation of a patient, and under any circumstances where an emergency necessitates respiratory care.

3704. As used in this chapter, these terms shall be defined as follows:

(a) "Board" means the Division of Allied Health Professions of the Board of Medical Quality Assurance of the State of California.

(b) "Department" means the Department of Consumer Affairs.

(c) "Examining committee" means the Respiratory Care

Examining Committee.

(d) "Medical director" means a physician and surgeon who is a member of a health care facility's active medical staff and who is knowledgeable in respiratory care.

(e) "Respiratory care" includes "respiratory therapy" or "inhalation therapy," where those terms mean respiratory care.

(f) "Respiratory therapy training program" means a program approved by the examining committee.

3705. Nothing in this chapter shall be construed as authorizing a respiratory care practitioner to practice medicine, surgery, or any other form of healing, except as authorized by this chapter.

3706. A person certified under this chapter who in good faith renders emergency care at the scene of an emergency which occurs outside both the place and the course of employment shall not be liable for any civil damages as the result of acts or omissions by the person in rendering the emergency care.

This section does not grant immunity from civil damages when the person is grossly negligent.

Article 2. Administration

3710. There is hereby created within the jurisdiction of the board, a Respiratory Care Examining Committee, hereinafter referred to as the examining committee. The examining committee shall enforce and administer the provisions of this chapter.

3711. The members of the examining committee shall be the following: two physician and surgeons, four respiratory care practitioners, each of whom shall have practiced respiratory care and three public members who shall not be certified by the examining committee.

3712. The members of the examining committee shall be appointed as follows:

(a) Two respiratory care practitioners and one public member shall be appointed by the Speaker of the Assembly.

(b) One physician and surgeon, one respiratory care practitioner, and one public member shall be appointed by the Senate Rules Committee.

(c) One physician and surgeon, one respiratory care practitioner, and one public member shall be appointed by the Governor.

The initial members shall be appointed as follows: one respiratory care practitioner and one public member for a term of one year; one respiratory care practitioner and one physician and surgeon for a term of two years; one respiratory care practitioner and one public member for a term of three years; and one physician and surgeon, one respiratory care practitioner, and one public member for a term of four years. Thereafter, appointments shall be made for four-year terms, expiring on the first day of June of each year, and vacancies shall be filled for the unexpired term.

The members first appointed shall determine by lot the terms to

which they are appointed.

No member shall serve for more than two consecutive terms. Not more than two members of the examining committee shall be appointed from the full-time faculty of any university, college, or other educational institution.

Annually, the examining committee shall elect one of its members as chairperson.

The appointing power shall have the authority to remove any member of the examining committee from office for neglect of any duty required by law or for incompetency or unprofessional or dishonorable conduct.

3713. The public members shall be appointed from persons having the following qualifications:

(a) Be a citizen of the United States of America.

(b) Be a resident of the State of California.

(c) Shall not be an officer or faculty member of any college, school, or institution engaged in respiratory therapy education.

(d) Shall not be certified by the board or of any board under this division.

(e) Shall have no pecuniary interests in the provision of health care.

The respiratory care practitioner members shall be appointed from persons having the following qualifications:

(a) Be a citizen of the United States of America.

(b) Be a resident of the State of California.

(c) One respiratory care practitioner member shall be a technical director of a respiratory care department or respiratory care corporation.

(d) One respiratory care practitioner shall be an officer or faculty member of any college, school, or institution engaged in respiratory therapy education.

(e) Two respiratory care practitioners who are involved in direct patient care.

(f) Have at least five years' experience in respiratory care or respiratory therapy education, and have been actively engaged therein for at least three years immediately preceding appointment.

(g) Subsequent to the first appointments to the committee, shall be certified as a respiratory care practitioner in the State of California.

The physician and surgeon member shall be appointed from persons having the following qualifications:

(a) Be a citizen of the United States of America.

(b) Be a resident of the State of California.

(c) Be a licensed practicing physician and surgeon in the State of California.

(d) Be knowledgeable in respiratory care.

3714. It shall be the duty of the examining committee to examine applicants for certification as provided by this chapter, at such places and at such times as shall be designated by the examining committee

in its discretion.

3715. Each member of the examining committee shall receive a per diem and expenses as provided in Section 103.

3716. The examining committee may employ an executive officer exempt from civil service and, subject to the provisions of law relating to civil service, such clerical assistants and, except as provided in Section 159.5, other employees as it may deem necessary to carry out its powers and duties.

3717. Each member of the examining committee, or any certified respiratory care practitioner appointed by the examining committee, may inspect, or require reports from, a general or specialized hospital or any other facility or corporation providing respiratory care, treatment, or services and the respiratory care staff thereof, with respect to the respiratory care, treatment, services, or facilities provided therein, and may inspect respiratory care patient records with respect to such care, treatment, services, or facilities. The authority to make inspections and to require reports as provided by this section shall not be delegated by a member of the examining committee to any person other than a respiratory care practitioner and shall be subject to the restrictions against disclosure described in Section 2225.

3718. The board shall, upon the recommendation and direction of the examining committee, issue, suspend, and revoke certificates to practice respiratory care as provided in this chapter.

3719. The examining committee shall develop and implement rules and regulations for continuing education within two years of the effective date of this chapter. Continuing education requirements shall not exceed 15 hours every two years.

3720. The examining committee shall hold at least one regular meeting annually. The examining committee may convene from time to time until its business is concluded. Special meetings may be held at such time and place as the examining committee may designate. Additional meetings may be held upon call of the chairperson or at the written request of any two members of the examining committee.

3721. Notice of each regular or special meeting shall be sent to all committee members 15 days prior to the meeting. In addition, twice a week for two weeks immediately preceding each meeting notice of the meeting shall be given in one daily paper published in the City of San Francisco, one published in the City of Sacramento, and one published in the City of Los Angeles.

3722. The examining committee shall adopt such regulations as may be necessary to effectuate the provisions of this chapter. In adopting rules and regulations, the examining committee shall comply with the provisions of Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

Article 3. Certification of Practitioners

3730. All certificates for the practice of respiratory care in this state shall be issued by the board, upon the recommendation and direction of the examining committee, and all applications for such certificates shall be filed with the examining committee. Except as otherwise required by the director pursuant to Section 164, the certificate issued by the board shall describe the certificate holder as a "respiratory care practitioner certifed by the Division of Allied Health Professions of the Board of Medical Quality Assurance".

Each application shall be accompanied by the application fee prescribed in Section 3775, shall be signed by the applicant, and shall contain a statement under oath of the facts entitling the applicant to receive a certificate without examination or to take an examination.

The application shall contain such information as the examining committee deems necessary to determine the qualifications of the applicant.

3731. A person holding a certificate as a respiratory care practitioner issued by the board may use the title "respiratory care practitioner" or the letters "RCP" or any other words, letters, or figures which indicate that the person using same is a certified respiratory care practitioner. The certificate as a respiratory care practitioner shall not authorize the use of the prefix "Dr.", or the word "doctor", or any suffix or affix indicating or implying that the certified person is a doctor or a physician and surgeon.

Notwithstanding the provisions of this section, a practitioner certified under this chapter may use an initial or other suffix indicating possession of a specific academic degree earned at, and issued by an institution accredited by any accrediting agency recognized by the National Commission on Accrediting which the examining committee determines is equivalent, except that the initials "M.D." shall not be used unless the certified practitioner is licensed as a physician and surgeon in this state.

Notwithstanding the provisions of this section, a practitioner certified under this chapter may use an initial or initials indicating possession of a specific credential as approved by the examining committee.

3732. The examining committee shall investigate each and every applicant for a certificate, before a certificate is issued, in order to determine whether or not the applicant has in fact the qualifications required by this chapter.

3733. Every applicant for a certificate under this chapter shall, at the time of application, be a person over 18 years of age, not addicted to the intemperate use of alcohol or any narcotic drug, have successfully completed courses of training equivalent to the minimum standard established in this chapter for approval by the examining committee, and not have committed acts or crimes constituting grounds for denial of certification under Section 480.

3734. (a) An applicant whose application is based on a diploma

issued to the applicant by a foreign respiratory therapy school or a certificate or license issued by another state, district, or territory of the United States, shall furnish documentary evidence, satisfactory to the examining committee, that he or she has completed a respiratory therapy school or a course of professional instruction equivalent to that required in Section 3740, for a respiratory care practitioner applicant.

(b) An applicant who has filed a respiratory care practitioner application under this section with the committee may, between the date of receipt of notice that his or her application is on file and the date of receipt of his or her certificate, perform as a respiratory care practitioner under the direct and immediate supervision of a respiratory care practitioner certified in this state.

During the application period, such an applicant shall be identified only as a "respiratory care practitioner certification applicant."

If the applicant under this section does not qualify and receive a certificate as provided in this section, and does not qualify under Section 3737, all privileges under this section shall automatically cease on the date specified by the examining committee.

(c) Before a certificate may be issued, the applicant shall meet the requirements of subdivision (a), and shall pass the written examination as provided in this chapter within one year of application.

(d) If an applicant shall fail to take the next succeeding examination without due cause or fails to pass the examination and receive a certificate, all privileges under this section shall automatically cease on the date specified by the examining committee.

(e) The requirements to pass the written examination shall not apply to an applicant who at the time of his or her application has passed, to the satisfaction of the examining committee, an examination for credentialing in another state, district, or territory of the United States, that is, in the opinion of the examining committee, equivalent to the examination given in this state.

(f) Nothing contained in this section shall prohibit the examining committee from disapproving any foreign respiratory therapy school, nor from denying the applicant if, in the opinion of the examining committee, the instruction received by the applicant or the courses were not equivalent to that required in this chapter for a respiratory care practitioner certification applicant.

3735. Except as otherwise provided in this chapter, no person shall receive a certificate under this chapter without first successfully passing an examination given under the direction of the examining committee. The examination shall be in writing and shall be conducted by such persons and in such manner and under such regulations as shall be prescribed by the examining committee.

3736. Examinations for a certificate as a respiratory care practitioner may be conducted by the examining committee under a uniform examination system, and for that purpose the examining

committee may make such arrangements with organizations furnishing examination material as may in its discretion be desirable.

3737. Every applicant who is otherwise qualified as provided in this chapter and who receives a passing grade established by the examining committee on the examination shall be granted a certificate.

3738. For a period, not to exceed two years following the effective date of this chapter, any individual actively engaged in the practice of respiratory therapy as defined in this chapter may continue to engage in the practice of respiratory care without being certified.

A person currently performing as a respiratory care practitioner, who provides acceptable documentation to the committee, may apply for certification as a respiratory care practitioner at any time within two years after the effective date of this chapter. Upon approval by the examining committee, the board shall issue a certificate without examination.

Article 4. Education Standards

3740. Except as otherwise provided in this chapter, all applicants for certificates under this chapter shall have a high school diploma or equivalent education, and shall be a graduate of a training program approved by the examining committee.

All schools, whether situated in this state or not, furnishing courses of study meeting the minimum standard required by Section 3740 and the regulations of the examining committee adopted pursuant to this chapter, shall be approved by the examining committee and shall be entitled to compel that approval, if approval is denied, by action in any superior court of the State of California. The procedure and power of the court in such an action shall be the same as provided in Section 2174.

3741. During the period of any clinical practice, respiratory care services may be rendered by a student enrolled in an approved respiratory therapy training program when these services are incidental to his or her course of study.

A person engaged in a respiratory therapy program as a student shall be identified only as a "student respiratory care practitioner" as authorized by the examining committee in its regulations.

3743. A student enrolled in a respiratory therapy training program who is employed in a health facility may render respiratory care services, under the direct and immediate supervision of a certified respiratory care practitioner for a limited period of time to be determined by the examining committee.

Article 5. Suspension, Revocation, and Reinstatement of Certificates

3750. The examining committee may order the denial of an

application for, the issuance of with terms or conditions, the suspension for a period not exceeding 12 months, the revocation of, or the imposition of probationary conditions upon, a certificate issued under this chapter, for any of the following causes:

(a) Advertising in violation of Section 651 or Section 17500.

(b) Fraud in the procurement of any certificate under this chapter.

(c) Knowingly employing uncertified persons who present themselves as certified respiratory care practitioners.

(d) Conviction of a crime which substantially relates to the qualifications, functions, or duties of a respiratory care practitioner. The record of conviction or a certified copy thereof shall be conclusive evidence of the conviction.

(e) Impersonating or acting as a proxy for an applicant in any examination given under this chapter.

(f) Habitual intemperance.

(g) Addiction to the use of any controlled substance.

(h) Gross negligence in his or her practice as a respiratory care practitioner.

(i) Conviction of a violation of any of the provisions of this chapter or of the State Medical Practice Act, or violating, or attempting to violate, directly or indirectly, or assisting in or abetting the violation of, or conspiring to violate any provision or term of this chapter or of the Medical Practice Act (Chapter 5 (commencing with Section 2000)).

(j) The aiding or abetting of any person to violate the provisions of this chapter or any regulations duly adopted under this chapter.

(k) The aiding or abetting of any person to engage in the unlawful practice of respiratory care.

(*l*) The commission of any fraudulent, dishonest, or corrupt act which is substantially related to the qualifications, functions, or duties of a respiratory care practitioner.

3751. One year from the date of revocation of a certificate or approval under this chapter, application may be made to the examining committee for reinstatement, restoration, or modification of probation. The examining committee shall have discretion to accept or reject an application for reinstatement or modification of probation and may require an examination for such reinstatement, restoration, or modification of probation when it is deemed appropriate on a certificate or approval under this chapter.

3752. A plea or verdict of guilty or a conviction following a plea of nolo contendere made to a charge of a felony or of any offense which substantially relates to the qualifications, functions, or duties of a respiratory care practitioner is deemed to be a conviction within the meaning of this article. The board shall, upon the recommendation and direction of the examining committee, order the certificate suspended or revoked, or may decline to issue a certificate, when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal or when an order granting

probation is made suspending the imposition of sentence, irrespective of a subsequent order under the provisions of Section 1203.4 of the Penal Code allowing such person to withdraw his or her plea of guilty and to enter a plea of not guilty, or setting aside the verdict of guilty, or dismissing the accusation, information, or indictment.

3753. The procedure in all matters and proceedings relating to the denial, suspension, or revocation of certificates under this chapter shall be governed by 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).

The examining committee shall hear all matters, including, but not limited to, any contested case or any petition for reinstatement or modification of probation.

3754. The board shall deny an application for, or issue with terms and conditions, or suspend or revoke, or impose probationary conditions upon, a certificate as ordered by the examining committee in any decision made after a hearing, as provided in Section 3753.

Article 6. Offenses and Enforcement

3760. Except as otherwise provided in this chapter, no person shall engage in the practice of respiratory care, respiratory therapy, or inhalation therapy.

Except as otherwise provided in this chapter, no person may represent himself or herself to be a respiratory care practitioner, a respiratory therapist or an inhalation therapist, or use the abbreviation or letters "R.C.P.," "R.P.," "R.T.," or "I.T." without a current and valid certificate issued under this chapter.

3761. No person may represent himself or herself to be a respiratory care practitioner without a certificate granted under this chapter, except as otherwise provided in this chapter.

3762. Nothing in this chapter is intended to limit, preclude, or otherwise interfere with the practices of other licensed personnel in carrying out authorized and customary duties and functions. Further, nothing in this chapter is intended to limit, preclude, or otherwise interfere with the practice of those personnel who are employed to perform specific diagnostic and testing techniques under medical direction.

3763. Any person who violates any of the provisions of this chapter shall be guilty of a misdemeanor punishable by a fine not exceeding five hundred dollars ($500) or imprisonment in a county jail not exceeding six months, or both, for each offense.

3764. Whenever any person has engaged or is about to engage in any acts or practices which constitute or will constitute an offense against this chapter, the superior court of any county, on application of the Division of Allied Health Professions, or the examining committee, or 10 or more persons holding respiratory care

practitioner certificates issued under this chapter, may issue an injunction or other appropriate order restraining such conduct. Proceedings under this section shall be governed by Chapter 3 (commencing with Section 525) of Title 7 of Part 2 of the Code of Civil Procedure, except that no undertaking shall be required in any action commenced by the board or the examining committee.

3765. This act does not prohibit:

(a) The performance of respiratory care which is an integral part of the program of study by students enrolled in approved respiratory therapy training programs.

(b) Self-care by the patient or the gratuitous care by a friend or member of the family who does not represent or hold himself or herself out to be a respiratory care practitioner certified under the provisions of this chapter.

(c) The respiratory care practitioner from performing advances in the art and techniques of respiratory care learned through formal or specialized training.

(d) Nothing in this chapter shall be interpreted to preclude the performance of respiratory care by paramedical personnel who have been formally trained in these modalities and are duly licensed under the provisions of an act pertaining to their speciality.

(e) Respiratory care services in case of an emergency. "Emergency," as used in this subdivision, includes an epidemic or public disaster.

(f) Nothing in this act shall prohibit persons from engaging in cardiopulmonary research.

Article 7. Fiscal Administration

3770. The department shall keep a record of its proceedings under this chapter, and a register of all persons certified under it. The register shall show the name of every living certified respiratory care practitioner, his or her last known place of residence, and the date and number of his or her certificate as a respiratory care practitioner. The department shall, once every two years, compile a list of respiratory care practitioners authorized to practice respiratory care in the state. Any interested person is entitled to obtain a copy of that list upon application to the department and payment of such amount as may be fixed by the department, which amount shall not exceed the cost of the list so furnished.

3771. Within 10 days after the beginning of each calendar month, the examining committee shall report to the Controller the amount and source of all collections made from persons certified or seeking to be certified under this chapter, and all fines and forfeitures to which the examining committee is entitled, and at the same time, pay all such sums into the State Treasury, where they shall be credited to the Respiratory Care Fund, which is hereby created and continuously appropriated for the purposes of this chapter.

3772. (a) There is established in the State Treasury the

Respiratory Care Fund. All collections from persons certified or seeking to be certified under this chapter shall be paid by the board into the fund after the report to the Controller at the beginning of each month of the amount and source of the collections.

3774. On or before the birthday of a certified practitioner in every other year, following the initial certification, the examining committee shall mail to each practitioner certified under this chapter, at the latest address furnished by the certified practitioner to the executive officer of the examining committee, a notice stating the amount of the renewal fee and the date on which it is due, and that failure to pay it on or before the due date and submission of evidence of compliance with Article 9 (commencing with Section 3790) will result in expiration of the certificate.

3775. The amount of fees provided in connection with certificates or approvals for the practice of respiratory care is as follows:

(a) The application fee shall be fixed by the examining committee at not more than one hundred fifty dollars ($150). The application fee for the applicant under Section 3734 shall be fixed by the examining committee at not more than two hundred dollars ($200).

(b) The reexamination fee shall be fixed by the examining committee at not more than one hundred dollars ($100).

(c) The initial certificate fee for a respiratory care practitioner is an amount equal to the renewal fee in effect on the last regular renewal date before the date on which the certificate is issued, except that if the certificate will expire less than one year after its issuance, then the initial certificate fee is an amount equal to 50 percent of the renewal fee in effect on the last regular renewal date before the date on which the certificate is issued. The examining committee may by regulation provide for the waiver or refund of the initial certificate fee where the certificate is issued less than 45 days before the date on which it will expire.

(d) The renewal fee shall be fixed by the examining committee at not more than one hundred fifty dollars ($150).

(e) The delinquency fee shall be 50 percent of the renewal fee in effect, but not more than fifty dollars ($50).

(f) The duplicate certificate fee is ten dollars ($10).

(g) The endorsement fee is five dollars ($5).

(h) The fee for approval of providers of continued education shall be fixed by the examining committee at not more than one hundred dollars ($100).

SEC. 2. Notwithstanding Section 2445 of the Business and Professions Code, it is the intent of the Legislature that whatever funds are necessary to establish the Respiratory Care Fund be appropriated from the Contingent Fund of the Board of Medical Quality Assurance to the Respiratory Care Fund for the purpose of carrying out the provisions of this act. The amount so appropriated shall be repaid to the contingent fund within three years from the effective date of this act, with interest at the rate paid by the State Pooled Investment Fund.

SEC. 3. The provisions of this bill shall be operative on July 1, 1983.

SEC. 4. No appropriation is made and no reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution or Section 2231 or 2234 of the Revenue and Taxation Code because the only costs which may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, changes the definition of a crime or infraction, changes the penalty for a crime or infraction, or eliminates a crime or infraction.

CHAPTER 1345

An act to add Sections 46614 and 52317 to the Education Code, relating to regional occupational centers and programs.

[Approved by Governor September 23, 1982. Filed with Secretary of State September 24, 1982.]

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

SECTION 1. Section 46614 is added to the Education Code, to read:

46614. The average daily attendance for attendance of pupils who reside outside of the regional occupational center or program attendance area and are enrolled in a regional occupational center or program pursuant to Section 52317 shall be credited to the regional occupational center or program that incurs the training costs for purposes of determining state apportionments and the revenue limits.

For purposes of computing the revenue limits for pupils who enroll in a regional occupational center or program outside their district of residence, the regional occupational center or program shall claim the lesser of the two revenue limits, or the rate at which growth average daily attendance is funded, if that amount is less than either of the two revenue limits.

Average daily attendance earned pursuant to this section is not to be included for purposes of declining enrollment calculations as prescribed by Section 42239.5.

The regional occupational center or program shall not be eligible for state reimbursement for home-to-school transportation allowances for pupils who are enrolled in the regional occupational center or program pursuant to this section.

SEC. 2. Section 52317 is added to the Education Code, to read:

52317. (a) The State Department of Education shall establish a two-year pilot project commencing January 1, 1983, whereby the governing board of any regional occupational center or program operated by a joint powers agency, a single district, or a county

superintendent of schools maintaining a county regional occupational center or program, in Los Angeles County and Orange County may admit to its programs or classes, on a full-time or part-time basis, any person who can benefit from the program or class, including a person who does not reside in the attendance area of the center or program, if there are openings in the program or class. The enrollment of pupils residing outside the attendance area of the center or program shall not exceed 10 percent of the total enrollment. Regional occupational centers or programs having enrollments of pupils residing outside the attendance area in excess of 10 percent in the 1981–82 fiscal year shall be restricted to that level of enrollment.

Under no circumstances shall any person be enrolled in a regional occupational center or program pursuant to this section in a manner which contradicts delineation of function agreements.

(b) The department shall submit a report to the Legislature no later than March 1, 1986, as to whether there has been a reduction in costs or any increase in the enrollments of the regional occupational centers or programs participating in the pilot project established pursuant to subdivision (a).

CHAPTER 1346

An act to amend Section 798.71 of, and to repeal and add Section 1917.063 to, the Civil Code, to amend Section 11125.5 of the Government Code, to amend Section 18080 of, and to add Section 18084 to, the Health and Safety Code, to amend Section 21083.3 of the Public Resources Code, and to repeal Section 4602.2 of the Vehicle Code, relating to housing.

[Approved by Governor September 23, 1982. Filed with Secretary of State September 24, 1982]

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

SECTION 1. Section 798.71 of the Civil Code is amended to read:

798.71. The management shall not show or list for sale a mobilehome without first obtaining the owner's written authorization. The authorization shall specify the terms and conditions regarding the showing or listing.

Nothing in this section shall be construed as affecting the provisions of the Health and Safety Code governing the licensing of mobilehome salesmen.

SEC. 2. Section 1917.063 of the Civil Code, as added by Chapter 1143 of the Statutes of 1981, is repealed.

SEC. 3. Section 1917.063 of the Civil Code, as added by Chapter 466 of the Statutes of 1982, is repealed.

SEC. 4. Section 1917.063 of the Civil Code, as amended by

Chapter 486 of the Statutes of 1982, is repealed.

SEC. 5. Section 1917.063 is added to Chapter 4 (commencing with Section 1917.010) of Title 4 of Part 4 of Division 3 of the Civil Code, to read:

1917.063. This chapter facilitates the making of shared appreciation financing in this state which conforms to the provisions of this chapter. The terms and conditions of any shared appreciation loan made pursuant to this chapter shall be consistent with this chapter. This chapter does not, however, apply to or limit shared appreciation financing of real property of a type specified in Section 1917.030 that is made pursuant to other provisions of law, or which is not otherwise unlawful. Nothing in this chapter shall be construed to in any way affect shared appreciation financing of commercial property or residential property not meeting the criteria specified in Section 1917.030.

Nothing in this chapter precludes a pension fund specified in Section 1917.030 from providing shared appreciation financing pursuant to Chapter 5 (commencing with Section 1917.110) or any other provision of law, or which is not otherwise unlawful.

SEC. 5.5. Section 11125.5 of the Government Code is amended to read:

11125.5. In the case of an emergency situation involving matters upon which prompt action is necessary due to the disruption or threatened disruption of public facilities, a state body may hold an emergency meeting without complying with the 10-day notice requirement of Section 11125.

For purposes of this section, "emergency situation" means any of the following, as determined by a majority of the members of the state body during a meeting prior to the emergency meeting, or at the beginning of the emergency meeting:

(a) Work stoppage or other activity which severely impairs public health, safety, or both.

(b) Crippling disaster which severely impairs public health, safety, or both.

(c) Difficulties with examinations for licensure which require immediate attention.

(d) Administrative disciplinary matters, including, but not limited to, consideration of proposed decisions and stipulations, and pending litigation, which require immediate attention.

(e) Consideration of applications for licensure where a decision must be made in less than 10 days.

(f) Consideration by a licensing agency of proposed legislation which requires immediate attention due to legislative action which may be taken prior to the next regularly scheduled meeting of the agency, or due to time limitations imposed by law.

(g) Action on a loan or grant provided pursuant to Division 31 (commencing with Section 50000) of the Health and Safety Code if a 10-day delay would detrimentally affect the ability to provide or operate low- or moderate-income housing or seriously affect the

fiscal integrity of the program pursuant to which the loan or grant was made or the assisted housing development.

However, newspapers of general circulation and radio or television stations which have requested notice of meetings pursuant to Section 11125 shall be notified by the presiding officer of the state body, or a designee thereof, one hour prior to the emergency meeting by telephone. In the event that telephone services are not functioning the notice requirements of this section shall be deemed waived, and the presiding officer of the state body, or a designee thereof, shall notify such newspapers, radio stations, or television stations of the fact of the holding of the emergency meeting, the purpose of the meeting, and any action taken at the meeting as soon after the meeting as possible.

The minutes of a meeting called pursuant to this section, a list of persons who the presiding officer of the state body, or a designee thereof, notified or attempted to notify, a copy of the rollcall vote, and any actions taken at such meeting shall be posted for a minimum of 10 days in a public place as soon after the meeting as possible.

SEC. 6. Section 18080 of the Health and Safety Code is amended to read:

18080. Ownership registration and title to a mobilehome or commercial coach subject to registration may be held by two or more coowners as follows:

(a) A mobilehome or commercial coach may be registered in the names of two or more persons as joint tenants. Upon the death of a joint tenant the interest of the decedent shall pass to the survivor or survivors. The signature of each joint tenant or survivor or survivors, as the case may be, shall be required to transfer or encumber the title to the mobilehome or commercial coach.

(b) A mobilehome or commercial coach may be registered in the names of two or more persons as tenants in common. Each tenant in common may transfer, but may not encumber, his or her other interest in the title to the mobilehome or commercial coach without the signature of the other tenant or tenants in common.

(c) A mobilehome or commercial coach may be registered as community property in the names of a husband and wife. Except as provided in Section 18102.5, the signature of each spouse shall be required to transfer or encumber the title to the mobilehome or commercial coach.

SEC. 7. Section 18084 is added to the Health and Safety Code, to read:

18084. With respect to mobilehomes, commencing January 1, 1982, the registration card issued to the owner shall be in two parts. One part is to be retained in the vehicle as required by Section 18080.5.

The other part shall be filed by the owner with the mobilehome park operator, if the mobilehome is situated in a mobilehome park. The two parts shall contain identical registration information, except that the part to be filed with the mobilehome park operator shall

bear the notation "Duplicate copy to be filed with the mobilehome park operator as required by law."

SEC. 8. Section 21083.3 of the Public Resources Code is amended to read:

21083.3. (a) If a parcel has been zoned to accommodate a particular density of residential development or has been designated in a community plan to accommodate a particular density of residential development and an environmental impact report was certified for that zoning or planning action, the application of this division to the approval of any subdivision map or other project that is consistent with the zoning or community plan shall be limited to effects upon the environment which are peculiar to the parcel or to the project and which were not addressed as significant effects in the prior environmental impact report. However, all public agencies with authority to mitigate the significant effects shall undertake or require the undertaking of any feasible mitigation measures specified in the prior environmental impact report relevant to a significant effect which the project will have on the environment or, if not, then the provisions of this section shall have no application to that effect. The lead agency shall make a finding, at a public hearing, as to whether those mitigation measures will be undertaken. An effect of a project upon the environment shall not be considered peculiar to the parcel or to the project, for purposes of this subdivision, if uniformly applied development policies or standards have been previously adopted by the city or county, with a finding based upon substantial evidence, which need not include an environmental impact report, that the development policies or standards will substantially mitigate that environmental effect when applied to future projects.

Where a community plan is the basis for application of this section, any rezoning action consistent with the community plan shall be a project subject to exemption from this division in accordance with the provisions of this subdivision.

(b) As used in subdivision (a), "community plan" means a part of the general plan of a city or county which (1) applies to a defined geographic portion of the total area included in the general plan, (2) complies with Article 5 (commencing with Section 65300) of Chapter 3 of Division 1 of Title 7 of the Government Code by including or referencing each of the mandatory elements specified in Section 65302 of the Government Code, and (3) contains specific development policies adopted for the area included in the community plan and identifies measures to implement those policies, so that the policies which will apply to each parcel can be determined.

(c) No person shall have standing to bring an action or proceeding to attack, review, set aside, void, or annul a finding of a public agency made at a public hearing pursuant to subdivision (a) with respect to the conformity of the project to the mitigation measures identified in the prior environmental impact report for the zoning or planning

action, unless he or she has participated in that public hearing. However, this subdivision shall not be applicable if the local agency failed to give public notice of the hearing as required by law. For purposes of this subdivision, a person has participated in the public hearing if he or she has either submitted oral or written testimony regarding the proposed determination, finding, or decision prior to the close of the hearing.

(d) Any plan adopted prior to January 1, 1982, which does not comply with the definitional criteria specified in subdivision (b) may be amended to comply with that criteria, in which case, the plan shall be deemed a "community plan" within the meaning of subdivision (b); provided, that, (1) an environmental impact report was certified for adoption of the plan and (2) at the time of the conforming amendment, the environmental impact report has not been held inadequate by a court of this state, and the environmental impact report is not the subject of pending litigation challenging its adequacy.

SEC. 9. Section 4602.2 of the Vehicle Code is repealed.

SEC. 10. The provisions of Section 1917.063 of the Civil Code, as added to Chapter 4 (commencing with Section 1917.010) of Title 4 of Part 4 of Division 3 of the Civil Code by Section 5 of this act, do not constitute a change in, but are declaratory of existing law.

CHAPTER 1347

An act to amend Section 7065 of the Business and Professions Code, relating to contractors.

[Approved by Governor September 23, 1982. Filed with Secretary of State September 24, 1982.]

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

SECTION 1. Section 7065 of the Business and Professions Code is amended to read:

7065. Under rules and regulations adopted by the board and approved by the director, the registrar shall investigate, classify, and qualify applicants for contractors' licenses by written examination. This examination shall include questions designed to show that the applicant has the necessary degree of knowledge required by Section 7068 and shall include pertinent questions relating to the laws of this state, and the contracting business and trade. Contractors' licenses are to be issued to individual owners, copartnerships, and corporations. An individual owner may qualify by examination for a contractor's license upon the appearance of the owner or a qualifying individual appearing as a responsible managing employee on behalf of the owner. A copartnership may qualify by examination for a contractor's license upon the appearance of a copartner or a

qualifying individual appearing as a responsible managing employee. A corporation may qualify by examination for a contractor's license upon the appearance of a qualifying individual appearing either as a responsible managing officer or a responsible managing employee.

SEC. 2. Section 7065 of the Business and Professions Code is amended to read:

7065. Under rules and regulations adopted by the board and approved by the director, the registrar shall investigate, classify, and qualify applicants for contractors' licenses by written examination. This examination shall include questions designed to show that the applicant has the necessary degree of knowledge required by Section 7068 and shall include pertinent questions relating to the laws of this state, and the contracting business and trade. Contractors' licenses are to be issued to individual owners, copartnerships, and corporations. An individual owner may qualify by examination for a contractor's license upon the appearance of the owner or a qualifying individual appearing as a responsible managing employee on behalf of the owner. A copartnership may qualify by examination for a contractor's license upon the appearance of a copartner or a qualifying individual appearing as a responsible managing employee. A corporation may qualify by examination for a contractor's license upon the appearance of a qualifying individual appearing either as a responsible managing officer or a responsible managing employee. No examination shall be required of a qualifying individual if, within the three-year period immediately preceding the application for licensure, the qualifying individual has either personally passed the written examination for the same classification being applied for, or has served as the qualifying individual for a licensee whose license was in good standing at any time during the three-year period immediately preceding the application for licensure and in the same classification being applied for.

SEC. 3. It is the intent of the Legislature, if this bill and Assembly Bill 3067 are both chaptered and become effective January 1, 1983, both bills amend Section 7065 of the Business and Professions Code, and this bill is chaptered after Assembly Bill 3067, that the amendments to Section 7065 proposed by both bills be given effect and incorporated in Section 7065 in the form set forth in Section 2 of this act. Therefore, Section 2 of this act shall become operative only if this bill and Assembly Bill 3067 are both chaptered and become effective January 1, 1983, both amend Section 7065, and this bill is chaptered after Assembly Bill 3067, in which case Section 1 of this act shall not become operative.

CHAPTER 1348

An act to amend Sections 1143 and 1147 of the Probate Code, and to amend Section 8009 of the Welfare and Institutions Code, relating to estates.

[Approved by Governor September 23, 1982 Filed with Secretary of State September 24, 1982.]

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

SECTION 1. Section 1143 of the Probate Code is amended to read:

1143. (a) Except as provided in subdivision (b), when a public administrator takes possession of the estate of a decedent as provided in this chapter, and it appears that the total value of the estate of the decedent does not exceed twenty thousand dollars ($20,000) excluding any motor vehicle owned by the decedent, the public administrator may apply to the superior court of his county or a judge thereof for an order permitting him summarily to sell any personal property belonging to the decedent, and to withdraw any money of the decedent on deposit with any bank, and to collect any indebtedness or claim that may be owing to the decedent. The money received from any such sale or collection shall be used to pay commissions to the public administrator, and to defray the expenses of the burial of the decedent and the expenses of his last illness; the balance, if any, shall be used to pay other claims presented to the public administrator within four months of the above order and there shall be no administration upon the estate unless additional property is discovered. No notice of the application need be given. The application may be filed whether or not there is a will of the decedent in existence, if the executor named therein refuses to act, or if the will does not appoint an executor.

(b) When a public administrator takes possession of the estate of a decedent as provided in this chapter, and it appears that the total value of the estate of the decedent does not exceed three thousand dollars ($3,000), the public administrator may, instead of applying to the superior court or judge thereof for an order provided in subdivision (a), apply such money or proceeds from the sale of any personal property towards the expense of the burial of the decedent, pay other proper claims presented within four months after the public administrator takes possession of the estate, and pay over the remaining funds to the heirs or legatees, or if none, deposit the balance with the county treasurer for use in the general fund.

(c) The commissions payable to the public administrator pursuant to this section and the attorney, if any, for the public administrator for the filing of the application provided for in this section, and for the performance of any duty or service connected therewith, are those set forth in Sections 901, 902, and 910, except that, in any case

administered pursuant to this section, the public administrator shall be entitled to a minimum commission of two hundred fifty dollars ($250).

SEC. 2. Section 1147 of the Probate Code is amended to read:

1147. The public administrator, as soon as he or she receives the same, shall deposit all moneys of the estate with the county treasurer of the county in which the proceedings are pending or with one or more banks, or invest any amount thereof in an account or accounts in one or more insured savings and loan associations in the state, whereupon the public administrator shall be discharged from further care or responsibility therefor until the money is withdrawn by him or her. Money deposited with the county treasurer or with a bank or invested in an account or accounts in one or more insured savings and loan associations may be withdrawn upon the order of the public administrator when required for the purposes of administration.

The public administrator shall credit each estate with the highest rate of interest or dividends that the estate would have received if the funds available for deposit or investment had been individually and separately invested in the insured bank or savings and loan association. Any other interest or dividends credited to the account of the public administrator shall be deposited in the county general fund in an amount no more than necessary to offset the cost to the general fund of the services of the public administrator and public guardian.

SEC. 3. Section 8009 of the Welfare and Institutions Code is amended to read:

8009. All funds coming into the custody of the public guardian shall be deposited in the county treasury and disbursed by proper warrant issued pursuant to Chapter 5 (commencing with Section 29800) of Division 3 of Title 3 of the Government Code, or shall be deposited in one or more insured banks or invested in one or more insured savings and loan associations in the state. The public guardian is not legally responsible for funds coming into his custody while such funds are deposited in an insured bank or invested in an insured savings and loan association. Money deposited with the county treasurer or with an insured bank or invested in an account or accounts in an insured savings and loan association may be withdrawn only upon an order of the public guardian.

The public guardian shall credit each estate with the highest rate of interest or dividends that the estate would have received if the funds available for deposit or investment had been individually and separately invested in the insured bank or savings and loan association. Any other interest or dividends credited to the account of the public guardian shall be deposited in the county general fund in an amount no more than necessary to offset the cost to the general fund of the services of the public administrator and public guardian.

SEC. 4. The amendments to subdivision (c) of Section 1143 of the Probate Code made by this act shall apply to all decedents' estates which are being administered by a public administrator on the date

on which this act becomes operative.

CHAPTER 1349

An act to amend Section 188.8 of the Streets and Highways Code, and to repeal Section 40 of Chapter 541 of the Statutes of 1981, relating to transportation.

[Approved by Governor September 23, 1982 Filed with Secretary of State September 24, 1982]

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

SECTION 1. Section 188.8 of the Streets and Highways Code is amended to read:

188.8. From the money expended pursuant to Section 188, the commission shall allocate and the department shall expend, or cause to be expended, in each county of County Group No. 1 and in each county of County Group No. 2 during the period commencing July 1, 1983, and ending June 30, 1988, and for each period of five years thereafter, not less than an amount computed as follows:

(a) The commission shall compute, for each period of five years, an amount equal to 70 percent of the money to be expended in County Groups Nos. 1 and 2, respectively, as provided in Section 188.

(b) From the amount computed for County Group No. 1 in subdivision (a) for each five-year period, the commission shall determine the minimum expenditure for each county in the group based on a formula which is based 75 percent on the population of the county to the total population of County Group No. 1 and 25 percent on state highway miles in the county to the total state highway miles in County Group No. 1.

(c) From the amount computed for County Group No. 2 in subdivision (a) for each five-year period, the commission shall determine the minimum expenditure for each county in the group based on a formula which is based 75 percent on the population of the county to the total population of County Group No. 2 and 25 percent on state highway miles in the county to the total state highway miles in County Group No. 2.

(d) Except as otherwise provided in this subdivision, the entire obligation under a contract awarded or a day labor project commenced during any of the periods shall be deemed an expenditure within the period in which the contract was awarded or day labor project commenced. Obligations under contracts which have been awarded or day labor projects which have been commenced, but which are to be budgeted over more than one fiscal year pursuant to Section 170, shall be deemed expenditures in each of the fiscal years in which the work is to be performed in an amount equal to the final amount budgeted for each of the fiscal years for the

work.

(e) For the purpose of this section, the population in each county is that determined by the last preceding federal census, or a subsequent census validated by the Population Research Unit of the Department of Finance, at the beginning of each five-year period.

(f) For the purpose of this section, "state highway miles," are the miles of state highways open to vehicular traffic at the beginning of each five-year period.

(g) Notwithstanding subdivisions (a), (b), and (c), the commission shall program and allocate funds for projects that were included in the 1980 state transportation improvement program. This subdivision shall be limited to projects, as defined in the 1980 state transportation improvement program, and shall provide for inflationary cost increases, but shall not provide for cost increases which are caused by any change in the scope or nature of the project. This subdivision shall not apply to projects that cannot proceed due to changes in federal law or other causes beyond the commission's and department's authority. During the five-year period beginning July 1, 1983, the commission may deviate from subdivisions (a), (b), and (c) for the purpose of meeting the requirements of this subdivision, but shall make a reasonable effort to comply with subdivisions (a), (b), and (c).

SEC. 2. Section 188.8 of the Streets and Highways Code is amended to read:

188.8. From the money expended pursuant to Section 188, the commission shall allocate and the department shall expend, or cause to be expended, in each county of County Group No. 1 and in each county of County Group No. 2 during the period commencing July 1, 1983, and ending June 30, 1988, and for each period of five years thereafter, not less than an amount computed as follows:

(a) The commission shall compute, for each period of five years, an amount equal to 70 percent of the money to be expended in County Groups Nos. 1 and 2, respectively, as provided in Section 188.

(b) From the amount computed for County Group No. 1 in subdivision (a) for each five-year period, the commission shall determine the minimum expenditure for each county in the group based on a formula which is based 75 percent on the population of the county to the total population of County Group No. 1 and 25 percent on state highway miles in the county to the total state highway miles in County Group No. 1.

(c) From the amount computed for County Group No. 2 in subdivision (a) for each five-year period, the commission shall determine the minimum expenditure for each county in the group based on a formula which is based 75 percent on the population of the county to the total population of County Group No. 2 and 25 percent on state highway miles in the county to the total state highway miles in County Group No. 2.

(d) A county board of supervisors may adopt a resolution to pool its county minimum expenditure with adjacent counties adopting

similar resolutions. The resolution shall provide for pooling the county minimum expenditures for expenditure in any of the pooling counties for a five-year period and shall be submitted to the commission not later than May 1 immediately preceding the commencement of the five-year period.

(e) Except as provided in this subdivision, the entire obligation under a contract awarded or a day labor project commenced during any of the periods shall be deemed an expenditure within the period in which the contract was awarded or day labor project commenced. Obligations under contracts which have been awarded or day labor projects which have been commenced, but which are to be budgeted over more than one fiscal year pursuant to Section 170, shall be deemed expenditures in each of the fiscal years in which the work is to be performed in an amount equal to the final amount budgeted for each of the fiscal years for the work.

(f) For the purpose of this section, the population in each county is that determined by the last preceding federal census, or a subsequent census validated by the Population Research Unit of the Department of Finance, at the beginning of each five-year period.

(g) For the purpose of this section, "state highway miles," are the miles of state highways open to vehicular traffic at the beginning of each five-year period.

(h) Notwithstanding subdivisions (a), (b), and (c), the commission shall program and allocate funds for projects that were included in the 1980 state transportation improvement program. This subdivision shall be limited to projects, as defined in the 1980 state transportation improvement program, and shall provide for inflationary cost increases, but shall not provide for cost increases which are caused by any change in the scope or nature of the project. This subdivision shall not apply to projects that cannot proceed due to changes in federal law or other causes beyond the commission's and department's authority. During the five-year period beginning July 1, 1983, the commission may deviate from subdivisions (a), (b), and (c) for the purpose of meeting the requirements of this subdivision, but shall make a reasonable effort to comply with subdivisions (a), (b), and (c).

SEC. 3. Section 40 of Chapter 541 of the Statutes of 1981 is repealed.

SEC. 4. It is the intent of the Legislature, if this bill and Assembly Bill 1353 are both chaptered and become effective January 1, 1983, both bills amend Section 188.8 of the Streets and Highways Code, and this bill is chaptered after Assembly Bill 1353, that the amendments to Section 188.8 proposed by both bills be given effect and incorporated in Section 188.8 in the form set forth in Section 2 of this act. Therefore, Section 2 of this act shall become operative only if this bill and Assembly Bill 1353 are both chaptered and become effective January 1, 1983, both amend Section 188.8, and this bill is chaptered after Assembly Bill 1353, in which case Section 1 of this act shall not become operative.

CHAPTER 1350

An act to amend Section 117.4 of the Code of Civil Procedure, relating to small claims court.

[Approved by Governor September 23, 1982. Filed with Secretary of State September 24, 1982.]

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

SECTION 1. Section 117.4 of the Code of Civil Procedure is amended to read:

117.4. No attorney at law or other person than the plaintiff and the defendant shall take any part in the filing or the prosecution or defense of such litigation in small claims court, unless the attorney is appearing to prosecute or defend an action by or against himself or herself, or by or against a partnership in which he or she is a general partner and in which all the partners are attorneys, or by or against a professional corporation of which he or she is an officer or director and of which all other officers and directors are attorneys at law. Nothing herein shall prevent an attorney from rendering advice to a party to such litigation, either before or after the commencement of such an action; nor shall anything herein prevent an attorney from testifying to facts of which he or she has personal knowledge and about which he or she is competent to testify. However, if the court determines that a party does not speak or understand the English language sufficiently to comprehend the proceedings or give testimony, or cannot properly present his or her own case and needs assistance in so doing, the court may permit another person (other than an attorney at law) to assist such party. A plaintiff incarcerated in a county jail, a Department of Corrections facility, or a Youth Authority facility shall be entitled to waive personal appearance and submit written declarations to serve as evidence supporting the party's claim, or allow another person (other than an attorney at law) to appear on the plaintiff's behalf.

The presence of the plaintiff or defendant, whether individual or corporate, at the hearing shall not be required to permit the proof of the items of an account but such proof shall be in accordance with the provisions of Sections 1270 and 1271 of the Evidence Code.

CHAPTER 1351

An act to amend Sections 922.4 and 922.5 of, and to add Article 5.5 (commencing with Section 1230) to Chapter 2 of Part 2 of Division 1 of the Insurance Code, relating to insurance.

[Approved by Governor September 23, 1982 Filed with Secretary of State September 24, 1982]

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

SECTION 1. Section 922.4 of the Insurance Code is amended to read:

922.4. Credit in accounting and financial statements on account of reinsurance ceded to a nonadmitted reinsurer other than an alien reinsurer shall be allowed only:

(a) Where it is demonstrated by the ceding insurer to the satisfaction of the commissioner that such reinsurer maintains the standards and meets the financial requirements applicable to an admitted insurer, or

(b) To the extent of deposits by, or funds withheld from, such reinsurer pursuant to express provision therefor in the reinsurance contract as security for the payment of the obligations thereunder if such deposits or funds are held subject to withdrawal by, and under the control of, the ceding insurer or are placed in trust for such purposes in a bank which is a member of the Federal Reserve System if withdrawals from the trust cannot be made without the consent of the ceding insurer. With respect to credit life insurance and credit disability insurance, such deposits or funds shall be deposited in a bank located in California, notwithstanding the fact that the deposits or funds are held subject to withdrawal by, and under the control of, the ceding insurer.

(c) To the extent that the amount of a clean and irrevocable letter of credit issued for a term of one year conforming to the requirements set forth below, is a substitute for advances for claims, unearned premium, and all other policy and contract liabilities and reserve obligations to be made by a foreign reinsurer in connection with its liability under a specific reinsurance agreement. The requirements are that such a clean and irrevocable letter of credit shall be issued under arrangements satisfactory to the commissioner as constituting security to the ceding insurer substantially equal to that of a deposit under subdivision (b), and that it shall be issued by a banking institution which is a member of the Federal Reserve System and of financial standing satisfactory to the commissioner. The changes enacted to this subdivision at the 1982 Regular Session shall apply only to life insurers.

As used in this section, the terms "deposits" and "funds" include securities authorized as general investments by Article 3 (commencing with Section 1170) of Chapter 2, but not to exceed current market value.

SEC. 2. Section 922.5 of the Insurance Code is amended to read.

922.5. Credit in accounting and financial statement permitted by this code on account of reinsurance ceded to an alien reinsurer other than one which complies with Article 2 (commencing with Section 1580) of Chapter 4 and includes in the statements required by that

article all reserves and liabilities arising out of such reinsurance shall be allowed only:

(a) To the extent of the amount of deposits by, and funds withheld from, such alien reinsurer pursuant to express provision therefor in the reinsurance contract as security for the payment of the obligations thereunder if the deposits or funds are held subject to withdrawal by, and under the control of, the ceding insurer or are placed in trust for such purposes in a bank which is a member of the Federal Reserve System, if withdrawals from the trust cannot be made without the consent of the ceding insurer, or

(b) Where such alien reinsurer maintains sufficient assets in the United States for the protection of policyholders in the United States and operates its business in such manner as to satisfy the commissioner that it maintains standard and financial condition reasonably comparable to those required of admitted insurers and that it is able to pay losses in the United States.

(c) To the extent that the amount of a clean and irrevocable letter of credit issued for a term of one year conforming to the requirements set forth below, is a substitute for advances for claims, unearned premium, and all other policy and contract liabilities and reserve obligations to be made by an alien reinsurer in connection with its liability under a specific reinsurance agreement. The requirements are that such a clean and irrevocable letter of credit shall be issued under arrangements satisfactory to the commissioner as constituting security to the ceding insurer substantially equal to that of a deposit under subdivision (a), and that it shall be issued by a banking institution which is a member of the Federal Reserve System and of financial standing satisfactory to the commissioner. The changes enacted to this subdivison at the 1982 Regular Session shall apply only to life insurers.

SEC. 3. Article 5.5 (commencing with Section 1230) is added to Chapter 2 of Part 2 of Division 1 of the Insurance Code, to read:

Article 5.5. Life Insurance Policy Loans

1230. The Legislature declares that the purpose of this article is to establish guidelines for life insurers to use in life insurance policies which contain a provision for periodic adjustment of policy loan interest rates and are issued after the effective date of this article.

It is the intent of the Legislature that the life insurance industry make available to the people of the State of California who purchase new life insurance policies after the effective date of this act the benefits of higher dividends or lower premiums, or both, resulting from the increased earnings through the use of higher policy loan interest rates.

1231. For the purposes of this article the "published monthly average" means:

(a) Moody's Corporate Bond Yield Average-Monthly Average Corporates as published by Moody's Investors Service, Inc. or any

successor thereto.

(b) In the event that Moody's Corporate Bond Yield Average-Monthly Average Corporates is no longer published, a substantially similar average, established by the Legislature.

1232. (a) Policies issued on or after the effective date of this article shall provide for policy loan interest rates at either of the following rates:

(1) A provision permitting a maximum interest rate of not more than 8 percent per annum.

(2) A provision permitting an adjustable maximum interest rate established from time to time by the life insurer as permitted by law.

(b) The rate of interest charged on a policy loan made under paragraph (2) of subdivision (a) shall not exceed the higher of the following:

(1) The published monthly average for the calendar month ending two months before the date on which the rate is determined.

(2) The rate used to compute the cash surrender values under the policy during the applicable period plus 1 percent per annum.

(c) Any insurer offering insurance policies with an adjustable policy loan interest rate shall establish a written pricing or dividend policy in order that the holders of the policies shall receive a benefit from any earnings of the insurer resulting from the use of the adjustable rate, either by means of higher dividends or lower premiums or a combination of both.

1233. If the maximum rate of interest is determined pursuant to paragraph (2) of subdivision (a) of Section 1232, the policy shall contain a provision setting forth the frequency at which the rate is to be determined for that policy.

1234. The maximum rate for each policy shall be determined at regular intervals at least once every 12 months, but not more frequently than once in any three-month period.

At the intervals specified in the policy:

(1) The rate being charged may be increased whenever the increase as determined under subdivision (b) of Section 1232 would increase that rate by one-half of 1 percent or more per annum.

(2) The rate being charged shall be reduced whenever the reduction as determined under subdivision (b) of Section 1232 would decrease that rate by one-half of 1 percent or more per annum.

1235. The life insurer shall do all of the following:

(1) Notify the policyholder at the time a cash loan is made of the initial rate of interest on the loan.

(2) Notify the policyholder with respect to premium loans of the initial rate of interest on the loan as soon as it is reasonably practical to do so after making the initial loan. Notice need not be given to the policyholder when a further premium loan is added, except as provided in paragraph (3).

(3) Send to policyholders with loans reasonable advance notice of any increase in the rate.

(4) Include in the required notices the substance of the pertinent

provisions of subdivision (a) of Section 1232 and Section 1233.

1236. The loan value of the policy shall be equivalent to the cash surrender value of the policy, the minimum requirements of which are specified in Sections 10160 through 10165 for life insurance and in Section 11043, for fraternal benefit society policies or certificates, but no policy shall terminate in a policy year as the sole result of change in the interest rate during that policy year. The life insurer shall maintain coverage during that policy year until the time at which it would otherwise have terminated if there had been no change during that policy year.

1237. The substance of the pertinent provisions of Section 1232 and 1233 shall be set forth in the policies to which the provisions apply.

1238. For the purposes of this section:

(1) The rate of interest on policy loans permitted under this section includes the interest rate charged on reinstatement of policy loans for the period during and after any lapse of a policy.

(2) "Policy loan" includes any premium loan made under a policy to pay one or more premiums that were not paid to the life insurer as they fell due.

(3) "Policyholder" includes the owner of the policy or the person designated to pay premiums as shown on the records of the life insurer.

(4) "Policy" includes certificates issued by a fraternal benefit society and annuity contracts which provide for policy loans.

1239. No other provision of law shall apply to policy loan interest rates unless made specifically applicable to these rates.

1239.5. The provisions of this article shall not apply to any insurance contract issued before the effective date of this article unless the policyholder agrees in writing to the applicability of these provisions.

CHAPTER 1352

An act to amend Section 1194.85 of the Insurance Code, relating to insurance.

[Approved by Governor September 23, 1982. Filed with Secretary of State September 24, 1982.]

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

SECTION 1. Section 1194.85 is added to the Insurance Code, to read:

1194.85. In any case in which an admitted insurer, other than a life, title, mortgage and mortgage guaranty insurer, having admitted assets aggregating in value less than twenty-five million dollars ($25,000,000), but not less than ten million dollars ($10,000,000), has

requested the approval of the commissioner to make the investments specified in subdivision (a) of Section 1194.8, that insurer shall reimburse the department for all actual expenses, not to exceed five hundred dollars ($500), incurred by it in making a determination of whether to approve or disapprove that request.

SEC. 2. This act shall become effective only if Assembly Bill 3558 of the 1981–82 Regular Session of the Legislature is chaptered into law and becomes effective on or before January 1, 1983.

CHAPTER 1353

An act to amend Section 243 of the Penal Code, relating to battery.

[Approved by Governor September 23, 1982. Filed with Secretary of State September 24, 1982.]

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

SECTION 1. Section 243 of the Penal Code is amended to read:

243. (a) A battery is punishable by a fine of not exceeding one thousand dollars ($1,000), or by imprisonment in the county jail not exceeding six months, or by both such fine and imprisonment.

(b) When a battery is committed against the person of a peace officer, custodial officer, firefighter, emergency medical technician, or mobile intensive care paramedic, engaged in the performance of his or her duties, or a physician or nurse engaged in rendering emergency medical care outside a hospital, clinic, or other health care facility, and the person committing the offense knows or reasonably should know that such victim is a peace officer, custodial officer, firefighter, emergency medical technician, or mobile intensive care paramedic, engaged in the performance of his or her duties, or a physician or nurse engaged in rendering emergency medical care, the battery is punishable by a fine not exceeding one thousand dollars ($1,000), or by imprisonment in the county jail not exceeding one year, or by both such fine and imprisonment.

(c) When a battery is committed against a peace officer, custodial officer, firefighter, emergency medical technician, or mobile intensive care paramedic, engaged in the performance of his or her duties, or a physician or nurse engaged in rendering emergency medical care outside a hospital, clinic, or other health care facility, and the person committing the offense knows or reasonably should know that such victim is a peace officer, custodial officer, firefighter, emergency medical technician, or mobile intensive care paramedic, engaged in the performance of his or her duties, or a physician or nurse engaged in rendering emergency medical care, and an injury is inflicted on that victim, the battery is punishable by imprisonment in the county jail for a period of not more than one year, or by a fine of not more than one thousand dollars ($1,000), or by imprisonment

in the state prison for 16 months, or two or three years.

(d) When a battery is committed against any person and serious bodily injury is inflicted on the person, the battery is punishable by imprisonment in the county jail for a period of not more than one year or imprisonment in the state prison for two, three, or four years.

(e) As used in this section:

(1) "Peace officer" means any person defined in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2.

(2) "Emergency medical technician" means a person possessing a valid course completion certificate from a program approved by the State Department of Health Services for the medical training and education of ambulance personnel, and who meets the standards of Division 2.5 (commencing with Section 1797) of the Health and Safety Code.

(3) "Mobile intensive care paramedic" means any person who meets the standards set forth in Section 1481 of, and Division 2.5 (commencing with Section 1797) of, the Health and Safety Code.

(4) "Nurse" means a person who meets the standards of Division 2.5 (commencing with Section 1797) of the Health and Safety Code.

(5) "Serious bodily injury" means a serious impairment of physical condition, including, but not limited to, the following: loss of consciousness; concussion; bone fracture; protracted loss or impairment of function of any bodily member or organ; a wound requiring extensive suturing; and serious disfigurement.

(6) "Injury" means any physical injury which requires professional medical treatment.

(7) "Custodial officer" means any person who has the responsibilities and duties described in Section 831 and who is employed by a law enforcement agency of any city or county or who performs those duties as a volunteer.

SEC. 2. Section 243 of the Penal Code is amended to read:

243. (a) A battery is punishable by a fine of not exceeding one thousand dollars ($1,000), or by imprisonment in the county jail not exceeding six months, or by both such fine and imprisonment.

(b) When a battery is committed against the person of a peace officer, custodial officer, firefighter, emergency medical technician, or mobile intensive care paramedic, engaged in the performance of his or her duties, whether on or off duty, including when the peace officer is in a police uniform and is concurrently performing the duties required of him or her as a peace officer while also employed in a private capacity for a public entity as a part-time or casual private security guard or patrolman, or a physician or nurse engaged in rendering emergency medical care outside a hospital, clinic, or other health care facility, and the person committing the offense knows or reasonably should know that such victim is a peace officer, custodial officer, firefighter, emergency medical technician, or mobile intensive care paramedic, engaged in the performance of his or her duties, or a physician or nurse engaged in rendering emergency medical care, the battery is punishable by a fine not

exceeding one thousand dollars ($1,000), or by imprisonment in the county jail not exceeding one year, or by both such fine and imprisonment.

(c) When a battery is committed against a peace officer, custodial officer, firefighter, emergency medical technician, or mobile intensive care paramedic, engaged in the performance of his or her duties, whether on or off duty, including when the peace officer is in a police uniform and is concurrently performing the duties required of him or her as a peace officer while also employed in a private capacity for a public entity as a part-time or casual private security guard or patrolman, or a physician or nurse engaged in rendering emergency medical care outside a hospital, clinic, or other health care facility, and the person committing the offense knows or reasonably should know that such victim is a peace officer, custodial officer, firefighter, emergency medical technician, or mobile intensive care paramedic, engaged in the performance of his or her duties, or a physician or nurse engaged in rendering emergency medical care, and an injury is inflicted on that victim, the battery is punishable by imprisonment in the county jail for a period of not more than one year, or by a fine of not more than one thousand dollars ($1,000), or by imprisonment in the state prison for 16 months, or two or three years.

(d) When a battery is committed against any person and serious bodily injury is inflicted on the person, the battery is punishable by imprisonment in the county jail for a period of not more than one year or imprisonment in the state prison for two, three, or four years.

(e) As used in this section:

(1) "Peace officer" means any person defined in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2.

(2) "Emergency medical technician" means a person possessing a valid course completion certificate from a program approved by the State Department of Health Services for the medical training and education of ambulance personnel, and who meets the standards of Division 2.5 (commencing with Section 1797) of the Health and Safety Code.

(3) "Mobile intensive care paramedic" means any person who meets the standards set forth in Section 1481 of, and Division 2.5 (commencing with Section 1797) of, the Health and Safety Code.

(4) "Nurse" means a person who meets the standards of Division 2.5 (commencing with Section 1797) of the Health and Safety Code.

(5) "Serious bodily injury" means a serious impairment of physical condition, including, but not limited to, the following: loss of consciousness; concussion; bone fracture; protracted loss or impairment of function of any bodily member or organ; a wound requiring extensive suturing; and serious disfigurement.

(6) "Injury" means any physical injury which requires professional medical treatment.

(7) "Custodial officer" means any person who has the responsibilities and duties described in Section 831 and who is

employed by a law enforcement agency of any city or county or who performs those duties as a volunteer.

It is the intent of the Legislature by amendments to this section at the 1981–82 Regular Session to abrogate the holdings in cases such as People v. Corey, 21 Cal. 3d 783, and Cervantez v. J.C. Penny Co., 24 Cal. 3d 579, and to reinstate prior judicial interpretations of this section as they relate to criminal sanctions for battery on peace officers who are employed, on a part-time or casual basis, by a public entity, while wearing a police uniform as private security guards or patrolmen and to allow the exercise of peace officer powers concurrently with such employment.

SEC. 3. It is the intent of the Legislature, if this bill and Assembly Bill 253 are both chaptered and become effective January 1, 1983, both bills amend Section 243 of the Penal Code, and this bill is chaptered after Assembly Bill 253, that the amendments to Section 243 proposed by both bills be given effect and incorporated in Section 243 in the form set forth in Section 2 of this act. Therefore, Section 2 of this act shall become operative only if this bill and Assembly Bill 253 are both chaptered and become effective January 1, 1983, both amend Section 243, and this bill is chaptered after Assembly Bill 253, in which case Section 1 of this act shall not become operative.

SEC. 4. No appropriation is made and no reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution or Section 2231 or 2234 of the Revenue and Taxation Code because the only costs which may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, changes the definition of a crime or infraction, changes the penalty for a crime or infraction, or eliminates a crime or infraction.

CHAPTER 1354

An act to amend Sections 723.101 and 1141.21 of, and to amend and renumber Sections 1032a and 1032b of, the Code of Civil Procedure, relating to service of process.

[Approved by Governor September 23, 1982. Filed with Secretary of State September 24, 1982.]

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

SECTION 1. Section 723.101 of the Code of Civil Procedure is amended to read:

723.101. (a) An earnings withholding order shall be served by the levying officer upon the employer by delivery of the order to any of the following:

(1) The managing agent or person in charge, at the time of

service, of the branch or office where the employee works or the office from which the employee is paid.

(2) Any person to whom a copy of the summons and of the complaint may be delivered to make service on the employer under Article 4 (commencing with Section 416.10) of Chapter 4 of Title 5.

(b) Service of an earnings withholding order shall be made by personal delivery as provided in Section 415.10 or 415.20 or by delivery by registered or certified mail, postage prepaid, with return receipt requested. When service is made by mail, service is completed at the time the return receipt is executed by or on behalf of the recipient. If the levying officer attempts service by mail under this subdivision and does not receive a return receipt within 15 days from the date of deposit in the mail of the earnings withholding order, the levying officer shall make service as provided in Article 3 (commencing with Section 415.10) of Chapter 4 of Title 5.

(c) Except as provided in subdivision (b), service of any notice or document under this chapter may be made by first-class mail, postage prepaid. If service is made on the employer after the employer's return has been received by the levying officer, the service shall be made by first-class mail, postage prepaid, on the person designated in the employer's return to receive notices and at the address indicated in the employer's return, whether or not such address is within the county. Nothing in this subdivision precludes service by personal delivery on the employer before the employer's return has been received by the levying officer, or on the person designated in the employer's return after its receipt. Service by personal delivery under this subdivision may be made by either the levying officer or, if the notice or document runs in the debtor's favor, by the debtor or the debtor's agent who obtains the levying officer's permission to do so.

(d) Notwithstanding subdivision (b), if the judgment creditor so requests, the levying officer shall make service of the earnings withholding order by personal delivery as provided in Section 415.10 or 415.20. If the judgment creditor requests that service be made under this subdivision, the fee provided in Section 26750 of the Government Code shall be increased by one dollar and fifty cents ($1.50).

(e) An earnings withholding order also may be served by any person registered as a process server pursuant to Chapter 16 (commencing with Section 22350) of Division 8 of the Business and Professions Code. When an earnings withholding order is served by a process server pursuant to this subdivision, the levying officer shall perform all other duties required by the provisions of this chapter, except for the actual service of the order, as if the levying officer had served the order.

When an earnings withholding order is served by a process server, the court, in allowing costs for service pursuant to Section 1032.8, shall not allow a sum in excess of one dollar and fifty cents ($1.50).

SEC. 2. Section 1032a of the Code of Civil Procedure is amended

and renumbered to read:

1032.7. Any person allowed costs under the provisions of this chapter shall, in addition to other costs, be entitled to the reasonable cost of taking and transcribing depositions, together with the reasonable cost of one copy of each such deposition, unless it shall appear to the court that the taking of such deposition was unnecessary, and in addition the reasonable cost of one copy of all depositions taken by the party or parties against whom such costs are allowed.

SEC. 3. Section 1032b of the Code of Civil Procedure is amended and renumbered to read:

1032.8. (a) When any process is served by a person other than a public officer or employee, or a registered process server or employee, the court in which the action is pending shall allow as a recoverable cost such sum as it deems proper for such service, but not exceeding the amount allowed to a public officer or employee in this state for such service. The court, in its discretion, may also award costs reasonably incurred in effecting service by a person other than a public officer or a registered process server, upon application of a party.

(b) When any process is served by a registered process server registered pursuant to Chapter 16 (commencing with Section 22350) of Division 8 of the Business and Professions Code, the court in which the action is pending shall allow as recoverable costs such sums as are reasonably incurred in effecting service, including, but not limited to, a stakeout or other reasonable means employed in locating the person to be served.

(c) The clerk shall enter any and all costs of a registered process server as submitted by the moving party on a memorandum of costs or equivalent document unless a motion has been granted striking or adjusting the costs.

SEC. 4. Section 1141.21 of the Code of Civil Procedure is amended to read:

1141.21. (a) If the judgment upon the trial de novo is not more favorable in either the amount of damages awarded or the type of relief granted for the party electing the trial de novo than the arbitration award, the court shall order that party to pay the following nonrefundable costs and fees, unless the court finds in writing and upon motion that the imposition of such costs and fees would create such a substantial economic hardship as not to be in the interest of justice:

(i) To the county, the compensation actually paid to the arbitrator.

(ii) To the other party or parties, all costs including, but not limited to, those specified in Sections 1032.5, 1032.6, 1032.7, and 1032.8, and the party electing the trial de novo shall not recover his costs.

(iii) To the other party or parties, the reasonable costs of the services of expert witnesses, who are not regular employees of any

party, actually incurred or reasonably necessary in the preparation or trial of the case.

Such costs and fees, other than the compensation of the arbitrator, shall include only those incurred from the time of election of the trial de novo.

(b) If the party electing the trial de novo has proceeded in the action in forma pauperis and has failed to obtain a more favorable judgment, the costs and fees under paragraphs (ii) and (iii) of subdivision (a) shall be imposed only as an offset against any damages awarded in favor of that party.

(c) If the party electing the trial de novo has proceeded in the action in forma pauperis and has failed to obtain a more favorable judgment, the costs under paragraph (i) of subdivision (a) shall be imposed only to the extent that there remains a sufficient amount in the judgment after the amount offset under subdivision (b) has been deducted from the judgment.

CHAPTER 1355

An act to amend Section 65587 of, to amend and renumber Section 65913.4 of, and to add Section 65913.7 to, the Government Code, relating to land use.

[Approved by Governor September 23, 1982. Filed with Secretary of State September 24, 1982.]

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

SECTION 1. Section 65587 of the Government Code is amended to read:

65587. (a) Each city, county, or city and county shall bring its housing element, as required by subdivision (c) of Section 65302, into conformity with the requirements of this article on or before October 1, 1981. No extension of time for such purpose may be granted pursuant to Section 65302.6, notwithstanding its provisions to the contrary.

(b) Any action brought by any interested party to review the conformity with the provisions of this article of any housing element or portion thereof or revision thereto shall be brought pursuant to Section 1085 of the Code of Civil Procedure; the court's review of compliance with the provisions of this article shall extend to whether the housing element or portion thereof or revision thereto reasonably complies with the requirements of this article.

(c) If a court finds that an action of a city, county, or city and county, which is required to be consistent with its general plan, does not comply with its housing element, the city, county, or city and county shall bring its action into compliance within 60 days. However, the court shall retain jurisdiction to enforce its decision.

Upon the court's determination that the 60-day period for compliance would place an undue hardship on the city, county, or city and county, the court may extend the time period for compliance by an additional 60 days.

SEC. 1.5. Section 65587 of the Government Code is amended to read:

65587. (a) Each city, county, or city and county shall bring its housing element, as required by subdivision (c) of Section 65302, into conformity with the requirements of this article on or before October 1, 1981. No extension of time for such purpose may be granted pursuant to Section 65302.6, notwithstanding its provisions to the contrary.

(b) Any action brought by any interested party to review the conformity with the provisions of this article of any housing element or portion thereof or revision thereto shall be brought pursuant to Section 1085 of the Code of Civil Procedure; the court's review of compliance with the provisions of this article shall extend to whether the housing element or portion thereof or revision thereto reasonably complies with the requirements of this article.

(c) If a court finds that an action of a city, county, or city and county, which is required to be consistent with its general plan, does not comply with its housing element, the city, county, or city and county shall bring its action into compliance within 60 days. However, the court shall retain jurisdiction throughout the period for compliance to enforce its decision. Upon the court's determination that the 60-day period for compliance would place an undue hardship on the city, county, or city and county, the court may extend the time period for compliance by an additional 60 days.

SEC. 2. Section 65913.4 of the Government Code is amended and renumbered to read:

65913.9. This chapter shall apply to all cities, including charter cities, counties, and cities and counties.

The Legislature finds and declares that the development of a sufficient supply of housing to meet the needs of all Californians is a matter of statewide concern.

SEC. 3. Section 65913.7 is added to the Government Code, to read:

65913.7. If a court finds that an action of a city, county, or city and county is in violation of Section 65913.1 or 65913.2, the city, county, or city and county shall bring its action into compliance within 60 days. However, the court shall retain jurisdiction to enforce its decision. Upon the court's determination that the 60-day period for compliance would place an undue hardship on the city, county, or city and county, the court may extend the time period for compliance by an additional 60 days.

SEC. 4. It is the intent of the Legislature, if this bill and Senate Bill 2011 are both chaptered and become effective January 1, 1983, both bills amend Section 65587 of the Government Code, and this bill is chaptered after Senate Bill 2011, that the amendments to Section

65587 proposed by both bills be given effect and incorporated in Section 65587 in the form set forth in Section 1.5 of this act. Therefore, Section 1.5 of this act shall become operative only if this bill and Senate Bill 2011 are both chaptered and become effective January 1, 1983, both amend Section 65587, and this bill is chaptered after Senate Bill 2011, in which case Section 1 of this act shall not become operative.

CHAPTER 1356

An act to amend Section 11107 of the Penal Code, relating to crimes against children, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 23, 1982. Filed with Secretary of State September 24, 1982.]

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

SECTION 1. Section 11107 of the Penal Code is amended to read:

11107. Each sheriff or police chief executive shall furnish all of the following information to the Department of Justice on standard forms approved by the department:

(a) Daily reports of those misdemeanors and felonies that are required to be reported by the Attorney General including but not limited to, forgery, fraud-bunco, bombings, receiving or selling stolen property, safe and commercial burglary, grand theft, child abuse, homicide, threats, and offenses involving lost, stolen, found, pledged or pawned property.

(b) Daily reports of any instance of the suspected sexual exploitation of a child. As used in this subdivision "sexual exploitation" means any offense where a person engages a minor to engage in acts of prostitution or the preparation of sexually explicit material involving sexual conduct as defined in subdivision (b) of Section 311.3; or any conduct proscribed by law where it appears that there was an intention to sexually exploit a minor for any purpose or to promote or to encourage child molestation.

The reports required by this section shall describe the nature and character of each such crime and note all particular circumstances thereof and include all additional or supplemental data. The Attorney General may also require that the report shall indicate whether or not the submitting agency considers the information to be confidential because it was compiled for the purpose of a criminal investigation of suspected criminal activities. The term "criminal investigation" includes the gathering and maintenance of information pertaining to suspected criminal activity.

SEC. 2. Notwithstanding Section 6 of Article XIII B of the California Constitution and Section 2231 or 2234 of the Revenue and

Taxation Code, no appropriation is made by this act for the purpose of making reimbursement pursuant to these sections. It is recognized, however, that a local agency or school district may pursue any remedies to obtain reimbursement available to it under Chapter 3 (commencing with Section 2201) of Part 4 of Division 1 of that 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:

The commission of sexual exploitation of children is a growing problem and of paramount concern to the people of California. In order to take immediate action to protect children who are especially vulnerable and defenseless to criminal assault, it is necessary that this act take immediate effect.

CHAPTER 1357

An act to add Section 25149.1 to the Health and Safety Code, relating to hazardous wastes.

[Approved by Governor September 23, 1982. Filed with Secretary of State September 24, 1982]

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

SECTION 1. Section 25149.1 is added to the Health and Safety Code, to read:

25149.1. (a) No city, county, or city and county, whether general law or chartered, which has issued a conditional use permit for a hazardous waste facility shall thereafter adopt an ordinance, rule, or regulation, or issue or amend any permit, which adoption, issuance, or amendment imposes additional restrictions on the types of hazardous waste which previously have been authorized to be accepted for disposal, treatment, or storage under the terms and conditions of any previously issued conditional use permit for that facility.

(b) This section does not apply to a modification or revocation of a use permit which is necessary to enforce the terms and conditions of the use permit, or to abate a nuisance, or to prevent an immediate threat to the public health or safety. Modification or revocation of an existing use permit may only occur after the city, county, or city and county orders the facility operator to abate the nuisance or correct the threat to the public health or safety, the facility operator has been afforded adequate opportunity to abate the nuisance or correct the threat to the public health or safety, and the facility operator has failed to comply with the enforcement or abatement order.

(c) This section does not apply to an existing hazardous waste

facility, as defined in Section 25148.

SEC. 2. Notwithstanding Section 6 of Article XIII B of the California Constitution and Section 2231 or 2234 of the Revenue and Taxation Code, no appropriation is made by this act for the purpose of making reimbursement pursuant to these sections. It is recognized, however, that a local agency or school district may pursue any remedies to obtain reimbursement available to it under Chapter 3 (commencing with Section 2201) of Part 4 of Division 1 of that code.

SEC. 3. Notwithstanding Section 2231.5 of the Revenue and Taxation Code, this act does not contain a repealer, as required by that section; therefore, the provisions of this act shall remain in effect unless and until they are amended or repealed by a later enacted act.

CHAPTER 1358

An act to amend Sections 14660 and 15808.1 of, and to add Section 11005.5 to, the Government Code, and to add Section 18961 to the Health and Safety Code, relating to property.

[Approved by Governor September 23, 1982. Filed with Secretary of State September 24, 1982.]

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

SECTION 1. Section 11005.5 is added to the Government Code, to read:

11005.5. After January 1, 1983, if property is to be constructed, purchased, or leased, or any interest is acquired in the property, for a period of five years firm term or more, for the conduct of state business and the property is located in a standard metropolitan statistical area (SMSA) with a population of 250,000 or more according to the most recent decennial census, which is served by a public transit operator, as defined in Section 99210 of the Public Utilities Code, and is not located within a public transit corridor, as defined in Section 50093.5 of the Health and Safety Code, the property shall be subject to the determination required in Section 15808.1.

SEC. 2. Section 14660 of the Government Code is amended to read:

14660. The director may acquire title to real property in the name of the state whenever the acquisition of real property is authorized or contemplated by law, if no other state agency is specifically authorized and directed to acquire it. However, after January 1, 1980, if the property is to be constructed, purchased, or leased, or any interest is acquired in the property, for a period of five years firm term or more, and the property is located in a standard metropolitan statistical area (SMSA) with a population of 250,000 or

more according to the most recent decennial census, which is served by a public transit operator, as defined in Section 99210 of the Public Utilities Code, and is not located within a public transit corridor, as defined in Section 50093.5 of the Health and Safety Code, the property shall be subject to the determination required in Section 15808.1.

For purposes of this section, "construction" does not include repair or furnishing.

SEC. 2.5. Section 15808.1 of the Government Code is amended to read:

15808.1. After January 1, 1980, with respect to the construction, purchase, or lease for a period of five years firm term or more, of buildings for the conduct of state business which are located or will be located in a standard metropolitan statistical area (SMSA) with a population of 250,000 or more according to the most recent decennial census, which is served by a public transit operator, the State Public Works Board, the Department of Finance, and the Department of General Services shall give consideration to the location of existing public transit corridors in the area. Construction, purchase, or lease of buildings for a period of five years firm term or more at locations outside of existing public transit corridors may be approved after the board or department, as the case may be, has determined that the purpose of the facility does not require transit access or the transit operator will provide service as needed, to effectively serve the facility. However, the determination that the purpose of the facility does not require transit access shall not be made if the facility employs more than 200 people or directly serves the public. The board or departments may request the assistance of the transit operator in making their determination and shall notify the operator of their decision.

SEC. 3. Section 18961 is added to the Health and Safety Code, to read:

18961. All state agencies which review, enforce, and administer variances or appeals procedures affecting the preservation of the historical aspects of historical buildings shall consider the alternative provisions of this part and shall consult with the State Historical Building Code Advisory Board to obtain its advisory review prior to undertaking action or making decisions on variances or appeals which affect historical buildings.

CHAPTER 1359

An act to repeal and add Section 1909 of the Education Code, relating to education, and making an appropriation therefor.

[Approved by Governor September 23, 1982. Filed with Secretary of State September 24, 1982.]

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

SECTION 1. Section 1909 of the Education Code is repealed.

SEC. 2. Section 1909 is added to the Education Code, to read:

1909. From funds appropriated for allocation pursuant to Sections 2558 and 41841.5, for each county superintendent of schools who maintained schools or classes for prisoners in the 1981–82 fiscal year pursuant to Section 1906, and who continues to maintain such schools or classes in each fiscal year thereafter, the Superintendent of Public Instruction shall allow in the 1982–83 fiscal year and each fiscal year thereafter, an amount equal to the actual current expenses of the programs, but not to exceed an amount determined as follows:

(a) Compute the statewide average revenue limit per unit of average daily attendance for adults for the current fiscal year pursuant to Section 52616.

(b) Multiply the amount computed in paragraph (1) by the average daily attendance of the schools or classes in the current fiscal year, but in no event shall the average daily attendance in the 1982–83 fiscal year exceed 1.085 times the average daily attendance in the 1981–82 fiscal year.

(c) Multiply the product determined in subdivision (b) for each fiscal year by 0.8.

SEC. 3. Notwithstanding Section 52616 of the Education Code, in the 1982–83 fiscal year, the Superintendent of Public Instruction shall direct the Controller to transfer the sum of one hundred forty thousand dollars ($140,000) from the amount appropriated in the Budget Act for the purpose of Section 52616 of the Education Code, to Section A of the State School Fund for the purposes of Section 1909 of the Education Code.

CHAPTER 1360

An act to add Section 6512.5 to the Health and Safety Code, to amend Section 35580 of the Water Code, to amend Sections 4.1, 5.1, and 8.2 of, and to repeal Section 8.1 of, the Central Delta Water Agency Act (Chapter 1133 of the Statutes of 1973), and to amend Sections 4.4 and 10.5 of the Sacramento County Water Agency Act (Chapter 10 of the Statutes of 1952, First Extraordinary Session), relating to water agencies.

[Approved by Governor September 23, 1982 Filed with Secretary of State September 24, 1982.]

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

SECTION 1. Section 6512.5 is added to the Health and Safety Code, to read:

6512.5. Notwithstanding any other provision of law, for the purpose of furnishing water in the district for any present or future beneficial use, the Winton Sanitary District may exercise any of the powers of a county water district, including the power to acquire, operate, finance, and control water rights, works, property, rights, and privileges useful or necessary to convey, supply, store, or make use of water for any useful purpose, all in the same manner as county water districts formed under the County Water District Law (Division 12 (commencing with Section 30000) of the Water Code). However, the Winton Sanitary District shall otherwise continue to be governed in all respects as a sanitary district under the provisions of this part, and the provisions of this section are intended only to vest additional powers in the district which the district may elect to exercise.

SEC. 2. The provisions of Section 1 of this act are necessary because there is no other entity within the territory of the Winton Sanitary District which is willing and able to provide water service for the benefit of the people of the district, and it is necessary to ensure that the Winton Sanitary District is authorized to do any act necessary to furnish sufficient water in the district for any present or future beneficial use. This problem is not common to all districts formed under the Sanitary District Act of 1923. It is therefore hereby declared that a general law cannot be made applicable within the meaning of Section 16 of Article IV of the California Constitution and that the enactment of Section 6512.5 of the Health and Safety Code as a special law is necessary for the solution of problems existing in the Winton Sanitary District.

SEC. 3. Section 35580 of the Water Code is amended to read:

35580. The provisions of this chapter shall apply only to the Chowchilla Water District, the La Branza Water District, the Rock Creek Water District, and the Tea Pot Dome Water District.

SEC. 4. The Rock Creek Water District, has a potential source of hydroelectric power in its water facilities which can be generated as an incident to the operation of such facilities. This incidental source of hydroelectric power is not common to other California water districts. The Legislature therefore finds and declares that a special law is necessary with respect to the Rock Creek Water District, that the provisions of Section 3 of this act are needed to meet special circumstances within the district, and that a general law cannot be made applicable within the meaning of Section 16 of Article IV of the California Constitution.

SEC. 5. Section 4.1 of the Central Delta Water Agency Act (Chapter 113 of the Statutes of 1973) is amended to read:

Sec. 4.1. The general purposes of the agency shall be to negotiate, enter into, execute, amend, administer, perform, and enforce one or

more agreements with the United States and with the State of California, or with either, which have for their general purposes the following:

(a) To protect the water supply of the lands within the agency against intrusion of ocean salinity; and

(b) To assure the lands within the agency a dependable supply of water of suitable quality sufficient to meet present and future needs.

The agency may also undertake activities to assist landowners and local districts within the agency in reclamation and flood control matters.

SEC. 6. Section 5.1 of the Central Delta Water Agency Act (Chapter 1133 of the Statutes of 1973) is amended to read:

Sec. 5.1. On or before the 30th day of June of each year, the board shall determine, and cause to be thereafter assessed and collected as provided in this act, an amount of money sufficient to meet and pay the estimated expenses and obligations, including a reasonable reserve for contingencies, of the agency, until such time as moneys shall be available to the agency from assessments levied in the next succeeding year; provided, that the total amount of money assessed during any year pursuant to this act for purposes other than payment under the contracts provided for in Section 4.1 of this act shall not exceed the sum of two hundred fifty thousand dollars ($250,000). No vote shall be required to establish a maximum rate upon formation of the agency as would otherwise be required under Section 2286 of the Revenue and Taxation Code, and the maximum rate shall be the statutory rate allowed by law unless the voters of the agency approve a higher rate as provided in subdivision (3) of Section 2263 of the Revenue and Taxation Code.

SEC. 7. Section 8.1 of the Central Delta Water Agency Act (Chapter 1133 of the Statutes of 1973) is repealed.

SEC. 8. Section 8.2 of the Central Delta Water Agency Act (Chaptered 1133 of the Statutes of 1973) is amended to read:

Sec. 8.2. In the event of dissolution of the agency and the termination of its existence, its affairs shall be wound up, its successor for the purpose of winding up its affairs determined, and its assets and funds distributed in accordance with the District Reorganization Act of 1965 (Division 1 (commencing with Section 56000) of Title 6 of the Government Code.

SEC. 9. Section 4.4 of the Sacramento County Water Agency Act (Chapter 10 of the Statutes of 1952, First Extraordinary Session) is amended to read:

Sec. 4.4. The agency shall have the power to adopt and carry out any definite plan or system for accomplishing, facilitating or financing all work which may lawfully be accomplished by the agency and to enforce said plan or system by resolution or ordinance.

In order to carry out its plan or system, the agency shall have the power (1) to prescribe, revise, and collect fees and charges for facilities furnished or to be furnished for the production, conservation, transmittal, and sale of ground or surface water at

wholesale for the present or future beneficial use or uses of the lands within the agency, or any zone thereof created for that purpose; provided, that, within those geographical areas included within a district, mutual water company, or public utility as defined in Section 216 of the Public Utilities Code, that authority shall only be exercised pursuant to a written agreement between the agency and the district, mutual water company, or public utility; (2) 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, storm, or drainage system constructed or to be constructed in a zone of the agency; and (3) whenever a drainage or flood control problem is referred to the agency by the County of Sacramento, or any incorporated city therein, to require the installation of drainage or flood control improvements necessary or convenient for the needs of any zone, including, but not limited to, residential, subdivision, commercial, and industrial drainage and flood control needs.

The agency may make reimbursement agreements pursuant to which the agency may provide for owners or developers of property to install those facilities and for reimbursement of that part of the cost of the facilities in excess of any fees required with respect to the property of the owner or developer, and the agreements may provide for the agency to pay interest not to exceed 6 percent per annum on the unpaid balance. The county and cities therein are hereby authorized to refer all drainage and flood control problems, arising under the Subdivision Map Act or otherwise, to the agency for solution. Revenues derived under this section shall be used (1) to acquire, construct, reconstruct, maintain, and operate the facilities within the zone collecting the revenue, (2) to comply with any reimbursement agreement made for the acquisition, construction, or reconstruction of those facilities, (3) to reduce the principal or interest of any bonded indebtedness thereof, or (4) to replace funds expended on behalf of the zone derived from the funds created under the authority of subdivision 1 of Section 10.5 hereof.

SEC. 10. Section 10.5 of the Sacramento County Water Agency Act (Chapter 10 of the Statutes of 1952, First Extraordinary Session) is amended to read:

Sec. 10.5. The board shall have the power, in any year:

(1) To levy ad valorem taxes or assessments:

(a) To pay the general administrative costs and expenses, including maintenance and operation of established works, of the agency,

(b) To carry out any of the objects or purposes of this act of common benefit to the agency, and

(c) To provide a fund which may be used by the agency to pay the costs and expenses of constructing or extending any or all works established within or on behalf of any zone or participating zones within the agency; provided, that funds so used are replaced from funds derived from either of the following sources:

(i) Taxes or assessments levied pursuant to subdivisions 3 or 4 of this section within the zone or participating zones benefited by such construction in the year or years immediately following the use of said funds.

(ii) Fees or charges collected under authority of Section 4.4.

(2) Taxes or assessments may be levied for purposes of subdivision (1) by either of the following methods:

(a) By a levy or assessment upon all property within the agency, including land, improvements thereon, and personal property.

(b) By a levy or assessment upon all real property within the agency, including both land and improvements thereon.

(3) To levy taxes or assessments in any zone to pay the cost of carrying out any of the objects or purposes of this act performed or to be performed on behalf of the zone, including the constructing, maintaining, operating, extending, repairing, or otherwise improving any or all works or improvements established or to be established within or on behalf of the zone, according to the benefits derived or to be derived by the zone, by either of the following methods:

(a) By a levy or assessment upon all property within a zone or participating zone, including land, improvements thereon, and personal property.

(b) By a levy or assessment upon all real property within a zone or participating zone, including both land and improvements thereon.

It is declared that for the purposes of any tax or assessment levied pursuant to this subdivision, the property so taxed or assessed within a given zone is equally benefited.

(4) To levy assessments upon any property in any zone, according to the provisions and procedures of the Improvement Act of 1911 (Division 7, commencing with Section 5000, Streets and Highways Code), the Improvement Bond Act of 1915 (Division 10, commencing with Section 8500, Streets and Highways Code), the Municipal Improvement Act of 1913 (Division 12, commencing with Section 10000, Streets and Highways Code), or the Refunding Assessment Bond Act of 1935 (Chapter 732 of the Statutes of 1935).

(5) To levy and collect a special tax or assessment upon the property in any zone within the agency for the purpose of raising funds to make payments pursuant to any contract entered into with another governmental agency pursuant to Section 6.3 of this act when the contract requires the governmental agency to perform work in any specified zone or participating zones for its or their particular benefit and also requires the agency to pay the governmental agency a sum of money in consideration or subvention for the performance of that work. The tax or assessment levied pursuant to this subdivision shall be in addition to any other tax or assessment herein otherwise provided.

Taxes or assessments levied pursuant to this section shall be levied and collected together with, and not separately from, taxes for

county purposes. The revenues derived from the agency taxes or assessments shall be paid into the county treasury to the credit of the agency or the respective zones thereof, as the case may be, and the board shall have the power to control and order the expenditure thereof for the purposes for which the tax or assessment was levied; provided, however, that no revenues, or portions thereof, derived in any of the several zones from taxes or assessments levied under the provisions of subdivision 3 of this section shall be expended for constructing, maintaining, operating, extending, repairing, or otherwise improving any works or improvements located in any zone other than the zone in which the work or improvement was or is to be done, except in the case of joint projects, or for projects authorized or established outside such zone, or zones, but for the benefit thereof. In cases of joint projects between two or more zones, the zones are, and shall be referred to as, participating zones.

The provisions of this section shall not apply to the financing, construction, acquisition, reconstruction, maintenance, operation, extending, repair, or other improvement to any work or improvement designed or intended primarily for the production, conservation, transmittal, distribution, and sale of ground and surface waters for the present or future beneficial use or uses of the lands or inhabitants within the agency or any zone thereof created for that purpose within those geographical areas served by a district, mutual water company, or public utility as defined in Section 216 of the Public Utilities Code, unless pursuant to a written agreement between the agency and the district, mutual water company, or public utility.

CHAPTER 1361

An act to amend Section 44244 of, to repeal and add Section 44260 of, and to add Sections 44260.1, 44260.2, 44260.3, 44260.4, 44260.5, and 44260.6 to, the Education Code, relating to certificated employees.

[Approved by Governor September 23, 1982. Filed with Secretary of State September 24, 1982.]

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

SECTION 1. Section 44244 of the Education Code is amended to read:

44244. (a) At least 30 days prior to any Committee of Credentials meeting or hearing at which the application or credential of a certified employee is to be considered, the committee shall notify the certified employee of the specific allegations of misconduct for which the application or credential may be denied, suspended, or revoked, or for which the employee may be privately admonished, in ordinary and concise language setting forth the acts or omissions

charged and the statutes or rules violated. Supplemental allegations of misconduct shall be sent to the certified employee 30 days prior to such meeting or hearing. The portions of the investigation of the original or supplemental allegations which constitute the basis for such allegations shall be open to inspection and copying by such employee and his or her attorney. The statement of the allegations shall inform such employee that such allegations, if they are true, are sufficient to cause his or her application or credential to be denied, suspended, or revoked, or to cause him or her to be privately admonished.

(b) The investigation shall be commenced within 30 days after all allegations of misconduct have been filed with the committee, and within one year thereafter, the committee shall have made a determination either that no adverse action shall be taken; that the allegations are sufficient to cause his or her application or credential to be denied, suspended, or revoked; or that the allegations are sufficient to cause him or her to be privately admonished.

(c) The recommended decision of the committee shall be in writing and a copy of such decision shall be delivered to the certified employee personally or sent to him or her by registered mail within 30 days after the meeting or hearing together with specific information relative to any administrative hearing to which such employee is entitled.

SEC. 2. Section 44260 of the Education Code is repealed.

SEC. 3. Section 44260 is added to the Education Code, to read:

44260. The minimum requirements for the designated subjects preliminary vocational education teaching credential shall be all of the following:

(a) Five years or the equivalent of adequate, successful, and recent experience in, or experience and education in, the subject named on the credential.

(b) Possession of a high school diploma or the passage of an equivalency examination as designated by the commission.

(c) Completion of two semester units or passage of an examination on the principles and provisions of the United States Constitution, as specified in Section 44335.

(d) Passage of an approved examination of basic reading, writing, and mathematics skills, as specified in Sections 44252 and 44253.

(e) If in the judgment of the commission an examination in the subject to be taught is necessary or desirable, such an examination may also be required.

SEC. 4. Section 44260.1 is added to the Education Code, to read:

44260.1. The minimum requirements for the five-year renewal of the preliminary designated subjects vocational education teaching credential shall be all of the following:

(a) A valid designated subjects preliminary vocational education teaching credential.

(b) Two years of successful teaching, or the equivalent, as authorized by the designated subjects preliminary vocational

education teaching credential.

(c) A program of personalized preparation as approved by the commission.

(d) Completion of a program of study in health education, including, but not limited to, an emphasis on the physiological and sociological effects of abuse of alcohol, narcotics, and drugs, and of the use of tobacco.

SEC. 5. Section 44260.2 is added to the Education Code, to read:

44260.2. The minimum requirements for the designated subjects preliminary adult education teaching credential shall be all of the following:

(a) Five years or the equivalent of appropriate experience or education in the subject named on the credential.

(b) Possession of a high school diploma or the passage of an equivalency examination as designated by the commission.

(c) Completion of two semester units or passage of an examination on the principles and provisions of the United States Constitution, as specified in Section 44335.

(d) Passage of an approved examination of basic reading, writing, and mathematics skills, as specified in Sections 44252 and 44253.

SEC. 6. Section 44260.3 is added to the Education Code, to read:

44260.3. The minimum requirements for the five-year renewal of the preliminary designated subjects adult education teaching credential shall be all of the following:

(a) A valid designated subjects preliminary adult education teaching credential.

(b) Two years of successful teaching, or the equivalent, as authorized by the designated subjects preliminary adult education teaching credential.

(c) A program of personalized preparation as approved by the commission.

(d) Completion of a program of study in health education, including, but not limited to, emphasis on the physiological and sociological effects of abuse of alcohol, narcotics, and drugs, and of the use of tobacco.

SEC. 7. Section 44260.4 is added to the Education Code, to read:

44260.4. The minimum requirements for the designated subjects special subjects teaching credential shall be appropriate to the special subject named on the credential, in accordance with the requirements established by the commission. Special subjects instruction may include, but shall not be limited to, driver education and training.

SEC. 8. Section 44260.5 is added to the Education Code, to read:

44260.5. The commission shall establish minimum requirements for the issuance and renewal of the designated subjects teaching credentials for part-time service. Designated subjects teaching credentials issued for part-time service shall not authorize service for more than one-half of a full-time teaching assignment.

SEC. 9. Section 44260.6 is added to the Education Code, to read:

44260.6. The minimum requirements for the designated subjects supervision and coordination credential shall include all of the following:

(a) Possession of a designated subjects teaching credential, other than for part-time service.

(b) Three years of full-time teaching experience in the subject named on the designated subjects teaching credential.

(c) Completion of a commission-approved personalized preservice program in supervision and coordination.

(d) The designated subjects supervision and coordination credential shall authorize the holder to supervise and coordinate designated subjects classes and programs.

CHAPTER 1362

An act to amend Section 20455 of the Public Contract Code, as added by Chapter 465 of the Statutes of 1982, relating to public contracts.

[Approved by Governor September 23, 1982 Filed with Secretary of State September 24, 1982]

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

SECTION 1. Section 20455 of the Public Contract Code, as added by Chapter 465 of the Statutes of 1982, is amended to read:

20455. After construction has begun, the legislative body, or the superintendent of streets if authorized by the legislative body, may order changes in the work without the necessity of a hearing. The order shall be in writing, and the amount of any change ordered shall not exceed five thousand dollars ($5,000) when the total amount of the original contract does not exceed fifty thousand dollars ($50,000), nor 10 percent of the amount of any original contract which exceeds fifty thousand dollars ($50,000). No change shall exceed twenty-five thousand dollars ($25,000). The limitations on the cost of changes permitted by this section shall not apply where (1) the change is requested in writing by the owner of property subject to assessment for the improvement under construction and the nature of the change requested is such that the cost thereof will be assessed exclusively against the property of the person requesting the change, or (2) the change in the work will not adversely affect the benefiting property and any increase in the cost resulting from such changes will be paid by the city and will not be assessed against the property within the assessment district.

CHAPTER 1363

An act to add and repeal Sections 31681.8 and 31739.5 of the Government Code, relating to the County Employees Retirement Law of 1937.

[Approved by Governor September 23, 1982. Filed with Secretary of State September 24, 1982.]

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

SECTION 1. Section 31681.8 is added to the Government Code, to read:

31681.8. (a) The board of supervisors in any county under the County Employees Retirement Law of 1937 may provide, effective on a date determined by the board, for cost-of-living payments, in addition to those payable under Articles 16.5 and 16.6, to members of this system or a superseded system who retired and to their surviving beneficiaries who are receiving allowances under this system, provided the following conditions are met:

(1) On January 1 of the year of adoption or readoption of this section, the accumulations established by Section 31870, 31870.1, or 31870.2, as applicable, shall, for any member, equal or exceed 25 percent in order for that member to be eligible for such cost-of-living payment.

(2) The payments shall be made either quarterly or monthly to those members and survivors eligible for the first payment.

(3) The amount of each payment is equal to the product of a sum determined by the board of supervisors, but not to exceed fifteen dollars ($15) times the member's full years of county service not exceeding 30 years.

(4) The total annual payments to all members and survivors as a percentage of the retired members' and survivors' payroll shall not exceed the latest percentage increase in the Consumers Price Index as determined by the board under Article 16.5 (commencing with Section 31870) minus the latest percentage increase in allowances granted pursuant to Article 16.5 (commencing with Section 31870) or 16.6 (commencing with Section 31875).

(b) The payments made pursuant to this section and Section 31739.5 shall be made only during the lifetimes of the members or their survivors receiving allowances and to no other person.

(c) The payments made pursuant to this section and Section 31739.5 shall not be considered as a part of the monthly retirement allowance, optional death allowance, or annual death allowance, nor shall any such payments be construed as guaranteeing any similar payments in any subsequent year.

(d) Notwithstanding subdivision (a), the payments to beneficiaries of members pursuant to Section 31760.1, 31765.1, 31781.1, or 31785 or to beneficiaries who elected a combined benefit

pursuant to Section 31781.3 shall be 60 percent of the payments which otherwise would have been payable under subdivision (a) to the members.

(e) Notwithstanding subdivision (a), the payments to beneficiaries of members who elected optional settlement 3 pursuant to Section 31763 shall be 50 percent of the payments which otherwise would have been payable under subdivision (a) to the member.

(f) This section shall not be operative in any county in any year, unless (1) it is adopted or readopted in any year by the board of supervisors and (2) the average annual increase in the Bureau of Labor Statistics Consumer Price Index for all Urban Consumers applicable to the county for the calendar year preceding the year of adoption or readoption exceeded by 2 percent or more the maximum percentage increase in allowances payable on April 1 pursuant to Article 16.5 (commencing with Section 31870) in the year of such adoption or readoption. Any such adoption or readoption in any particular year shall not be construed to require any adoption or readoption in any subsequent year.

Before adoption by the board of supervisors in any year, the cost of the payments authorized by this section and Section 31739.5 shall be determined by a qualified actuary and the board of supervisors shall, with advice of the actuary, provide for the payment of such cost in such manner as to fully fund the benefits on a sound actuarial basis, including use of available funds in the reserves provided in Section 31592.2 with the approval of the retirement board, or an increase in the employer rates of contributions, or a combination of these sources of payments. This actuarial determination shall be made only upon authorization by the board of supervisors.

This section shall remain in effect only until January 1, 1989, and as of such date is repealed, unless a later enacted statute, which is chaptered before January 1, 1989, deletes or extends such date.

SEC. 2. Section 31739.5 is added to the Government Code, to read:

31739.5. The provision in Section 31681.8, when adopted or readopted, shall apply to members of this system or a superseded system who retired for disability, except that payments to a member of this system or a superseded system who retired for service-connected disability or to the surviving beneficiary of such member shall be computed on the basis that the member's service had continued to age 60, if a safety member, or age 70, if any other category of member, provided, that this additional service credit shall not exceed 30 years.

This section shall remain in effect only until January 1, 1989, and as of such date is repealed, unless a later enacted statute, which is chaptered before January 1, 1989, deletes or extends such date.

SEC. 3. Notwithstanding Section 6 of Article XIII B of the California Constitution and Section 2231 or 2234 of the Revenue and Taxation Code, no appropriation is made by this act for the purpose

of making reimbursement pursuant to these sections. It is recognized, however, that a local agency or school district may pursue any remedies to obtain reimbursement available to it under Chapter 3 (commencing with Section 2201) of Part 4 of Division 1 of that code.

CHAPTER 1364

An act to add Sections 699.080, 706.101, and 715.040 to, and to add Title 9 (commencing with Section 680.010) to, and to repeal Title 9 (commencing with Section 681) of, Part 2 of, the Code of Civil Procedure, and to amend Sections 26820.4, 26828, and 72055 of the Government Code, relating to enforcement of judgments.

[Approved by Governor September 23, 1982. Filed with Secretary of State September 24, 1982.]

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

SECTION 1. Title 9 (commencing with Section 681) of Part 2 of the Code of Civil Procedure is repealed.

SEC. 2. Title 9 (commencing with Section 680.010) is added to Part 2 of the Code of Civil Procedure, to read:

TITLE 9. ENFORCEMENT OF JUDGMENTS

DIVISION 1. DEFINITIONS AND GENERAL PROVISIONS

CHAPTER 1. SHORT TITLE AND DEFINITIONS

680.010. This title shall be known and may be cited as the Enforcement of Judgments Law.

680.110. Unless the provision or context otherwise requires, the definitions in this chapter govern the construction of this title.

680.120. "Account debtor" means "account debtor" as defined in Section 9105 of the Commercial Code.

680.130. "Account receivable" means "account" as defined in Section 9106 of the Commercial Code.

680.140. "Chattel paper" means "chattel paper" as defined in Section 9105 of the Commercial Code.

680.150. "Costs" means costs and disbursements, including but not limited to statutory fees, charges, commissions, and expenses.

680.160. "Court" means the court where the judgment sought to be enforced was entered.

680.170. "Deposit account" means "deposit account" as defined in Section 9105 of the Commercial Code.

680.180. "Document of title" means "document" as defined in Section 9105 of the Commercial Code. A document of title is

negotiable if it is negotiable within the meaning of Section 7104 of the Commercial Code.

680.190. "Equity" means the fair market value of the interest of the judgment debtor in property, or in the case of community property the fair market value of the interest of the judgment debtor and the spouse of the judgment debtor in the property, over and above all liens and encumbrances on the interest superior to the judgment creditor's lien.

680.200. "Financial institution" means a state or national bank, state or federal savings and loan association or credit union, or like organization, and includes a corporation engaged in a safe deposit business.

680.210. "General intangibles" means "general intangibles", as defined in Section 9106 of the Commercial Code, consisting of rights to payment.

680.220. "Instrument" means "instrument", as defined in Section 9105 of the Commercial Code, but does not include a security.

680.230. "Judgment" means a judgment, order, or decree entered in a court of this state.

680.240. "Judgment creditor" means the person in whose favor a judgment is rendered or, if there is an assignee of record, means the assignee of record. Unless the context otherwise requires, the term also includes the guardian or conservator of the estate, personal representative, or other successor in interest of the judgment creditor or assignee of record.

680.250. "Judgment debtor" means the person against whom a judgment is rendered.

680.260. "Levying officer" means the sheriff, marshal, or constable.

680.270. "Money judgment" means that part of a judgment that requires the payment of money.

680.280. "Person" includes a natural person, a corporation, a partnership or other unincorporated association, and a public entity.

680.290. "Personal property" includes both tangible and intangible personal property.

680.300. "Principal amount of the judgment" means the total amount of the judgment as entered or as last renewed, together with the costs thereafter added to the judgment pursuant to Section 685.090, reduced by any partial satisfactions of such amount and costs and by any amounts no longer enforceable.

680.310. "Property" includes real and personal property and any interest therein.

680.320. "Real property" includes any right in real property, including but not limited to a leasehold interest in real property.

680.330. "Registered process server" means a person registered as a process server pursuant to Chapter 16 (commencing with Section 22350) of Division 8 of the Business and Professions Code.

680.340. "Secured party" means "secured party" as defined in Section 9105 of the Commercial Code.

680.345. "Security" means a "security" as defined in Section 8102 of the Commercial Code.

680.350. "Security agreement" means "security agreement" as defined in Section 9105 of the Commercial Code.

680.360. "Security interest" means "security interest" as defined in Section 1201 of the Commercial Code.

680.365. "Spousal support" includes support for a former spouse.

680.370. "Tangible personal property" includes chattel paper, documents of title, instruments, securities, and money.

680.380. "Writ" includes a writ of execution, a writ of possession of personal property, a writ of possession of real property, and a writ of sale.

CHAPTER 2. GENERAL PROVISIONS

681.010. Except as otherwise provided by statute:

(a) A money judgment is enforceable as provided in Division 2 (commencing with Section 695.010).

(b) A judgment for possession of personal property is enforceable as provided in Chapter 2 (commencing with Section 714.010) of Division 3.

(c) A judgment for possession of real property is enforceable as provided in Chapter 3 (commencing with Section 715.010) of Division 3.

(d) A judgment for sale of real or personal property is enforceable as provided in Chapter 4 (commencing with Section 716.010) of Division 3.

(e) A judgment requiring performance of an act not described in subdivisions (a) to (d), inclusive, or requiring forbearance from performing an act, is enforceable as provided in Chapter 5 (commencing with Section 717.010) of Division 3.

681.020. An assignee of a judgment is not entitled to enforce the judgment under this title unless an acknowledgment of assignment of judgment to that assignee has been filed under Section 673 or the assignee has otherwise become an assignee of record.

681.030. (a) The Judicial Council may provide by rule for the practice and procedure in proceedings under this title.

(b) The Judicial Council may prescribe the form of the applications, notices, orders, writs, and other papers under this title. A form prescribed by the Judicial Council under this section is deemed to comply with this title and supersedes any corresponding form provided in this title. The Judicial Council may prescribe forms in languages other than English.

(c) The Judicial Council shall prepare a form containing both of the following:

(1) A list of each of the federal and this state's exemptions from enforcement of a money judgment against a natural person.

(2) A citation to the relevant statute of the United States or this state which creates each of the exemptions.

681.040. If a paper is required or permitted to be filed with a levying officer under this title, the paper is considered filed when it is actually received by the levying officer.

681.050. If any provision or clause of this title or application thereof to any person or circumstances is held invalid, the invalidity does not affect other provisions or applications of this title which can be given effect without the invalid provision or application, and to this end the provisions of this title are severable.

CHAPTER 3. PERIOD FOR ENFORCEMENT AND RENEWAL OF JUDGMENTS

Article 1. Period for Enforcement of Judgments

683.010. Except as otherwise provided by statute or in the judgment, a judgment is enforceable under this title upon entry.

683.020. Except as otherwise provided by statute, upon the expiration of 10 years after the date of entry of a money judgment or a judgment for possession or sale of property:

(a) The judgment may not be enforced.

(b) All enforcement procedures pursuant to the judgment or to a writ or order issued pursuant to the judgment shall cease.

(c) Any lien created by an enforcement procedure pursuant to the judgment is extinguished.

683.030. If a money judgment is payable in installments, the 10-year period of enforceability prescribed by Section 683.020 runs as to each installment from the date the installment becomes due and runs as to costs from the date the costs are added to the judgment pursuant to Section 685.090.

683.040. If the judgment creditor applies for a writ for the enforcement of a judgment and the application is made more than 10 years after the date the judgment was entered or renewed, the application shall be accompanied by an affidavit of a person having knowledge of the facts stating facts showing that the issuance of the writ sought in the application is not barred under this chapter. A copy of the affidavit shall be attached to the writ when issued.

683.050. Nothing in this chapter limits any right the judgment creditor may have to bring an action on a judgment, but any such action shall be commenced within the period prescribed by Section 337.5.

Article 2. Renewal of Judgments

683.110. (a) The period of enforceability of a money judgment or a judgment for possession or sale of property may be extended by renewal of the judgment as provided in this article.

(b) A judgment shall not be renewed under this article if the application for renewal is filed within five years from the time the judgment was previously renewed under this article.

683.120. (a) The judgment creditor may renew a judgment by filing an application for renewal of the judgment with the court in which the judgment was entered.

(b) Except as otherwise provided in this article, the filing of the application renews the judgment in the amount determined under Section 683.150 and extends the period of enforceability of the judgment as renewed for a period of 10 years from the date the application is filed.

(c) In the case of a money judgment payable in installments, for the purposes of enforcement and of any later renewal, the amount of the judgment as renewed shall be treated as a lump-sum money judgment entered on the date the application is filed.

683.130. (a) In the case of a lump-sum money judgment or a judgment for possession or sale of property, the application for renewal of the judgment may be filed at any time before the expiration of the 10-year period of enforceability provided by Section 683.020 or, if the judgment is a renewed judgment, at any time before the expiration of the 10-year period of enforceability of the renewed judgment provided by Section 683.120.

(b) In the case of a money judgment payable in installments, the application for renewal of the judgment may be filed:

(1) If the judgment has not previously been renewed, at any time as to past due amounts that at the time of filing are not barred by the expiration of the 10-year period of enforceability provided by Sections 683.020 and 683.030.

(2) If the judgment has previously been renewed, within the time specified by subdivision (a) as to the amount of the judgment as previously renewed and, as to any past due amounts that became due and payable after the previous renewal, at any time before the expiration of the 10-year period of enforceability provided by Sections 683.020 and 683.030.

683.140. The application for renewal of the judgment shall be executed under oath and shall include all of the following:

(a) The title of the court where the judgment is entered and the cause and number of the action.

(b) The date of entry of the judgment and of any renewals of the judgment and where entered in the records of the court.

(c) The name and address of the judgment creditor and the name and last known address of the judgment debtor.

(d) In the case of a money judgment, the information necessary to compute the amount of the judgment as renewed. In the case of a judgment for possession or sale of property, a description of the performance remaining due.

683.150. (a) Upon the filing of the application, the court clerk shall enter the renewal of the judgment in the court records.

(b) In the case of a money judgment, the entry of renewal shall show the amount of the judgment as renewed. Except as provided in subdivisions (c) and (d), this amount is the amount required to satisfy the judgment on the date of the filing of the application for

renewal and includes the fee for the filing of the application for renewal.

(c) In the case of a money judgment payable in installments not previously renewed, the amount of the judgment as renewed is the total of the past due installments, the costs added to the judgment pursuant to Section 685.090, and the accrued interest, which remains unsatisfied and is enforceable on the date of the filing of the application for renewal and includes the fee for the filing of the application for renewal.

(d) In the case of a money judgment payable in installments previously renewed, the amount of the judgment as renewed under the latest renewal is the total of the following which remains unsatisfied and is enforceable on the date of the filing of the application for the latest renewal:

(1) The amount of the judgment as renewed under the previous renewal.

(2) The past due installments that became due and payable after the previous renewal.

(3) The costs that have been added to the judgment pursuant to Section 685.090 after the previous renewal.

(4) The interest that has accrued on the amounts described in paragraphs (1), (2), and (3) since the last renewal.

(5) The fee for filing the application for renewal.

(e) In the case of a judgment for possession or sale of property, the entry of renewal shall describe the performance remaining due.

683.160. (a) The judgment creditor shall serve a notice of renewal of the judgment on the judgment debtor. Service shall be made personally and proof of service shall be filed with the court clerk. The notice shall be in a form prescribed by Section 693.040 and shall inform the judgment debtor that the judgment debtor has 30 days within which to make a motion to vacate or modify the renewal.

(b) Until proof of service is filed pursuant to subdivision (a), no writ may be issued, nor may any enforcement proceedings be commenced to enforce the judgment, except to the extent that the judgment would be enforceable had it not been renewed.

683.170. (a) The renewal of a judgment pursuant to this article may be vacated on any ground that would be a defense to an action on the judgment, including the ground that the amount of the renewed judgment as entered pursuant to this article is incorrect, and shall be vacated if the application for renewal was filed within five years from the time the judgment was previously renewed under this article.

(b) Not later than 30 days after service of the notice of renewal pursuant to Section 683.160, the judgment debtor may apply by noticed motion under this section for an order of the court vacating the renewal of the judgment. The notice of motion shall be served on the judgment creditor. Service shall be made personally or by mail.

(c) Upon the hearing of the motion, the renewal may be ordered

vacated upon any ground provided in subdivision (a), and another and different renewal may be entered, including, but not limited to, the renewal of the judgment in a different amount if the decision of the court is that the judgment creditor is entitled to renewal in a different amount.

683.180. (a) If a judgment lien on an interest in real property has been created pursuant to a money judgment and the judgment is renewed pursuant to this article, the duration of the judgment lien is extended until 10 years from the date of the filing of the application for renewal if, before the expiration of the judgment lien, a certified copy of the application for renewal is recorded with the county recorder of the county where the real property subject to the judgment lien is located.

(b) A judgment lien on an interest in real property that has been transferred subject to the lien is not extended pursuant to subdivision (a) if the transfer was recorded before the application for renewal was filed unless both of the following requirements are satisfied:

(1) A copy of the application for renewal is personally served on the transferee.

(2) Proof of such service is filed with the court clerk within 30 days after the filing of the application for renewal.

683.190. If a lien (other than a judgment lien on an interest in real property or an execution lien) has been created by an enforcement procedure pursuant to a judgment and the judgment is renewed pursuant to this article, the duration of the lien is extended, subject to any other limitations on its duration under this title, until 10 years from the date of the filing of the application for renewal of the judgment if, before the expiration of the lien, a certified copy of the application for renewal is served on or filed with the same person and in the same manner as the notice or order that created the lien.

683.200. If a judgment is renewed pursuant to this article, any enforcement proceeding previously commenced pursuant to the judgment or to a writ or order issued pursuant to the judgment that would have ceased pursuant to Section 683.020 had the judgment not been renewed may be continued, subject to any other limitations provided in this title, if, before the expiration of the prior 10-year period of enforceability, a certified copy of the application for renewal of the judgment is filed with the levying officer, receiver, or other officer acting pursuant to such writ or order or, in other cases, is filed in the enforcement proceeding.

683.210. A judgment may be renewed notwithstanding any stay of enforcement of the judgment, but the renewal of the judgment does not affect the stay of enforcement.

683.220. If a judgment is renewed pursuant to this article, the date of the filing of the application for renewal shall be deemed to be the date that the period for commencing an action on the renewed judgment commences to run under Section 337.5.

Article 3. Application of Chapter

683.310. This chapter does not apply to judgments made, entered, or enforceable pursuant to the Family Law Act, Part 5 (commencing with Section 4000) of Division 4 of the Civil Code.

683.320. This chapter does not apply to a money judgment against a public entity that is subject to Section 965.5 or 970.1 of the Government Code.

CHAPTER 4. MANNER OF SERVICE OF WRITS, NOTICES, AND OTHER PAPERS

Article 1. Service on Attorney of Creditor or Debtor

684.010. Subject to Chapter 1 (commencing with Section 283) of Title 5 of Part 1 of this code and Section 4809 of the Civil Code, when a notice, order, or other paper is required to be served under this title on the judgment creditor, it shall be served on the judgment creditor's attorney of record rather than on the judgment creditor if the judgment creditor has an attorney of record.

684.020. (a) Except as provided in subdivision (b), when a writ, notice, order, or other paper is required to be served under this title on the judgment debtor, it shall be served on the judgment debtor instead of the attorney for the judgment debtor.

(b) The writ, notice, order, or other paper shall be served on the attorney specified by the judgment debtor rather than on the judgment debtor if all of the following requirements are satisfied:

(1) The judgment debtor has filed with the court and served on the judgment creditor a request that service on the judgment debtor under this title be made by serving the attorney specified in the request. Service on the judgment creditor of the request shall be made personally or by mail. The request shall include a consent, signed by the attorney, to receive service under this title on behalf of the judgment debtor.

(2) The request has not been revoked by the judgment debtor.

(3) The consent to receive service has not been revoked by the attorney.

(c) A request or consent under subdivision (b) may be revoked by filing with the court a notice revoking the request or consent. A copy of the notice revoking the request or consent shall be served on the judgment creditor. Service shall be made personally or by mail. The judgment creditor is not bound by the revocation until the judgment creditor has received a copy of the notice revoking the request or consent.

684.030. Sections 684.010 and 684.020 do not apply to either of the following:

(a) A subpoena or other process to require the attendance of a party.

(b) A paper to bring a party into contempt.

684.040. If service on an attorney is required under this article, service on the attorney shall be made in any of the following ways:

(a) By personal delivery to the attorney.

(b) By service in the manner provided in subdivision (1) of Section 1011.

(c) By mail in the manner provided in Section 684.120.

684.050. Service on the attorney for the judgment creditor or the judgment debtor pursuant to the provisions of this article constitutes service on the judgment creditor or judgment debtor for the purposes of this title.

Article 2. Manner of Service Generally

684.110. (a) Subject to subdivisions (b), (c), and (d), if a writ, notice, order, or other paper is required to be personally served under this title, service shall be made in the same manner as a summons is served under Chapter 4 (commencing with Section 413.10) of Title 5.

(b) If the paper is required to be personally served under this title and service on an attorney is required under Article 1 (commencing with Section 684.010), service shall be made on the attorney in the manner provided in Section 684.040.

(c) If the service is on (1) a financial institution, (2) a title insurer (as defined in Section 12340.4 of the Insurance Code) or underwritten title company (as defined in Section 12340.5 of the Insurance Code), or (3) an industrial loan company (as defined in Section 18003 of the Financial Code), service shall be made at the office or branch that has actual possession of the property levied upon or at which a deposit account levied upon is carried and shall be made upon the officer, manager, or other person in charge of the office or branch at the time of service.

(d) Subject to subdivision (c), if a levy is made by personally serving a copy of the writ and notice of levy on a third person, service on the third person shall be made in the same manner as a summons may be served under Section 415.10 or 415.20.

684.120. (a) Except as otherwise provided in this title, if a writ, notice, order, or other paper is to be served by mail under this title, it shall be sent by first-class mail (unless some other type of mail is specifically required) and shall be deposited in a post office, mailbox, sub-post office, substation, mail chute, or other like facility regularly maintained by the United States Postal Service, in a sealed envelope, with postage paid, addressed as follows:

(1) If an attorney is being served in place of the judgment creditor or judgment debtor as provided in Section 684.010 or 684.020, to the attorney at the last address given by the attorney on any paper filed in the proceeding and served on the party making the service.

(2) If any other person is being served, to such person at the person's current mailing address if known or, if unknown, at the address last given by the person on any paper filed in the proceeding

and served on the party making the service.

(3) If the mailing cannot be made as provided in paragraph (1) or (2), to the person at the person's last known address.

(b) Service by mail is complete at the time of deposit; but, unless the court prescribes a shorter period of time, any prescribed period of notice and any right or duty to do any act or make any response within any prescribed period or on a date certain after a paper is served by mail is extended:

(1) Five days if the place of address is within the State of California.

(2) Ten days if the place of address is outside the State of California but within the United States.

(3) Twenty days if the place of address is outside the United States.

(c) The writ, notice, order, or other paper served by mail under this section shall bear a notation of the date and place of mailing or be accompanied by an unsigned copy of the affidavit or certificate of mailing. This subdivision is directory only.

684.130. (a) If the levying officer is required by any provision of this title to serve any writ, order, notice, or other paper on any person, the judgment creditor shall include in the instructions to the levying officer the correct name and address of the person. The judgment creditor shall use reasonable diligence to ascertain the correct name and address of the person.

(b) Unless the levying officer has actual knowledge that the name or address included in the instructions is incorrect, the levying officer shall rely on the instructions in serving the writ, order, notice, or other paper on the person.

684.140. If a provision of this title provides for service by the levying officer of an order, notice, or other paper that runs in favor of a particular person, personal service of the paper may be made by the person or the person's agent if the levying officer gives permission. The levying officer's permission may be evidenced by a certificate signed by the levying officer. This section does not authorize the levying officer to give permission to serve a writ or notice of levy. If service is made by a person or the person's agent pursuant to this section, the cost of the service is not a recoverable cost. Nothing in this section limits the authority of a registered process server provided in this title.

Article 3. Proof of Service

684.210. If service of notice of a court hearing is required under this title, proof of service of the notice shall be made at or before the hearing to the satisfaction of the court.

684.220. Proof of service or of posting or publication under this title may be made by, but is not limited to, the following means:

(a) If service is made in the same manner as a summons is served under Chapter 4 (commencing with Section 413.10) of Title 5, proof

of service may be made in the manner provided in Article 5 (commencing with Section 417.10) of that chapter.

(b) If service is made in the same manner as a summons is served under Section 415.10 or 415.20, proof of service may be made by affidavit of the person making the service showing the time, place, and manner of service and the facts showing that the service was made in accordance with the applicable statutory provisions. The affidavit shall recite or in other manner show the name of the person to whom the papers served were delivered and, if appropriate, the title of the person or the capacity in which the person was served.

(c) Proof of service by mail as provided in Section 684.120 may be made in the manner prescribed in Section 1013a.

(d) Proof of posting may be made by the affidavit of the person who posted the notice, showing the time and place of posting.

(e) Proof of publication may be made by the affidavit of the publisher or printer, or the foreman or principal clerk of the publisher or printer, showing the time and place of publication.

(f) Proof of service may be made by the written admission of the person served.

(g) Proof of service however made, or of posting or publication, may be made by testimonial evidence.

Article 4. Application of Chapter

684.310. Except for Sections 684.130 and 684.140, the provisions of Article 1 (commencing with Section 684.010) and Article 2 (commencing with Section 684.110) do not apply to service under Chapter 5 (commencing with Section 706.010) of Division 2 (wage garnishment).

CHAPTER 5. INTEREST AND COSTS

685.010. (a) Interest accrues at the rate of 10 percent per annum on the principal amount of a money judgment remaining unsatisfied.

(b) The Legislature reserves the right to change the rate of interest provided in subdivision (a) at any time to a rate of less than 10 percent per annum, regardless of the date of entry of the judgment or the date any obligation upon which the judgment is based was incurred. A change in the rate of interest may be made applicable only to the interest that accrues after the operative date of the statute that changes the rate.

685.020. Unless the judgment otherwise provides, if a money judgment is payable in installments, interest commences to accrue as to each installment on the date the installment becomes due.

685.030. (a) If a money judgment is satisfied in full pursuant to a writ under this title, interest ceases to accrue on the judgment:

(1) If the proceeds of collection are paid in a lump sum, on the date of levy.

(2) In any other case, on the date the proceeds of sale or collection

are actually received by the levying officer.

(b) If a money judgment is satisfied in full other than pursuant to a writ under this title, interest ceases to accrue on the date the judgment is satisfied in full.

(c) If a money judgment is partially satisfied pursuant to a writ under this title or is otherwise partially satisfied, interest ceases to accrue as to the part satisfied on the date the part is satisfied.

(d) For the purposes of subdivisions (b) and (c), the date a money judgment is satisfied in full or in part is the earliest of the following times:

(1) The date satisfaction is actually received by the judgment creditor.

(2) The date satisfaction is tendered to the judgment creditor or deposited in court for the judgment creditor.

(3) The date of any other performance that has the effect of satisfaction.

685.040. The judgment creditor is entitled to the reasonable and necessary costs of enforcing a judgment. Attorney's fees incurred in enforcing a judgment are not included in costs collectible under this title unless otherwise provided by law.

685.050. (a) If a writ is issued pursuant to this title to enforce a judgment, the costs and interest to be satisfied in a levy under the writ are the following:

(1) The statutory fee for issuance of the writ.

(2) The amount of interest that has accrued from the date of entry or renewal of the judgment to the date of issuance of the writ, as adjusted for partial satisfactions, if the judgment creditor has filed an affidavit with the court clerk stating such amount.

(3) The amount of interest that accrues on the principal amount of the judgment remaining unsatisfied from the date of issuance of the writ until the date interest ceases to accrue.

(4) The levying officer's statutory costs for performing the duties under the writ.

(b) In a levy under the writ, the levying officer shall do all of the following:

(1) Collect the amount of costs and interest entered on the writ pursuant to paragraphs (1) and (2) of subdivision (a).

(2) Compute and collect the amount of additional interest required to be collected by paragraph (3) of subdivision (a) by reference to the daily interest entered on the writ.

(3) Determine and collect the amount of additional costs pursuant to paragraph (4) of subdivision (a).

685.070. (a) The judgment creditor may claim under this section the following costs of enforcing a judgment:

(1) Statutory fees for preparing and issuing, and recording and indexing, an abstract of judgment or a certified copy of a judgment.

(2) Statutory fees for filing a notice of judgment lien on personal property.

(3) Statutory fees for issuing a writ for the enforcement of the

judgment to the extent that the fees are not satisfied pursuant to Section 685.050.

(4) Statutory costs of the levying officer for performing the duties under a writ to the extent that the costs are not satisfied pursuant to Section 685.050 and the statutory fee of the levying officer for performing the duties under the Wage Garnishment Law to the extent that the fee has not been satisfied pursuant to the wage garnishment.

(5) Costs incurred in connection with any proceeding under Chapter 6 (commencing with Section 708.010) of Division 2 that have been approved as to amount, reasonableness, and necessity by the judge or referee conducting the proceeding.

(b) Before the judgment is fully satisfied but not later than two years after the costs have been incurred, the judgment creditor claiming costs under this section shall file a memorandum of costs with the court clerk and serve a copy on the judgment debtor. Service shall be made personally or by mail. The memorandum of costs shall be executed under oath by a person who has knowledge of the facts and shall state that to the person's best knowledge and belief the costs are correct, are reasonable and necessary, and have not been satisfied.

(c) Within 10 days after the memorandum of costs is served on the judgment debtor, the judgment debtor may apply to the court on noticed motion to have the costs taxed by the court. The notice of motion shall be served on the judgment creditor. Service shall be made personally or by mail. The court shall make an order allowing or disallowing the costs to the extent justified under the circumstances of the case.

(d) If no motion to tax costs is made within the time provided in subdivision (c), the costs claimed in the memorandum are allowed.

685.080. (a) The judgment creditor may claim costs authorized by Section 685.040 by noticed motion. The motion shall be made before the judgment is satisfied in full, but not later than two years after the costs have been incurred. The costs claimed under this section may include, but are not limited to, costs that may be claimed under Section 685.070 and costs incurred but not approved by the court or referee in a proceeding under Chapter 6 (commencing with Section 708.010) of Division 2.

(b) The notice of motion shall describe the costs claimed, shall state their amount, and shall be supported by an affidavit of a person who has knowledge of the facts stating that to the person's best knowledge and belief the costs are correct, are reasonable and necessary, and have not been satisfied. The notice of motion shall be served on the judgment debtor. Service shall be made personally or by mail.

(c) The court shall make an order allowing or disallowing the costs to the extent justified under the circumstances of the case.

685.090. (a) Costs are added to and become a part of the judgment:

(1) Upon the filing of an order allowing the costs pursuant to this chapter.

(2) If a memorandum of costs is filed pursuant to Section 685.070 and no motion to tax is made, upon the expiration of the time for making the motion.

(b) The costs added to the judgment pursuant to this section are included in the principal amount of the judgment remaining unsatisfied.

(c) If a writ is outstanding at the time the costs are added to the judgment pursuant to this section, the levying officer shall add the amount of such costs to the amount to be collected pursuant to the writ if the levying officer receives either of the following before the writ is returned:

(1) A certified copy of the court order allowing the costs.

(2) A certificate from the clerk of the court that the costs have been added to the judgment where the costs have been added to the judgment after a memorandum of costs has been filed pursuant to Section 685.070 and no motion to tax has been made within the time allowed for making the motion.

(d) The levying officer shall include the costs described in subdivision (c) in the amount of the sale or collection distributed to the judgment creditor only if the levying officer receives the certified copy of the court order or the clerk's certificate before the distribution is made.

685.100. (a) Except as otherwise provided by law:

(1) As a prerequisite to the performance by the levying officer of a duty under this title, the judgment creditor shall deposit a sum of money with the levying officer sufficient to pay the costs of performing the duty.

(2) As a prerequisite to the taking of property into custody by the levying officer, whether by keeper or otherwise, the judgment creditor shall deposit with the levying officer a sum of money sufficient to pay the costs of taking the property and keeping it safely for a period not to exceed 15 days. If continuation of the custody of the property is required, the levying officer shall, from time to time, demand orally or in writing that the judgment creditor deposit additional amounts to cover estimated costs for periods not to exceed 30 days each. A written demand may be mailed or delivered to the judgment creditor. The judgment creditor has not less than three business days after receipt of the demand within which to comply with the demand. If the amount demanded is not paid within the time specified in the oral or written demand, the levying officer shall release the property.

(b) The levying officer is not liable for failure to take or hold property unless the judgment creditor has complied with the provisions of this section.

685.110. Nothing in this chapter affects the law relating to prejudgment interest.

CHAPTER 6. ENFORCEMENT AFTER DEATH OF JUDGMENT CREDITOR OR JUDGMENT DEBTOR

686.010. After the death of the judgment creditor, the judgment may be enforced as provided in this title by the judgment creditor's executor or administrator or successor in interest.

686.020. After the death of the judgment debtor, enforcement of a judgment against the judgment debtor is governed by the Probate Code.

CHAPTER 7. LEVYING OFFICERS

687.010. (a) The judgment creditor shall give the levying officer instructions in writing. The instructions shall be signed by the judgment creditor's attorney of record or, if the judgment creditor does not have an attorney of record, by the judgment creditor. The instructions shall contain the information needed or requested by the levying officer to comply with the provisions of this title, including but not limited to:

(1) An adequate description of any property to be levied upon.

(2) A statement whether the property is a dwelling.

(3) If the property is a dwelling, whether it is real or personal property.

(b) Subject to subdivision (c), the levying officer shall act in accordance with the written instructions to the extent the actions are taken in conformance with the provisions of this title.

(c) Except to the extent the levying officer has actual knowledge that the information is incorrect, the levying officer may rely on any information contained in the written instructions.

687.020. (a) As used in this section, "instrument" means a check, draft, money order, or other order for the withdrawal of money from a financial institution, the United States, any state, or any public entity within any state.

(b) If an instrument is payable to the judgment debtor on demand and comes into the possession of a levying officer pursuant to this title, the levying officer shall promptly endorse and present the instrument for payment.

(c) The levying officer shall endorse the instrument by writing on the instrument (1) the name of the judgment debtor, (2) the name and official title of the levying officer, (3) the title of the court where the judgment is entered, and (4) the date of entry of the judgment and where entered in the records of the court. The endorsement is as valid as if the instrument were endorsed by the judgment debtor. No financial institution or public entity on which the instrument is drawn is liable to any person for payment of the instrument to the levying officer rather than to the judgment debtor by reason of the endorsement. No levying officer is liable by reason of endorsing, presenting, and obtaining payment of the instrument.

(d) If it appears from the face of the instrument that it has been

tendered to the judgment debtor in satisfaction of a claim or demand and that endorsement of the instrument is considered a release and satisfaction by the judgment debtor of the claim or demand, the levying officer shall not endorse the instrument unless the judgment debtor has first endorsed it to the levying officer. If the judgment debtor does not endorse the instrument to the levying officer, the levying officer shall hold the instrument for 30 days and is not liable to the judgment debtor or to any other person for delay in presenting it for payment. At the end of the 30-day holding period, the levying officer shall return the instrument to the maker.

687.030. Except as otherwise provided by statute, where the method of levy upon property requires that the property be taken into custody or where the levying officer is otherwise directed to take property into custody, the levying officer may do so by any of the following methods:

(a) Removing the property to a place of safekeeping.

(b) Installing a keeper.

(c) Otherwise obtaining possession or control of the property.

687.040. (a) The levying officer is not liable for actions taken in conformance with the provisions of this title, including actions taken in conformance with the provisions of this title in reliance on information contained in the written instructions of the judgment creditor, or in reliance on information provided to the levying officer by a registered process server pursuant to subdivision (c) of Section 699.080 or subdivision (e) of Section 706.101 or subdivision (b) of Section 715.040 or other provision, except to the extent the levying officer has actual knowledge that the information is incorrect. Nothing in this subdivision limits any liability the judgment creditor may have if the levying officer acts on the basis of incorrect information given in the written instructions. Nothing in this subdivision limits any liability the judgment creditor or registered process server may have if the levying officer acts on the basis of incorrect information provided by a registered process server.

(b) Unless the levying officer is negligent in the care or handling of the property, the levying officer is not liable to either the judgment debtor or the judgment creditor for loss by fire, theft, injury, or damage of any kind to personal property while (1) in the possession of the levying officer either in a warehouse or other storage place or in the custody of a keeper or (2) in transit to or from a warehouse or other storage place.

687.050. The levying officer has a special lien, dependent upon possession, on personal property levied upon in the amount of the levying officer's costs for which an advance has not been made.

CHAPTER 8. ENFORCEMENT OF STATE TAX LIABILITY

Article 1. Enforcement Pursuant to Warrant or Notice of Levy

688.010. For the purpose of the remedies provided under this

article, jurisdiction is conferred upon any of the following courts:

(a) The superior court, regardless whether the municipal or justice court also has jurisdiction under subdivision (b).

(b) The municipal or justice court if (1) the amount of liability sought to be collected does not exceed the jurisdictional amount of the court and (2) the legality of the liability being enforced is not contested by the person against whom enforcement is sought.

688.020. (a) Except as otherwise provided by statute, whenever a warrant may properly be issued by the state, or by a department or agency of the state, pursuant to any provision of the Public Resources Code, Revenue and Taxation Code, or Unemployment Insurance Code, and the warrant may be levied with the same effect as a levy pursuant to a writ of execution, the state or the department or agency of the state authorized to issue the warrant may use any of the remedies available to a judgment creditor, including but not limited to, those provided in Chapter 6 (commencing with Section 708.010) of Division 2.

(b) The proper court for the enforcement of such remedies is a court of any of the following counties:

(1) The county where the debtor resides.

(2) The county where the property against which enforcement is sought is located.

(3) If the debtor does not reside in this state, any county of this state.

688.030. (a) Whenever pursuant to any provision of the Public Resources Code, Revenue and Taxation Code (excluding Sections 3201 to 3204, inclusive), or Unemployment Insurance Code, property is levied upon pursuant to a warrant or notice of levy issued by the state or by a department or agency of the state for the collection of a liability:

(1) If the debtor is a natural person, the debtor is entitled to the same exemptions to which a judgment debtor is entitled. Except as provided in subdivisions (b) and (c), the claim of exemption shall be made, heard, and determined as provided in Chapter 4 (commencing with Section 703.010) of Division 2 in the same manner as if the property were levied upon under a writ of execution.

(2) A third person may claim ownership or the right to possession of the property or a security interest in or lien on the property. Except as provided in subdivisions (b) and (c) or as otherwise provided by statute, the third-party claim shall be made, heard, and determined as provided in Division 4 (commencing with Section 720.010) in the same manner as if the property were levied upon under a writ of execution.

(b) In the case of a levy pursuant to a notice of levy:

(1) The claim of exemption or the third-party claim shall be filed with the state department or agency that issued the notice of levy.

(2) The state department or agency that issued the notice of levy shall perform the duties of the levying officer, except that the state

department or agency need not give itself the notices that the levying officer is required to serve on a judgment creditor or creditor or the notices that a judgment creditor or creditor is required to give to the levying officer. The state department or agency in performing the duties of the levying officer under this paragraph has no obligation to search public records or otherwise seek to determine whether any lien or encumbrance exists on property sold or collected.

(c) A claim of exemption or a third-party claim pursuant to this section shall be heard and determined in the court specified in Section 688.010 in the county where the property levied upon is located.

688.040. For the purpose of this article, as used in this title:

(a) "Judgment creditor" or "creditor" means the state or the department or agency of the state seeking to collect the liability.

(b) "Judgment debtor" or "debtor" means the debtor from whom the liability is sought to be collected.

688.050. For the purpose of applying Section 694.080, 703.050, or 703.100, the date of creation of a tax lien is the earliest of the following times:

(a) The time when a notice of state tax lien is recorded or filed pursuant to Chapter 14 (commencing with Section 7150) of Division 7 of Title 1 of the Government Code.

(b) The time when the property is levied upon pursuant to a warrant or notice of levy or notice to withhold issued by the state or by a department or agency of the state.

(c) The time when any other act is performed that creates or perfects a lien on specific property as distinguished from a lien on the debtor's property generally.

Article 2. Enforcement of Judgment for Taxes

688.110. Except as otherwise provided by statute, if a judgment is entered on a claim for taxes by a public entity, the judgment is enforceable pursuant to this title in the same manner as any other money judgment.

CHAPTER 19. FORMS

693.010. Until superseded by a form prepared by the Judicial Council, a writ of execution, writ of possession of personal property, writ of possession of real property, and writ of sale shall be in substantially the following form:

— A-1 —

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name and address) TELEPHONE NO

☐ Recording requested by and return to

ATTORNEY FOR (Name)

NAME OF COURT AND BRANCH, IF ANY

STREET ADDRESS

MAILING ADDRESS

CITY ZIP CODE

PLAINTIFF

DEFENDANT

FOR RECORDER'S USE ONLY

CASE NUMBER

FOR COURT USE ONLY

WRIT OF ☐EXECUTION (MONEY JUDGMENT) ☐JOINT DEBTOR
☐POSSESSION OF ☐PERSONAL PROPERTY
☐REAL PROPERTY
☐SALE

1 To the Sheriff or any Marshal or Constable of the County of:

You are directed to enforce the judgment described below with interest and costs and your costs as provided by law.

2 To any registered process server: You are authorized to serve this writ only in accord with CCP 699.080 or 715.040

3 ☐Judgment creditor ☐Assignee of record
(Name and address)

4 Judgment debtor (name and address)

5 Judgment entered on (date):

6 Judgment entered in
a ☐Judgment book ☐Minute book ☐Docket
b Volume no. Page no.

7 ☐Judgment has been renewed
a Judgment renewed on (dates):
b Renewal entered in
(1) ☐Judgment book ☐Minute book ☐Docket
(2) Volume no. Page no.

8 Notice of sale under this writ
☐has not been requested
☐has been requested as set forth on the reverse

9 ☐Joint debtor information set forth on the reverse

10 ☐Real or personal property to be delivered under a writ of possession or sold under a writ of sale described on reverse

11 ☐If judgment not renewed, total judgment entered (including principal, attorney's fees, interest, and costs) $

12 ☐If judgment renewed, total amount of judgment as last renewed (including principal, interest, and costs) $

13. Principal amount of judgment on date of writ
a. Costs (per filed order or memo—CCP 685.090) added after entry or renewal: $
b. Total (add 11 or 12 to 13a and subtract partial satisfactions of principal amount): $

14 Amount required to satisfy judgment on date of writ
a Accrued interest due on date of writ (per filed affidavit—CCP 685.050) as adjusted for partial satisfactions: $
b Fee for issuance of writ: $
c Total (add 13b, 14a, b): $

15 Levying officer: Add the following daily interest from date of writ (at legal rate on 13b) $

(SEAL)

Dated Clerk, By _____, Deputy

NOTICE TO PERSON SERVED SEE REVERSE FOR IMPORTANT INFORMATION

(Continued on reverse)

— A-2 —

Continued items:

4 ☐ Additional judgment debtor (name and address):

8. ☐ Notice of sale has been requested by (name and address):

9. ☐ Joint debtor was declared bound by the judgment (CCP 989-994)

a On (date):
b Name and address of joint debtor

a On (date):
b Name and address of joint debtor

c ☐ Additional costs against certain joint debtors (itemize):

10. ☐ Judgment was entered for the following:

a. ☐ Possession of personal property. ☐ If delivery cannot be had, then for the value (itemize in 10e) specified in the judgment or supplemental order.
b. ☐ Possession of real property.
c. ☐ Sale of personal property.
d. ☐ Sale of real property.
e. ☐ Description:

NOTICE TO PERSON SERVED

☐ Writ of execution or sale. Your rights and duties are indicated on the accompanying Notice of Levy.

☐ Writ of possession of personal property. If the levying officer is not able to take custody of the property, the levying officer will make a demand upon you for the property. If custody is not obtained following demand, the judgment may be enforced as a money judgment for the value of the property specified in the judgment or in a supplemental order.

☐ Writ of possession of real property. If the premises are not vacated within five days after the date of service on an occupant or, if service is by posting, within five days after service on you, the levying officer will place the judgment creditor in possession of the property. Personal property remaining on the premises will be sold or otherwise disposed of in accordance with CCP 1174 unless you or the owner of the property pays the judgment creditor the reasonable cost of storage and takes possession of the personal property not later than 15 days after the time the judgment creditor takes possession of the premises.

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693.020. Until superseded by a form prescribed by the Judicial Council, the notice of levy shall be in substantially the following form:

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name and address) TELEPHONE NO ☐ Recording requested by and return to ATTORNEY FOR (Name)	FOR RECORDER'S USE ONLY
NAME OF COURT AND BRANCH, IF ANY STREET ADDRESS MAILING ADDRESS CITY AND ZIP CODE	
PLAINTIFF DEFENDANT	
NOTICE OF LEVY under WRIT OF ☐ EXECUTION (MONEY JUDGMENT) ☐ JOINT DEBTOR ☐ SALE	CASE NUMBER FOR COURT USE ONLY

NOTICE TO PERSON SERVED (name):

The judgment creditor (name)_____seeks to levy upon property in which the judgment debtor (name)_____ has an interest and apply it to the satisfaction of a judgment. The property to be levied upon is described:

☐ In the accompanying writ of possession or writ of sale.

☐ As follows:

1. ☐ You are served as a judgment debtor. See item 3.

2. ☐ You are served as a person other than the judgment debtor. See items 4, 5, 6, 7, and 8.

3. Notice to judgment debtor:

a. The levying officer is required to take custody of property in your possession that is to be levied upon.

b. You may claim any available exemption for your property. A list of exemptions is attached. If you wish to claim an exemption, you must do so within 10 days after this notice was delivered to you or 15 days after this notice was mailed to you by filing a claim of exemption with the levying officer, together with a copy thereof, as provided in Section 703.520 of the Code of Civil Procedure. If you wish to seek the advice of an attorney in this matter, you should do so immediately so that a claim of exemption may be filed on time.

c. You are not entitled to claim an exemption for property that is levied upon under a judgment for sale of property. This property is described in the accompanying writ of sale. You may, however, claim available exemptions for property levied upon to satisfy damages or costs awarded in such a judgment.

d. You may obtain the release of your property by paying the amount of a money judgment remaining unpaid and any interest and costs remaining unpaid.

e. If your property is levied upon under a writ of execution or to satisfy damages and costs under a writ of possession or sale, the property may be sold at an execution sale, perhaps at a price substantially below its value. Notice of sale will be given to you. Notice of sale of real property (other than a leasehold estate with an unexpired term of less than two years) may not be given until at least 120 days after this notice is served on you. This grace period is intended to give you an opportunity to settle with the judgment creditor, obtain a satisfactory buyer for the property, or encourage other potential buyers to attend the execution sale.

f. All sales at an execution sale are final; there is no right of redemption.

4. Notice to person other than the judgment debtor. You are served as:

a. ☐ Person in possession of:

☐ Tangible personal property in general ☐ Money

☐ Negotiable document ☐ Instrument

☐ Chattel paper

b. ☐ Bailee of goods not covered by negotiable document.

c. ☐ Financial institution. Your rights and duties are set forth in CCP 700.140-700.160.

d. ☐ As to a security:

☐ Person in possession ☐ Holder in escrow

☐ Issuer

e. ☐ Person obligated on instrument. If the levying officer has custody of the instrument, you must make payments to the levying officer as they come due.

f. ☐ Person obligated on:

☐ Account receivable ☐ General intangible

☐ Chattel paper ☐ Final money judgment

If you have been making payments to a person other than the judgment debtor you must continue to make such payments until the obligation is satisfied and thereafter to the levying officer, unless otherwise directed by the other person or by court order. In other cases you must comply with item 5.

g. ☐ Person to whom payments are made on:

☐ Account receivable ☐ General intangible

h. ☐ Personal representative of a decedent in whose estate the judgment debtor has an interest in personal property. Your rights and duties are set forth in CCP 700.200.

i. ☐ Occupant of:

☐ Personal property

☐ Real property

j. ☐ Person in whose name stands:

☐ Real property ☐ Growing crops

☐ Timber to be cut ☐ Minerals or the like (including oil and gas) to be extracted

☐ Safe deposit box ☐ Deposit account

k. ☐ Legal owner of:

☐ Vehicle ☐ Boat

l. ☐ Secured party who has filed financing statement on:

☐ Growing crops ☐ Timber to be cut

☐ Minerals or the like (including oil and gas) to be extracted ☐ Account receivable resulting from sale of minerals or the like at wellhead or minehead

m. ☐ Levying officer having custody of property.

n. ☐ Other:

5. If the property levied upon is in your possession or under your control and you do not claim the right to possession or a security interest, you must deliver the property to the levying officer. If you do not deny an obligation levied upon or do not claim a priority over the judgment creditor's lien, you must pay to the levying officer the amount that is due and payable and that becomes due and payable during the period of the execution lien. You must execute and deliver any documents needed to transfer the property.

6. You must complete the accompanying garnishee's memorandum.

7. If you claim ownership or the right to possession of real or personal property levied upon or if you claim a security interest in or lien on personal property levied upon you may make a third-party claim and obtain the release of the property pursuant to CCP 720.010-720.800.

8. The amount necessary to satisfy the judgment creditor's judgment is $_____ (total of amount due under writ less partial satisfactions and plus daily interest from the date of the writ until the date of levy).

_____
(name of levying officer)

_____

_____
(address of levying officer)

☐ Date mailed:
☐ Date delivered:
☐ Date posted:
☐ Date filed:
☐ Date recorded:

Signed by:
☐ Levying officer:
☐ Registered process server:

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693.030. Until superseded by a form prescribed by the Judicial Council, the garnishee's memorandum shall be in substantially the following form:

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name and Address) TELEPHONE NO :	LEVYING OFFICER (Name and Address):	
ATTORNEY FOR (Name):		
Name of court, judicial district or branch court, if any		
PLAINTIFF:		
DEFENDANT:		
MEMORANDUM OF GARNISHEE	LEVYING OFFICER FILE NUMBER	COURT CASE NUMBER

Notice to person served with writ and notice of levy: This memorandum must be completed and mailed or delivered to the levying officer within 10 days after service on you of the writ and notice of levy unless you have fully complied with the levy. Failure to complete and return this memorandum may render you liable for the costs and attorney's fees incurred in obtaining the required information.

This memorandum does not apply to garnishment of earnings.

1. If you will not deliver to the levying officer any property levied upon, describe the property and the reason for not delivering it:

2. Describe any property of the judgment debtor not levied upon that is in your possession or under your control:

3. If you owe money to the judgment debtor which you will not pay to the levying officer, describe the amount and terms of the obligation and the reason for not paying it to the levying officer:

4. Describe the amount and terms of any obligation owed to the judgment debtor that is levied upon but is not yet due and payable:

5. Describe the amount and terms of any obligation owed to the judgment debtor that is not levied upon:

6. Describe any claims and rights of other persons to the property or obligation levied upon that are known to you and the names and addresses of the other persons:

DECLARATION

I certify (or declare) under penalty of perjury under the laws of the State of California that the foregoing is true and correct:

_____ _____

(Date) (Signature)

_____

(Type or print name)

If you need more space to provide the information required by this memorandum, you may attach additional pages. Total number of pages attached:_____.

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693.040. Until superseded by a form prescribed by the Judicial Council, the notice of renewal of judgment required by Section 683.160 shall be in substantially the following form:

ATTORNEY OR PARTY WITHOUT ATTORNEY (name and address) TELEPHONE NO ☐ Recording requested by and return to ATTORNEY FOR (name)	FOR RECORDER'S USE ONLY
NAME OF COURT AND BRANCH IF ANY STREET ADDRESS MAILING ADDRESS CITY ZIP CODE	
PLAINTIFF DEFENDANT	
NOTICE OF RENEWAL OF JUDGMENT	CASE NUMBER
	FOR COURT USE ONLY

TO JUDGMENT DEBTOR (name and last known address):

1. Upon application of the judgment creditor, the following judgment against you has been renewed.
   a. Judgment creditor (name and address):
   b. Judgment originally entered on (date):
   c. Judgment originally entered in
      (1) ☐ Judgment book ☐ Minute book ☐ Docket
      (2) Volume no.: Page no.:
   d. ☐ Judgment has previously been renewed.
      (1) Judgment renewed on (dates):
      (2) Renewal entered in
         (a) ☐ Judgment book ☐ Minute book ☐ Docket
         (b) Volume no.: Page no.:
2. Application for this renewal filed (date):
3. This renewal is entered in
   a. ☐ Judgment book ☐ Minute book ☐ Docket
   b. Volume no.: Page no.:

4. ☐ Renewal of money judgment.

a. ☐ If judgment not previously renewed, total judgment as entered (including principal, attorney's fees, interest, and costs): $

b. ☐ If judgment previously renewed, total amount of judgment as last renewed: $

c. Principal amount of judgment on date of renewal
(1) Costs (per filed order or memo--CCP 685.090) added after entry or renewal: $
(2) Total (add 4a or 4b to 4c(1) and subtract partial satisfactions of principal amount): $

d. Accrued interest from date of entry or prior renewal to date of renewal as adjusted for partial satisfactions: $

e. *AMOUNT OF RENEWED JUDGMENT (total amount required to satisfy judgment on date of renewal)* (add 4c(2), 4d): $

5. ☐ Renewal of judgment for ☐ possession. ☐ sale.

a. ☐ If judgment not previously renewed, terms of judgment as entered:

b. ☐ If judgment previously renewed, terms of judgment as last renewed:

c. Terms of judgment remaining unsatisfied:

6. THIS RENEWAL EXTENDS THE PERIOD OF ENFORCEABILITY OF THE JUDGMENT UNTIL 10 YEARS FROM THE DATE THE APPLICATION FOR RENEWAL WAS FILED. IF YOU OBJECT TO THIS RENEWAL, YOU MAY MAKE A MOTION TO VACATE OR MODIFY THE RENEWAL WITH THIS COURT. YOU MUST MAKE THIS MOTION WITHIN 30 DAYS AFTER SERVICE OF THIS NOTICE ON YOU.

Date: Clerk, By _____ Deputy

(SEAL)

7. NOTICE TO THE PERSON SERVED: *You are served*
a. ☐ As an individual judgment debtor.
b. ☐ Under the fictitious name of:
c. On behalf of:

Under ☐ CCP 416.10 (Corporation) ☐ CCP 416.60 (Minor)
☐ CCP 416.20 (Defunct Corporation) ☐ CCP 416.70 (Ward)
☐ CCP 416.40 (Association or Partnership) ☐ CCP 416.90 (Individual)
☐ Other:

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693.050. Until superseded by a form prepared by the Judicial Council, the notice of the hearing required by Section 704.770 shall be in both English and Spanish, in at least 10-point bold type, and in substantially the following form:

IMPORTANT LEGAL NOTICE TO HOMEOWNER AND RESIDENT

1. Your house will be offered for sale to satisfy a judgment obtained in court. You may be able to exempt the proceeds of sale of the house and real property described in the accompanying application if you or your family now actually reside on the property. YOU OR YOUR SPOUSE SHOULD COME TO THE HEARING TO SHOW THIS FACT.

2. If you or your spouse want to exempt the proceeds of sale of this property, you or your spouse should appear at

_____ on _____
(Location set forth in OSC) (Date and time)

and be prepared to answer questions concerning the statements made in the attached application. THE ONLY PURPOSE OF THE HEARING WILL BE TO DETERMINE WHETHER THE PROCEEDS OF SALE ARE EXEMPT, NOT WHETHER YOU OWE THE MONEY.

3. FOR YOUR OWN PROTECTION, YOU SHOULD PROMPTLY SEEK THE ADVICE OF AN ATTORNEY IN THIS MATTER. IF YOU ARE A RESIDENT OF THIS PROPERTY AND ARE NOT THE DEBTOR, THIS NOTICE DOES NOT AFFECT YOU. PLEASE GIVE IT TO YOUR LANDLORD.

IMPORTANTE AVISO LEGAL AL PROPIETARIO DE CASA Y RESIDENTE

1. Su casa será puesta en venta para cumplir con una orden judicial obtenida en la corte. Usted podría exentar las ganancias de la venta de la casa y los bienes raíces descritos en la solicitud adjunta si usted o su familia actualmente residen en la propiedad. USTED O SU ESPOSO(A) DEBEN VENIR A LA AUDIENCIA PARA DEMOSTRAR ESTE PUNTO.

2. Si usted o su esposo(a) quieren exentar las ganancias de la venta de esta propiedad, usted o su esposo(a) deben presentarse a

_____ el _____
(Location set forth in O.S.C.) (Date and time)

y estar preparados para contestar las preguntas acerca de las declaraciones puestas en la solicitud adjunta. EL ÚNICO PROPÓSITO DE ESTA AUDIENCIA SERÁ EL DE DETERMINAR SI LAS GANANCIAS DE LA VENTA SON EXENTAS, Y NO SI USTED DEBE DINERO.

3. PARA SU PROPIA PROTECCIÓN, USTED DEBERÍA PRONTAMENTE PROCURAR EL CONSEJO DE UN ABOGADO EN ESTE ASUNTO. SI USTED ES UN RESIDENTE EN ESTA PROPIEDAD Y NO ES EL DEUDOR(A), ESTE AVISO NO LE AFECTA A USTED. POR FAVOR DESELO A SU ARRENDADOR.

693.060. (a) Until superseded by a form prepared by the Judicial Council, the notice of order for sale required by Section 704.790 shall be in both English and Spanish, in at least 10-point bold type, and in substantially the following form:

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name and Address) TELEPHONE NO ATTORNEY FOR (Name)	LEVYING OFFICER (Name and Address)
Name of court, judicial district or branch court, if any	
PLAINTIFF DEFENDANT	
DECLARATION FOR REHEARING ON HOMESTEAD EXEMPTION	LEVYING OFFICER FILE NUMBER / COURT CASE NUMBER

IMPORTANT LEGAL NOTICE TO HOMEOWNER AND RESIDENT

1. You were recently served with a court order requiring your presence at a hearing to determine why the court should not issue an order for the forced sale of your home in accordance with the application of the creditor. YOU AND YOUR SPOUSE FAILED TO APPEAR AT THE HEARING AND THE COURT HAS ORDERED THAT YOUR HOME BE SOLD TO SATISFY A JUDGMENT AGAINST YOU.

2. Your absence at the hearing has contributed to the issuance of the accompanying order for sale in accordance with the application of the creditor. If the absence of you or your attorney at the hearing was legally excusable and you believe in good faith that the proceeds of sale of your home may be entitled to an exemption, you should complete the form below and date, sign, and return the form below no later than _____. (Insert date no later than 10 days after date of service or 15 days if service is by mail in this state.)

3. FOR YOUR OWN PROTECTION, YOU SHOULD IMMEDIATELY SEEK THE ADVICE OF AN ATTORNEY. IF YOU ARE A RESIDENT OF THIS PROPERTY AND ARE NOT THE DEBTOR, THIS NOTICE DOES NOT AFFECT YOU. PLEASE GIVE IT TO YOUR LANDLORD.

Return This Form to:

_____
(Name and title of levying officer)

_____
(Street address and city)

_____
(Area code and telephone number of levying officer)

I delare that my absence from the previous hearing on whether this property should be sold in accordance with the application of the creditor was legally excusable. I, or my spouse, currently reside in this property and I wish a further hearing so that I may claim my exemption of the proceeds of the sale of my home. I understand that I will be notified of the date and place for this hearing if I return this form immediately and that I must attend this hearing.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date_____ _____
(Signature of debtor or debtor's spouse)

_____
(Type or print name)

IMPORTANTE AVISO LEGAL AL PROPIETARIO DE CASA Y RESIDENTE

1. Recientemente se le entregó una orden de la corte exigiendo su presencia en una audiencia para determinar el porqué la corte no debería extenderle una orden para la venta forzosa de su casa de acuerdo con la solicitud del acreedor. USTED Y SU ESPOSO(A) NO VINIERON A LA AUDIENCIA Y LA CORTE HA ORDENADO QUE SU CASA SEA VENDIDA PARA SATISFACER EL JUDICIO EN CONTRA USTEDES.

2. Su ausencia en la audiencia ha contribuído para la emisión de la orden de venta adjunta de acuerdo con la solicitud del acreedor. Si la ausencia de ustedes o de su abogado en la audiencia es escusable legalmente y creen de buena fe que las ganancias de la venta de su casa pueden tener derecho a una exención, debería completar el formato que esta debajo, fecharlo, firmarlo, y devolverlo a no mas tardar del _____. (Insert date no later than 10 days after date service or 15 days if service is by mail in this state.)

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3. PARA SU PROPIA PROTECCIÓN, USTED DEBERÍA INMEDIATAMENTE PROCURAR EL CONSEJO DE UN ABOGADO. SI USTED ES UN RESIDENTE EN ESTA PROPIEDAD Y NO ES EL DEUDOR(A), ESTE AVISO NO LE AFECTA A USTED. POR FAVOR DESELO A SU ARRENDADOR.

Devuelva Este Formato a:

_____
(Name and title of levying officer)

_____
(Street address and city)

_____
(Area code and telephone number of levying officer)

Declaro que mi ausencia en la pasada audiencia sobre si esta propiedad debería ser vendida de acuerdo con la solicitud del acreedor fue legalmente excusable. Yo, o mi esposo(a), acutalmente residimos en esta propiedad y deseo una audiencia adicional para reclamar mi exención de las ganarcias de la venta de mi casa. Entiendo que seré notificado de la fecha y del lugar de esta audiencia si devuelvo este formato inmediatamente y que debo asistir a esta audiencia.

Declaro bajo pena de perjurio bajo las leyes del Estado de California que lo anterior es verdadero y está correcto.

Fecha_____ _____
(Firma del Deudor(a) o de la Esposa(o) del Deudor(a))

_____
(Nombre escrito a máquina o en letra de molde)

(b) Timely completion and return of the Spanish language form has the same force and effect as timely completion and return of the English language form.

CHAPTER 20. TRANSITIONAL PROVISIONS

694.010. As used in this chapter:

(a) "Operative date" means July 1, 1983.

(b) "Prior law" means the applicable law in effect on June 30, 1983.

694.020. Except as otherwise provided in this chapter, this title on and after its operative date applies to all proceedings commenced prior thereto unless in the opinion of the court application of a particular provision of this title would substantially interfere with the effective conduct of the proceedings or the rights of the parties or other interested persons, in which case the particular provision of this title does not apply and prior law applies.

694.030. (a) Except for a judgment described in Section 683.310 or 683.320, the period for enforcement of a money judgment or a judgment for possession or sale of property entered prior to the operative date is governed on and after the operative date by Chapter 3 (commencing with Section 683.010).

(b) Notwithstanding subdivision (a), even though a judgment to which subdivision (a) applies is not renewable pursuant to Chapter 3 (commencing with Section 683.010) because the time for filing an application for renewal has expired, the judgment may be renewed under Chapter 3 (commencing with Section 683.010) if the court which entered the judgment determines, on noticed motion filed within two years after the operative date, that authority to enforce the judgment after the 10-year period provided in former Section 681 would have been granted if a motion had been made under former Section 685 and the court, in its discretion, makes an order authorizing the renewal of the judgment. The notice of motion shall be served personally or by mail on the judgment debtor.

694.040. (a) Except as provided in subdivision (c), property levied upon or otherwise subjected to process for enforcement of a money judgment or a judgment for possession or sale of property prior to the operative date is subject to prior law relating to sale or delivery of possession.

(b) The duties to be performed in the execution of a writ or order for the enforcement of a money judgment or a judgment for possession or sale of property that is served prior to the operative date are governed by prior law.

(c) The manner of payment at a sale of property pursuant to a writ or order after the operative date is governed by Section 701.590.

694.050. (a) Except as provided in subdivision (b), property levied upon, or property to be sold upon which foreclosure or other proceedings for sale have been commenced, prior to the operative date that would have been sold subject to the right of redemption under prior law shall be sold subject to the right of redemption and may be redeemed as provided by prior law.

(b) If the judgment creditor and judgment debtor agree in

writing, property described in subdivision (a) may be sold as provided in this title rather than subject to the right of redemption.

(c) Property sold prior to the operative date subject to the right of redemption under prior law may be redeemed as provided by prior law.

694.060. Notwithstanding Section 708.230, an action may be commenced pursuant to Section 708.210 within one year after the operative date if the action could have been commenced under prior law on the day before the operative date.

694.070. (a) A third-party claim filed prior to the operative date is governed by prior law.

(b) A demand for a third-party claim served on a secured party prior to the operative date is governed by prior law.

694.080. The exemptions from enforcement of a money judgment provided by this title do not apply to property levied upon or otherwise subjected to a lien prior to the operative date. Whether such property is exempt is determined by the exemptions provided by law at the time the lien was created.

694.090. On and after the operative date, a declaration of homestead made under prior law pursuant to Title 5 (commencing with Section 1237) of Part 4 of Division 2 of the Civil Code is effective only to the extent provided in Article 5 (commencing with Section 704.910) of Chapter 4 of Division 2.

DIVISION 2. ENFORCEMENT OF MONEY JUDGMENTS

CHAPTER 1. GENERAL PROVISIONS

Article 1. Property Subject to Enforcement of Money Judgment

695.010. Except as otherwise provided by law, all property of the judgment debtor is subject to enforcement of a money judgment.

695.020. (a) Community property is subject to enforcement of a money judgment as provided in Title 8 (commencing with Section 5100) of Part 5 of Division 4 of the Civil Code.

(b) Unless the provision or context otherwise requires, if community property that is subject to enforcement of a money judgment is sought to be applied to the satisfaction of a money judgment:

(1) Any provision of this division that applies to the property of the judgment debtor or to obligations owed to the judgment debtor also applies to the community property interest of the spouse of the judgment debtor and to obligations owed to either spouse that are community property.

(2) Any provision of this division that applies to property in the possession or under the control of the judgment debtor also applies to community property in the possession or under the control of the spouse of the judgment debtor.

695.030. (a) Except as otherwise provided by statute, property

of the judgment debtor that is not assignable or transferable is not subject to enforcement of a money judgment.

(b) The following property is subject to enforcement of a money judgment:

(1) An interest in a spendthrift trust, to the extent provided by law.

(2) A cause of action for money or property that is the subject of a pending action or special proceeding.

695.035. (a) A lessee's interest in real property may be applied to the satisfaction of a money judgment in any of the following circumstances:

(1) If the lessee has the right voluntarily to sublet the property or assign the interest in the lease.

(2) If the lessee has the right voluntarily to sublet the property or assign the interest in the lease subject to standards or conditions and the purchaser at the execution sale or other assignee agrees to comply with the standards or conditions that would have had to be complied with had the lessee voluntarily sublet the property or assigned the interest in the lease.

(3) If the lessee has the right voluntarily to sublet the property or assign the interest in the lease with the consent of the lessor, in which case the obligation of the lessor to consent to the assignment is subject to the same standard that would apply had the lessee voluntarily sublet the property or assigned the interest in the lease.

(4) In any other case, if the lessor consents in writing.

(b) A provision in a lease for the termination or modification of the lease upon an involuntary transfer or assignment of the lessee's interest is ineffective to the extent that such provision would prevent the application of the lessee's interest to the satisfaction of the money judgment under subdivision (a).

695.040. Property that is not subject to enforcement of a money judgment may not be levied upon or in any other manner applied to the satisfaction of a money judgment. If property that is not subject to enforcement of a money judgment has been levied upon, the property may be released pursuant to the claim of exemption procedure provided in Article 2 (commencing with Section 703.510) of Chapter 4.

695.050. A money judgment against a public entity is not enforceable under this division if the money judgment is subject to Chapter 1 (commencing with Section 965) of, or Article 1 (commencing with Section 970) of Chapter 2 of, Part 5 of Division 3.6 of Title 1 of the Government Code.

695.060. Except as provided in Section 708.630, a license issued by a public entity to engage in any business, profession, or activity is not subject to enforcement of a money judgment.

695.070. Notwithstanding the transfer or encumbrance of property subject to a lien created under this division, if the property remains subject to the lien after the transfer or encumbrance, the money judgment may be enforced against the property in the same

manner and to the same extent as if it had not been transferred or encumbered.

Article 2. Amount to Satisfy Money Judgment

695.210. The amount required to satisfy a money judgment is the total amount of the judgment as entered or renewed with the following additions and subtractions:

(a) The addition of costs added to the judgment pursuant to Section 685.090.

(b) The addition of interest added to the judgment as it accrues pursuant to Sections 685.010 to 685.030, inclusive.

(c) The subtraction of the amount of any partial satisfactions of the judgment.

(d) The subtraction of the amount of any portion of the judgment that is no longer enforceable.

695.220. Money received in satisfaction of a money judgment is to be credited as follows:

(a) The money is first to be credited against the amounts described in subdivision (b) of Section 685.050 that are collected by the levying officer.

(b) Any remaining money is next to be credited against the accrued interest that remains unsatisfied.

(c) Any remaining money is to be credited against the principal amount of the judgment remaining unsatisfied. If the judgment is payable in installments, the remaining money is to be credited against the matured installments in the order in which they matured.

CHAPTER 2. LIENS

Article 1. General Provisions

697.010. Except as otherwise provided by statute, a lien created under this division or under Title 6.5 (commencing with Section 481.010) (attachment) is a lien for the amount required to satisfy the money judgment.

697.020. (a) If a lien is created on property pursuant to Title 6.5 (commencing with Section 481.010) (attachment) and after judgment in the action a lien is created pursuant to this division on the same property under the same claim while the earlier lien is in effect, the priority of the later lien relates back to the date the earlier lien was created.

(b) If a lien is created on property pursuant to this division and a later lien of the same or a different type is created pursuant to this division on the same property under the same judgment while the earlier lien is in effect, the priority of the later lien relates back to the date the earlier lien was created.

(c) Nothing in this section affects priorities or rights of third persons established while the earlier lien was in effect under the law

governing the earlier lien.

697.030. Subject to Sections 683.180 to 683.200, inclusive, and to Section 697.040, except where a shorter period is provided by statute, a lien created pursuant to this title is effective during the period of enforceability of the judgment.

697.040. (a) If enforcement of the judgment is stayed on appeal by the giving of a sufficient undertaking under Chapter 2 (commencing with Section 916) of Title 13:

(1) Existing liens created under this division are extinguished.

(2) New liens may not be created under this division during the period of the stay.

(b) Unless the court otherwise expressly orders, a stay of enforcement of the judgment under Section 918 does not extinguish or prevent the creation of a lien under Article 2 (commencing with Section 697.310) or Article 3 (commencing with Section 697.510); but, unless the court otherwise expressly orders, no other liens may be created or continued under this division during the period of the stay of enforcement.

(c) Unless the court expressly orders otherwise, if enforcement of the judgment is stayed pursuant to Section 1699 or 1710.50:

(1) Existing liens created under this division are extinguished.

(2) New liens may not be created under this division during the period of the stay.

697.050. If a lien created pursuant to this division is extinguished, property held subject to the lien shall be released unless the property is to be held under another lien or the property is ordered by the court to be held pending resolution of a dispute concerning its proper disposition.

697.060. (a) An abstract or certified copy of a money judgment of a court of the United States that is enforceable in this state may be recorded to create a judgment lien on real property pursuant to Article 2 (commencing with Section 697.310).

(b) A notice of judgment lien based on a money judgment of a court of the United States that is enforceable in this state may be filed to create a judgment lien on personal property pursuant to Article 3 (commencing with Section 697.510).

Article 2. Judgment Lien on Real Property

697.310. (a) Except as otherwise provided by statute, a judgment lien on real property is created under this section by recording an abstract of a money judgment with the county recorder.

(b) Unless the money judgment is satisfied or the judgment lien is released, subject to Section 683.180 (renewal of judgment), a judgment lien created under this section continues until 10 years from the date of entry of the judgment.

(c) The creation and duration of a judgment lien under a money judgment entered pursuant to Section 85 or 117 of this code or Section 16380 of the Vehicle Code or under a similar judgment is

governed by this section, notwithstanding that the judgment may be payable in installments.

697.320. (a) A judgment lien on real property is created under this section by recording a certified copy of any of the following money judgments with the county recorder:

(1) A judgment for spousal or child support payable in installments.

(2) A judgment entered pursuant to Section 667.7 (judgment against health care provider requiring periodic payments).

(b) Unless the money judgment is satisfied or the judgment lien is released, a judgment lien created under this section continues for a period of 10 years from the date of its creation. The duration of a judgment lien created under this section may be extended any number of times by recording during the time the judgment lien is in existence a certified copy of the judgment in the manner provided in this section for the initial recording. Such rerecording has the effect of extending the duration of the judgment lien created under this section until 10 years from the date of such rerecording.

697.330. (a) In the case of a money judgment entered on an order, decision, or award made under Division 4 (commencing with Section 3200) of the Labor Code (workers' compensation):

(1) If the judgment is for a lump sum, a judgment lien on real property is created by recording an abstract of the judgment as provided in Section 697.310 and, except as otherwise provided in Division 4 (commencing with Section 3200) of the Labor Code, the judgment lien is governed by the provisions applicable to a judgment lien created under Section 697.310.

(2) If the judgment is for the payment of money in installments, a judgment lien on real property is created by recording a certified copy of the judgment as provided in Section 697.320 and, except as otherwise provided in Division 4 (commencing with Section 3200) of the Labor Code, the lien is governed by the provisions applicable to a judgment lien created under Section 697.320.

(b) Nothing in this section limits or affects any provision of Division 4 (commencing with Section 3200) of the Labor Code.

697.340. Except as provided in Section 704.950:

(a) A judgment lien on real property attaches to all interests in real property in the county where the lien is created (whether present or future, vested or contingent, legal or equitable) that are subject to enforcement of the money judgment against the judgment debtor pursuant to Article 1 (commencing with Section 695.010) of Chapter 1 at the time the lien was created, but does not reach a right to rents or a leasehold estate with an unexpired term of less than two years or the interest of a beneficiary under a trust.

(b) If any interest in real property in the county on which a judgment lien could be created under subdivision (a) is acquired after the judgment lien was created, the judgment lien attaches to such interest at the time it is acquired.

697.350. (a) Except as otherwise provided by statute, a judgment

lien on real property is a lien for the amount required to satisfy the money judgment.

(b) A judgment lien on real property created under a money judgment payable in installments pursuant to Section 85 or 117 of this code or Section 16380 of the Vehicle Code or under a similar judgment is in the full amount required to satisfy the judgment, but the judgment lien may not be enforced for the amount of unmatured installments unless the court so orders.

(c) A judgment lien created pursuant to Section 697.320 is a lien for the amount of the installments as they mature under the terms of the judgment, plus accrued interest and the costs as they are added to the judgment pursuant to Chapter 5 (commencing with Section 685.010) of Division 1, and less the amount of any partial satisfactions, but does not become a lien for any installment until it becomes due and payable under the terms of the judgment.

697.360. (a) If a judgment lien on real property has been created under a money judgment that is thereafter modified as to its amount, an abstract of the modified judgment or a certified copy of the order modifying the judgment may be recorded in the same manner as an abstract of judgment or a certified copy of the judgment is recorded to create a judgment lien.

(b) If a judgment lien on real property has been created under a money judgment that is thereafter modified to reduce its amount, the judgment lien continues under the terms of the judgment as modified, whether or not the modification is recorded as provided in subdivision (a).

(c) If a judgment lien on real property has been created under a money judgment that is thereafter modified to increase its amount, the judgment lien continues under the terms of the original judgment until such time as the modification is recorded as provided in subdivision (a). Upon such recording, the judgment lien extends to the judgment as modified, but the priority for the additional amount under the judgment as modified dates from the time the modification is recorded.

697.370. (a) The judgment creditor may do either of the following:

(1) Release from the judgment lien all or a part of the real property subject to the lien.

(2) Subordinate to another lien or encumbrance the judgment lien on all or a part of the real property subject to the judgment lien.

(b) A release or subordination is sufficient if it is executed by the judgment creditor in the same manner as an acknowledgment of satisfaction of judgment and contains all of the following:

(1) A description of the real property being released or on which the lien is being subordinated. If the judgment debtor does not have an interest of record in the real property, the release or subordination shall show the name of the record owner.

(2) The date the judgment lien was created and where in the records of the county the abstract of judgment or certified copy of

the judgment was recorded to create the lien.

(3) The title of the court where the judgment is entered and the cause and number of the action.

(4) The date of entry of the judgment and of any subsequent renewals and where entered in the records of the court.

(5) The name and address of the judgment creditor and the judgment debtor.

(c) A release or subordination substantially complying with the requirements of this section is effective even though it contains minor errors that are not seriously misleading.

697.380. (a) As used in this section:

(1) "Installment judgment lien" means a judgment lien created under Section 697.320.

(2) "Lump-sum judgment lien" means a judgment lien created under Section 697.310.

(b) Except as otherwise provided by law, the rules stated in this section govern the priorities of judgment liens on real property.

(c) A lump-sum judgment lien has priority over any other lump-sum judgment lien thereafter created.

(d) A lump-sum judgment lien has priority over an installment judgment lien as to all of the following:

(1) Installments that mature on the installment judgment after the lump-sum judgment lien is created.

(2) Interest that accrues on the installment judgment after the lump-sum judgment lien is created.

(3) Costs that are added to the installment judgment after the lump-sum judgment lien is created.

(e) An installment judgment lien has priority over a lump-sum judgment lien as to all of the following:

(1) Installments that have matured on the installment judgment before the lump-sum judgment lien is created.

(2) Interest that has accrued on the installment judgment before the lump-sum judgment lien is created.

(3) Costs that have been added to the installment judgment before the lump-sum judgment lien is created.

(f) If an installment judgment lien has been created and another installment judgment lien is thereafter created, the first installment judgment lien has priority over the second installment judgment lien as to the installments that have matured on the judgment at the time the second installment judgment lien is created, the interest that has accrued prior to that time on the judgment, and the costs that have been added prior to that time to the judgment pursuant to Chapter 5 (commencing with Section 685.010) of Division 1. Thereafter, priorities are determined by the time at which each installment matures on a judgment, the time the interest accrues on a judgment, and the time costs are added to a judgment pursuant to Chapter 5 (commencing with Section 685.010) of Division 1.

(g) For the purposes of this section, if two judgment liens attach to the same property at the same time under subdivision (b) of

Section 697.340 (after-acquired property), the judgment lien that was first created has priority as to all amounts that are due and payable on that judgment at the time the property is acquired.

697.390. If an interest in real property that is subject to a judgment lien is transferred or encumbered without satisfying the judgment lien:

(a) The interest transferred or encumbered remains subject to a judgment lien created pursuant to Section 697.310 in the same amount as if the interest had not been transferred or encumbered.

(b) The interest transferred or encumbered remains subject to a judgment lien created pursuant to Section 697.320 in the amount of the lien at the time of transfer or encumbrance plus interest thereafter accruing on such amount.

697.400. (a) The judgment creditor, judgment debtor, or owner of real property subject to a judgment lien on real property created under Section 697.310, may record in the office of the county recorder an acknowledgment of satisfaction of judgment executed as provided in Section 724.060 or a court clerk's certificate of satisfaction of judgment issued pursuant to Section 724.100. Upon such recording, the judgment lien created under the judgment that has been satisfied is extinguished as a matter of record.

(b) The judgment creditor, judgment debtor, or owner of real property subject to a judgment lien on real property created under Section 697.320, may record in the office of the county recorder an acknowledgment of satisfaction of matured installments under an installment judgment if the acknowledgment is executed as provided in Section 724.250. Upon such recording, the judgment lien is extinguished as a matter of record to the extent of the satisfied installments described in the acknowledgment of satisfaction.

(c) The judgment creditor, the judgment debtor, or the owner of real property subject to a judgment lien, including a property owner described in Section 697.410, may record in the office of the county recorder a release or subordination of a judgment lien on real property if the release or subordination is executed as provided in Section 697.370.

697.410. (a) If a recorded abstract of a money judgment or certified copy of a money judgment appears to create a judgment lien on real property of a person who is not the judgment debtor because the name of the property owner is the same as or similar to that of the judgment debtor, the erroneously identified property owner may deliver to the judgment creditor a written demand for a recordable document releasing the lien. The demand shall be accompanied by proof to the satisfaction of the judgment creditor that the property owner is not the judgment debtor and that the property is not subject to enforcement of the judgment against the judgment debtor.

(b) Within 15 days after receipt of the property owner's demand and proof satisfactory to the judgment creditor that the property owner is not the judgment debtor and that the property is not subject

to enforcement of the judgment, the judgment creditor shall deliver to the property owner a recordable document releasing the lien on the property of such owner. If the judgment creditor improperly fails to deliver a recordable document releasing the lien within the time allowed, the judgment creditor is liable to the property owner for all damages sustained by reason of such failure and shall also forfeit one hundred dollars ($100) to the property owner.

(c) If the judgment creditor does not deliver a recordable document pursuant to subdivision (b), the property owner may apply to the court on noticed motion for an order releasing the judgment lien on the property of such owner. Notice of motion shall be served on the judgment creditor. Service shall be made personally or by mail. Upon presentation of evidence to the satisfaction of the court that the property owner is not the judgment debtor and that the property is not subject to enforcement of the judgment, the court shall order the judgment creditor to prepare and deliver a recordable document releasing the lien or shall itself order the release of the judgment lien on the property of such owner. The court order may be recorded in the office of the county recorder with the same effect as the recordable document demanded by the property owner.

(d) The court shall award reasonable attorney's fees to the prevailing party in any proceeding maintained pursuant to this section.

(e) The damages provided by this section are not in derogation of any other damages or penalties to which an aggrieved person may be entitled by law.

Article 3. Judgment Lien on Personal Property

697.510. (a) A judgment lien on personal property described in Section 697.530 is created by filing a notice of judgment lien in the office of the Secretary of State pursuant to this article. A judgment lien may be created under this article only if the judgment is a money judgment that was first entered in this state after June 30, 1983. Except as provided in subdivision (b) of Section 697.540, a judgment lien may not be created under this article if the money judgment is payable in installments unless all of the installments under the judgment have become due and payable at the time the notice of judgment lien is filed.

(b) Unless the money judgment is satisfied or the judgment lien is terminated or released, the judgment lien continues for five years from the date of filing.

(c) Notwithstanding Section 697.020, the priority of a judgment lien created under this article does not relate back to the date an earlier judgment lien was created under this article.

697.520. A judgment lien on personal property may be created pursuant to this article as an alternative or in addition to a lien created by levy under a writ of execution pursuant to Chapter 3

(commencing with Section 699.010) or by use of an enforcement procedure provided by Chapter 6 (commencing with Section 708.010).

697.530. (a) A judgment lien on personal property is a lien on all interests in the following personal property that are subject to enforcement of the money judgment against the judgment debtor pursuant to Article 1 (commencing with Section 695.010) of Chapter 1 at the time the lien is created if a security interest in the property could be perfected under the Commercial Code by filing a financing statement at that time with the Secretary of State:

(1) Accounts receivable.
(2) Chattel paper.
(3) Equipment.
(4) Farm products.
(5) Inventory.
(6) Negotiable documents of title.

(b) If any interest in personal property on which a judgment lien could be created under subdivision (a) is acquired after the judgment lien was created, the judgment lien attaches to the interest at the time it is acquired.

(c) To the extent provided by Section 697.620, a judgment lien on personal property continues on the proceeds received upon the sale, collection, or other disposition of the property subject to the judgment lien.

(d) Notwithstanding any other provision of this section, the judgment lien does not attach to:

(1) A vehicle or vessel required to be registered with the Department of Motor Vehicles or a mobilehome or commercial coach required to be registered pursuant to the Health and Safety Code.

(2) The inventory of a retail merchant held for sale except to the extent that the inventory of the retail merchant consists of durable goods having a unit retail value of at least five hundred dollars ($500). For the purposes of this paragraph, "retail merchant" does not include (A) a person whose sales for resale exceeded 75 percent in dollar volume of the person's total sales of all goods during the 12 months preceding the filing of the notice of judgment lien on personal property or (B) a cooperative association organized pursuant to Chapter 1 (commencing with Section 54001) of Division 20 of the Food and Agricultural Code (agricultural cooperative associations) or Part 3 (commencing with Section 13200) of Division 3 of Title 1 of the Corporations Code (Fish Marketing Act).

(e) If property subject to a lien under this article becomes a fixture (as defined in Section 9313 of the Commercial Code), the judgment lien on such property is extinguished.

(f) Notwithstanding the filing of a notice of judgment lien, subject to the provisions of Chapter 6 (commencing with Section 708.010), a person obligated on an account receivable or chattel paper is authorized to pay or compromise the amount without notice to or

consent of the judgment creditor unless and until there is a levy pursuant to Chapter 3 (commencing with Section 699.010).

697.540. (a) Except as otherwise provided by statute, a judgment lien on personal property is a lien for the amount required to satisfy the money judgment.

(b) A judgment lien on personal property created under a money judgment payable in installments pursuant to Section 85 or 117 of this code or pursuant to Section 16380 of the Vehicle Code is in the full amount required to satisfy the judgment, but the judgment lien may not be enforced for the amount of unmatured installments unless the court so orders.

697.550. The notice of judgment lien on personal property shall be executed under oath by the judgment creditor's attorney if the judgment creditor has an attorney of record or, if the judgment creditor does not have an attorney of record, by the judgment creditor and shall contain the following information:

(a) The name and mailing address of the judgment creditor.

(b) The name and last known mailing address of the judgment debtor.

(c) A statement that: "All property subject to enforcement of a money judgment against the judgment debtor to which a judgment lien on personal property may attach under Section 697.530 of the Code of Civil Procedure is subject to this judgment lien."

(d) The title of the court where the judgment is entered and the cause and number of the action.

(e) The date of entry of the judgment and of any subsequent renewals and where entered in the records of the court.

(f) The amount required to satisfy the judgment at the date of the notice.

(g) The date of the notice.

697.560. At the time of filing the notice of judgment lien on personal property or promptly thereafter, the judgment creditor shall serve a copy of the notice of judgment lien on the judgment debtor. Service shall be made personally or by mail. The failure to comply with this requirement does not affect the validity of the judgment lien.

697.570. Upon presentation of a notice of judgment lien on personal property for filing and tender of the filing fee to the office of the Secretary of State, the notice of judgment lien shall be filed, marked, and indexed in the same manner as a financing statement. The fee for filing in the office of the Secretary of State is the same as the fee for filing a financing statement in the standard form. A notice shall not be filed if it is presented for filing more than 10 days after the date of the notice.

697.580. (a) Upon the request of any person, the Secretary of State shall issue a certificate showing whether there is on file in that office on the date and hour stated therein any notice of judgment lien on personal property filed against the property of a particular person named in the request. If a notice of judgment lien is on file,

the certificate shall state the date and hour of filing of each such notice and any notice affecting any such notice of judgment lien and the name and address of the judgment creditor. The fee for a certificate issued pursuant to this subdivision is the same as the fee for a certificate issued pursuant to Section 9407 of the Commercial Code.

(b) Upon request, the Secretary of State shall furnish a copy of any notice of judgment lien or notice affecting a notice of judgment lien for the fee for a copy prescribed by subdivision (2) of Section 9407 of the Commercial Code.

697.590. (a) As against a security interest, a judgment lien on personal property has priority to the extent provided in Section 9301 of the Commercial Code.

(b) For the purpose of this section, a judgment lien on personal property under subdivision (b) of Section 697.530 (after-acquired property) has priority over a security interest in the property if the date the financing statement was filed with respect to the security interest is after the date the notice of judgment lien was filed under this article unless the secured party files a financing statement with respect to a purchase money security interest (Section 9107 of the Commercial Code) in the property subject to the judgment lien before or within 10 days after the debtor receives possession of the property.

(c) If a perfected purchase money security interest in inventory has priority over a judgment lien on after-acquired inventory pursuant to subdivision (b) and a conflicting security interest has priority over the purchase money security interest in the same inventory pursuant to subdivision (3) of Section 9312 of the Commercial Code, the conflicting security interest also has priority over the judgment lien on after-acquired inventory notwithstanding that the conflicting security interest would not otherwise have priority over the judgment lien.

697.600. (a) A judgment lien on personal property has priority over any other judgment lien thereafter created on the property.

(b) For the purpose of this section, if two or more judgment liens attach to after-acquired property at the same time under subdivision (b) of Section 697.530, the judgment lien first filed has priority.

697.610. Except as provided in Section 9504 of the Commercial Code, a judgment lien on personal property continues notwithstanding the sale, exchange, or other disposition of the property, unless the person receiving the property is one of the following:

(a) A buyer in ordinary course of business (as defined in Section 1201 of the Commercial Code) who, under Section 9307 of the Commercial Code, would take free of a security interest created by the seller.

(b) A holder to whom a negotiable document of title has been duly negotiated within the meaning of Section 7501 of the Commercial Code.

(c) A purchaser of chattel paper who gives new value and takes possession of the chattel paper in the ordinary course of business.

697.620. (a) As used in this section:

(1) "Cash proceeds" means money, checks, deposit accounts, and the like.

(2) "Proceeds" means identifiable cash proceeds received upon the sale, exchange, collection, or other disposition of property subject to a judgment lien on personal property.

(b) Except as provided in subdivision (c), the judgment lien on personal property continues in the proceeds with the same priority.

(c) In the event of insolvency proceedings (as defined in Section 1201 of the Commercial Code) instituted by or against the judgment debtor, the judgment lien continues under subdivision (b) only in the following proceeds:

(1) Proceeds in a separate deposit account containing only proceeds.

(2) Proceeds in the form of money which are neither commingled with other money nor deposited in a deposit account prior to the insolvency proceedings.

(3) Proceeds in the form of checks and the like which are not deposited in a deposit account prior to the insolvency proceedings.

697.640. (a) The judgment creditor, judgment debtor, owner of property subject to a judgment lien on personal property created under the judgment, or a person having a security interest in or a lien on the property subject to the judgment lien, may file in the office of the Secretary of State an acknowledgment of satisfaction of judgment executed as provided in Section 724.060 or a court clerk's certificate of satisfaction of judgment issued pursuant to Section 724.100. Upon such filing, the judgment lien created under the judgment that has been satisfied is extinguished as a matter of record. The fee for filing the acknowledgment or certificate is the same as the fee for filing a termination statement under Section 9404 of the Commercial Code.

(b) The filing officer shall treat an acknowledgment of satisfaction of judgment, or court clerk's certificate of satisfaction of judgment, filed pursuant to this section in the same manner as a termination statement filed pursuant to Section 9404 of the Commercial Code.

697.650. (a) The judgment creditor may by a writing do either of the following:

(1) Release the judgment lien on all or a part of the personal property subject to the lien.

(2) Subordinate to a security interest or other lien or encumbrance the judgment lien on all or a part of the personal property subject to the judgment lien.

(b) A statement of release or subordination is sufficient if it is signed by the judgment creditor and contains a description of the property being released or on which the lien is being subordinated, the name and address of the judgment debtor, and the file number of the notice of judgment lien.

(c) The filing officer shall treat a statement of release or subordination filed pursuant to this section in the same manner as a statement of release filed pursuant to Section 9405 of the Commercial Code. The fee for filing the statement is the same as that provided in Section 9405 of the Commercial Code.

697.660. (a) If a notice of judgment lien on personal property filed in the office of the Secretary of State appears to create a judgment lien on personal property of a person who is not the judgment debtor because the name of the property owner is the same as or similar to that of the judgment debtor, the erroneously identified property owner or a person having a security interest in or a lien on the property may deliver to the judgment creditor a written demand that the judgment creditor file in the office of the Secretary of State a statement releasing the lien as to the property of such owner. The demand shall be accompained by proof to the satisfaction of the judgment creditor that the property owner is not the judgment debtor and that the property is not subject to enforcement of the judgment against the judgment debtor.

(b) Within 15 days after receipt of the demand and proof satisfactory to the judgment creditor that the property owner is not the judgment debtor and that the property is not subject to enforcement of the judgment, the judgment creditor shall file in the office of the Secretary of State a statement releasing the lien on the property of such owner. If the judgment creditor improperly fails to file the statement of release within the time allowed, the judgment creditor is liable to the person who made the demand for all damages sustained by reason of such failure and shall also forfeit one hundred dollars ($100) to such person.

(c) If the judgment creditor does not file a statement of release pursuant to subdivision (b), the person who made the demand may apply to the court on noticed motion for an order releasing the judgment lien on the property of such owner. Notice of motion shall be served on the judgment creditor. Service shall be made personally or by mail. Upon presentation of evidence to the satisfaction of the court that the property owner is not the judgment debtor and that the property is not subject to enforcement of the judgment, the court shall order the judgment creditor to prepare and file the statement of release or shall itself order the release of the judgment lien on the property of such owner. The court order may be filed in the office of the Secretary of State with the same effect as the statement of release demanded under subdivision (a).

(d) The court shall award reasonable attorney's fees to the prevailing party in any action or proceeding maintained pursuant to this section.

(e) The damages provided by this section are not in derogation of any other damages or penalties to which an aggrieved person may be entitled by law.

(f) The fee for filing a statement of release or court order under this section is the same as that provided in Section 9405 of the

Commercial Code.

697.670. The Secretary of State may prescribe the forms for the notice of judgment lien on personal property and the statement of release or subordination provided for in this article.

Article 4. Execution Lien

697.710. A levy on property under a writ of execution creates an execution lien on the property from the time of levy until the expiration of two years after the date of issuance of the writ unless the judgment is sooner satisfied.

697.720. Subject to Section 701.630, if an interest in real property subject to an execution lien is transferred or encumbered, the interest transferred or encumbered remains subject to the lien after the transfer or encumbrance.

697.730. Subject to Section 701.630, if tangible personal property subject to an execution lien is in the custody of a levying officer and is transferred or encumbered, the property remains subject to the lien after the transfer or encumbrance.

697.740. Except as provided in Section 9504 of the Commercial Code and in Section 701.630, if personal property subject to an execution lien is not in the custody of a levying officer and the property is transferred or encumbered, the property remains subject to the lien after the transfer or encumbrance except where the transfer or encumbrance is made to one of the following persons:

(a) A person who acquires an interest in the property under the law of this state for fair consideration (as defined in Section 3439.03 of the Civil Code) without knowledge of the lien.

(b) A buyer in ordinary course of business (as defined in Section 1201 of the Commercial Code) who, under Section 9307 of the Commercial Code, would take free of a security interest created by the seller or encumbrancer.

(c) A holder in due course (as defined in Section 3302 of the Commercial Code) of a negotiable instrument within the meaning of Section 3104 of the Commercial Code.

(d) A holder to whom a negotiable document of title has been duly negotiated within the meaning of Section 7501 of the Commercial Code.

(e) A bona fide purchaser (as defined in Section 8302 of the Commercial Code) of a security.

(f) A purchaser of chattel paper or an instrument who gives new value and takes possession of the chattel paper or instrument in the ordinary course of business.

(g) A holder of a purchase money security interest (as defined in Section 9107 of the Commercial Code).

(h) A collecting bank holding a security interest in items being collected, accompanying documents and proceeds, pursuant to Section 4208 of the Commercial Code.

(i) A person who acquires any right or interest in letters of credit,

advices of credit, or money.

(j) A person who acquires any right or interest in property subject to a certificate of title statute of another jurisdiction under the law of which indication of a security interest on the certificate of title is required as a condition of perfection of the security interest.

697.750. Notwithstanding Section 697.740, except as provided in Section 9504 of the Commercial Code and in Section 701.630, if (1) growing crops, (2) timber to be cut, or (3) minerals or the like (including oil or gas) to be extracted or accounts receivable resulting from the sale thereof at wellhead or minehead are subject to an execution lien and are transferred or encumbered, the property remains subject to the execution lien after the transfer or encumbrance.

Article 5. Other Liens Created by Enforcement Process

697.910. This article applies to liens created by any of the following:

(a) An examination proceeding as provided in Section 708.110, 708.120, or 708.205.

(b) A creditor's suit as provided in Section 708.250.

(c) A charging order as provided in Section 708.320.

697.920. Except as provided in Section 9504 of the Commercial Code and in Section 701.630, a lien described in Section 697.910 continues on property subject to the lien, notwithstanding the transfer or encumbrance of the property subject to the lien, unless the transfer or encumbrance is made to a person listed in Section 697.740.

CHAPTER 3. EXECUTION

Article 1. General Provisions

699.010. Except as otherwise provided by statute, this chapter governs enforcement of a money judgment by a writ of execution.

699.020. At any time after delivery of a writ of execution to a levying officer and before its return, a person indebted to the judgment debtor may pay to the levying officer the amount of the debt or so much thereof as is necessary to satisfy the money judgment. The levying officer shall give a receipt for the amount paid and such receipt is a discharge for the amount paid.

699.030. If personal property sought to be levied upon is located in a private place of the judgment debtor:

(a) The levying officer making the levy shall demand delivery of the property by the judgment debtor and shall advise the judgment debtor that the judgment debtor may be liable for costs and attorney's fees incurred in any further proceedings to obtain delivery of the property. If the judgment debtor does not deliver the property, the levying officer shall make no further effort to obtain

custody of the property and shall promptly notify the judgment creditor of the failure to obtain custody of the property.

(b) The judgment creditor may apply to the court ex parte, or on noticed motion if the court so directs or a court rule so requires, for an order directing the levying officer to seize the property in the private place. The application may be made whether or not a writ has been issued and whether or not demand has been made pursuant to subdivision (a). The application for the order shall describe with particularity both the property sought to be levied upon, and the place where it is to be found, according to the best knowledge, information, and belief of the judgment creditor. The court may not issue the order unless the judgment creditor establishes that there is probable cause to believe that property sought to be levied upon is located in the place described. The levying officer making the levy, at the time delivery of the property pursuant to the order is demanded, shall announce his or her identity, purpose, and authority. If the property is not voluntarily delivered, the levying officer may cause the building or enclosure where the property is believed to be located to be broken open in such manner as the levying officer reasonably believes will cause the least damage, but if the levying officer reasonably believes that entry and seizure of the property will involve a substantial risk of death or serious bodily harm to any person, the levying officer shall refrain from entering and shall promptly make a return to the court setting forth the reasons for believing that the risk exists. In such a case, the court shall make such orders as may be appropriate.

699.040. (a) If a writ of execution is issued, the judgment creditor may apply to the court ex parte, or on noticed motion if the court so directs or a court rule so requires, for an order directing the judgment debtor to transfer to the levying officer either or both of the following:

(1) Possession of the property sought to be levied upon if the property is sought to be levied upon by taking it into custody.

(2) Possession of documentary evidence of title to property of or a debt owed to the judgment debtor that is sought to be levied upon. An order pursuant to this paragraph may be served when the property or debt is levied upon or thereafter.

(b) The court may issue an order pursuant to this section upon a showing of need for the order.

(c) The order shall be personally served on the judgment debtor and shall contain a notice to the judgment debtor that failure to comply with the order may subject the judgment debtor to arrest and punishment for contempt of court.

699.060. (a) The levying officer shall release property levied upon when the levying officer receives a written direction to release the property from the judgment creditor's attorney of record or, if the judgment creditor does not have an attorney of record, from the judgment creditor or when the levying officer receives a certified copy of a court order for release or when otherwise required to

release the property. The release extinguishes any execution lien or attachment lien in favor of the judgment creditor on the property released.

(b) If the property to be released has been taken into custody under the levy, it shall be released to the person from whom it was taken unless otherwise ordered by the court. If the person does not claim the property to be released, the levying officer shall retain custody of the property and shall serve on such person a notice of where possession of the property may be obtained. Service shall be made personally or by mail. If the person does not claim the property within 30 days after the notice is served, the levying officer shall sell the property (other than cash which does not have a value exceeding its face value) in the manner provided by Article 6 (commencing with Section 701.510). The levying officer shall deposit the proceeds of sale and cash, after first deducting the levying officer's costs, with the county treasurer of the county where the property is located, payable to the order of the person. If the amount deposited is not claimed by the person, or the legal representative of the person, within five years after the deposit is made, by making application to the treasurer or other official designated by the county, it shall be paid into the general fund of the county.

(c) If the property to be released has not been taken into custody under the levy, the levying officer shall release the property by issuing a written notice of release and serving it on the person who was served with a copy of the writ and a notice of levy to create the lien. Service shall be made personally or by mail.

(d) If the property to be released was levied upon by recording or filing a copy of the writ and a notice of levy, the levying officer shall record or file a written notice of release in the same office.

(e) The levying officer is not liable for releasing property in accordance with this section nor is any other person liable for acting in conformity with the release.

699.070. (a) The court may appoint a receiver or order the levying officer to take any action the court orders that is necessary to preserve the value of property levied upon, including but not limited to selling the property, if the court determines that the property is perishable or will greatly deteriorate or greatly depreciate in value or that for some other reason the interests of the parties will be best served by the order. An order may be made under this subdivision upon application of the judgment creditor, the judgment debtor, or a person who has filed a third-party claim pursuant to Division 4 (commencing with Section 720.010). The application shall be made on noticed motion if the court so directs or a court rule so requires. Otherwise, the application may be made ex parte.

(b) If the levying officer determines that property levied upon is extremely perishable or will greatly deteriorate or greatly depreciate in value before a court order pursuant to subdivision (a) could be obtained, the levying officer may take any action necessary to

preserve the value of the property or may sell the property. The levying officer is not liable for a determination made in good faith under this subdivision.

(c) Except as otherwise provided by order of the court, a sale of property pursuant to this section shall be made in the manner provided by Article 6 (commencing with Section 701.510) and the proceeds shall be applied to the satisfaction of the money judgment in the manner provided by Article 7 (commencing with Section 701.810). Notwithstanding subdivisions (b) and (d) of Section 701.530, notice of sale shall be posted and served at a reasonable time before the sale, considering the character and condition of the property.

(d) If a receiver is appointed, the court shall fix the daily fee of the receiver and may order the judgment creditor to pay the fees and expenses of the receiver in advance or may direct that the whole or any part of the fees and expenses be paid from the proceeds of any sale of the property. Except as otherwise provided in this section, the provisions of Chapter 5 (commencing with Section 564) and Chapter 5a (commencing with Section 571) of Title 7 govern the appointment, qualifications, powers, rights, and duties of a receiver appointed under this section.

699.080. (a) A registered process server may levy under a writ of execution on the following types of property:

(1) Real property, pursuant to Section 700.015.

(2) Growing crops, timber to be cut, or minerals or the like (including oil and gas) to be extracted or accounts receivable resulting from the sale thereof at the wellhead or minehead, pursuant to Section 700.020.

(3) Personal property in the custody of a levying officer, pursuant to Section 700.050.

(4) Personal property used as a dwelling, pursuant to subdivision (a) of Section 700.080.

(5) Deposit accounts, pursuant to Section 700.140 or 700.160.

(6) Property in a safe deposit box, pursuant to Section 700.150 or 700.160.

(7) Accounts receivable or general intangibles, pursuant to Section 700.170.

(8) Final money judgments, pursuant to Section 700.190.

(9) Interest of a judgment debtor in personal property in the estate of a decedent, pursuant to Section 700.200.

(b) If a registered process server levies on property pursuant to subdivision (a), the registered process server shall do all of the following:

(1) Comply with the applicable levy, posting, and service provisions of Article 4 (commencing with Section 700.010).

(2) Deliver any undertaking required by Section 700.160.

(3) Request any third person served to give a garnishee's memorandum to the levying officer in compliance with Section 701.030.

(c) Within five days after levy under this section, all of the following shall be filed with the levying officer:

(1) The writ of execution.

(2) An affidavit of the registered process server stating the manner of levy performed.

(3) Proof of service of the copy of the writ and notice of levy on other persons as required by Article 4 (commencing with Section 700.010).

(4) Instructions in writing, as required by the provisions of Section 687.010.

(d) Upon receipt of the fee provided by Section 26721 of the Government Code, the levying officer shall perform all other duties under the writ as if the levying officer had levied under the writ and shall return the writ to the court.

(e) The fee for services of a registered process server under this section may, in the court's discretion, be allowed as a recoverable cost upon a motion pursuant to Section 685.080. If allowed, the amount of the fee to be allowed is governed by Section 1032b.

699.090. If property that is required by law to be registered or recorded in the name of the owner is levied upon under a writ of execution and it appears at the time of the levy that the judgment debtor was the registered or record owner of the property and the judgment creditor caused the levy to be made and the lien maintained in good faith and in reliance upon such registered or recorded ownership, neither the judgment creditor, the levying officer, nor the sureties on an undertaking given by the judgment creditor pursuant to Chapter 2 (commencing with Section 720.110) or Chapter 3 (commencing with Section 720.210) of Division 4 is liable to a third person for the levy itself.

Article 2. Writ of Execution and Notice of Levy

699.510. (a) Subject to subdivision (b), after entry of a money judgment, a writ of execution shall be issued by the clerk of the court upon application of the judgment creditor and shall be directed to the levying officer in the county where the levy is to be made and to any registered process server. A separate writ shall be issued for each county where a levy is to be made. Writs may be issued successively until the money judgment is satisfied, except that a new writ may not be issued for a county until the expiration of 180 days after the issuance of a prior writ for that county unless the prior writ is first returned.

(b) If the judgment creditor seeks a writ of execution to enforce a judgment made, entered, or enforceable pursuant to the Family Law Act, Part 5 (commencing with Section 4000) of Division 4 of the Civil Code, in addition to the requirements of this article, the judgment creditor shall satisfy the requirements of any applicable provisions of Sections 4380 to 4384, inclusive, of the Civil Code.

699.520. The writ of execution shall require the levying officer to

whom it is directed to enforce the money judgment and shall include the following information:

(a) The date of issuance of the writ.

(b) The title of the court where the judgment is entered and the cause and number of the action.

(c) The name and address of the judgment creditor and the name and last known address of the judgment debtor.

(d) The date of the entry of the judgment and of any subsequent renewals and where entered in the records of the court.

(e) The total amount of the money judgment as entered or renewed, together with costs thereafter added to the judgment pursuant to Section 685.090 and the accrued interest on the judgment from the date of entry or renewal of the judgment to the date of issuance of the writ, reduced by any partial satisfactions and by any amounts no longer enforceable.

(f) The amount required to satisfy the money judgment on the date the writ is issued.

(g) The amount of interest accruing daily on the principal amount of the judgment from the date the writ is issued.

(h) Whether any person has requested notice of sale under the judgment and, if so, the name and mailing address of such person.

699.530. (a) Upon delivery of the writ of execution to the levying officer to whom the writ is directed, together with the written instructions of the judgment creditor, the levying officer shall execute the writ in the manner prescribed by law.

(b) The levying officer may not levy upon any property under the writ after the expiration of 180 days from the date the writ was issued.

699.540. The notice of levy required by Article 4 (commencing with Section 700.010) shall inform the person notified of all of the following:

(a) The capacity in which the person is notified.

(b) The property that is levied upon.

(c) The person's rights under the levy, including the right to claim an exemption pursuant to Chapter 4 (commencing with Section 703.010) and the right to make a third-party claim pursuant to Division 4 (commencing with Section 720.010).

(d) The person's duties under the levy.

699.550. In any case where property has been levied upon and, pursuant to a levy, a copy of the writ of execution and a notice of levy are required by statute to be posted or to be served on or mailed to the judgment debtor or other person, failure to post, serve, or mail the copy of the writ and the notice does not affect the execution lien created by the levy. Failure to serve on or mail to the judgment debtor a list of exemptions does not affect the execution lien created by the levy.

699.560. (a) Except as provided in subdivision (b), the levying officer to whom the writ of execution is delivered shall return the writ to the court, together with a report of the levying officer's actions and an accounting of amounts collected and costs incurred,

at the earliest of the following times:

(1) Two years from the date of issuance of the writ.

(2) Promptly after all of the duties under the writ are performed.

(3) When return is requested in writing by the judgment creditor.

(4) If no levy takes place under the writ within 180 days after its issuance, promptly after the expiration of the 180-day period.

(5) Upon expiration of the time for enforcement of the money judgment.

(b) If a levy has been made under Section 700.200 upon an interest in personal property in the estate of a decedent, the writ shall be returned within the time prescribed in Section 700.200.

Article 3. Property Subject to Execution

699.710. Except as otherwise provided by law, all property that is subject to enforcement of a money judgment pursuant to Article 1 (commencing with Section 695.010) of Chapter 1 is subject to levy under a writ of execution to satisfy a money judgment.

699.720. (a) The following types of property are not subject to execution:

(1) An alcoholic beverage license that is transferable under Article 5 (commencing with Section 24070) of Chapter 6 of Division 9 of the Business and Professions Code.

(2) The interest of a partner in a partnership where the partnership is not a judgment debtor.

(3) A cause of action that is the subject of a pending action or special proceeding.

(4) A judgment in favor of the judgment debtor prior to the expiration of the time for appeal from such judgment or, if an appeal is filed, prior to the final determination of the appeal.

(5) A debt (other than earnings) owing and unpaid by a public entity.

(6) The loan value of an unmatured life insurance, endowment, or annuity policy.

(7) A franchise granted by a public entity and all the rights and privileges thereof.

(8) The interest of a trust beneficiary.

(9) A contingent remainder, executory interest, or other interest in property that is not vested.

(10) Property in a guardianship or conservatorship estate.

(b) Nothing in subdivision (a) affects or limits the right of the judgment creditor to apply property to the satisfaction of a money judgment pursuant to any applicable procedure other than execution.

Article 4. Methods of Levy

700.010. (a) At the time of levy pursuant to this article or promptly thereafter, the levying officer shall serve a copy of the

following on the judgment debtor:

(1) The writ of execution.

(2) A notice of levy.

(3) If the judgment debtor is a natural person, a copy of the form listing exemptions prepared by the Judicial Council pursuant to subdivision (c) of Section 681.030.

(b) Service under this section shall be made personally or by mail.

700.015. (a) To levy upon real property, the levying officer shall record with the recorder of the county where the real property is located a copy of the writ of execution and a notice of levy that describes the property levied upon and states that the judgment debtor's interest in the described property has been levied upon. If the judgment debtor's interest in the real property stands upon the records of the county in the name of a person other than the judgment debtor, the notice of levy shall identify the third person and the recorder shall index the copy of the writ and notice of levy in the names of both the judgment debtor and the third person.

(b) At the time of levy or promptly thereafter, the levying officer shall serve a copy of the writ and a notice of levy on any third person in whose name the judgment debtor's interest in the real property stands upon the records of the county. Service shall be made personally or by mail. If service on the third person is by mail, it shall be sent to the person at the address for such person, if any, shown by the records of the office of the tax assessor of the county where the real property is located or, if no address is so shown, to the person at the address used by the county recorder for the return of the instrument creating the interest of the third person in the property.

(c) At the time of levy or promptly thereafter, the levying officer shall serve a copy of the writ and a notice of levy on one occupant of the real property. Service on the occupant shall be made by leaving the copy of the writ and a notice of levy with the occupant personally or, in the occupant's absence, with a person of suitable age and discretion found upon the real property when service is attempted who is either an employee or agent of the occupant or a member of the occupant's household. If unable to serve such an occupant at the time service is attempted, the levying officer shall post the copy of the writ and the notice of levy in a conspicuous place on the real property. If the real property described in the notice of levy consists of more than one distinct lot, parcel, or governmental subdivision and any of the lots, parcels, or governmental subdivisions lies with relation to any of the others so as to form one or more continuous, unbroken tracts, only one service or posting need be made under this subdivision as to each continuous, unbroken tract.

700.020. (a) To levy upon (1) growing crops, (2) timber to be cut, or (3) minerals or the like (including oil and gas) to be extracted or accounts receivable resulting from the sale thereof at the wellhead or minehead, the levying officer shall record with the recorder of the county where such crops, timber, or minerals or the like are located a copy of the writ of execution and a notice of levy that describes the

property levied upon and states that the judgment debtor's interest in the described property has been levied upon and describes the real property where the crops, timber, or minerals or the like are located. If the judgment debtor's interest in the crops, timber, minerals or the like, or if the real property where the crops, timber, or minerals or the like are located, stands upon the records of the county in the name of a person other than the judgment debtor, the notice of levy shall identify the third person and the recorder shall index the copy of the writ and notice of levy in the names of both the judgment debtor and the third person.

(b) At the time of levy or promptly thereafter, the levying officer shall serve a copy of the writ and a notice of levy personally or by mail on the following persons:

(1) Any third person in whose name the judgment debtor's interest in the crops, timber, minerals or the like stands upon the records of the county and any third person in whose name the real property stands upon the records of the county. If service on the third person is by mail, it shall be sent to the person at the address for such person, if any, shown by the records of the office of the tax assessor of the county where the real property is located or, if no address is so shown, to the person at the address used by the county recorder for the return of the instrument creating the interest of the third person in the property.

(2) Any secured party who has filed a financing statement with respect to the crops, timber, or minerals or the like or the accounts receivable, prior to the date of levy on the property.

(c) At the time of levy or promptly thereafter, the levying officer shall serve a copy of the writ and a notice of levy on one occupant of the real property where the crops, timber, or minerals or the like are located. Service on the occupant shall be made by leaving the copy of the writ and a notice of levy with the occupant personally or, in the occupant's absence, with a person of suitable age and discretion found upon the real property when service is attempted who is either an employee or agent of the occupant or a member of the occupant's household. If unable to serve such an occupant at the time service is attempted, the levying officer shall post the copy of the writ and the notice of levy in a conspicuous place on the real property. If the real property described in the notice of levy consists of more than one distinct lot, parcel, or governmental subdivision and any of the lots, parcels, or governmental subdivisions lies with relation to any of the others so as to form one or more continuous, unbroken tracts, only one service or posting need be made under this subdivision as to each continuous, unbroken tract.

700.030. Unless another method of levy is provided by this article, to levy upon tangible personal property in the possession or under the control of the judgment debtor, the levying officer shall take the property into custody.

700.040. (a) Unless another method of levy is provided by this article, to levy upon tangible personal property in the possession or

under the control of a third person, the levying officer shall personally serve a copy of the writ of execution and a notice of levy on the third person.

(b) If goods are in the possession of a bailee who has issued a negotiable document of title therefor, the goods may not be levied upon but the negotiable document of title may be levied upon in the manner provided by Section 700.120. If goods are in the possession of a bailee other than one who has issued a negotiable document of title therefor, the goods may be levied upon in the manner provided by Section 700.060. As used in this subdivision, "bailee" means "bailee" as defined in Section 7102 of the Commercial Code.

700.050. (a) To levy upon personal property in the custody of a levying officer:

(1) If the writ of execution is directed to the levying officer having custody of the property, the judgment creditor shall deliver the writ to the levying officer.

(2) If the writ of execution is directed to a levying officer other than the levying officer having custody of the property, the levying officer to whom the writ is directed shall serve a copy of the writ and a notice of levy on the levying officer having custody. Service shall be made personally or by mail.

(b) The levying officer having custody of the property shall comply with the writs in the order they are received and is not subject to the provisions of Article 5 (commencing with Section 701.010) (duties and liabilities of third persons after levy).

700.060. (a) To levy upon goods in the possession of a bailee (as defined in Section 7102 of the Commercial Code) other than one who has issued a negotiable document of title therefor, the levying officer shall personally serve a copy of the writ of execution and a notice of levy on the bailee.

(b) If the goods described in subdivision (a) are subject to a security interest, the levying officer shall, if so instructed by the judgment creditor, serve a copy of the writ of execution and a notice of levy on the secured party. Service shall be made personally or by mail.

700.070. To levy upon tangible personal property of a going business in the possession or under the control of the judgment debtor, the levying officer shall comply with Section 700.030, except to the extent that the judgment creditor instructs that levy be made in the following manner:

(a) Subject to subdivision (b), the levying officer shall place a keeper in charge of the business for the period requested by the judgment creditor. During the period, the business may continue to operate in the ordinary course of business provided that all sales are final and are for cash or its equivalent. For the purpose of this subdivision, a check is the equivalent of cash. The levying officer is not liable for accepting payment in the form of a cash equivalent. The keeper shall take custody of the proceeds from all sales unless otherwise directed by the judgment creditor.

(b) The levying officer shall take the tangible personal property into exclusive custody at the earliest of the following times:

(1) At any time the judgment debtor objects to placement of a keeper in charge of the business.

(2) At any time when requested by the judgment creditor.

(3) At the end of 10 days from the time the keeper is placed in charge of the business.

700.080. (a) To levy upon personal property used as a dwelling, the levying officer shall serve a copy of the writ of execution and a notice of levy on one occupant of the property. Service on the occupant shall be made by leaving the copy of the writ and the notice of levy with the occupant personally or, in the occupant's absence, with a person of suitable age and discretion found at the property when service is attempted who is a member of the occupant's family or household. If unable to serve such an occupant at the time service is attempted, the levying officer shall make the levy by posting the copy of the writ and the notice of levy in a conspicuous place on the property.

(b) If the judgment creditor so instructs, the levying officer shall place a keeper in charge of the property for a period requested by the judgment creditor.

(c) The judgment creditor may apply to the court on noticed motion for an order directing the levying officer to remove the occupants. The notice of motion shall be served on any legal owner who was served pursuant to Section 700.090, on the occupant, and, if the judgment debtor is not the occupant, on the judgment debtor. Service shall be made personally or by mail. At the hearing on the motion the court shall determine the occupant's right to possession and shall make an order including such terms and conditions as are appropriate under the circumstances of the case.

700.090. If a vehicle or vessel is levied upon and a certificate of ownership has been issued by the Department of Motor Vehicles for such vehicle or vessel and the certificate of ownership is still in effect, or if a mobilehome or commercial coach is levied upon and a certificate of title has been issued by the Department of Housing and Community Development for such mobilehome or commercial coach and the certificate of title is still in effect, the levying officer shall determine from the appropriate department the name and address of the legal owner of the property levied upon. If the legal owner is not the judgment debtor and is not in possession of the vehicle, vessel, mobilehome, or commercial coach, the levying officer shall at the time of levy or promptly thereafter serve a copy of the writ of execution and a notice of levy on the legal owner. Service shall be made personally or by mail.

700.100. (a) To levy upon chattel paper, the levying officer shall:

(1) If the chattel paper is in the possession of the judgment debtor, take the chattel paper into custody.

(2) If the chattel paper is in the possession of a third person, personally serve a copy of the writ of execution and a notice of levy

on the third person.

(b) If the levying officer obtains custody of the chattel paper or if pursuant to a security agreement the judgment debtor has liberty to collect or compromise the chattel paper or to accept the return of goods or make repossessions, the levying officer shall, if so instructed by the judgment creditor, serve a copy of the writ of execution and a notice of levy on the account debtor. Service shall be made personally or by mail.

(c) In addition to any other rights created by a levy on chattel paper, the levy creates a lien on the judgment debtor's rights in specific goods subject to the chattel paper.

700.110. (a) To levy upon an instrument, the levying officer shall:

(1) If the instrument is in the possession of the judgment debtor, take the instrument into custody.

(2) If the instrument is in the possession of a third person, personally serve a copy of the writ of execution and a notice of levy on the third person.

(b) If the levying officer obtains custody of the instrument, the levying officer shall, if the judgment creditor so instructs, serve a copy of the writ of execution and a notice of levy on the obligor. Service shall be made personally or by mail.

700.120. To levy upon a negotiable document of title, the levying officer shall:

(a) If the negotiable document of title is in the possession of the judgment debtor, take the negotiable document of title into custody.

(b) If the negotiable document of title is in the possession of a third person, personally serve a copy of the writ of execution and a notice of levy on the third person.

700.130. To levy upon a security, the levying officer shall comply with Section 8317 of the Commercial Code.

700.140. (a) 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.

(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) Subject to Section 700.160, 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 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 where such nonpayment is pursuant to the requirements of subdivision (c).

(3) Refusal to pay a withdrawal from the deposit account where such 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.

700.150. (a) To levy upon property in a safe deposit box, 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 safe deposit box is maintained.

(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 safe deposit box stands. Service shall be made personally or by mail.

(c) Subject to Section 700.160, during the time the execution lien is in effect, the financial institution shall not permit the removal of any of the contents of the safe deposit box except pursuant to the levy.

(d) The levying officer may first give the person in whose name the safe deposit box stands an opportunity to open the safe deposit box to permit the removal pursuant to the levy of the property levied upon. The financial institution may refuse to permit the forcible opening of the safe deposit box to permit the removal of the property levied upon unless the judgment creditor pays in advance the cost of forcibly opening the safe deposit box and of repairing any damage caused thereby.

(e) 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) Refusal to permit access to the safe deposit box by the person in whose name it stands.

(3) Removal of any of the contents of the safe deposit box pursuant to the levy.

700.160. (a) The provisions of this section apply in addition to the provisions of Sections 700.140 and 700.150 if any of the following property is levied upon:

(1) A deposit account standing in the name of a third person or in the names of both the judgment debtor and a third person.

(2) Property in a safe deposit box standing in the name of a third person or in the names of both the judgment debtor and a third person.

(b) The judgment creditor shall provide, and the levying officer shall deliver to the financial institution at the time of levy, an undertaking given by a corporate surety authorized to execute the undertaking by Section 1056. The undertaking shall be for not less

than twice the amount of the judgment or, if a lesser amount in a deposit account is sought to be levied upon, not less than twice the lesser amount. The undertaking shall indemnify any third person rightfully entitled to the property against actual damage by reason of the levy on the property and shall assure to the third person the return of the property upon proof of the person's right thereto. The undertaking need not name the third person specifically but may refer to the third person generally in the same manner as in this subdivision. If the provisions of this subdivision are not satisfied, the levy is ineffective and the financial institution shall not comply with the requirements of this section or with the levy.

(c) Upon delivery of the undertaking to the financial institution, the financial institution shall immediately mail or deliver a notice of the delivery of the undertaking to the third person in whose name the deposit account or safe deposit box stands. If mailed, the notice shall be sent by registered or certified mail addressed to the person's last address known to the financial institution. The financial institution shall deliver the undertaking as directed by the third person.

(d) Notwithstanding Article 5 (commencing with Section 701.010), from the time of levy and the delivery of the undertaking to the financial institution until 15 days after the notice is mailed or delivered under subdivision (c) if no objection to the undertaking is made or, if such objection is made, until the court determines that the undertaking is sufficient, the financial institution shall not do any of the following:

(1) Honor a check or other order for the payment of money drawn against, or pay a withdrawal from, the deposit account that would reduce the deposit account to less than the amount levied upon. For the purposes of this paragraph, 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.

(2) Permit the removal of any of the contents of the safe deposit box except pursuant to the writ.

(e) The financial institution is not liable to any person for any of the following during the period prescribed in subdivision (d):

(1) Nonpayment of a check or other order for the payment of money drawn or presented against the deposit account where such nonpayment is pursuant to the requirements of subdivision (d).

(2) Refusal to pay a withdrawal from the deposit account where such refusal is pursuant to the requirements of subdivision (d).

(3) Refusal to permit access to the safe deposit box by the person in whose name it stands.

(4) Removal of any of the contents of the safe deposit box pursuant to the levy.

(f) An objection to the undertaking may be made by any person claiming to be rightfully entitled to the property levied upon. The objection shall be made in the manner provided by Chapter 7

(commencing with Section 720.710) of Division 4.

(g) Upon the expiration of the period prescribed in subdivision (d), the financial institution shall comply with the levy and Sections 700.140 and 700.150 apply.

700.170. (a) Unless another method of levy is provided by this article, to levy upon an account receivable or general intangible, the levying officer shall personally serve a copy of the writ of execution and a notice of levy on the account debtor.

(b) If a levy is made under subdivision (a) and payments on the account receivable or general intangible are made to a person other than the judgment debtor (whether pursuant to a security agreement, assignment for collection, or otherwise), the levying officer shall, if so instructed by the judgment creditor, personally serve a copy of the writ of execution and a notice of levy on such third person. Service of the copy of the writ and notice of levy on such third person is a levy on any amounts owed to the judgment debtor by such third person.

700.180. (a) The following property may be levied upon pursuant to this article notwithstanding that the property levied upon is the subject of a pending action or special proceeding:

(1) Real property.

(2) Growing crops, timber to be cut, or minerals or the like (including oil and gas) to be extracted or accounts receivable resulting from the sale thereof at the wellhead or minehead.

(3) Tangible personal property in the possession or under the control of the judgment debtor or in the custody of a levying officer.

(4) The interest of a judgment debtor in personal property in the estate of a decedent, whether the interest arises by testate or intestate succession.

(b) Except as provided in subdivision (a), a levy upon property that is the subject of an action or special proceeding pending at the time of the levy is not effective.

(c) If a levy is attempted but is ineffective under subdivision (b) and the levying officer has requested a garnishee's memorandum under Section 701.030 in connection with the ineffective levy, the garnishee's memorandum shall include the following information in addition to that required by Section 701.030:

(1) A statement that the levy on the property is not effective because the property is the subject of a pending action or special proceeding.

(2) The title of the court, cause, and number of the pending action or proceeding.

(d) For the purpose of this section, an action or proceeding is pending from the time the action or proceeding is commenced until judgment has been entered and the time for appeal has expired or, if an appeal is filed, until the appeal has been finally determined.

(e) Nothing in this section affects or limits the right of the judgment creditor to obtain a lien pursuant to Article 5 (commencing with Section 708.410) of Chapter 6.

700.190. (a) As used in this section, "final money judgment" means a money judgment after the time for appeal from the judgment has expired or, if an appeal is filed, after the appeal has been finally determined.

(b) To levy upon a final money judgment, the levying officer shall file a copy of the writ of execution and a notice of levy with the clerk of the court that entered the final money judgment. The court clerk shall endorse upon the judgment a statement of the existence of the execution lien and the time it was created. If an abstract of the judgment is issued, it shall include a statement of the execution lien in favor of the judgment creditor.

(c) At the time of levy or promptly thereafter, the levying officer shall personally serve a copy of the writ of execution and a notice of levy on the judgment debtor obligated to pay the final money judgment levied upon. The filing with the court clerk pursuant to subdivision (b) is not, of itself, notice to the judgment debtor obligated to pay the judgment levied upon so as to invalidate any payments made by him or her that would otherwise be applied to the satisfaction of the judgment levied upon.

700.200. (a) To levy upon the interest of the judgment debtor in personal property in the estate of a decedent, whether the interest arises by testate or intestate succession, the levying officer shall personally serve a copy of the writ and a notice of levy on the personal representative of the decedent. The levy does not impair the powers of the representative over the property for the purposes of administration.

(b) The personal representative shall report the levy to the court in which the estate is being administered when any petition for distribution is filed. If a decree orders distribution to the judgment debtor, the court making the decree shall order the property levied upon to be delivered to the levying officer. The property may not be delivered to the levying officer until the decree distributing the property has become final. To the extent the property delivered to the levying officer is not necessary to satisfy the money judgment, it shall be released to the judgment debtor.

(c) Promptly after the property is delivered to the levying officer pursuant to subdivision (b), the levying officer shall serve a notice describing the property on the judgment debtor. Service shall be made personally or by mail. Notwithstanding Section 703.520, a claim of exemption for the property described in the notice may be made within 10 days after the notice was served on the judgment debtor.

(d) Notwithstanding Section 697.710, an execution lien created by a levy pursuant to this section continues for a period of one year after the decree distributing the interest has become final unless the judgment is sooner satisfied.

(e) A writ under which a levy is made pursuant to this section shall be returned not later than one year after the date the decree distributing the interest has become final.

Article 5. Duties and Liabilities of Third Persons After Levy

701.010. (a) Except as otherwise provided by statute, when a levy is made by service of a copy of the writ of execution and a notice of levy on a third person, the third person at the time of levy or promptly thereafter shall comply with this section.

(b) Unless the third person has good cause for failure or refusal to do so:

(1) The third person shall deliver to the levying officer any of the property levied upon that is in the possession or under the control of the third person at the time of levy unless the third person claims the right to possession of the property.

(2) To the extent that the third person does not deny an obligation levied upon, or claim a priority over the judgment creditor's lien, the third person shall pay to the levying officer both of the following:

(A) The amount of the obligation levied upon that is due and payable to the judgment debtor at the time of levy.

(B) Amounts that become due and payable to the judgment debtor on the obligation levied upon during the period of the execution lien.

(3) If the third person makes a delivery or payment to the levying officer pursuant to this section, the third person shall execute and deliver any documents necessary to effect the transfer of the property.

(c) For the purposes of this section, "good cause" includes, but is not limited to, a showing that the third person did not know or have reason to know of the levy from all the facts and circumstances known to the third person.

701.020. (a) If a third person is required by this article to deliver property to the levying officer or to make payments to the levying officer and the third person fails or refuses without good cause to do so, the third person is liable to the judgment creditor for whichever of the following is the lesser amount:

(1) The value of the judgment debtor's interest in the property or the amount of the payments required to be made.

(2) The amount required to satisfy the judgment pursuant to which the levy is made.

(b) The third person's liability continues until the earliest of the following times:

(1) The time when the property levied upon is delivered to the levying officer or the payments are made to the levying officer.

(2) The time when the property levied upon is released pursuant to Section 699.060.

(3) The time when the judgment is satisfied or discharged.

(c) If the third person's liability is established, the court that determines the liability may, in its discretion, require the third person to pay the costs and reasonable attorney's fees incurred by the judgment creditor in establishing the liability.

701.030. (a) At the time of service of a copy of the writ of

execution and a notice of levy on a third person, the levying officer shall request the third person to give the levying officer a garnishee's memorandum containing the information required by this section. Within 10 days after the request is made, the third person shall mail or deliver the garnishee's memorandum to the levying officer whether or not the levy is effective.

(b) The garnishee's memorandum shall be executed under oath and shall contain the following information:

(1) A description of any property of the judgment debtor sought to be levied upon that is not delivered to the levying officer and the reason for not delivering the property.

(2) A description of any property of the judgment debtor not sought to be levied upon that is in the possession or under the control of the third person at the time of levy.

(3) A statement of the amount and terms of any obligation to the judgment debtor sought to be levied upon that is due and payable and is not paid to the levying officer, and the reason for not paying the obligation

(4) A statement of the amount and terms of any obligation to the judgment debtor sought to be levied upon that is not due and payable at the time of levy.

(5) A statement of the amount and terms of any obligation to the judgment debtor at the time of levy not sought to be levied upon.

(6) A description of claims and rights of other persons to the property or obligation levied upon that are known to the third person and the names and addresses of such other persons.

(c) If a garnishee's memorandum is received from the third person, the levying officer shall promptly mail or deliver a copy of the memorandum to the judgment creditor and attach the original to the writ when it is returned to the court. If a garnishee's memorandum is not received from the third person, the levying officer shall so state in the return.

(d) Except as provided in subdivisions (e) and (f), if a third person does not give the levying officer a garnishee's memorandum within the time provided in subdivision (a) or does not provide complete information, the third person may, in the court's discretion, be required to pay the costs and reasonable attorney's fees incurred in any proceedings to obtain the information required in the garnishee's memorandum.

(e) Notwithstanding subdivision (a), when the levy is made upon a deposit account or upon property in a safe deposit box, the financial institution need not give a garnishee's memorandum to the levying officer if the financial institution fully complies with the levy and, if a garnishee's memorandum is required, the garnishee's memorandum need provide information with respect only to property which is carried on the records available at the office or branch where the levy is made.

(f) Notwithstanding subdivision (a), the third person need not give a garnishee's memorandum to the levying officer if both of the

following conditions are satisfied:

(1) The third person has delivered to the levying officer all of the property sought to be levied upon.

(2) The third person has paid to the levying officer the amount due at the time of levy on any obligation to the judgment debtor that was levied upon and there is no additional amount that thereafter will become payable on the obligation levied upon.

701.040. (a) Except as otherwise ordered by the court upon a determination that the judgment creditor's lien has priority over the security interest, if property levied upon is subject to a security interest that attached prior to levy, the property or obligation is subject to enforcement of the security interest without regard to the levy unless the property is in the custody of the levying officer; but, if the execution lien has priority over the security interest, the secured party is liable to the judgment creditor for any proceeds received by the secured party from the property to the extent of the execution lien.

(b) After the security interest is satisfied, the secured party shall deliver any excess property, and pay any excess payments or proceeds of property, remaining in the possession of the secured party to the levying officer for the purposes of the levy, as provided in Section 9504 of the Commercial Code, unless otherwise ordered by the court or directed by the levying officer.

701.050. After service of a copy of the writ of execution and a notice of levy on an account debtor obligated on an account receivable, chattel paper, or general intangible:

(a) If the account debtor has been making payments or is required to make payments to the judgment debtor, the account debtor shall make payments to the levying officer as they become due unless otherwise directed by court order or by the levying officer. Payments made to the judgment debtor after the account debtor has received notice of the levy do not discharge the obligation of the account debtor to make payments as required by this subdivision.

(b) If the account debtor has been making payments to a third person or is required to make payments to a third person (whether pursuant to a security agreement, assignment for collection, or otherwise), the account debtor shall continue to make such payments to the third person notwithstanding the levy until the account debtor receives notice that the obligation to the third person is satisfied or is otherwise directed by court order or by the third person. After the account debtor receives notice that the obligation to the third person is satisfied, the account debtor shall make payments to the levying officer as they become due unless otherwise directed by court order or by the levying officer.

(c) If pursuant to a security agreement the judgment debtor has liberty to accept the return of goods or make repossessions under the account receivable or chattel paper, the account debtor shall deliver to the levying officer property returnable to the judgment debtor

unless otherwise directed by court order or by the levying officer.

701.060. If the levying officer obtains custody of an instrument levied upon and serves the obligor under the instrument pursuant to the levy, the obligor shall make payments to the levying officer as they become due. Payments made to a person other than the levying officer do not discharge the obligation of the obligor to make payments as required by this section if the payments are made after the obligor has received notice of the levy.

Article 6. Sale and Collection

701.510. Subject to Sections 687.020 and 701.520, the levying officer shall sell all property that has been levied upon except:

(a) Tangible personal property may not be sold until the levying officer obtains custody of the property.

(b) Cash may not be sold unless it has a value exceeding its face value.

701.520. (a) Except as provided in this section, any of the following property that has been levied upon shall be collected rather than sold:

(1) Accounts receivable.

(2) Chattel paper.

(3) General intangibles.

(4) Final money judgments.

(5) Instruments that are not customarily transferred in an established market.

(6) Instruments that represent an obligation arising out of the sale or lease of property, a license to use property, the furnishing of services, or the loan of money where the property sold or leased or licensed for use, the services furnished, or the money loaned was used by an individual primarily for personal, family, or household purposes.

(b) At the time of levy on property described in subdivision (a) or thereafter, the judgment creditor may serve a notice of intended sale of the property on the judgment debtor. Service shall be made personally or by mail. A copy of the notice of intended sale and proof of service on the judgment debtor shall be filed with the court and with the levying officer. The notice of intended sale shall describe the property and state that it will be sold at an execution sale unless, within the time allowed after service of the notice of intended sale, the judgment debtor applies to the court on noticed motion for an order that the property be collected rather than sold.

(c) Within 10 days after service of the notice of intended sale, the judgment debtor may apply to the court on noticed motion for an order that the property be collected rather than sold. A judgment debtor who so applies shall, within the time allowed for the application, serve a copy of the notice of motion on the judgment creditor and file a copy of the notice of motion with the levying officer. Service of the copy of the notice of motion on the judgment

creditor shall be made personally or by mail. If the copy of the notice of motion is not filed with the levying officer within the time allowed, the levying officer shall proceed to sell the property. If a copy of the notice of motion is filed with the levying officer within the time allowed, the levying officer shall continue to collect the property until otherwise ordered by the court.

(d) At the hearing on the motion, the court may in its discretion order that the property be sold or be collected depending on the equities and circumstances of the particular case. If the court orders that the property be sold, the order may specify terms and conditions of sale. If the court orders that the property be collected, the court may condition its order on an assignment of the property by the judgment debtor to the judgment creditor pursuant to Article 6 (commencing with Section 708.510) of Chapter 6.

701.530. (a) Notice of sale of personal property shall be in writing, shall state the date, time, and place of sale, and shall describe the property to be sold.

(b) Not less than 10 days before a sale of personal property, notice of sale shall be posted and served on the judgment debtor by the levying officer. Service shall be made personally or by mail.

(c) Posting under this section shall be in three public places in:

(1) The city in which the property is to be sold if it is to be sold in a city.

(2) The judicial district in which the property is to be sold if it is not to be sold in a city.

(d) A sale of personal property of an individual may not take place until the expiration of the time during which the judgment debtor may make a claim of exemption under subdivision (a) of Section 703.520.

701.540. (a) Notice of sale of an interest in real property shall be in writing, shall state the date, time, and place of sale, shall describe the interest to be sold, and shall give a legal description of the real property and its street address or other common designation, if any. If the real property has no street address or other common designation, the notice of sale shall include a statement that directions to its location may be obtained from the levying officer upon oral or written request or, in the discretion of the levying officer, the notice of sale may contain directions to its location. Directions are sufficient if information as to the location of the real property is given by reference to the direction and approximate distance from the nearest crossroads, frontage road, or access road. If an accurate legal description of the real property is given, the validity of the notice and sale is not affected by the fact that the street address or other common designation, or directions to its location, are erroneous or omitted.

(b) Not less than 20 days before the date of sale, notice of sale of an interest in real property shall be served, mailed, and posted by the levying officer as provided in subdivisions (c), (d), (e), and (f).

(c) Notice of sale shall be served on the judgment debtor. Service

shall be made personally or by mail.

(d) Notice of sale shall be posted in the following places:

(1) One public place in the city in which the interest in the real property is to be sold if it is to be sold in a city or, if not to be sold in a city, one public place in the judicial district in which the interest in the real property is to be sold.

(2) A conspicuous place on the real property.

(e) At the time notice is posted pursuant to paragraph (2) of subdivision (d), notice of sale shall be served or service shall be attempted on one occupant of the real property. Service on the occupant shall be made by leaving the notice with the occupant personally or, in the occupant's absence, with any person of suitable age and discretion found upon the real property at the time service is attempted who is either an employee or agent of the occupant or a member of the occupant's household. If the levying officer is unable to serve such an occupant at the time service is attempted, the levying officer is not required to make any further attempts to serve an occupant.

(f) If the property described in the notice of sale consists of more than one distinct lot, parcel, or governmental subdivision and any of the lots, parcels, or governmental subdivisions lies with relation to any of the others so as to form one or more continuous, unbroken tracts, only one service pursuant to subdivision (e) and posting pursuant to paragraph (2) of subdivision (d) need be made as to each continuous, unbroken tract.

(g) Notice of sale shall be published pursuant to Section 6063 of the Government Code, with the first publication at least 20 days prior to the time of sale, in a newspaper of general circulation published in the city in which the real property or a part thereof is situated if any part thereof is situated in a city or, if not, in a newspaper of general circulation published in the judicial district in which the real property or a part thereof is situated. If no newspaper of general circulation is published in the city or judicial district, notice of sale shall be published in a newspaper of general circulation in the county in which the real property or a part thereof is situated.

(h) Not earlier than 30 days after the date of levy, the judgment creditor shall determine the names of all persons having liens on the real property on the date of levy that are of record in the office of the county recorder and shall instruct the levying officer to mail notice of sale to each such person at the address used by the county recorder for the return of the instrument creating the person's lien after recording. The levying officer shall mail notice to each such person, at the address given in the instructions, not less than 20 days before the date of sale.

701.545. Notice of sale of an interest in real property, other than a leasehold estate with an unexpired term of less than two years at the time of levy, may not be given pursuant to Section 701.540 until the expiration of 120 days after the date notice of levy on the interest in real property was served on the judgment debtor.

701.547. A notice of sale shall contain the substance of the following statement: "Prospective bidders should refer to Sections 701.510 to 701.680, inclusive, of the Code of Civil Procedure for provisions governing the terms, conditions, and effect of the sale and the liability of defaulting bidders."

701.550. (a) In addition to the notice of sale required by this article, the levying officer shall, at the time notice of sale is posted pursuant to Section 701.530 or 701.540, mail notice of sale to any person who has requested notice of the sale pursuant to this section.

(b) A request for notice of sale under this section made prior to the issuance of the writ shall be in writing and shall be filed with the clerk of the court where the judgment is entered. The request shall specify the title of the court, the cause and number of the action in which the judgment was entered, and the date of entry thereof, and shall state the address to which the notice of sale is to be mailed. The name and address of the person requesting notice of sale under this subdivision shall be noted on the writ.

(c) A person who desires notice of sale of particular property that has been levied upon may file a request for notice of sale with the levying officer who will conduct the sale. The request shall contain the information specified by the levying officer as needed in order to comply with the request.

701.555. In addition to the notice of sale required by this article, the judgment creditor may advertise the sale in the classified or other advertising section of a newspaper of general circulation or other publication and may recover reasonable costs of such advertising. The judgment debtor may also advertise the sale at the judgment debtor's own expense.

701.560. (a) Failure to give notice of sale as required by this article does not invalidate the sale.

(b) A levying officer who sells property without giving the required notice is liable to the judgment creditor and the judgment debtor for actual damages caused by failure to give notice.

701.570. (a) A sale of property shall be held at the date, time, and place specified in the notice of sale, which shall be in the county where the property or a part thereof is situated and between the hours of nine in the morning and five in the afternoon. Subject to subdivision (d), real property consisting of one parcel, or of two or more contiguous parcels, situated in two or more counties may be sold in one county as instructed by the judgment creditor.

(b) The sale shall be made at auction to the highest bidder.

(c) If personal property capable of manual delivery is to be sold, it shall be within the view of those who attend the sale unless, upon application of the judgment creditor or the judgment debtor, the court orders otherwise.

(d) Property shall be sold separately or in such groups or lots as are likely to bring the highest price. The judgment debtor may request that the property be sold separately or together and may request that the property be sold in a particular order. If the

judgment debtor is not present at the sale, the request may be made in writing and delivered to the levying officer prior to the sale. The levying officer shall honor the request if, in the opinion of the levying officer, the requested manner of sale is likely to yield an amount at least equal to any other manner of sale or the amount required to satisfy the money judgment. The levying officer is not liable for a decision made in good faith under this subdivision.

(e) After sufficient property has been sold to yield the amount required to satisfy the money judgment, no more shall be sold.

701.580. The judgment debtor and judgment creditor together may request in writing that a sale be postponed to an agreed day and hour. The request shall be delivered to the levying officer conducting the sale, and the levying officer shall, by public declaration at the time and place originally fixed for the sale, postpone the sale to the day and hour fixed in the request. Notice of any additional postponements shall be given by public declaration by the levying officer at the time and place last appointed for the sale. No other notice of postponed sale need be given. A postponed sale shall be held at the place originally fixed for the sale.

701.590. (a) Except as otherwise provided in this section, the purchaser at a sale shall pay in cash or by certified check or cashier's check.

(b) The judgment creditor may bid by giving the levying officer a written receipt crediting all or part of the amount required to satisfy the judgment, except that the levying officer's costs remaining unsatisfied and the amount of preferred labor claims, exempt proceeds, and any other claim that is required by statute to be satisfied, shall be paid in cash or by certified check or cashier's check.

(c) If the highest bid for an interest in real property sold exceeds five thousand dollars ($5,000), the highest bidder may elect to treat the sale as a credit transaction. A person who makes the election shall deposit at least five thousand dollars ($5,000) or 10 percent of the amount bid, whichever is greater, and within 10 days after the date of the sale shall pay the balance due plus costs accruing with regard to the property sold and interest accruing at the rate on money judgments on the balance of the amount bid from the date of sale until the date of payment.

(d) If the highest bid for an item, group, or lot of personal property sold exceeds two thousand five hundred dollars ($2,500), the highest bidder may elect to treat the sale as a credit transaction. A person who makes the election shall deposit at least two thousand five hundred dollars ($2,500) or 10 percent of the amount bid, whichever is greater, and within 10 days after the date of the sale shall pay the balance due plus costs accruing with regard to the property sold and interest accruing at the rate on money judgments on the balance of the amount bid from the date of sale until the date of payment.

(e) A person who makes the election under subdivision (c) or (d) is not entitled to possession of the property sold until the amount bid,

plus accruing costs and interest, have been paid.

701.600. If the highest bidder does not pay the amount bid as prescribed by Section 701.590:

(a) The levying officer shall sell the property:

(1) If the default occurs at the sale, either to the next highest bidder at the amount of the next highest bid if such bidder agrees or to the highest bidder at a new sale held immediately.

(2) If the default occurs after the sale to a credit bidder pursuant to subdivision (c) of Section 701.590, to the highest bidder at a new sale.

(b) The levying officer shall apply the amount of any deposit made pursuant to subdivision (c) of Section 701.590 in the following order:

(1) To the satisfaction of costs accruing with regard to the property sold from the date of the sale until the date the property is resold, including costs of resale.

(2) To the satisfaction of interest at the rate on money judgments on the amount bid from the date of the sale until the date the property is resold.

(3) To the amount required to satisfy the money judgment in the order of distribution prescribed by Section 701.810 or Section 704.850, whichever is applicable.

(c) If there is a sale to the next highest bidder or to the highest bidder at a new sale, the defaulting bidder is liable for the following amounts in an action by the judgment creditor or judgment debtor:

(1) The amount bid, less the amount obtained from the resale of the property and the amount of any deposit applied pursuant to subdivision (b). The amount recovered pursuant to this paragraph shall be distributed in the manner prescribed by Section 701.810 or Section 704.850, whichever is applicable.

(2) Any costs accruing with regard to the property sold from the date of sale until the date the property is resold, including costs of resale.

(3) Interest at the rate on money judgments on the amount bid from the date of the sale until the date the property is resold.

(4) Costs and attorney's fees incurred in the action under this subdivision.

(d) The levying officer may, in the levying officer's discretion, reject any subsequent bid of the defaulting bidder.

701.610. The levying officer may not be a purchaser or have an interest in any purchase at a sale.

701.620. (a) Property may not be sold unless the amount bid exceeds the total of the following amounts:

(1) The amount of all preferred labor claims that are required by Section 1206 to be satisfied from the proceeds.

(2) The amount of any state tax lien (as defined in Section 7162 of the Government Code) that is superior to the judgment creditor's lien.

(3) If the purchaser is not the judgment creditor, the amount of

any deposit made pursuant to Section 720.260 with interest thereon at the rate on money judgments from the date of the deposit to the date of the sale.

(b) Property for which a proceeds exemption is provided by Section 704.010 (motor vehicle), 704.020 (household furnishings and other personal effects), or 704.060 (tools of trade), may not be sold unless the amount bid exceeds the sum of any amount under subdivision (a) and the amount of the proceeds exemption.

(c) If a minimum bid required for the sale of property pursuant to this section is not received, the levying officer shall promptly release the property.

701.630. If property is sold pursuant to this article, the lien under which it is sold, any liens subordinate thereto, and any state tax lien (as defined in Section 7162 of the Government Code) on the property sold are extinguished.

701.640. The purchaser of property at an execution sale acquires any interest of the judgment debtor in the property sold (1) that is held on the effective date of the lien under which the property was sold or (2) that is acquired between such effective date and the date of sale.

701.650. (a) When the purchaser of personal property pays the amount due:

(1) If the property is capable of manual delivery, the levying officer shall deliver the property to the purchaser and, if the purchaser so requests, shall execute and deliver a certificate of sale to the purchaser.

(2) If the property is not tangible personal property or if it is otherwise not capable of manual delivery, the levying officer shall execute and deliver a certificate of sale to the purchaser.

(b) If property or a certificate is delivered pursuant to subdivision (a), the levying officer shall sign or endorse any document or instrument in the levying officer's possession relating to the title to or the right to possession of the property and deliver it to the purchaser.

701.660. When the purchaser of an interest in real property pays the amount due, the levying officer conducting the sale shall execute and deliver a deed of sale to the purchaser and record a duplicate of the deed of sale in the office of the county recorder.

701.670. The certificate of sale or deed of sale shall contain all of the following:

(a) The title of the court where the judgment was entered under which the sale was made and the cause and number of the action.

(b) The date of entry of the judgment and of any subsequent renewals and where entered in the records of the court.

(c) The name and address of the judgment creditor and the name and last known address of the judgment debtor.

(d) A description of the property sold.

(e) The date of sale.

701.680. (a) Except as provided in paragraph (1) of subdivision

(c), a sale of property pursuant to this article is absolute and may not be set aside for any reason.

(b) If the judgment is reversed, vacated, or otherwise set aside, the judgment debtor may recover from the judgment creditor the proceeds of a sale pursuant to the judgment with interest at the rate on money judgments to the extent the proceeds were applied to the satisfaction of the judgment.

(c) If the sale was improper because of irregularities in the proceedings, because the property sold was not subject to execution, or for any other reason:

(1) An action may be commenced within six months after the date of sale to set aside the sale if the purchaser at the sale is the judgment creditor. Subject to paragraph (2), if the sale is set aside, the judgment of the judgment creditor is revived to reflect the amount that was satisfied from the proceeds of the sale and the judgment creditor is entitled to interest on the amount of the judgment as so revived as if the sale had not been made.

(2) The judgment debtor may recover damages caused by the impropriety. If damages are recovered against the judgment creditor, they shall be offset against the judgment to the extent the judgment is not satisfied. If damages are recovered against the levying officer, they shall be applied to the judgment to the extent the judgment is not satisfied.

Article 7. Distribution of Proceeds of Sale or Collection

701.810. Except as otherwise provided by statute, the levying officer shall distribute the proceeds of sale or collection in the following order:

(a) To persons having preferred labor claims that are required by Section 1206 to be satisfied from the proceeds, in the amounts required by Section 1206 to be satisfied.

(b) To the state department or agency having a state tax lien (as defined in Section 7162 of the Government Code) that is superior to the judgment creditor's lien, in the amount of the lien.

(c) If a deposit has been made pursuant to Section 720.260 and the purchaser at the sale is not the judgment creditor, to the judgment creditor in the amount required to repay the deposit with interest thereon at the rate on money judgments from the date of the deposit.

(d) To the judgment debtor in the amount of any applicable exemption of proceeds pursuant to Section 704.010 (motor vehicle), 704.020 (household furnishings and other personal effects), or 704.060 (tools of trade), except that such proceeds shall be used to satisfy all of the following in the order of their respective priorities:

(1) Any consensual liens and encumbrances, and any liens for labor or materials, that are subordinate to the judgment creditor's lien.

(2) Subject to Section 688.030, any state tax lien (as defined in Section 7162 of the Government Code) on the property sold if the

notice of state tax lien on the property has been recorded or filed pursuant to Section 7171 of the Government Code prior to the time the levying officer received the proceeds of the sale or collection.

(e) To the levying officer for the reimbursement of the levying officer's costs for which an advance has not been made.

(f) To the judgment creditor to satisfy the following:

(1) First, costs and interest accruing after issuance of the writ pursuant to which the sale or collection is conducted.

(2) Second, the amount due on the judgment with costs and interest, as entered on the writ.

(g) To any other judgment creditors who have delivered writs to the levying officer, accompanied by instructions to levy upon the judgment debtor's property or the proceeds of its sale or collection, or any other persons actually known by the levying officer to have a claim, lien, or other interest subordinate to the judgment creditor's lien that is extinguished by the sale and that is not otherwise satisfied pursuant to this section, in the amounts to which they are entitled in order of their respective priorities.

(h) To the judgment debtor in the amount remaining.

701.820. (a) Promptly after a sale or collection under this title, the levying officer shall distribute the proceeds to the persons entitled thereto or, in cases covered by Section 701.830, deposit the proceeds with the court.

(b) Except as otherwise provided by statute, the proceeds shall be paid to the persons entitled thereto within 30 days after they are received by the levying officer.

(c) If the proceeds are not to be received by the levying officer in one payment, the levying officer may accumulate proceeds received during a 30-day period and the accumulated proceeds shall be paid to the persons entitled thereto not later than 20 days after the expiration of the 30-day period.

(d) When proceeds are received by the levying officer in the form of a check or other form of noncash payment that is to be honored upon presentation by the levying officer for payment, the proceeds are not received for the purposes of this section until the check or other form of noncash payment has actually been honored upon presentation for payment.

(e) The provisions of Section 26680 of the Government Code apply to the levying officer only if all of the following conditions are satisfied:

(1) The levying officer has failed to pay the proceeds or deposit them with the court as provided in this article within the time provided in this section.

(2) Upon such failure, a person entitled to any of the proceeds has filed with the levying officer a written demand for the payment of the proceeds to the persons entitled thereto.

(3) The levying officer has failed within 10 days after the demand is filed to pay to the person filing the demand the proceeds to which that person is entitled.

701.830. (a) If there are conflicting claims to all or a portion of the proceeds of sale or collection known to the levying officer before the proceeds are distributed, the levying officer may deposit with the court the proceeds that are the subject of the conflicting claims instead of distributing such proceeds under Section 701.810. Any interested person may apply on noticed motion for an order for the distribution of the proceeds deposited with the court. A copy of the notice of motion shall be served on such persons as the court shall by order determine in such manner as the court prescribes. Any interested person may request time for filing a response to the motion for an order for the distribution of the proceeds, for discovery proceedings in connection with the motion, or for other preparation for the hearing on the motion, and the court shall grant a continuance for a reasonable time for any of these purposes.

(b) Except as provided in subdivision (c), at the hearing on the motion the court shall determine the issues presented by the motion and make an order for the distribution of the proceeds deposited with the court.

(c) The court shall not determine the issues presented by the motion and instead shall abate the hearing until the issues presented by the motion can be determined in a civil action in the following cases if:

(1) The court is not the proper court under any other provision of law for the trial of a civil action with respect to the subject matter of the motion and any interested person at or prior to the hearing objects to the determination of the issues presented by the motion by the court.

(2) A civil action is pending with respect to the subject matter of the motion and jurisdiction has been obtained in the court in which the civil action is pending.

(3) The court determines that the matter should be determined in a civil action.

CHAPTER 4. EXEMPTIONS

Article 1. General Provisions

703.010. Except as otherwise provided by statute:

(a) The exemptions provided by this chapter or by any other statute apply to all procedures for enforcement of a money judgment.

(b) The exemptions provided by this chapter or by any other statute do not apply if the judgment to be enforced is for the foreclosure of a mortgage, deed of trust, or other lien or encumbrance on the property other than a lien created pursuant to this division or pursuant to Title 6.5 (commencing with Section 481.010) (attachment).

703.020. (a) The exemptions provided by this chapter apply only to property of a natural person.

(b) The exemptions provided in this chapter may be claimed by any of the following persons:

(1) In all cases, by the judgment debtor or a person acting on behalf of the judgment debtor.

(2) In the case of community property, by the spouse of the judgment debtor, whether or not the spouse is also a judgment debtor under the judgment.

703.030. (a) An exemption for property that is described in this chapter or in any other statute as exempt may be claimed within the time and in the manner prescribed in the applicable enforcement procedure. If the exemption is not so claimed, the exemption is waived and the property is subject to enforcement of a money judgment.

(b) Except as otherwise specifically provided by statute, property that is described in this chapter or in any other statute as exempt without making a claim is not subject to any procedure for enforcement of a money judgment.

(c) Nothing in this section limits the authority of the court pursuant to Section 473 to relieve a person upon such terms as may be just from failure to claim an exemption within the time and in the manner prescribed in the applicable enforcement procedure.

703.040. A purported contractual or other prior waiver of the exemptions provided by this chapter or by any other statute, other than a waiver by failure to claim an exemption required to be claimed or otherwise made at the time enforcement is sought, is against public policy and void.

703.050. (a) The determination whether property is exempt or the amount of an exemption shall be made by application of the exemption statutes in effect (1) at the time the judgment creditor's lien on the property was created or (2) if the judgment creditor's lien on the property is the latest in a series of overlapping liens created when an earlier lien on the property in favor of the judgment creditor was in effect, at the time the earliest lien in the series of overlapping liens was created.

(b) This section applies to all judgments, whether based upon tort, contract, or other legal theory or cause of action that arose before or after the operative date of this section, and whether the judgment was entered before or after the operative date of this section.

(c) Notwithstanding subdivision (a), in the case of a levy of execution, the procedures to be followed in levying upon, selling, or releasing property, claiming, processing, opposing, and determining exemptions, and paying exemption proceeds, shall be governed by the law in effect at the time the levy of execution is made on the property.

703.060. (a) The Legislature finds and declares that generally persons who enter into contracts do not do so in reliance on an assumption that the exemptions in effect at the time of the contract will govern enforcement of any judgment based on the contract, that liens imposed on property are imposed not as a matter of right but

as a matter of privilege granted by statute for purposes of priority, that no vested rights with respect to exemptions are created by the making of a contract or imposition of a lien, that application of exemptions and exemption procedures in effect at the time of enforcement of a judgment is essential to the proper balance between the rights of judgment debtors and judgment creditors and has a minimal effect on the economic stability essential for the maintenance of private and public faith in commercial matters, and that it is the policy of the state to treat all judgment debtors equally with respect to exemptions and exemption procedures in effect at the time of enforcement of a money judgment. To this end, the Legislature reserves the right to repeal, alter, or add to the exemptions and the procedures therefor at any time and intends, unless otherwise provided by statute, that any repeals, alterations, or additions apply upon their operative date to enforcement of all money judgments, whether based upon tort, contract, or other legal theory or cause of action that arose before or after the operative date of the repeals, alterations, or additions, whether the judgment was entered before or after the operative date of the repeals, alterations, or additions.

(b) All contracts shall be deemed to have been made and all liens on property shall be deemed to have been created in recognition of the power of the state to repeal, alter, and add to statutes providing for liens and exemptions from the enforcement of money judgments.

703.070. Except as otherwise provided by statute:

(a) The exemptions provided by this chapter or by any other statute apply to a judgment for child or spousal support.

(b) If property is exempt without making a claim, the property is not subject to being applied to the satisfaction of a judgment for child or spousal support.

(c) Except as provided in subdivision (b), if property sought to be applied to the satisfaction of a judgment for child or spousal support is shown to be exempt under subdivision (a) in appropriate proceedings, the court shall, upon noticed motion of the judgment creditor, determine the extent to which the exempt property nevertheless shall be applied to the satisfaction of the judgment. In making this determination, the court shall take into account the needs of the judgment creditor, the needs of the judgment debtor and all the persons the judgment debtor is required to support, and all other relevant circumstances. The court shall effectuate its determination by an order specifying the extent to which the otherwise exempt property is to be applied to the satisfaction of the judgment.

703.080. (a) Subject to any limitation provided in the particular exemption, a fund that is exempt remains exempt to the extent that it can be traced into deposit accounts or in the form of cash or its equivalent.

(b) The exemption claimant has the burden of tracing an exempt fund.

(c) The tracing of exempt funds in a deposit account shall be by application of the lowest intermediate balance principle unless the exemption claimant or the judgment creditor shows that some other method of tracing would better serve the interests of justice and equity under the circumstances of the case.

703.090. If a judgment creditor has failed to oppose a claim of exemption within the time allowed by Section 703.550 or if property has been determined by a court to be exempt, and the judgment creditor thereafter levies upon or otherwise seeks to apply the property toward the satisfaction of the same money judgment, the judgment creditor is not entitled to recover the subsequent costs of collection unless the property is applied to satisfaction of the judgment.

703.100. (a) Subject to subdivision (b), the determination whether property is exempt shall be made under the circumstances existing at the earliest of the following times:

(1) The time of levy on the property.

(2) The time of the commencement of court proceedings for the application of the property to the satisfaction of the money judgment.

(3) The time a lien is created under Title 6.5 (commencing with Section 481.010) (attachment) or under this title.

(b) The court, in its discretion, may take into consideration any of the following changes that have occurred between the time of levy or commencement of enforcement proceedings or creation of the lien and the time of the hearing:

(1) A change in the use of the property if the exemption is based upon the use of property and if the property was used for the exempt purpose at the time of the levy or the commencement of enforcement proceedings or the creation of the lien but is used for a nonexempt purpose at the time of the hearing.

(2) A change in the value of the property if the exemption is based upon the value of property.

(3) A change in the financial circumstances of the judgment debtor and spouse and dependents of the judgment debtor if the exemption is based upon their needs.

703.110. If the judgment debtor is married:

(a) The exemptions provided by this chapter or by any other statute apply to all property that is subject to enforcement of a money judgment, including the interest of the spouse of the judgment debtor in community property. The fact that one or both spouses are judgment debtors under the judgment or that property sought to be applied to the satisfaction of the judgment is separate or community does not increase or reduce the number or amount of the exemptions.

(b) In determining an exemption based upon the needs of the judgment debtor and the spouse and dependents of the judgment debtor, the court shall take into account all property of the judgment debtor and of the spouse and dependents, including community

property and separate property of the spouse, whether or not such property is subject to enforcement of the money judgment.

(c) If an exemption is required by statute to be applied first to property not before the court and then to property before the court, the application of the exemption to property not before the court shall be made to the community property and separate property of both spouses, whether or not such property is subject to enforcement of the money judgment.

(d) If the same exemption is claimed by the judgment debtor and the spouse of the judgment debtor for different property, and the property claimed by one spouse, but not both, is exempt, the exemption shall be applied as the spouses agree. If the spouses are unable to agree, the exemption shall be applied as directed by the court in its discretion.

703.120. (a) Ten years following the operative date of this title and every 10 years thereafter, the California Law Revision Commission shall review the exempt amounts provided in this chapter and in other statutes and recommend to the Governor and the Legislature any changes in exempt amounts that appear proper.

(b) Nothing in this section precludes the commission from making recommendations concerning exempt amounts more frequently than required by subdivision (a) or from making recommendations concerning any other aspect of this title, and the commission is authorized to maintain a continuing review of and submit recommendations concerning enforcement of judgments.

703.130. (a) Pursuant to the authority of paragraph (1) of subsection (b) of Section 522 of Title 11 of the United States Code, the exemptions set forth in subsection (d) of Section 522 of Title 11 of the United States Code (Bankruptcy) are not authorized in this state.

(b) Notwithstanding subdivision (a), if a husband and wife are joined in a petition filed under Title 11 of the United States Code (Bankruptcy), they jointly may elect to utilize the applicable exemption provisions under this chapter or to utilize the applicable exemptions set forth in subsection (d) of Section 522 of Title 11 of the United States Code, but not both.

(c) Notwithstanding subdivision (a), if a petition under Title 11 of the United States Code (Bankruptcy) is filed individually, and not jointly, for a husband or a wife, the exemptions set forth in subsection (d) of Section 522 of Title 11 of the United States Code are authorized in this state if the husband and wife each effectively waive in writing the right to claim, during the period the case commenced by filing such petition is pending, the exemptions provided by the applicable exemption provisions of this chapter in any case commenced by filing a petition for either of them under Title 11 of the United States Code.

(d) Notwithstanding subdivision (a), if a petition is filed under Title 11 of the United States Code (Bankruptcy) for an unmarried person, the unmarried person may elect to utilize the applicable

exemption provisions under this chapter or to utilize the applicable exemptions set forth in subsection (d) of Section 522 of Title 11 of the United States Code, but not both.

Article 2. Procedure for Claiming Exemptions After Levy

703.510. (a) Except as otherwise provided by statute, property that has been levied upon may be claimed to be exempt as provided in this article.

(b) If property that is exempt without making a claim is levied upon, it may be released pursuant to the exemption procedure provided in this article.

703.520. (a) The claimant may make a claim of exemption by filing with the levying officer a claim of exemption together with a copy thereof. The claim shall be made within 10 days after the date the notice of levy on the property claimed to be exempt was served on the judgment debtor.

(b) The claim of exemption shall be executed under oath and shall include all of the following:

(1) The name of the claimant and the mailing address where service of a notice of opposition to the claim may be made upon the claimant.

(2) The name and last known address of the judgment debtor if the claimant is not the judgment debtor.

(3) A description of the property claimed to be exempt. If an exemption is claimed pursuant to Section 704.010 or 704.060, the claimant shall describe all other property of the same type (including exempt proceeds of property of the same type) owned by the judgment debtor alone or in combination with others on the date of levy and identify the property, whether or not levied upon, to which the exemption is to be applied. If an exemption is claimed pursuant to subdivision (b) of Section 704.100, the claimant shall state the nature and amount of all other property of the same type owned by the judgment debtor or the spouse of the judgment debtor alone or in combination with others on the date of levy.

(4) A financial statement if required by Section 703.530.

(5) A citation of the provision of this chapter or other statute upon which the claim is based.

(6) A statement of the facts necessary to support the claim.

703.530. (a) If property is claimed as exempt pursuant to a provision exempting property to the extent necessary for the support of the judgment debtor and the spouse and dependents of the judgment debtor, the claim of exemption shall include a financial statement.

(b) The financial statement shall include all of the following information:

(1) The name of the spouse of the judgment debtor.

(2) The name, age, and relationship of all persons dependent upon the judgment debtor or the spouse of the judgment debtor for

support.

(3) All sources and the amounts of earnings and other income of the judgment debtor and the spouse and dependents of the judgment debtor.

(4) A list of the assets of the judgment debtor and the spouse and dependents of the judgment debtor and the value of such assets.

(5) All outstanding obligations of the judgment debtor and the spouse and dependents of the judgment debtor.

(c) The financial statement shall be executed under oath by the judgment debtor and, unless the spouses are living separate and apart, by the spouse of the judgment debtor.

703.540. Promptly after the filing of the claim of exemption, the levying officer shall serve both of the following on the judgment creditor personally or by mail:

(a) A copy of the claim of exemption.

(b) A notice of claim of exemption stating that the claim of exemption has been made and that the levying officer will release the property unless, within the time allowed as specified in the notice, both of the following are filed with the levying officer:

(1) A copy of the notice of opposition to the claim of exemption.

(2) A copy of the notice of motion for an order determining the claim of exemption.

703.550. Within 10 days after service of the notice of claim of exemption, a judgment creditor who opposes the claim of exemption shall file with the court a notice of opposition to the claim of exemption and a notice of motion for an order determining the claim of exemption and shall file with the levying officer a copy of the notice of opposition and a copy of the notice of motion. Upon the filing of the copies of the notice of opposition and notice of motion, the levying officer shall promptly file the claim of exemption with the court. If copies of the notice of opposition and notice of motion are not filed with the levying officer within the time allowed, the levying officer shall immediately release the property to the extent it is claimed to be exempt.

703.560. The notice of opposition to the claim of exemption shall be executed under oath and shall include both of the following:

(a) An allegation either (1) that the property is not exempt under the provision of this chapter or other statute relied upon or (2) that the equity in the property claimed to be exempt is in excess of the amount provided in the applicable exemption.

(b) A statement of the facts necessary to support the allegation.

703.570. (a) The hearing on the motion shall be held not later than 20 days from the date the notice of motion was filed with the court unless continued by the court for good cause.

(b) Not less than 10 days prior to the hearing, the judgment creditor shall serve a notice of the hearing and a copy of the notice of opposition to the claim of exemption on the claimant and on the judgment debtor, if other than the claimant. Service shall be made personally or by mail.

703.580. (a) The claim of exemption and notice of opposition to the claim of exemption constitute the pleadings, subject to the power of the court to permit amendments in the interest of justice.

(b) At a hearing under this section, the exemption claimant has the burden of proof.

(c) The claim of exemption is deemed controverted by the notice of opposition to the claim of exemption and both shall be received in evidence. If no other evidence is offered, the court, if satisfied that sufficient facts are shown by the claim of exemption (including the financial statement if one is required) and the notice of opposition, may make its determination thereon. If not satisfied, the court shall order the hearing continued for the production of other evidence, oral or documentary.

(d) At the conclusion of the hearing, the court shall determine by order whether or not the property is exempt in whole or in part. Subject to Section 703.600, the order is determinative of the right of the judgment creditor to apply the property to the satisfaction of the judgment. No findings are required in a proceeding under this section.

(e) The court clerk shall promptly transmit a certified copy of the order to the levying officer. Subject to Section 703.610, the levying officer shall, in compliance with the order, release the property or apply the property to the satisfaction of the money judgment.

703.590. If the court extends the time allowed for an act to be done under this article, written notice of the extension shall be filed with the levying officer and, unless notice is waived, shall be served promptly on the opposing party. Service shall be made personally or by mail.

703.600. An appeal lies from any order made under this article and shall be taken in the manner provided for appeals in the court in which the proceeding takes place.

703.610. (a) Except as otherwise provided by statute, the levying officer shall not release, sell, or otherwise dispose of the property for which an exemption is claimed until the final determination of the exemption.

(b) At any time while the exemption proceedings are pending, upon motion of the judgment creditor or a claimant, or upon its own motion, the court may make such orders for disposition of the property as may be proper under the circumstances of the case. Such an order may be modified or vacated by the court at any time during the pendency of the exemption proceedings upon such terms as are just.

(c) If an appeal of the determination of a claim of exemption is taken, notice of the appeal shall be given to the levying officer and the levying officer shall hold, release, or dispose of the property in accordance with the provisions governing enforcement and stay of enforcement of money judgments pending appeal.

Article 3. Exempt Property

704.010. (a) Any combination of the following is exempt in the amount of one thousand two hundred dollars ($1,200):

(1) The aggregate equity in motor vehicles.

(2) The proceeds of an execution sale of a motor vehicle.

(3) The proceeds of insurance or other indemnification for the loss, damage, or destruction of a motor vehicle.

(b) Proceeds exempt under subdivision (a) are exempt for a period of 90 days after the time the proceeds are actually received by the judgment debtor.

(c) For the purpose of determining the equity, the fair market value of a motor vehicle shall be determined by reference to used car price guides customarily used by California automobile dealers unless the motor vehicle is not listed in such price guides.

(d) If the judgment debtor has only one motor vehicle and it is sold at an execution sale, the proceeds of the execution sale are exempt in the amount of one thousand two hundred dollars ($1,200) without making a claim. The levying officer shall consult and may rely upon the records of the Department of Motor Vehicles in determining whether the judgment debtor has only one motor vehicle. In the case covered by this subdivision, the exemption provided by subdivision (a) is not available.

704.020. (a) Household furnishings, appliances, provisions, wearing apparel, and other personal effects are exempt in the following cases:

(1) If ordinarily and reasonably necessary to, and personally used or procured for use by, the judgment debtor and members of the judgment debtor's family at the judgment debtor's principal place of residence.

(2) Where the judgment debtor and the judgment debtor's spouse live separate and apart, if ordinarily and reasonably necessary to, and personally used or procured for use by, the spouse and members of the spouse's family at the spouse's principal place of residence.

(b) In determining whether an item of property is "ordinarily and reasonably necessary" under subdivision (a), the court shall take into account both of the following:

(1) The extent to which the particular type of item is ordinarily found in a household.

(2) Whether the particular item has extraordinary value as compared to the value of items of the same type found in other households.

(c) If an item of property for which an exemption is claimed pursuant to this section is an item of the type ordinarily found in a household but is determined not to be exempt because the item has extraordinary value as compared to the value of items of the same type found in other households, the proceeds obtained at an execution sale of the item are exempt in the amount determined by

the court to be a reasonable amount sufficient to purchase a replacement of ordinary value if the court determines that a replacement is reasonably necessary. Proceeds exempt under this subdivision are exempt for a period of 90 days after the proceeds are actually received by the judgment debtor.

704.030. Material that in good faith is about to be applied to the repair or improvement of a residence is exempt if the equity in the material does not exceed one thousand dollars ($1,000) in the following cases:

(a) If purchased in good faith for use in the repair or improvement of the judgment debtor's principal place of residence.

(b) Where the judgment debtor and the judgment debtor's spouse live separate and apart, if purchased in good faith for use in the repair or improvement of the spouse's principal place of residence.

704.040. Jewelry, heirlooms, and works of art are exempt to the extent that the aggregate equity therein does not exceed two thousand five hundred dollars ($2,500).

704.050. Health aids reasonably necessary to enable the judgment debtor or the spouse or a dependent of the judgment debtor to work or sustain health, and prosthetic and orthopedic appliances, are exempt.

704.060. (a) Tools, implements, instruments, materials, uniforms, furnishings, books, equipment, one commercial motor vehicle, one vessel, and other personal property are exempt to the extent that the aggregate equity therein does not exceed:

(1) Two thousand five hundred dollars ($2,500), if reasonably necessary to and actually used by the judgment debtor in the exercise of the trade, business, or profession by which the judgment debtor earns a livelihood.

(2) Two thousand five hundred dollars ($2,500), if reasonably necessary to and actually used by the spouse of the judgment debtor in the exercise of the trade, business, or profession by which the spouse earns a livelihood.

(3) Five thousand dollars ($5,000), if reasonably necessary to and actually used by the judgment debtor and by the spouse of the judgment debtor in the exercise of the same trade, business, or profession by which both earn a livelihood. In the case covered by this paragraph, the exemptions provided in paragraphs (1) and (2) are not available.

(b) If property described in subdivision (a) is sold at an execution sale, or if it has been lost, damaged, or destroyed, the proceeds of the execution sale or of insurance or other indemnification are exempt for a period of 90 days after the proceeds are actually received by the judgment debtor or the judgment debtor's spouse. The amount exempt under this subdivision is the amount specified in subdivision (a) that applies to the particular case less the aggregate equity of any other property to which the exemption provided by subdivision (a) for the particular case has been applied.

(c) Notwithstanding subdivision (a), a motor vehicle is not exempt under subdivision (a) if there is a motor vehicle exempt under Section 704.010 which is reasonably adequate for use in the trade, business, or profession for which the exemption is claimed under this section.

704.070. (a) As used in this section:

(1) "Earnings withholding order" means an earnings withholding order under Chapter 5 (commencing with Section 706.010) (Wage Garnishment Law).

(2) "Paid earnings" means earnings as defined in Section 706.011 that were paid to the employee during the 30-day period ending on the date of the levy. For the purposes of this paragraph, where earnings that have been paid to the employee are sought to be subjected to the enforcement of a money judgment other than by a levy, the date of levy is deemed to be the date the earnings were otherwise subjected to the enforcement of the judgment.

(3) "Wage assignment for support" means a wage assignment for support as defined in Section 706.011.

(b) Paid earnings that can be traced into deposit accounts or in the form of cash or its equivalent as provided in Section 703.080 are exempt in the following amounts:

(1) All of the paid earnings are exempt if prior to payment to the employee they were subject to an earnings withholding order or a wage assignment for support.

(2) Seventy-five percent of the paid earnings that are levied upon or otherwise sought to be subjected to the enforcement of a money judgment are exempt if prior to payment to the employee they were not subject to an earnings withholding order or a wage assignment for support.

704.080. (a) For the purposes of this section:

(1) "Deposit account" means a deposit account in which payments authorized by the Social Security Administration are directly deposited by the United States government.

(2) "Payments authorized by the Social Security Administration" means regular retirement and survivors' benefits, supplemental security income benefits, coal miners' health benefits, and disability insurance benefits.

(b) A deposit account is exempt without making a claim in the following amount:

(1) Five hundred dollars ($500) where one depositor is the designated payee of the directly deposited payments.

(2) Seven hundred fifty dollars ($750) where two or more depositors are the designated payees of the directly deposited payments, unless such depositors are joint payees of directly deposited payments which represent a benefit to only one of the depositors, in which case the exempt amount is five hundred dollars ($500).

(c) The amount of a deposit account that exceeds the exemption provided in subdivision (b) is exempt to the extent that it consists of

payments authorized by the Social Security Administration.

(d) Notwithstanding Article 5 (commencing with Section 701.010) of Chapter 3, when a deposit account is levied upon or otherwise sought to be subjected to the enforcement of a money judgment, the financial institution that holds the deposit account shall either place the amount that exceeds the exemption provided in subdivision (b) in a suspense account or otherwise prohibit withdrawal of such amount pending notification of the failure of the judgment creditor to file the affidavit required by this section or the judicial determination of the exempt status of the amount. Within 10 business days after the levy, the financial institution shall provide the levying officer with a written notice stating (1) that the deposit account is one in which payments authorized by the Social Security Administration are directly deposited by the United States government and (2) the balance of the deposit account that exceeds the exemption provided by subdivision (b). Promptly upon receipt of the notice, the levying officer shall serve the notice on the judgment creditor. Service shall be made personally or by mail.

(e) Notwithstanding the procedure prescribed in Article 2 (commencing with Section 703.510), whether there is an amount exempt under subdivision (c) shall be determined as follows:

(1) Within five days after the levying officer serves the notice on the judgment creditor under subdivision (d), a judgment creditor who desires to claim that the amount is not exempt shall file with the court an affidavit alleging that the amount is not exempt and file a copy with the levying officer. The affidavit shall be in the form of the notice of opposition provided by Section 703.560, and a hearing shall be set and held, and notice given, as provided by Sections 703.570 and 703.580. For the purpose of this subdivision, the "notice of opposition to the claim of exemption" in Sections 703.570 and 703.580 means the affidavit under this subdivision.

(2) If the judgment creditor does not file the affidavit with the levying officer and give notice of hearing pursuant to Section 703.570 within the time provided in paragraph (1), the levying officer shall release the deposit account and shall notify the financial institution.

(3) The affidavit constitutes the pleading of the judgment creditor, subject to the power of the court to permit amendments in the interest of justice. The affidavit is deemed controverted and no counteraffidavit is required.

(4) At a hearing under this subdivision, the judgment debtor has the burden of proving that the excess amount is exempt.

(5) At the conclusion of the hearing, the court by order shall determine whether or not the amount of the deposit account is exempt pursuant to subdivision (c) in whole or in part and shall make an appropriate order for its prompt disposition. No findings are required in a proceeding under this subdivision.

(6) Upon determining the exemption claim for the deposit account under subdivision (c), the court shall immediately transmit a certified copy of the order of the court to the financial institution

and to the levying officer. If the order determines that all or part of the excess is exempt under subdivision (c), with respect to the amount of the excess which is exempt, the financial institution shall transfer the exempt excess from the suspense account or otherwise release any restrictions on its withdrawal by the judgment debtor. The transfer or release shall be effected within three business days of the receipt of the certified copy of the court order by the financial institution.

(f) If the judgment debtor claims that a portion of the amount is exempt other than pursuant to subdivision (c), the claim of exemption shall be made pursuant to Article 2 (commencing with Section 703.510). If the judgment debtor also opposes the judgment creditor's affidavit regarding an amount exempt pursuant to subdivision (c), both exemptions shall be determined at the same hearing, provided the judgment debtor has complied with Article 2 (commencing with Section 703.510).

704.090. The funds of a judgment debtor confined in a prison or facility under the jurisdiction of the Department of Corrections or the Department of the Youth Authority or confined in any county or city jail, road camp, industrial farm, or other local correctional facility, held in trust for or to the credit of the judgment debtor, in an inmate's trust account or similar account by the state, county, or city, or any agency thereof, are exempt without making a claim in the amount of one thousand dollars ($1,000). If the judgment debtor is married, each spouse is entitled to a separate exemption under this section or the spouses may combine their exemptions.

704.100. (a) Unmatured life insurance policies (including endowment and annuity policies), but not the loan value of such policies, are exempt without making a claim.

(b) The aggregate loan value of unmatured life insurance policies (including endowment and annuity policies) is subject to the enforcement of a money judgment but is exempt in the amount of four thousand dollars ($4,000). If the judgment debtor is married, each spouse is entitled to a separate exemption under this subdivision, and the exemptions of the spouses may be combined, regardless of whether the policies belong to either or both spouses and regardless of whether the spouse of the judgment debtor is also a judgment debtor under the judgment. The exemption provided by this subdivision shall be first applied to policies other than the policy before the court and then, if the exemption is not exhausted, to the policy before the court.

(c) Benefits from matured life insurance policies (including endowment and annuity policies) are exempt to the extent reasonably necessary for the support of the judgment debtor and the spouse and dependents of the judgment debtor.

704.110. (a) As used in this section:

(1) "Public entity" means the state, or a city, city and county, county, or other political subdivision of the state, or a public trust, public corporation, or public board, or the governing body of any of

them, but does not include the United States except where expressly so provided.

(2) "Public retirement benefit" means a pension or an annuity, or a retirement, disability, death, or other benefit, paid or payable by a public retirement system.

(3) "Public retirement system" means a system established pursuant to statute by a public entity for retirement, annuity, or pension purposes or payment of disability or death benefits.

(b) All amounts held, controlled, or in process of distribution by a public entity derived from contributions by the public entity or by an officer or employee of the public entity for public retirement benefit purposes, and all rights and benefits accrued or accruing to any person under a public retirement system, are exempt without making a claim.

(c) Notwithstanding subdivision (b), where an amount described in subdivision (b) becomes payable to a person and is sought to be applied to the satisfaction of a judgment for child or spousal support against that person:

(1) Except as provided in paragraph (2), the amount is exempt only to the extent that the court determines under subdivision (c) of Section 703.070.

(2) If the amount sought to be applied to the satisfaction of the judgment is payable periodically, the amount payable is subject to a wage assignment for support as defined in Section 706.011 or any other applicable enforcement procedure, but the amount to be withheld pursuant to the assignment or other procedure shall not exceed the amount permitted to be withheld on an earnings withholding order for support under Section 706.052. The paying entity may deduct from each payment made pursuant to a wage assignment under this paragraph an amount reflecting the actual cost of administration caused by the wage assignment up to two dollars ($2) for each payment.

(d) All amounts received by any person, a resident of the state, as a public retirement benefit or as a return of contributions and interest thereon from the United States or a public entity or from a public retirement system are exempt.

704.113. (a) As used in this section, "vacation credits" means vacation credits accumulated by a state employee pursuant to Section 18050 of the Government Code or by any other public employee pursuant to any law for the accumulation of vacation credits applicable to the employee.

(b) All vacation credits are exempt without making a claim.

(c) Amounts paid periodically or as a lump sum representing vacation credits are subject to any earnings withholding order served under Chapter 5 (commencing with Section 706.010) or any wage assignment for support as defined in Section 706.011 and are exempt to the same extent as earnings of a judgment debtor.

704.115. (a) As used in this section, "private retirement plan" means:

(1) Private retirement plans, including, but not limited to, union retirement plans.

(2) Profit-sharing plans designed and used for retirement purposes.

(3) Self-employed retirement plans and individual retirement annuities or accounts provided for in the Internal Revenue Code of 1954 as amended, to the extent the amounts held in the plans, annuities, or accounts do not exceed the maximum amounts exempt from federal income taxation under that code.

(b) All amounts held, controlled, or in process of distribution by a private retirement plan, for the payment of benefits as an annuity, pension, retirement allowance, disability payment, or death benefit from a private retirement plan are exempt.

(c) Notwithstanding subdivision (b), where an amount described in subdivision (b) becomes payable to a person and is sought to be applied to the satisfaction of a judgment for child or spousal support against that person:

(1) Except as provided in paragraph (2), the amount is exempt only to the extent that the court determines under subdivision (c) of Section 703.070.

(2) If the amount sought to be applied to the satisfaction of the judgment is payable periodically, the amount payable is subject to a wage assignment for support as defined in Section 706.011 or any other applicable enforcement procedure, but the amount to be withheld pursuant to the assignment or other procedure shall not exceed the amount permitted to be withheld on an earnings withholding order for support under Section 706.052.

(d) After payment, the amounts described in subdivision (b) and all contributions and interest thereon returned to any member of a private retirement plan are exempt.

(e) Notwithstanding subdivisions (b) and (d), except as provided in subdivision (f), the amounts described in paragraph (3) of subdivision (a) are exempt only to the extent necessary to provide for the support of the judgment debtor when the judgment debtor retires and for the support of the spouse and dependents of the judgment debtor, taking into account all resources that are likely to be available for the support of the judgment debtor when the judgment debtor retires. In determining the amount to be exempt under this subdivision, the court shall allow the judgment debtor such additional amount as is necessary to pay any federal and state income taxes payable as a result of the applying of an amount described in paragraph (3) of subdivision (a) to the satisfaction of the money judgment.

(f) Where the amounts described in paragraph (3) of subdivision (a) are payable periodically, the amount of such periodic payment that may be applied to the satisfaction of a money judgment is the amount that may be withheld from a like amount of earnings under Chapter 5 (commencing with Section 706.010) (Wage Garnishment Law).

704.120. (a) Contributions by workers payable to the Unemployment Compensation Disability Fund and by employers payable to the Unemployment Fund are exempt without making a claim.

(b) Before payment, amounts held for payment of the following benefits are exempt without making a claim:

(1) Unemployment compensation benefits payable under Part 1 (commencing with Section 100) of Division 1 of the Unemployment Insurance Code.

(2) Unemployment compensation disability benefits payable under Part 2 (commencing with Section 2601) of Division 1 of the Unemployment Insurance Code.

(3) Extended duration benefits payable under Part 3 (commencing with Section 3501) of Division 1 of the Unemployment Insurance Code.

(4) Federal-state extended benefits payable under Part 4 (commencing with Section 4001) of Division 1 of the Unemployment Insurance Code.

(5) Incentive payments payable under Division 2 (commencing with Section 5000) of the Unemployment Insurance Code.

(6) Benefits under a plan or system established by an employer that makes provision for employees generally or for a class or group of employees for the purpose of supplementing unemployment compensation benefits.

(7) Unemployment benefits by a fraternal organization to bona fide members.

(8) Benefits payable by a union due to a labor dispute.

(c) After payment, the benefits described in subdivision (b) are exempt.

(d) Notwithstanding subdivision (b), where benefits exempt under subdivision (b) become payable to a person and are sought to be applied to the satisfaction of a judgment for child support against that person:

(1) Except as provided in paragraph (2), the amount is exempt only to the extent that the court determines under subdivision (c) of Section 703.070.

(2) If the amount sought to be applied to the satisfaction of the judgment is payable periodically, the amount payable is subject to a wage assignment for support as defined in Section 706.011 or any other applicable enforcement procedure, but the amount to be withheld pursuant to the assignment or other procedure shall not exceed the amount permitted to be withheld on an earnings withholding order for support under Section 706.052. The paying entity may deduct from each payment made pursuant to a wage assignment under this paragraph an amount reflecting the actual cost of administration caused by the wage assignment up to two dollars ($2) for each payment.

704.130. (a) Before payment, benefits from a disability or health insurance policy or program are exempt without making a claim.

After payment, the benefits are exempt.

(b) Subdivision (a) does not apply to benefits that are paid or payable to cover the cost of health care if the judgment creditor is a provider of health care whose claim is the basis on which the benefits are paid or payable.

704.140. (a) Except as provided in Article 5 (commencing with Section 708.410) of Chapter 6, a cause of action for personal injury is exempt without making a claim.

(b) Except as provided in subdivisions (c) and (d), an award of damages or a settlement arising out of personal injury is exempt to the extent necessary for the support of the judgment debtor and the spouse and dependents of the judgment debtor.

(c) Subdivision (b) does not apply if the judgment creditor is a provider of health care whose claim is based on the providing of health care for the personal injury for which the award or settlement was made.

(d) Where an award of damages or a settlement arising out of personal injury is payable periodically, the amount of such periodic payment that may be applied to the satisfaction of a money judgment is the amount that may be withheld from a like amount of earnings under Chapter 5 (commencing with Section 706.010) (Wage Garnishment Law).

704.150. (a) Except as provided in Article 5 (commencing with Section 708.410) of Chapter 6, a cause of action for wrongful death is exempt without making a claim.

(b) Except as provided in subdivision (c), an award of damages or a settlement arising out of the wrongful death of the judgment debtor's spouse or a person on whom the judgment debtor or the judgment debtor's spouse was dependent is exempt to the extent reasonably necessary for support of the judgment debtor and the spouse and dependents of the judgment debtor.

(c) Where an award of damages or a settlement arising out of the wrongful death of the judgment debtor's spouse or a person on whom the judgment debtor or the judgment debtor's spouse was dependent is payable periodically, the amount of such a periodic payment that may be applied to the satisfaction of a money judgment is the amount that may be withheld from a like amount of earnings under Chapter 5 (commencing with Section 706.010) (Wage Garnishment Law).

704.160. Except as provided by Chapter 1 (commencing with Section 4900) of Part 3 of Division 4 of the Labor Code, before payment, a claim for workers' compensation or workers' compensation awarded or adjudged is exempt without making a claim. After payment, the award is exempt.

704.170. Before payment, aid provided pursuant to Division 9 (commencing with Section 10000) of the Welfare and Institutions Code or similar aid provided by a charitable organization or a fraternal benefit society as defined in Section 10990 of the Insurance Code, is exempt without making a claim. After payment, the aid is

exempt.

704.180. Before payment, relocation benefits for displacement from a dwelling which are to be paid pursuant to Chapter 16 (commencing with Section 7260) of Division 7 of Title 1 of the Government Code or the federal "Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970" (42 U.S.C. Sec. 4601 et seq.), as amended, are exempt without making a claim. After payment, the benefits are exempt.

704.190. (a) As used in this section, "institution of higher education" means "institution of higher education" as defined in Section 1141(a) of Title 20 of the United States Code, as amended.

(b) Before payment, financial aid for expenses while attending school provided to a student by an institution of higher education is exempt without making a claim. After payment, the aid is exempt.

704.200. (a) As used in this section:

(1) "Cemetery" has the meaning provided by Section 7003 of the Health and Safety Code.

(2) "Family plot" is a plot that satisfies the requirements of Section 8650 of the Health and Safety Code.

(3) "Plot" has the meaning provided by Section 7022 of the Health and Safety Code.

(b) A family plot is exempt without making a claim.

(c) Except as provided in subdivision (d), a cemetery plot for the judgment debtor and the spouse of the judgment debtor is exempt.

(d) Land held for the purpose of sale or disposition as cemetery plots or otherwise is not exempt.

704.210. Property that is not subject to enforcement of a money judgment is exempt without making a claim.

Article 4. Homestead Exemption

704.710. As used in this article:

(a) "Dwelling" means a place where a person actually resides and may include but is not limited to the following:

(1) A house together with the outbuildings and the land upon which they are situated.

(2) A mobilehome together with the outbuildings and the land upon which they are situated.

(3) A boat or other waterborne vessel.

(4) A condominium, as defined in Section 783 of the Civil Code.

(5) A planned development, as defined in Section 11003 of the Business and Professions Code.

(6) A stock cooperative, as defined in Section 11003.2 of the Business and Professions Code.

(7) A community apartment project, as defined in Section 11004 of the Business and Professions Code.

(b) "Family unit" means any of the following:

(1) The judgment debtor and the judgment debtor's spouse if the spouses reside together in the homestead.

(2) The judgment debtor and at least one of the following persons who the judgment debtor cares for or maintains in the homestead:

(A) The minor child or minor grandchild of the judgment debtor or the judgment debtor's spouse or the minor child or grandchild of a deceased spouse or former spouse.

(B) The minor brother or sister of the judgment debtor or judgment debtor's spouse or the minor child of a deceased brother or sister of either spouse.

(C) The father, mother, grandfather, or grandmother of the judgment debtor or the judgment debtor's spouse or the father, mother, grandfather, or grandmother of a deceased spouse.

(D) An unmarried relative described in this paragraph who has attained the age of majority and is unable to take care of or support himself or herself.

(3) The judgment debtor's spouse and at least one of the persons listed in paragraph (2) who the judgment debtor's spouse cares for or maintains in the homestead.

(c) "Homestead" means the principal dwelling (1) in which the judgment debtor or the judgment debtor's spouse actually resided on the date the judgment creditor's lien attached to the dwelling, and (2) in which the judgment debtor or the judgment debtor's spouse actually resided continuously thereafter until the date of the court determination that the dwelling is a homestead. Where exempt proceeds from the sale or damage or destruction of a homestead are used toward the acquisition of a dwelling within the six-month period provided by Section 704.720, "homestead" also means the dwelling so acquired if it is the principal dwelling in which the judgment debtor or the judgment debtor's spouse actually resided continuously from the date of acquisition until the date of the court determination that the dwelling is a homestead, whether or not an abstract or certified copy of a judgment was recorded to create a judgment lien before the dwelling was acquired.

(d) "Spouse" does not include a married person following entry of a judgment decreeing legal separation of the parties, or an interlocutory judgment of dissolution of the marriage, unless such married persons reside together in the same dwelling.

704.720. (a) A homestead is exempt from sale under this division to the extent provided in Section 704.800.

(b) If a homestead is sold under this division or is damaged or destroyed or is acquired for public use, the proceeds of sale or of insurance or other indemnification for damage or destruction of the homestead or the proceeds received as compensation for a homestead acquired for public use are exempt in the amount of the homestead exemption provided in Section 704.730. The proceeds are exempt for a period of six months after the time the proceeds are actually received by the judgment debtor, except that, if a homestead exemption is applied to other property of the judgment debtor or the judgment debtor's spouse during that period, the proceeds thereafter are not exempt.

(c) If the judgment debtor and spouse of the judgment debtor reside in separate homesteads, only the homestead of one of the spouses is exempt and only the proceeds of the exempt homestead are exempt.

704.730. (a) The amount of the homestead exemption is one of the following:

(1) Thirty thousand dollars ($30,000) unless the judgment debtor or spouse of the judgment debtor who resides in the homestead is a person described in paragraph (2).

(2) Forty-five thousand dollars ($45,000) if the judgment debtor or spouse of the judgment debtor who resides in the homestead is either or both of the following:

(A) A person 65 years of age or older.

(B) A member of a family unit. This clause applies only if there is at least one member of the family unit who owns no interest in the homestead or whose only interest in the homestead is a community property interest with the judgment debtor.

(b) Notwithstanding any other provision of this section, the combined homestead exemptions of spouses on the same judgment shall not exceed forty-five thousand dollars ($45,000), regardless of whether the spouses are jointly obligated on the judgment and regardless of whether the homestead consists of community or separate property or both. Notwithstanding any other provision of this article, if both spouses are entitled to a homestead exemption, the exemption of proceeds of the homestead shall be apportioned between the spouses on the basis of their proportionate interests in the homestead.

704.740. (a) Except as provided in subdivision (b), a dwelling may not be sold under this division to enforce a money judgment except pursuant to a court order for sale obtained under this article.

(b) If the dwelling is personal property or is real property in which the judgment debtor has a leasehold estate with an unexpired term of less than two years at the time of levy:

(1) A court order for sale is not required and the procedures provided in this article relating to the court order for sale do not apply.

(2) An exemption claim shall be made and determined as provided in Article 2 (commencing with Section 703.510).

704.750. (a) Promptly after a dwelling is levied upon (other than a dwelling described in subdivision (b) of Section 704.740), the levying officer shall serve notice on the judgment creditor that the levy has been made and that the property will be released unless the judgment creditor complies with the requirements of this section. Service shall be made personally or by mail. Within 20 days after service of the notice, the judgment creditor shall apply to the court for an order for sale of the dwelling and shall file a copy of the application with the levying officer. If the judgment creditor does not file the copy of the application for an order for sale of the dwelling within the allowed time, the levying officer shall release the

dwelling.

(b) If the dwelling is located in a county other than the county where the judgment was entered:

(1) The judgment creditor shall apply to a court of similar jurisdiction in the county where the dwelling is located or, if there is no court of similar jurisdiction, to a court of higher jurisdiction in that county.

(2) The judgment creditor shall file with the application an abstract of judgment in the form prescribed by Section 674 or, in the case of a judgment described in Section 697.320, a certified copy of the judgment.

(3) The judgment creditor shall pay a filing fee of twelve dollars ($12). No law library fee shall be charged.

704.760. The judgment creditor's application shall be made under oath, shall describe the dwelling, and shall contain all of the following:

(a) A statement whether or not the records of the county tax assessor indicate that there is a current homeowner's exemption or disabled veteran's exemption for the dwelling and the person or persons who claimed any such exemption.

(b) A statement, which may be based on information and belief, whether the dwelling is a homestead and the amount of the homestead exemption, if any, and a statement whether or not the records of the county recorder indicate that a homestead declaration under Article 5 (commencing with Section 704.910) that describes the dwelling has been recorded by the judgment debtor or the spouse of the judgment debtor.

(c) A statement of the amount of any liens or encumbrances on the dwelling, the name of each person having a lien or encumbrance on the dwelling, and the address of such person used by the county recorder for the return of the instrument creating such person's lien or encumbrance after recording.

704.770. (a) Upon the filing of the application by the judgment creditor, the court shall set a time and place for hearing and order the judgment debtor to show cause why an order for sale should not be made in accordance with the application. The time set for hearing shall be not later than 45 days after the application is filed or such later time as the court orders upon a showing of good cause.

(b) Not later than 30 days before the time set for hearing, the judgment creditor shall do both of the following:

(1) Serve on the judgment debtor a copy of the order to show cause, a copy of the application of the judgment creditor, and a copy of the notice of the hearing in the form prescribed in Section 693.050. Service shall be made personally or by mail.

(2) Personally serve a copy of each document listed in paragraph (1) on an occupant of the dwelling or, if there is no occupant present at the time service is attempted, post a copy of each document in a conspicuous place at the dwelling.

704.780. (a) The burden of proof at the hearing is determined in

the following manner:

(1) If the records of the county tax assessor indicate that there is a current homeowner's exemption or disabled veteran's exemption for the dwelling claimed by the judgment debtor or the judgment debtor's spouse, the judgment creditor has the burden of proof that the dwelling is not a homestead. If the records of the county tax assessor indicate that there is not a current homeowner's exemption for the dwelling claimed by the judgment debtor or the judgment debtor's spouse, the burden of proof that the dwelling is a homestead is on the person who claims that the dwelling is a homestead.

(2) If the application states the amount of the homestead exemption, the person claiming the homestead exemption has the burden of proof that the amount of the exemption is other than the amount stated in the application.

(b) The court shall determine the amount of the homestead exemption, if any, and the fair market value of the dwelling and shall make an order for sale of the dwelling. The order for sale shall specify the amount of the proceeds of the sale that is to be distributed to each person having a lien or encumbrance on the dwelling and shall include the name and address of each such person. Subject to the provisions of this article, the sale is governed by Article 6 (commencing with Section 701.510) of Chapter 3.

(c) The court clerk shall transmit a certified copy of the court order (1) to the levying officer and (2) if the court making the order is not the court in which the judgment was entered, to the clerk of the court in which the judgment was entered.

(d) The court may appoint a qualified appraiser to assist the court in determining the fair market value of the dwelling. If the court appoints an appraiser, the court shall fix the compensation of the appraiser in an amount determined by the court to be reasonable, not to exceed similar fees for similar services in the community where the dwelling is located.

704.790. (a) This section applies in any case where the court makes an order for sale of the dwelling upon a hearing at which none of the following appeared:

(1) The judgment debtor.

(2) The judgment debtor's spouse.

(3) The attorney for the judgment debtor.

(4) The attorney for the judgment debtor's spouse.

(b) Not later than 10 days after the date of the order for sale, the judgment creditor shall serve a copy of the order and a notice of the order in the form prescribed in Section 693.060:

(1) Personally or by mail on the judgment debtor and the judgment debtor's spouse.

(2) Personally on an occupant of the dwelling or, if there is no occupant present at the time service is attempted, post a copy of the order and notice in a conspicuous place at the dwelling.

(c) Proof of service and of any posting shall be filed with the court and with the levying officer. If the judgment creditor fails to comply

with this subdivision and with subdivision (b) in any case where this section applies, the dwelling may not be sold under the order for sale.

(d) If, within 10 days after service of notice of the order, the judgment debtor or the judgment debtor's spouse files with the levying officer a declaration that the absence of the judgment debtor and the judgment debtor's spouse or the attorney for the judgment debtor or the judgment debtor's spouse from the hearing was due to mistake, inadvertence, surprise, or excusable neglect and that the judgment debtor or spouse of the judgment debtor wishes to assert the homestead exemption, the levying officer shall transmit the declaration forthwith to the court. Upon receipt of the declaration, the court shall set a time and place for hearing to determine whether the determinations of the court should be modified. The time set for hearing shall be not later than 20 days after receipt of the declaration. The court clerk shall cause notice of the hearing promptly to be given to the parties.

704.800. (a) If no bid is received at a sale of a homestead pursuant to a court order for sale that exceeds the amount of the homestead exemption plus any additional amount necessary to satisfy all liens and encumbrances on the property, including but not limited to any attachment or judgment lien, the homestead shall not be sold and shall be released and is not thereafter subject to a court order for sale upon subsequent application by the same judgment creditor for a period of one year.

(b) If no bid is received at the sale of a homestead pursuant to a court order for sale that is 90 percent or more of the fair market value determined pursuant to Section 704.780, the homestead shall not be sold unless the court, upon motion of the judgment creditor, does one of the following:

(1) Grants permission to accept the highest bid that exceeds the amount of the minimum bid required by subdivision (a).

(2) Makes a new order for sale of the homestead.

704.810. Levy on a homestead that is subject to a lien or encumbrance is not by itself grounds for acceleration of the obligation secured by the lien or encumbrance, notwithstanding any provision of the obligation, lien, or encumbrance and if the homestead is sold pursuant to court order under this article the amount payable to satisfy a lien or encumbrance shall not include any penalty for prepayment.

704.820. If the dwelling is owned by the judgment debtor as a joint tenant or tenant in common or if the interest of the judgment debtor in the dwelling is a leasehold or other interest less than a fee interest:

(a) At an execution sale of a dwelling, the interest of the judgment debtor in the dwelling and not the dwelling shall be sold. If there is more than one judgment debtor of the judgment creditor, the interests of the judgment debtors in the dwelling shall be sold together and each of the judgment debtors entitled to a homestead exemption is entitled to apply his or her exemption to his or her own

interest.

(b) For the purposes of this section, all references in this article to the "dwelling" or "homestead" are deemed to be references to the interest of the judgment debtor in the dwelling or homestead.

704.830. The provisions of Sections 703.590 and 703.600 apply to proceedings under this article.

704.840. (a) Except as provided in subdivision (b), the judgment creditor is entitled to recover reasonable costs incurred in a proceeding under this article.

(b) If no bid is received at a sale of a homestead pursuant to a court order for sale that exceeds the amount of the homestead exemption plus any additional amount necessary to satisfy all liens and encumbrances on the property, the judgment creditor is not entitled to recover costs incurred in a proceeding under this article or costs of sale.

704.850. (a) The levying officer shall distribute the proceeds of sale of a homestead in the following order:

(1) To the discharge of all liens and encumbrances, if any, on the property.

(2) To the judgment debtor in the amount of any applicable exemption of proceeds pursuant to Section 704.720.

(3) To the levying officer for the reimbursement of the levying officer's costs for which an advance has not been made.

(4) To the judgment creditor to satisfy the following:

(A) First, costs and interest accruing after issuance of the writ pursuant to which the sale is conducted.

(B) Second, the amount due on the judgment with costs and interest, as entered on the writ.

(5) To the judgment debtor in the amount remaining.

(b) Sections 701.820 and 701.830 apply to distribution of proceeds under this section.

Article 5. Declared Homesteads

704.910. As used in this article:

(a) "Declared homestead" means the dwelling described in a homestead declaration.

(b) "Declared homestead owner" includes both of the following:

(1) The owner of an interest in the declared homestead who is named as a declared homestead owner in a homestead declaration recorded pursuant to this article.

(2) The declarant named in a declaration of homestead recorded prior to July 1, 1983, pursuant to former Title 5 (commencing with Section 1237) of Part 4 of Division 2 of the Civil Code and the spouse of such declarant.

(c) "Dwelling" means any interest in real property (whether present or future, vested or contingent, legal or equitable) that is a "dwelling" as defined in Section 704.710, but does not include a leasehold estate with an unexpired term of less than two years or the

interest of the beneficiary of a trust.

(d) "Homestead declaration" includes both of the following:

(1) A homestead declaration recorded pursuant to this article.

(2) A declaration of homestead recorded prior to July 1, 1983, pursuant to former Title 5 (commencing with former Section 1237) of Part 4 of Division 2 of the Civil Code.

(e) "Spouse" means a "spouse" as defined in Section 704.710.

704.920. A dwelling in which an owner or spouse of an owner resides may be selected as a declared homestead pursuant to this article by recording a homestead declaration in the office of the county recorder of the county where the dwelling is located. From and after the time of recording, the dwelling is a declared homestead for the purposes of this article.

704.930. (a) A homestead declaration recorded pursuant to this article shall contain all of the following:

(1) The name of the declared homestead owner. A husband and wife both may be named as declared homestead owners in the same homestead declaration if each owns an interest in the dwelling selected as the declared homestead.

(2) A description of the declared homestead.

(3) A statement that the declared homestead is the principal dwelling of the declared homestead owner or such person's spouse, and that the declared homestead owner or such person's spouse actually resides in the declared homestead on the date the homestead declaration is recorded.

(b) The homestead declaration shall be executed and acknowledged in the manner of an acknowledgment of a conveyance of real property by at least one of the following persons:

(1) The declared homestead owner.

(2) The spouse of the declared homestead owner.

(3) The guardian or conservator of the person or estate of either of the persons listed in paragraph (1) or (2). The guardian or conservator may execute, acknowledge, and record a homestead declaration without the need to obtain court authorization.

(4) A person acting under a power of attorney or otherwise authorized to act on behalf of a person listed in paragraph (1) or (2).

(c) The homestead declaration shall include a statement that the facts stated in the homestead declaration are known to be true as of the personal knowledge of the person executing and acknowledging the homestead declaration. If the homestead declaration is executed and acknowledged by a person listed in paragraph (3) or (4) of subdivision (b), it shall also contain a statement that the person has authority to so act on behalf of the declared homestead owner or the spouse of the declared homestead owner and the source of the person's authority.

704.940. A homestead declaration does not restrict or limit any right to convey or encumber the declared homestead. A homestead declaration, when properly recorded, is prima facie evidence of the facts therein stated, and conclusive evidence thereof in favor of a

purchaser or encumbrancer in good faith and for a valuable consideration.

704.950. (a) Except as provided in subdivisions (b) and (c), a judgment lien on real property created pursuant to Article 2 (commencing with Section 697.310) of Chapter 2 does not attach to a declared homestead if both of the following requirements are satisfied:

(1) A homestead declaration describing the declared homestead was recorded prior to the time the abstract or certified copy of the judgment was recorded to create the judgment lien.

(2) The homestead declaration names the judgment debtor or the spouse of the judgment debtor as a declared homestead owner.

(b) This section does not apply to a judgment lien created under Section 697.320 by recording a certified copy of a judgment for child or spousal support.

(c) A judgment lien attaches to a declared homestead in the amount of any surplus over the total of the following:

(1) All liens and encumbrances on the declared homestead at the time the abstract of judgment or certified copy of the judgment is recorded to create the judgment lien.

(2) The homestead exemption set forth in Section 704.730.

704.960. (a) If a declared homestead is voluntarily sold, the proceeds of sale are exempt in the amount provided by Section 704.730 for a period of six months after the date of sale.

(b) If the proceeds of a declared homestead are invested in a new dwelling within six months after the date of a voluntary sale or within six months after proceeds of an execution sale or of insurance or other indemnification for damage or destruction are received, the new dwelling may be selected as a declared homestead by recording a homestead declaration within the applicable six-month period. In such case, the homestead declaration has the same effect as if it had been recorded at the time the prior homestead declaration was recorded.

704.970. Whether or not a homestead declaration has been recorded:

(a) Nothing in this article affects the right of levy pursuant to a writ of execution.

(b) Any levy pursuant to a writ of execution on a dwelling (as defined in Section 704.710) and the sale pursuant thereto shall be made in compliance with Article 4 (commencing with Section 704.710) and the judgment debtor and the judgment creditor shall have all the rights and benefits provided by that article.

704.980. (a) A declared homestead may be abandoned by a declaration of abandonment under this section, whether the homestead declaration was recorded pursuant to this article or pursuant to former Title 5 (commencing with former Section 1237) of Part 4 of Division 2 of the Civil Code.

(b) A declaration of abandonment shall be executed and acknowledged in the manner of an acknowledgment of a

conveyance of real property. It shall be executed and acknowledged by a declared homestead owner or by a person authorized to act on behalf of a declared homestead owner. If it is executed and acknowledged by a person authorized to act on behalf of a declared homestead owner, the declaration shall contain a statement that the person has authority to act on behalf of the declared homestead owner and the source of the person's authority.

(c) The declaration of abandonment does not affect the declared homestead of any person other than the declared homestead owner named in the declaration of abandonment.

704.990. (a) A declared homestead is abandoned by operation of law as to a declared homestead owner if the declared homestead owner or a person authorized to act on behalf of the declared homestead owner executes, acknowledges, and records a new homestead declaration for the declared homestead owner on different property. An abandonment under this subdivision does not affect the declared homestead of any person other than the declared homestead owner named in the new homestead declaration.

(b) Notwithstanding subdivision (a), if a homestead declaration is recorded which includes property described in a previously recorded homestead declaration, to the extent that the prior homestead declaration is still valid, the new homestead declaration shall not be considered an abandonment of the prior declared homestead.

CHAPTER 5. WAGE GARNISHMENT

Article 1. Short Title; Definitions

706.010. This chapter shall be known and may be cited as the "Wage Garnishment Law."

706.011. As used in this chapter:

(a) "Earnings" means compensation payable by an employer to an employee for personal services performed by such employee, whether denominated as wages, salary, commission, bonus, or otherwise.

(b) "Employee" means a public officer and any individual who performs services subject to the right of the employer to control both what shall be done and how it shall be done.

(c) "Employer" means a person for whom an individual performs services as an employee.

(d) "Judgment creditor," as applied to the state, means the specific state agency seeking to collect a judgment or tax liability.

(e) "Judgment debtor" includes a person from whom the state is seeking to collect a tax liability under Article 4 (commencing with Section 706.070), whether or not a judgment has been obtained on such tax liability.

(f) "Person" includes an individual, a corporation, a partnership or other unincorporated association, and a public entity.

(g) "Wage assignment for support" means an order, made pursuant to Section 4701 or 4801.6 of the Civil Code or Section 3088 of the Probate Code, which requires an employer to withhold earnings for support.

Article 2. General Provisions

706.020. Except for a wage assignment for support, the earnings of an employee shall not be required to be withheld by an employer for payment of a debt by means of any judicial procedure other than pursuant to this chapter.

706.021. Notwithstanding any other provision of this title, a levy of execution upon the earnings of an employee shall be made by service of an earnings withholding order upon the employer in accordance with this chapter.

706.022. (a) As used in this section, "withholding period" means the period which commences on the 10th day after service of an earnings withholding order upon the employer and which continues until the earliest of the following dates:

(1) The 100th day after the order was served.

(2) The date the employer has withheld the full amount specified in the order.

(3) The date of termination specified in a court order served on the employer.

(4) The date of termination specified in a notice of termination served on the employer by the levying officer.

(b) Except as otherwise provided by statute, an employer shall withhold the amounts required by an earnings withholding order from all earnings of the employee payable for any pay period of such employee which ends during the withholding period.

(c) An employer is not liable for any amounts withheld and paid over to the levying officer pursuant to an earnings withholding order prior to service upon the employer pursuant to paragraph (3) or (4) of subdivision (a).

706.023. Except as otherwise provided in this chapter:

(a) An employer shall comply with the first earnings withholding order served upon the employer.

(b) If the employer is served with two or more earnings withholding orders on the same day, the employer shall comply with the order issued pursuant to the judgment first entered. If two or more orders served on the same day are based on judgments entered upon the same day, the employer shall comply with whichever one of such orders the employer selects.

(c) If an earnings withholding order is served while an employer is required to comply with another earnings withholding order with respect to the earnings of the same employee, the subsequent order is ineffective and the employer shall not withhold earnings pursuant to the subsequent order.

706.025. (a) Except as provided in subdivision (b), the amount

required to be withheld pursuant to an earnings withholding order shall be paid monthly to the levying officer not later than the 15th day of each month. The initial monthly payment shall include all amounts required to be withheld from the earnings of the employee during the preceding calendar month up to the close of the employee's pay period ending closest to the last day of that month, and thereafter each monthly payment shall include amounts withheld from the employee's earnings for services rendered in the interim up to the close of the employee's pay period ending closest to the last day of the preceding calendar month.

(b) The employer may elect to pay the amounts withheld to the levying officer more frequently than monthly. If the employer so elects, payment of the amount withheld from the employee's earnings for each pay period shall be made not later than 10 days after the close of the pay period.

706.026. The levying officer shall receive and account for all amounts received pursuant to Section 706.025 and shall pay the amounts so received over to the person entitled thereto at least once every 30 days.

706.027. If the judgment pursuant to which the earnings withholding order is issued is satisfied before the order otherwise terminates pursuant to Section 706.022, the judgment creditor shall promptly notify the levying officer who shall promptly terminate the order by serving a notice of termination on the employer.

706.028. Subject to Section 706.107, after the amount stated as owing in the earnings withholding order is paid, the judgment creditor may apply for issuance of another earnings withholding order covering costs and interest that may have accrued since application for the prior order.

706.029. Service of an earnings withholding order creates a lien upon the earnings of the judgment debtor that are required to be withheld pursuant to the order and upon all property of the employer subject to the enforcement of a money judgment in the amount required to be withheld pursuant to such order. The lien continues for a period of one year from the date the earnings of the judgment debtor become payable unless the amount required to be withheld pursuant to the order is paid as required by law.

706.030. (a) A "withholding order for support" is an earnings withholding order issued on a writ of execution to collect delinquent amounts payable under a judgment for the support of a child, or spouse or former spouse, of the judgment debtor. A withholding order for support shall be denoted as such on its face.

(b) Notwithstanding any other provision of this chapter:

(1) An employer shall continue to withhold pursuant to a withholding order for support until the earliest of the dates specified in paragraph (2), (3), or (4) of subdivision (a) of Section 706.022, except that a withholding order for support shall automatically terminate one year after the employment of the employee by the employer terminates.

(2) A withholding order for support has priority over any other earnings withholding order. An employer upon whom a withholding order for support is served shall withhold and pay over earnings of the employee pursuant to such order notwithstanding the requirements of another earnings withholding order.

(3) Subject to paragraph (2) and to Article 3 (commencing with Section 706.050), an employer shall withhold earnings pursuant to both a withholding order for support and another earnings withholding order simultaneously.

706.031. (a) Nothing in this chapter affects a wage assignment for support.

(b) A wage assignment for support shall be given priority over any earnings withholding order. An employer upon whom a wage assignment for support is served shall withhold and pay over the earnings of the employee pursuant to the wage assignment for support notwithstanding the requirements of any earnings withholding order. When an employer is required to cease withholding earnings pursuant to an earnings withholding order, the employer shall notify the levying officer who served the earnings withholding order that a supervening wage assignment for support is in effect.

(c) Subject to subdivisions (b), (d), and (e), an employer shall withhold earnings of an employee pursuant to both a wage assignment for support and an earnings withholding order.

(d) The employer shall withhold pursuant to an earnings withholding order only to the extent that the sum of the amount withheld pursuant to any wage assignment for support and the amount withheld pursuant to the earnings withholding order does not exceed the amount that may be withheld under Article 3 (commencing with Section 706.050).

(e) The employer shall withhold pursuant to an earnings withholding order for taxes only to the extent that the sum of the amount withheld pursuant to any wage assignment for support and the amount withheld pursuant to the earnings withholding order for taxes does not exceed the amount that may be withheld under Article 4 (commencing with Section 706.070).

Article 3. Restrictions on Earnings Withholding

706.050. Except as otherwise provided in this chapter, the amount of earnings of a judgment debtor exempt from the levy of an earnings withholding order shall be that amount that may not be withheld from the judgment debtor's earnings under federal law in Section 1673(a) of Title 15 of the United States Code.

706.051. (a) For the purposes of this section, "family of the judgment debtor" includes the spouse or former spouse of the judgment debtor.

(b) Except as provided in subdivision (c), the portion of the judgment debtor's earnings which the judgment debtor proves is

necessary for the support of the judgment debtor or the judgment debtor's family supported in whole or in part by the judgment debtor is exempt from levy under this chapter.

(c) The exemption provided in subdivision (b) is not available if any of the following exceptions applies:

(1) The debt was incurred for the common necessaries of life furnished to the judgment debtor or the family of the judgment debtor.

(2) The debt was incurred for personal services rendered by an employee or former employee of the judgment debtor.

(3) The order is a withholding order for support under Section 706.030.

(4) The order is one governed by Article 4 (commencing with Section 706.070) (state tax order).

706.052. (a) Except as provided in subdivision (b), one-half of the disposable earnings (as defined by Section 1672 of Title 15 of the United States Code) of the judgment debtor, plus any amount withheld from the judgment debtor's earnings pursuant to any wage assignment for support, is exempt from levy under this chapter where the earnings withholding order is a withholding order for support under Section 706.030.

(b) Except as provided in subdivision (c), upon motion of any interested party, the court shall make an equitable division of the judgment debtor's earnings that takes into account the needs of all the persons the judgment debtor is required to support and shall effectuate such division by an order determining the amount to be withheld from the judgment debtor's earnings pursuant to the withholding order for support.

(c) An order made under subdivision (b) may not authorize the withholding of an amount in excess of the amount that may be withheld for support under federal law under Section 1673 of Title 15 of the United States Code.

Article 4. Earnings Withholding Order for Taxes

706.070. As used in this article:

(a) "State" means the State of California and includes any officer, department, board, or agency thereof.

(b) "State tax liability" means an amount for which the state has a state tax lien as defined in Section 7162 of the Government Code excluding a state tax lien created pursuant to the Fish and Game Code.

706.071. This chapter does not limit the state's right to collect a state tax liability except that (a) no levy upon earnings of an employee held by an employer is effective unless such levy is made in accordance with the provisions of this chapter and (b) other methods of collection may not be used to require an employer to withhold earnings of an employee in payment of a state tax liability.

706.072. (a) A "withholding order for taxes" is an earnings

withholding order issued pursuant to this article to collect a state tax liability and shall be denoted as a withholding order for taxes on its face.

(b) A withholding order for taxes may only be issued under one of the following circumstances:

(1) The existence of the state tax liability appears on the face of the taxpayer's return, including a case where such tax liability is disclosed from the taxpayer's return after errors in mathematical computations in the return have been corrected.

(2) The state tax liability has been assessed or determined as provided by statute and the taxpayer had notice of the proposed assessment or determination and had available an opportunity to have the proposed assessment or determination reviewed by appropriate administrative procedures. If the taxpayer makes a timely request for review of the assessment or determination, the state shall not issue a withholding order for taxes until the administrative review procedure is completed. If the taxpayer is given notice of the proposed assessment or determination but does not make a timely request for review, the state may issue a withholding order for taxes.

(c) In any case where a state tax liability has been assessed or determined prior to July 1, 1983, and the state determines that the requirement of subdivision (b) may not have been satisfied, the state may send a "Notice of Proposed Issuance of Withholding Order for Taxes" to the taxpayer at the taxpayer's last known address by first-class mail, postage prepaid. The notice shall advise the taxpayer that the taxpayer may have the assessment or determination reviewed by appropriate administrative procedures and state how such a review may be obtained. If the taxpayer is sent such a notice and requests such a review within 30 days from the date the notice was mailed to the taxpayer, the state shall provide appropriate administrative procedures for review of the assessment or determination and shall not issue the withholding order for taxes until the administrative review procedure is completed. If the taxpayer is sent such a notice and does not request such a review within 30 days from the date the notice was mailed to the taxpayer, the state may issue the withholding order for taxes.

(d) A withholding order for taxes may be issued whether or not the state tax liability has been reduced to judgment.

706.073. Except as otherwise provided in this article, the provisions of this chapter govern the procedures and proceedings concerning a withholding order for taxes. For the purposes of this article, a reference in this chapter to a "levying officer" shall be deemed to mean the specific state agency seeking to collect a state tax liability under this article.

706.074. (a) The state may itself issue a withholding order for taxes under this section to collect a state tax liability. The order shall specify the total amount required to be withheld pursuant to the order (unpaid tax liability including any penalties, accrued interest,

and costs).

(b) Unless a lesser amount is specified in the order, the amount to be withheld by the employer each pay period pursuant to an order issued under this section is the amount required to be withheld under Section 1673(a) of Title 15 of the United States Code, and is not subject to the exception provided in Section 1673(b) of Title 15 of the United States Code.

706.075. (a) This section applies to any withholding order for taxes issued under this article.

(b) Together with the withholding order for taxes, the state shall serve upon the employer an additional copy of the order and a notice informing the taxpayer of the effect of the order and of his right to hearings and remedies provided in this chapter. Within 10 days from the date of service, the employer shall deliver to the taxpayer a copy of the order and the notice, except that immediate delivery shall be made where a jeopardy withholding order for taxes has been served. If the taxpayer is no longer employed by the employer and the employer does not owe the taxpayer any earnings, the employer is not required to make such delivery.

(c) The state shall provide for an administrative hearing to reconsider or modify the amount to be withheld pursuant to the withholding order for taxes, and the taxpayer may request such a hearing at any time after service of the order. If the taxpayer requests a hearing, the hearing shall be provided, and the matter shall be determined, within 15 days after the request is received by the state. The determination of the amount to be withheld is subject to the standard provided in subdivision (b) of Section 706.051. Judicial review of the determination made pursuant to this subdivision by the state may be had only if a petition for a writ of mandate pursuant to Section 1094.5 is filed within 90 days from the date that written notice of the state's determination was delivered or mailed to the taxpayer.

(d) The employer is not subject to any civil liability for failure to comply with subdivision (b). Nothing in this subdivision limits the power of a court to hold the employer in contempt of court for failure to comply with subdivision (b).

706.076. (a) A withholding order for taxes may be issued pursuant to this section requiring the employer of the taxpayer to withhold an amount in excess of the amount that may be required to be withheld pursuant to an order issued under Section 706.074.

(b) The state may, at any time, apply to a court of record in the county where the taxpayer was last known to reside for the issuance of a withholding order for taxes under this section to collect a state tax liability.

(c) The application for the order shall include a statement under oath that the state has served upon the taxpayer both of the following:

(1) A copy of the application.

(2) A notice informing the taxpayer of the purpose of the

application and the right of the taxpayer to appear at the court hearing on the application.

(d) Upon the filing of the application, the court shall immediately set the matter for hearing and the court clerk shall send a notice of the time and place of the hearing by first-class mail, postage prepaid, to the state and the taxpayer. The notice shall be deposited in the mail at least 10 days before the day set for the hearing.

(e) After hearing, the court shall issue a withholding order for taxes which shall require the taxpayer's employer to withhold and pay over all earnings of the taxpayer other than that amount which the taxpayer proves is exempt under subdivision (b) of Section 706.051, but in no event shall the amount to be withheld be less than that permitted to be withheld under Section 706.050.

(f) The state may issue a temporary earnings holding order, which shall be denoted as such on its face, in any case where the state intends to apply for a withholding order for taxes under this section and has determined that the collection of the state tax liability will be jeopardized in whole or in part if the temporary earnings holding order is not issued. The temporary earnings holding order shall be directed to the taxpayer's employer and shall require the employer to retain in the employer's possession or under the employer's control all or such portion of the earnings of the taxpayer then or thereafter due as is specified in the order. Together with the temporary earnings holding order, the state shall serve upon the employer an additional copy of the order and a notice informing the taxpayer of the effect of the order and of the right to the remedies provided in this chapter. Upon receipt of the order, the employer shall deliver to the taxpayer a copy of the order and notice. If the taxpayer is no longer employed by the employer and the employer does not owe the taxpayer any earnings, the employer is not required to make such delivery. The temporary earnings holding order expires 15 days from the date it is served on the employer unless it is extended by the court on ex parte application for good cause shown. If a temporary earnings holding order is served on an employer, the state may not thereafter, for a period of six months, serve on the same employer another temporary earnings holding order for the same employee unless the court for good cause shown otherwise orders. Sections 706.153 and 706.154 apply to temporary earnings holding orders issued under this section.

706.077. (a) Subject to subdivision (b), an employer upon whom a withholding order for taxes is served shall withhold and pay over earnings of the employee pursuant to such order and shall cease to withhold earnings pursuant to any prior earnings withholding order except that a withholding order for support shall be given priority as provided in Section 706.030. When an employer is required to cease withholding earnings pursuant to an earlier earnings withholding order, the employer shall notify the levying officer who served the earlier earnings withholding order that a supervening withholding order for taxes is in effect.

(b) An employer shall not withhold earnings of an employee pursuant to a withholding order for taxes if a prior withholding order for taxes is in effect, and, in such case, the subsequent withholding order for taxes is ineffective.

706.078. (a) Except as provided in subdivision (b), the employer shall not withhold pursuant to a withholding order for taxes from earnings of the employee payable for any pay period of such employee that ends prior to the 10th day after service of the order.

(b) A "jeopardy withholding order for taxes," which shall be denoted as such on its face, is a withholding order for taxes that requires that the employer withhold pursuant to the order from earnings due to the employee at the time of service of the order on the employer and from earnings thereafter due. A jeopardy withholding order for taxes may be issued only where the state has determined that the collection of a state tax liability will be jeopardized in whole or in part by delaying the time when withholding from earnings commences.

(c) An employer shall continue to withhold pursuant to a withholding order for taxes until the amount specified in the order has been paid in full or the order is withdrawn, except that the order automatically terminates one year after the employment of the employee by the employer terminates. The state shall promptly serve on the employer a notice terminating the withholding order for taxes if the state tax liability for which the withholding order for taxes was issued is satisfied before the employer has withheld the full amount specified in the order, and the employer shall discontinue withholding in compliance with such notice.

706.080. Service of a withholding order for taxes or of any other notice or document required under this chapter in connection with a withholding order for taxes may be made by the state by first-class mail, postage prepaid, or by any authorized state employee. Service of a withholding order for taxes is complete when it is received by the employer or a person described in paragraph (1) or (2) of subdivision (a) of Section 706.101. Service of, or the providing of, any other notice or document required to be served or provided under this chapter in connection with a withholding order for taxes is complete when the notice or document is deposited in the mail addressed to the last known address of the person on whom it is served or to whom it is to be provided.

706.081. Except for the forms referred to in Section 706.076, the state shall prescribe the form of any order, notice, or other document required by this chapter in connection with a withholding order for taxes notwithstanding Sections 706.100 and 706.120, and any form so prescribed is deemed to comply with this chapter.

706.082. No review of the taxpayer's tax liability shall be permitted in any court proceedings under this chapter.

706.084. Where a warrant, notice of levy, or notice or order to withhold is served on the employer to enforce a state tax liability of a person who is an employee of that employer, it shall be deemed to

be a withholding order for taxes as to any earnings that are subject to the provisions of this chapter if both of the following requirements are satisfied:

(a) The form provides notice on its face that it is to be treated as a withholding order for taxes as to any earnings that are subject to the provisions of this chapter.

(b) The form provides all the information provided in a withholding order for taxes.

Article 5. Procedure for Earnings Withholding Orders and Exemption Claims

706.100. Notwithstanding any other provision of law, the Judicial Council may provide by rule for the practice and procedure in proceedings under this chapter except for the state's administrative hearings provided by Article 4 (commencing with Section 706.070).

706.101. (a) An earnings withholding order shall be served by the levying officer upon the employer by delivery of the order to any of the following:

(1) The managing agent or person in charge, at the time of service, of the branch or office where the employee works or the office from which the employee is paid. In the case of a state employee, the office from which the employee is paid does not include the Controller's office unless the employee works directly for the Controller's office.

(2) Any person to whom a copy of the summons and of the complaint may be delivered to make service on the employer under Article 4 (commencing with Section 416.10) of Chapter 4 of Title 5.

(b) Service of an earnings withholding order shall be made by personal delivery as provided in Section 415.10 or 415.20 or by delivery by registered or certified mail, postage prepaid, with return receipt requested. When service is made by mail, service is complete at the time the return receipt is executed by or on behalf of the recipient. If the levying officer attempts service by mail under this subdivision and does not receive a return receipt within 15 days from the date of deposit in the mail of the earnings withholding order, the levying officer shall make service as provided in Article 3 (commencing with Section 415.10) of Chapter 4 of Title 5.

(c) Except as provided in subdivision (b), service of any notice or document under this chapter may be made by first-class mail, postage prepaid. If service is made on the employer after the employer's return has been received by the levying officer, the service shall be made by first-class mail, postage prepaid, on the person designated in the employer's return to receive notices and at the address indicated in the employer's return, whether or not such address is within the county. Nothing in this subdivision precludes service by personal delivery (1) on the employer before the employer's return has been received by the levying officer or (2) on the person designated in the employer's return after its receipt.

(d) Notwithstanding subdivision (b), if the judgment creditor so requests, the levying officer shall make service of the earnings withholding order by personal delivery as provided in Section 415.10 or 415.20. If the judgment creditor requests that service be made under this subdivision, the fee provided in Section 26750 of the Government Code shall be increased by one dollar and fifty cents ($1.50).

(e) An earnings withholding order also may be served by a registered process server. When an earnings withholding order is served by a registered process server pursuant to this subdivision, the levying officer shall perform all other duties required by the provisions of this chapter, except for the actual service of the order, as if the levying officer had served the order. When an earnings withholding order is served by a registered process server, the court, in allowing costs for service pursuant to Section 1032b, shall not allow a sum in excess of one dollar and fifty cents ($1.50).

706.102. (a) If a writ of execution has been issued to the county where the judgment debtor's employer is to be served and the time specified in subdivision (b) of Section 699.530 for levy on property under the writ has not expired, a judgment creditor may apply for the issuance of an earnings withholding order by filing an application with a levying officer in such county who shall promptly issue an earnings withholding order.

(b) This section does not apply where the earnings withholding order is a withholding order for taxes.

706.103. (a) The levying officer shall serve upon the designated employer all of the following:

(1) The original and one copy of the earnings withholding order.

(2) The form for the employer's return.

(3) The notice to employee of earnings withholding order.

(b) At the time the levying officer makes service pursuant to subdivision (a), the levying officer shall provide the employer with a copy of the employer's instructions referred to in Section 706.127. The Judicial Council may adopt rules prescribing the circumstances when compliance with this subdivision is not required.

(c) No earnings withholding order shall be served upon the employer after the time specified in subdivision (b) of Section 699.530.

706.104. Any employer who is served with an earnings withholding order shall:

(a) Deliver to the judgment debtor a copy of the earnings withholding order and the notice to employee of earnings withholding within 10 days from the date of service. If the judgment debtor is no longer employed by the employer and the employer does not owe the employee any earnings, the employer is not required to make such delivery. The employer is not subject to any civil liability for failure to comply with this subdivision. Nothing in this subdivision limits the power of a court to hold the employer in contempt of court for failure to comply with this subdivision.

(b) Complete the employer's return on the form provided by the levying officer and mail it by first-class mail, postage prepaid, to the levying officer within 15 days from the date of service. If the earnings withholding order is ineffective, the employer shall state in the employer's return that the order will not be complied with for this reason and shall return the order to the levying officer with the employer's return.

706.105. (a) A judgment debtor may claim an exemption under Section 706.051 under either of the following circumstances:

(1) No prior hearing has been held with respect to the earnings withholding order.

(2) There has been a material change in circumstances since the time of the last prior hearing on the earnings withholding order.

(b) A claim of exemption shall be made by filing with the levying officer an original and one copy of (1) the judgment debtor's claim of exemption and (2) the judgment debtor's financial statement.

(c) Upon filing of the claim of exemption, the levying officer shall promptly send to the judgment creditor, at the address stated in the application for the earnings withholding order, by first-class mail, postage prepaid, all of the following:

(1) A copy of the claim of exemption.

(2) A copy of the financial statement.

(3) A notice of claim of exemption. The notice shall state that the claim of exemption has been filed and that the earnings withholding order will be terminated, or modified to reflect the amount of earnings claimed to be exempt in the claim of exemption, unless a notice of opposition to the claim of exemption is filed with the levying officer by the judgment creditor within 10 days after the date of the mailing of the notice of claim of exemption.

(d) A judgment creditor who desires to contest a claim of exemption shall, within 10 days after the date of the mailing of the notice of claim of exemption, file with the levying officer a notice of opposition to the claim of exemption.

(e) If a notice of opposition to the claim of exemption is filed with the levying officer within the 10-day period, the judgment creditor is entitled to a hearing on the claim of exemption. If the judgment creditor desires a hearing on the claim of exemption, the judgment creditor shall file a notice of motion for an order determining the claim of exemption with the court within 10 days after the date the levying officer mailed the notice of claim of exemption. If the notice of motion is so filed, the hearing on the motion shall be held not later than 20 days from the date the notice of motion was filed unless continued by the court for good cause. Not less than 10 days prior to the hearing, the judgment creditor shall give written notice of the hearing to the levying officer and shall serve a notice of the hearing and a copy of the notice of opposition to the claim of exemption by first-class mail on the judgment debtor and, if the claim of exemption so requested, on the attorney for the judgment debtor. Service is deemed made when the notice of the hearing and a copy of the

notice of opposition to the claim of exemption are deposited in the mail, postage prepaid, addressed to the judgment debtor at the address stated in the claim of exemption and, if service on the attorney for the judgment debtor was requested in the claim of exemption, to the attorney at the address stated in the claim of exemption. The judgment creditor shall file proof of such service with the court. After receiving the notice of the hearing and before the date set for the hearing, the levying officer shall file the claim of exemption and the notice of opposition to the claim of exemption with the court.

(f) If the levying officer does not receive a notice of opposition to the claim of exemption within the 10-day period after the date of mailing of the notice of claim of exemption and a notice of the hearing not later than 10 days after the filing of the notice of opposition to the claim of exemption, the levying officer shall serve on the employer one of the following:

(1) A notice that the earnings withholding order has been terminated if all of the judgment debtor's earnings were claimed to be exempt.

(2) A modified earnings withholding order which reflects the amount of earnings claimed to be exempt in the claim of exemption if only a portion of the judgment debtor's earnings was claimed to be exempt.

(g) If, after hearing, the court orders that the earnings withholding order be modified or terminated, the clerk shall promptly transmit a certified copy of the order to the levying officer who shall promptly serve on the employer of the judgment debtor (1) a copy of the modified earnings withholding order or (2) a notice that the earnings withholding order has been terminated. The court may order that the earnings withholding order be terminated as of a date which precedes the date of hearing. If the court determines that any amount withheld pursuant to the earnings withholding order shall be paid to the judgment debtor, the court shall make an order directing the person who holds such amount to pay it promptly to the judgment debtor.

(h) If the earnings withholding order is terminated by the court, unless the court otherwise orders or unless there is a material change of circumstances since the time of the last prior hearing on the earnings withholding order, the judgment creditor may not apply for another earnings withholding order directed to the same employer with respect to the same judgment debtor for a period of 100 days following the date of service of the earnings withholding order or 60 days after the date of the termination of the order, whichever is later.

(i) If an employer has withheld and paid over amounts pursuant to an earnings withholding order after the date of termination of such order but prior to the receipt of notice of its termination, the judgment debtor may recover such amounts only from the levying officer if the levying officer still holds such amounts or, if such amounts have been paid over to the judgment creditor, from the

judgment creditor. If the employer has withheld amounts pursuant to an earnings withholding order after termination of the order but has not paid over such amounts to the levying officer, the employer shall promptly pay such amounts to the judgment debtor.

(j) An appeal lies from any court order under this section denying a claim of exemption or modifying or terminating an earnings withholding order. Such appeal shall be taken in the manner provided for appeals in the court in which the proceeding is had. An appeal by the judgment creditor from an order modifying or terminating the earnings withholding order does not stay the order from which the appeal is taken. Notwithstanding the appeal, until such time as the order modifying or terminating the earnings withholding order is set aside or modified, the order allowing the claim of exemption in whole or in part shall be given the same effect as if the appeal had not been taken.

(k) This section does not apply to a withholding order for support or a withholding order for taxes.

706.106. No findings are required in court proceedings under this chapter.

706.107. If an employer withholds earnings pursuant to an earnings withholding order, the judgment creditor who obtained the order may not cause another earnings withholding order to be served on the same employer requiring the employer to withhold earnings of the same employee during the 10 days following the expiration of the prior earnings withholding order.

Article 6. Forms; Employer's Instructions

706.120. Except as provided in Section 706.081, the Judicial Council shall prescribe the form of the applications, notices, claims of exemption, orders, and other documents required by this chapter as provided in Section 681.030, and only such forms may be used to implement this chapter.

706.121. The "application for issuance of earnings withholding order" shall be executed under oath and shall include all of the following:

(a) The name, the last known address, and, if known, the social security number of the judgment debtor.

(b) The name and address of the judgment creditor.

(c) The court where the judgment was entered and the date the judgment was entered.

(d) The date of issuance of a writ of execution to the county where the earnings withholding order is sought.

(e) The total amount to be withheld pursuant to the order (which shall not exceed the amount required to satisfy the writ of execution on the date of the issuance of the order plus the levying officer's statutory fee for service of the order).

(f) The name and address of the employer to whom the order will be directed.

(g) The name and address of the person to whom the withheld money is to be paid by the levying officer.

706.122. The "notice to employee of earnings withholding order" shall contain a statement that informs the employee in simple terms of the nature of a wage garnishment, the right to an exemption, the procedure for claiming an exemption, and any other information the Judicial Council determines would be useful to the employee and appropriate for inclusion in the notice, including all of the following:

(a) The named employer has been ordered to withhold from the earnings of the judgment debtor the amounts required to be withheld under Section 706.050, or such other amounts as are specified in the earnings withholding order, and to pay these amounts over to the levying officer for transmittal to the person specified in the order in payment of the judgment described in the order.

(b) The manner of computing the amounts required to be withheld pursuant to Section 706.050.

(c) The judgment debtor may be able to keep more or all of the judgment debtor's earnings if the judgment debtor proves that the additional earnings are necessary for the support of the judgment debtor or the judgment debtor's family supported in whole or in part by the judgment debtor.

(d) If the judgment debtor wishes a court hearing to prove that amounts should not be withheld from the judgment debtor's earnings because they are necessary for the support of the judgment debtor or the judgment debtor's family supported in whole or in part by the judgment debtor, the judgment debtor shall file with the levying officer an original and one copy of the "judgment debtor's claim of exemption" and an original and one copy of the "judgment debtor's financial statement." The notice shall also advise the judgment debtor that the claim of exemption form and the financial statement form may be obtained without charge at the office of the levying officer.

706.123. The "judgment debtor's claim of exemption" shall be executed under oath. The claim of exemption shall indicate how much the judgment debtor believes should be withheld from the judgment debtor's earnings each pay period by the employer pursuant to the earnings withholding order and shall state the judgment debtor's present mailing address.

706.124. The "judgment debtor's financial statement" shall be executed as provided in Section 703.530 and contain all of the information required by that section and the following additional information:

(a) Whether any earnings withholding orders are in effect with respect to the earnings of the judgment debtor or the spouse or dependents of the judgment debtor.

(b) Whether any wage assignments for support are in effect with respect to the earnings of the judgment debtor or the spouse or dependents of the judgment debtor.

706.125. The "earnings withholding order" shall include all of the following:

(a) The name, address, and, if known, the social security number of the judgment debtor.

(b) The name and address of the employer to whom the order is directed.

(c) The court where the judgment was entered, the date the judgment was entered, and the name of the judgment creditor.

(d) The date of issuance of the writ of execution to the county where the earnings withholding order is sought.

(e) The total amount that may be withheld pursuant to the order (which may not exceed the amount required to satisfy the writ of execution on the date of issuance of the order plus the levying officer's statutory fee for service of the order).

(f) A description of the withholding period and an order to the employer to withhold from the earnings of the judgment debtor for each pay period the amount required to be withheld under Section 706.050 or the amount specified in the order, as the case may be, for the pay periods ending during such withholding period.

(g) An order to the employer to pay over to the levying officer at a specified address the amount required to be withheld and paid over pursuant to the order in the manner and within the times provided by law.

(h) An order that the employer fill out the "employer's return" and return it by first-class mail, postage prepaid, to the levying officer at a specified address within 15 days after service of the earnings withholding order.

(i) An order that the employer deliver to the judgment debtor a copy of the earnings withholding order and the "notice to employee of earnings withholding order" within 10 days after service of the earnings withholding order; but, if the judgment debtor is no longer employed by the employer and the employer does not owe the employee any earnings, the employer is not required to make such delivery.

(j) The name and address of the levying officer.

706.126. (a) The "employer's return" shall be executed under oath. The form for the return provided to the employer shall state all of the following information:

(1) The name and address of the levying officer to whom the form is to be returned.

(2) A direction that the form be mailed to the levying officer by first-class mail, postage prepaid, no later than 15 days after the date of service of the earnings withholding order.

(3) The name, the address, and, if known, the social security number of the judgment debtor.

(b) In addition, the employer's return form shall require the employer to supply all of the following information:

(1) The date the earnings withholding order was served on the employer.

(2) Whether the judgment debtor is employed by the employer or whether the employer otherwise owes earnings to the employee.

(3) If the judgment debtor is employed by the employer or the employer otherwise owes earnings to the employee, the amount of the employee's earnings for the last pay period and the length of this pay period.

(4) Whether the employer was required on the date of service to comply with an earlier earnings withholding order and, if so, the name of the judgment creditor who secured the earlier order, the levying officer who served such order, the date it was issued, the date it was served, the expiration date of such order, and which of the earnings withholding orders the employer is required to comply with under the applicable statutory rules concerning the priority of such orders.

(5) Whether the employer was required on the date of service to comply with a wage assignment for support and, if so, the court which issued such assignment order and the date it was issued and any other information the Judicial Council determines is needed to identify the order.

(6) The name and address of the person to whom notices to the employer are to be sent.

706.127. (a) The Judicial Council shall prepare "employer's instructions" for employers and revise or supplement these instructions to reflect changes in the law or rules regulating the withholding of earnings.

(b) Except to the extent that they are included in the forms required to be provided by the employer to the levying officer, the Judicial Council shall publish and provide to the levying officers copies of the employer's instructions.

706.128. The "judgment creditor's notice of opposition to the claim of exemption" shall be executed under oath and shall include all of the following:

(a) The name, last known address, and, if known, the social security number of the judgment debtor.

(b) The name and address of the judgment creditor.

(c) The date of mailing of the notice of claim of exemption.

(d) The amount of the judgment debtor's claim of exemption which the judgment creditor claims is not exempt.

(e) The factual and legal grounds for the judgment creditor's opposition to the claim of exemption.

706.129. The levying officer shall have copies of the forms for the "judgment debtor's claim of exemption" and "judgment debtor's financial statement" available at the levying officer's office for distribution without charge to a person who desires to make a claim of exemption under Section 706.051.

Article 7. Administration and Enforcement

706.151. The Judicial Council may perform all acts required by the Administrator of the Wage and Hour Division of the United States Department of Labor as conditions to exemption of this state from the earnings garnishment provisions of the Consumer Credit Protection Act of 1968 (15 U.S.C. Secs. 1671–1677), including, but not limited to:

(a) Representing and acting on behalf of the state in relation to the Administrator of the Wage and Hour Division and the administrator's representatives with regard to any matter relating to, or arising out of, the application, interpretation, and enforcement of the laws of this state regulating withholding of earnings.

(b) Submitting to the Administrator of the Wage and Hour Division in duplicate and on a current basis, a certified copy of every statute of this state affecting earnings withholding, and a certified copy of any decision in any case involving any of those statutes, made by the Supreme Court of this state.

(c) Submitting to the Administrator of the Wage and Hour Division any information relating to the enforcement of earnings withholding laws of this state which the administrator may request.

706.152. If an employer withholds earnings pursuant to this chapter and, with the intent to defraud either the judgment creditor or the judgment debtor, fails to pay such withheld earnings over to the levying officer, the employer is guilty of a misdemeanor.

706.153. (a) No employer shall defer or accelerate any payment of earnings to an employee with the intent to defeat or diminish the judgment creditor's rights under an earnings withholding order issued pursuant to the procedures provided by this chapter.

(b) If an employer violates this section, the judgment creditor may bring a civil action against the employer to recover the amount that would have been withheld and paid over pursuant to this chapter had the employer not violated this section. The remedy provided by this subdivision is not exclusive.

706.154. (a) If an employer fails to withhold or to pay over the amount the employer is required to withhold and pay over pursuant to this chapter, the judgment creditor may bring a civil action against the employer to recover such amount. The remedy provided by this subdivision is not exclusive.

(b) Notwithstanding subdivision (a), an employer who complies with any written order or written notice which purports to be given or served in accordance with the provisions of this chapter is not subject to any civil or criminal liability for such compliance unless the employer has actively participated in a fraud.

CHAPTER 6. MISCELLANEOUS CREDITORS' REMEDIES

Article 1 Written Interrogatories to Judgment Debtor

708.010. (a) Except as provided in this section and in subdivision (b) of Section 708.020, the procedure in this article may be used at any time a money judgment is enforceable.

(b) If enforcement of the judgment is stayed on appeal by the giving of a sufficient undertaking under Chapter 2 (commencing with Section 916) of Title 13, all proceedings under this article are stayed. In any other case where the enforcement of the judgment is stayed, all proceedings under this article are stayed unless the court otherwise expressly orders.

708.020. (a) The judgment creditor may propound written interrogatories to the judgment debtor in the manner provided in Section 2030 requesting information to aid in enforcement of the money judgment. The judgment debtor shall answer the interrogatories in the manner and within the time provided by Section 2030.

(b) The judgment creditor may not serve interrogatories pursuant to this section within 120 days after the judgment debtor has responded to interrogatories previously served pursuant to this section or within 120 days after the judgment debtor has been examined pursuant to Article 2 (commencing with Section 708.110), and the judgment debtor is not required to respond to any interrogatories so served.

(c) Interrogatories served pursuant to this section may be enforced, to the extent practicable, in the same manner as interrogatories in a civil action.

Article 2. Examination Proceedings

708.110. (a) The judgment creditor may apply to the proper court for an order requiring the judgment debtor to appear before the court, or before a referee appointed by the court, at a time and place specified in the order, to furnish information to aid in enforcement of the money judgment.

(b) If the judgment creditor has not caused the judgment debtor to be examined under this section during the preceding 120 days, the court shall make the order upon ex parte application of the judgment creditor.

(c) If the judgment creditor has caused the judgment debtor to be examined under this section during the preceding 120 days, the court shall make the order if the judgment creditor by affidavit or otherwise shows good cause for the order. The application shall be made on noticed motion if the court so directs or a court rule so requires. Otherwise, it may be made ex parte.

(d) The judgment creditor shall personally serve a copy of the order on the judgment debtor not less than 10 days before the date set for the examination. Service of the order creates a lien on the personal property of the judgment debtor.

(e) The order shall contain the following statement in 14-point boldface type if printed or in capital letters if typed: "NOTICE TO

JUDGMENT DEBTOR. If you fail to appear at the time and place specified in this order, you may be subject to arrest and punishment for contempt of court and the court may make an order requiring you to pay the reasonable attorney's fees incurred by the judgment creditor in this proceeding."

708.120. (a) Upon ex parte application by a judgment creditor who has a money judgment and proof by the judgment creditor by affidavit or otherwise to the satisfaction of the proper court that a third person has possession or control of property in which the judgment debtor has an interest or is indebted to the judgment debtor in an amount exceeding two hundred fifty dollars ($250), the court shall make an order directing the third person to appear before the court, or before a referee appointed by the court, at a time and place specified in the order, to answer concerning such property or debt. The affidavit in support of the judgment creditor's application may be based on the affiant's information and belief.

(b) Not less than 10 days prior to the date set for the examination, a copy of the order shall be:

(1) Served personally on the third person.

(2) Served personally or by mail on the judgment debtor.

(c) If the property in the third person's possession or control in which the judgment debtor has an interest or the debt owed by the third person to the judgment debtor is described in the affidavit or application for an order under subdivision (a) in a manner reasonably adequate to permit it to be identified, service of the order on the third person creates a lien on the judgment debtor's interest in the property or on the debt for a period of one year from the date of the order unless extended or sooner terminated by the court.

(d) The judgment debtor may claim that all or any portion of the property or debt is exempt from enforcement of a money judgment by application to the court on noticed motion, filed with the court and personally served on the judgment creditor not later than three days before the date set for the examination. The judgment debtor shall execute an affidavit in support of the application that includes all of the matters set forth in subdivision (b) of Section 703.520. If a claim of exemption is made pursuant to this section, a notice of opposition to the claim of exemption is not required. The court shall determine any claim of exemption made pursuant to this section. Failure of the judgment debtor to make a claim of exemption does not preclude the judgment debtor from later claiming the exemption unless the property or debt is described in the order in a manner reasonably adequate to permit it to be identified and the judgment debtor receives notice of the examination proceeding at least 10 days before the date set for the examination.

(e) An order made pursuant to subdivision (a) shall contain the following statements in 14-point boldface type if printed or in capital letters if typed:

(1) "NOTICE TO PERSON SERVED. If you fail to appear at the time and place specified in this order, you may be subject to arrest

and punishment for contempt of court and the court may make an order requiring you to pay the reasonable attorney's fees incurred by the judgment creditor in this proceeding."

(2) "NOTICE TO JUDGMENT DEBTOR. The person in whose favor the judgment was entered in this action claims that the person to be examined pursuant to this order has possession or control of property which is yours or owes you a debt. This property or debt is as follows: (Description of property or debt).

If you claim that all or any portion of this property or debt is exempt from enforcement of the money judgment, you must file your exemption claim in writing with the court and personally serve a copy on the judgment creditor not later than three days before the date set for the examination. You must appear at the time and place set for this examination to establish your claim of exemption or your exemption may be waived."

(f) An order made pursuant to subdivision (a) is not effective unless, at the time it is served on the third person, the person serving the order tenders to the third person fees for the mileage necessary to be traveled from the third person's residence to the place of examination. The fees shall be in the same amount generally provided for witnesses when legally required to attend civil proceedings in the court where the examination proceeding is to be conducted.

708.130. (a) Witnesses may be required to appear and testify before the court or referee in an examination proceeding under this article in the same manner as upon the trial of an issue.

(b) The privilege prescribed by Article 4 (commencing with Section 970) of Chapter 4 of Division 8 of the Evidence Code does not apply in an examination proceeding under this article.

708.140. (a) The examination proceedings authorized by this article may be conducted by a referee appointed by the court. The referee may issue, modify, or vacate an order authorized by Section 708.205, may make a protective order authorized by Section 708.200, and may issue a warrant authorized by Section 708.170, and has the same power as the court to grant adjournments, to preserve order, and to subpoena witnesses to attend the examination, but only the court that ordered the reference has power to do the following:

(1) Punish for contempt for disobeying an order of the referee.

(2) Make an award of attorney's fees pursuant to Section 708.170.

(3) Determine a contested claim of exemption or determine a third-party claim under Section 708.180.

(b) Only a member of the State Bar of California is eligible for appointment as a referee pursuant to this article.

(c) Nothing in subdivision (a) limits the power of a court to appoint a temporary judge pursuant to Section 21 of Article VI of the California Constitution.

708.150. (a) If a corporation, partnership, association, trust, or other organization is served with an order to appear for an examination, it shall designate to appear and be examined one or

more officers, directors, managing agents, or other persons who are familiar with its property and debts.

(b) If the order to appear for an examination requires the appearance of a specified individual, the specified individual shall appear for the examination and may be accompanied by one or more officers, directors, managing agents, or other persons familiar with the property and debts of the corporation, partnership, association, trust, or other organization.

(c) If the order to appear for the examination does not require the appearance of a specified individual, the order shall advise the corporation, partnership, association, trust, or other organization of its duty to make a designation under subdivision (a).

708.160. (a) Except as otherwise provided in this section, the proper court for examination of a person under this article is the court in which the money judgment is entered.

(b) A person sought to be examined may not be required to attend an examination before a court located outside the county in which the person resides or has a place of business unless the distance from the person's place of residence or place of business to the place of examination is less than 150 miles.

(c) If a person sought to be examined does not reside or have a place of business in the county where the judgment is entered, a court of similar jurisdiction in the county where the person resides or has a place of business is a proper court for examination of the person. If there is no court of similar jurisdiction in the county, a court of higher jurisdiction is a proper court.

(d) If the judgment creditor seeks an examination of a person before a court other than the court in which the judgment is entered, the judgment creditor shall do all of the following:

(1) File with the court from which the order is sought an abstract of judgment in the form prescribed by Section 674.

(2) Present to the court an affidavit in support of the application for the order stating the place of residence or place of business of the person sought to be examined.

(3) Make any necessary affidavit or showing for the examination as required by Section 708.110 or 708.120.

(4) At the time of filing the abstract of judgment, pay a filing fee of twelve dollars ($12). No law library fee shall be charged.

708.170. (a) If an order requiring a person to appear for an examination was served by a sheriff, marshal, constable, a person specially appointed by the court in the order, or a registered process server, and the person fails to appear:

(1) The court may, pursuant to a warrant, have the person brought before the court to answer for the failure to appear and may punish the person for contempt.

(2) If the person's failure to appear is without good cause, the judgment creditor shall be awarded reasonable attorney's fees incurred in the examination proceeding. Attorney's fees awarded against the judgment debtor shall be added to and become part of

the principal amount of the judgment.

(b) A person who willfully makes an improper service of an order for an examination which subsequently results in the arrest pursuant to subdivision (a) of the person who fails to appear is guilty of a misdemeanor.

708.180. (a) Subject to subdivision (b), if a third person examined pursuant to Section 708.120 claims an interest in the property adverse to the judgment debtor or denies the debt, the court may, if the judgment creditor so requests, determine the interests in the property or the existence of the debt. Such a determination is conclusive as to the parties to the proceeding and the third person, but an appeal may be taken from the determination in the manner provided for appeals from the court in which the proceeding takes place. The court may grant a continuance for a reasonable time for discovery proceedings, the production of evidence, or other preparation for the hearing.

(b) The court may not make the determination provided in subdivision (a) if the third person's claim is made in good faith and any of the following conditions is satisfied:

(1) The court would not be a proper court for the trial of an independent civil action (including a creditor's suit) for the determination of the interests in the property or the existence of the debt, and the third person objects to the determination of the matter under subdivision (a).

(2) At the time an order for examination pursuant to Section 708.120 is served on the third person a civil action (including a creditor's suit) is pending with respect to the interests in the property or the existence of the debt.

(3) The court determines that the interests in the property or the existence of the debt should be determined in a creditor's suit.

(c) Upon application of the judgment creditor made ex parte, the court may make an order forbidding transfer of the property to the judgment debtor or payment of the debt to the judgment debtor until the interests in the property or the existence of the debt is determined pursuant to subdivision (a) or until a creditor's suit may be commenced and an order obtained pursuant to Section 708.240. An undertaking may be required in the discretion of the court. The court may modify or vacate the order at any time with or without a hearing on such terms as are just.

(d) Upon application of the judgment creditor upon noticed motion, the court may, if it determines that the judgment debtor probably owns an interest in the property or that the debt probably is owed to the judgment debtor, make an order forbidding the transfer or other disposition of the property to any person or forbidding payment of the debt until the interests in the property or the existence of the debt is determined pursuant to subdivision (a) or until a creditor's suit may be commenced and an order obtained pursuant to Section 708.240. The court shall require the judgment creditor to furnish an undertaking as provided in Section 529. The

court may modify or vacate the order at any time after notice and hearing on such terms as are just.

708.190. The court may permit a person claiming an interest in the property or debt sought to be applied in an examination proceeding to intervene in the proceeding and may determine the person's rights in the property or debt pursuant to Section 708.180.

708.200. In any proceeding under this article, the court may, on motion of the person to be examined or on its own motion, make such protective orders as justice may require.

708.205. (a) Except as provided in subdivision (b), at the conclusion of a proceeding pursuant to this article, the court may order the judgment debtor's interest in the property in the possession or under the control of the judgment debtor or the third person or a debt owed by the third person to the judgment debtor to be applied toward the satisfaction of the money judgment if the property is not exempt from enforcement of a money judgment. Such an order creates a lien on the property or debt.

(b) If a third person examined pursuant to Section 708.120 claims an interest in the property adverse to the judgment debtor or denies the debt and the court does not determine the matter as provided in subdivision (a) of Section 708.180, the court may not order the property or debt to be applied toward the satisfaction of the money judgment but may make an order pursuant to subdivision (c) or (d) of Section 708.180 forbidding transfer or payment to the extent authorized by that section.

Article 3. Creditor's Suit

708.210. If a third person has possession or control of property in which the judgment debtor has an interest or is indebted to the judgment debtor, the judgment creditor may bring an action against the third person to have the interest or debt applied to the satisfaction of the money judgment.

708.220. The judgment debtor shall be joined in an action brought pursuant to this article but is not an indispensable party. The residence of the judgment debtor may not be considered in the determination of proper venue unless otherwise provided by contract between the judgment debtor and the third person.

708.230. (a) Except as provided in subdivision (b), an action shall be commenced pursuant to this article before the expiration of the later of the following times:

(1) The time when the judgment debtor may bring an action against the third person concerning the property or debt.

(2) One year after creation of a lien on the property or debt pursuant to this title if the lien is created at the time when the judgment debtor may bring an action against the third person concerning the property or debt.

(b) An action may not be commenced pursuant to this article after the period for enforcement of the money judgment has expired.

(c) Notwithstanding Section 683.020, if an action is commenced pursuant to this article within the time permitted in this section, the action may be prosecuted to judgment.

708.240. The judgment creditor may apply to the court in which an action under this article is pending for either or both of the following:

(a) An order restraining the third person from transferring to the judgment debtor the property in which the judgment debtor is claimed to have an interest or from paying to the judgment debtor the alleged debt. The order shall be made on noticed motion if the court so directs or a court rule so requires. Otherwise, the order may be made on ex parte application. The order shall remain in effect until judgment is entered in the action or until such earlier time as the court may provide in the order. An undertaking may be required in the discretion of the court. The court may modify or vacate the order at any time with or without a hearing on such terms as are just.

(b) A temporary restraining order or a preliminary injunction or both, restraining the third person from transferring to any person or otherwise disposing of the property in which the judgment debtor is claimed to have an interest, pursuant to Chapter 3 (commencing with Section 525) of Title 7, and the court may make, dissolve, and modify such orders as provided therein.

708.250 Service of summons on the third person creates a lien on the interest of the judgment debtor in the property or on the debt owed to the judgment debtor that is the subject of an action under this article.

708.260. (a) In an action brought pursuant to this article, the judgment debtor may claim that all or any portion of the property or debt is exempt from enforcement of a money judgment. The claim shall be made by application to the court on noticed motion, filed with the court and served on the judgment creditor not later than 30 days before the date set for trial. Service shall be made personally or by mail. The judgment debtor shall execute an affidavit in support of the application that includes all of the matters set forth in subdivision (b) of Section 703.520. No notice of opposition to the claim of exemption is required. If the judgment debtor has not been named as a party to the action, the judgment debtor may obtain an order under Section 389 that the judgment debtor be made a party. Except as provided in subdivision (b), failure of the judgment debtor to make a claim of exemption is a waiver of the exemption.

(b) Failure of the judgment debtor to make a claim of exemption in an action brought pursuant to this article is not a waiver of the exemption if both of the following conditions are satisfied:

(1) The judgment debtor has not been served with process in the action that contains a description of the property or debt reasonably adequate to permit it to be identified.

(2) The judgment debtor does not have actual notice of the pendency of the action and the identity of the property or the nature of the debt in issue.

708.270. There is no right to a jury trial in an action under this article.

708.280. (a) The court shall determine any exemption claim made in the action. If the judgment debtor establishes to the satisfaction of the court that the property or debt is exempt from enforcement of a money judgment, the court shall so adjudge and may not make the orders referred to in subdivisions (b), (c), and (d).

(b) If the judgment creditor establishes that the third person has property in which the judgment debtor has an interest or is indebted to the judgment debtor, the court shall render judgment accordingly. The property or debt may be applied to the satisfaction of the judgment creditor's judgment against the judgment debtor as ordered by the court.

(c) If the court determines that the third person has property in which the judgment debtor has an interest, the court may order the third person not to transfer the property until it can be levied upon or otherwise applied to the satisfaction of the judgment.

(d) If the court determines that the third person has transferred property that was subject to a lien in favor of the judgment creditor or, contrary to court order of which the third person has notice, has paid the debt to the judgment debtor or has transferred the property, the court shall render judgment against the third person in an amount equal to the lesser of the following:

(1) The value of the judgment debtor's interest in the property or the amount of the debt.

(2) The amount of the judgment creditor's judgment against the judgment debtor remaining unsatisfied.

708.290. Costs incurred by or taxed against the judgment creditor in an action under this article may not be recovered from the judgment debtor as a cost of enforcing the judgment.

Article 4. Charging Orders

708.310. If a money judgment is rendered against a partner but not against the partnership, the judgment debtor's interest in the partnership may be applied toward the satisfaction of the judgment by an order charging the judgment debtor's interest pursuant to Section 15028 or 15573 of the Corporations Code.

708.320. (a) Service of a notice of motion for a charging order on the judgment debtor and on the other partners or the partnership creates a lien on the judgment debtor's interest in the partnership.

(b) If a charging order is issued, the lien created pursuant to subdivision (a) continues under the terms of the order. If issuance of the charging order is denied, the lien is extinguished.

Article 5. Lien in Pending Action or Proceeding

708.410. (a) A judgment creditor who has a money judgment against a judgment debtor who is a party to a pending action or

special proceeding may obtain a lien under this article, to the extent required to satisfy the judgment creditor's money judgment, on both of the following:

(1) Any cause of action of such judgment debtor for money or property that is the subject of the action or proceeding.

(2) The rights of such judgment debtor to money or property under any judgment subsequently procured in the action or proceeding.

(b) To obtain a lien under this article, the judgment creditor shall file a notice of lien and an abstract or certified copy of the judgment creditor's money judgment in the pending action or special proceeding.

(c) At the time of the filing under subdivision (b) or promptly thereafter, the judgment creditor shall serve on all parties who, prior thereto, have made an appearance in the action or special proceeding a copy of the notice of lien and a statement of the date when the notice of lien was filed in the action or special proceeding. Service shall be made personally or by mail. Failure to serve all parties as required by this subdivision does not affect the lien created by the filing under subdivision (b), but the rights of a party are not affected by the lien until the party has notice of the lien.

(d) For the purpose of this article, an action or special proceeding is pending until the time for appeal from the judgment has expired or, if an appeal is filed, until the appeal has been finally determined.

708.420. The notice of lien under Section 708.410 shall contain all of the following:

(a) A statement that a lien has been created under this article and the title of the court and the cause and number of the pending action or proceeding in which the notice of lien is filed.

(b) The name and last known address of the judgment debtor.

(c) The name and address of the judgment creditor.

(d) The title of the court where the judgment creditor's money judgment is entered and the cause and number of the action, the date of entry of the judgment, and the date of any subsequent renewals, and where entered in the records of the court.

(e) The amount required to satisfy the judgment creditor's money judgment at the time the notice of lien is filed in the action or proceeding.

(f) A statement that the lien attaches to any cause of action of the judgment debtor that is the subject of the action or proceeding and to the judgment debtor's rights to money or property under any judgment subsequently procured in the action or proceeding.

(g) A statement that no compromise, dismissal, settlement, or satisfaction of the pending action or proceeding or any of the judgment debtor's rights to money or property under any judgment procured therein may be entered into by or on behalf of the judgment debtor, and that the judgment debtor may not enforce the judgment debtor's rights to money or property under any judgment procured in the action or proceeding by a writ or otherwise, unless

one of the following requirements is satisfied:

(1) The prior approval by order of the court in which the action or proceeding is pending has been obtained.

(2) The written consent of the judgment creditor has been obtained or the judgment creditor has released the lien.

(3) The money judgment of the judgment creditor has been satisfied.

(h) A statement that the judgment debtor may claim an exemption for all or any portion of the money or property within 30 days after the judgment debtor has notice of the creation of the lien and a statement that, if the exemption is not claimed within the time allowed, the exemption is waived.

708.430. (a) The court in which the action or special proceeding is pending may permit a judgment creditor who has obtained a lien under this article to intervene in the action or proceeding pursuant to Section 387.

(b) For the purposes of Sections 708.450 and 708.470, a judgment creditor shall be deemed to be a party to the action or special proceeding even though the judgment creditor has not become a party to the action or proceeding under subdivision (a).

708.440. (a) Except as provided in subdivision (c) of Section 708.410, unless the judgment creditor's money judgment is first satisfied or the lien is released, the judgment recovered in the action or special proceeding in favor of the judgment debtor may not be enforced by a writ or otherwise, and no compromise, dismissal, settlement, or satisfaction of the pending action or special proceeding or the judgment procured therein may be entered into by or on behalf of the judgment debtor, without the written consent of the judgment creditor or authorization by order of the court obtained under subdivision (b).

(b) Upon application by the judgment debtor, the court in which the action or special proceeding is pending or the judgment procured therein is entered may, in its discretion, after a hearing, make an order described in subdivision (a) that may include such terms and conditions as the court deems necessary. The application for an order under this subdivision shall be made on noticed motion. The notice of motion shall be served on the judgment creditor. Service shall be made personally or by mail.

708.450. (a) If a lien is created under this article, the judgment debtor may claim that all or any portion of the money or property that the judgment debtor may recover in the action or special proceeding is exempt from enforcement of a money judgment. The claim shall be made by application on noticed motion to the court in which the action or special proceeding is pending, filed and served on the judgment creditor not later than 30 days after the judgment debtor has notice of the creation of the lien. Service shall be made personally or by mail. The judgment debtor shall execute an affidavit in support of the application that includes all the matters set forth in subdivision (b) of Section 703.520. No notice of opposition to the

claim of exemption is required. The failure of the judgment debtor to make a claim of exemption under this section constitutes a waiver of the exemption.

(b) Unless continued for good cause shown, the court shall determine the exemption claim at any time prior to the entry of judgment in the action or special proceeding and may consolidate the exemption hearing with the hearing on a motion pursuant to Section 708.470.

(c) If the judgment debtor establishes to the satisfaction of the court that the right of the judgment debtor to money or property under the judgment in the action or special proceeding is all or partially exempt from enforcement of a money judgment, the court shall order the termination of the lien created under this article on the exempt portion of the money or property.

708.460. (a) If a lien is created pursuant to this article, the court clerk shall endorse upon the judgment recovered in the action or special proceeding a statement of the existence of the lien and the time it was created.

(b) Any abstract issued upon the judgment shall include a statement of the lien in favor of the judgment creditor.

708.470. (a) If the judgment debtor is entitled to money or property under the judgment in the action or special proceeding and a lien created under this article exists, upon application of any party to the action or special proceeding, the court may order that the judgment debtor's rights to money or property under the judgment be applied to the satisfaction of the lien created under this article as ordered by the court. Application for an order under this section shall be on noticed motion. The notice of motion shall be served on all other parties. Service shall be made personally or by mail.

(b) If the judgment determines that the judgment debtor has an interest in property, the court may order the party having custody or control of the property not to transfer the property until it can be levied upon or otherwise applied to the satisfaction of the lien created under this article.

(c) If the court determines that a party (other than the judgment debtor) having notice of the lien created under this article has transferred property that was subject to the lien or has paid an amount to the judgment debtor that was subject to the lien, the court shall render judgment against the party in an amount equal to the lesser of the following:

(1) The value of the judgment debtor's interest in the property or the amount paid the judgment debtor.

(2) The amount of the judgment creditor's lien created under this article.

708.480. A lien created under this article may be enforced by any applicable procedure:

(a) After the judgment subject to the lien is entered and the time for appeal from the judgment has expired.

(b) If an appeal is filed from the judgment subject to the lien, after

the appeal is finally determined.

Article 6. Assignment Order

708.510. (a) Except as otherwise provided by law, upon application of the judgment creditor on noticed motion, the court may order the judgment debtor to assign to the judgment creditor or to a receiver appointed pursuant to Article 7 (commencing with Section 708.610) all or part of a right to payment due or to become due, whether or not the right is conditioned on future developments, including but not limited to the following types of payments:

(1) Wages due from the federal government that are not subject to withholding under an earnings withholding order.

(2) Rents.

(3) Commissions.

(4) Royalties.

(5) Payments due from a patent or copyright.

(6) Insurance policy loan value.

(b) The notice of the motion shall be served on the judgment debtor. Service shall be made personally or by mail.

(c) Subject to subdivisions (d), (e), and (f), in determining whether to order an assignment or the amount of an assignment pursuant to subdivision (a), the court may take into consideration all relevant factors, including the following:

(1) The reasonable requirements of a judgment debtor who is a natural person and of persons supported in whole or in part by the judgment debtor.

(2) Payments the judgment debtor is required to make or that are deducted in satisfaction of other judgments and wage assignments.

(3) The amount remaining due on the money judgment.

(4) The amount being or to be received in satisfaction of the right to payment that may be assigned.

(d) A right to payment may be assigned pursuant to this article only to the extent necessary to satisfy the money judgment.

(e) When earnings or periodic payments pursuant to a pension or retirement plan are assigned pursuant to subdivision (a), the amount of the earnings or the periodic payments assigned shall not exceed the amount that may be withheld from a like amount of earnings under Chapter 5 (commencing with Section 706.010) (Wage Garnishment Law).

(f) Where a specific amount of the payment or payments to be assigned is exempt by another statutory provision, the amount of the payment or payments to be assigned pursuant to subdivision (a) shall not exceed the amount by which the payment or payments exceed the exempt amount.

708.520. (a) When an application is made pursuant to Section 708.510 or thereafter, the judgment creditor may apply to the court for an order restraining the judgment debtor from assigning or otherwise disposing of the right to payment that is sought to be

assigned. The application shall be made on noticed motion if the court so directs or a court rule so requires. Otherwise, it may be made ex parte.

(b) The court may issue an order pursuant to this section upon a showing of need for the order. The court, in its discretion, may require the judgment creditor to provide an undertaking.

(c) The court may modify or vacate the order at any time with or without a hearing on such terms as are just.

(d) The order shall be personally served upon the judgment debtor and shall contain a notice to the judgment debtor that failure to comply with the order may subject the judgment debtor to being held in contempt of court.

708.530. The effect and priority of an assignment ordered pursuant to this article is governed by Section 955.1 of the Civil Code. For the purpose of priority, an assignee of a right to payment pursuant to this article shall be deemed to be a bona fide assignee for value under the terms of Section 955.1 of the Civil Code.

708.540. The rights of an obligor are not affected by an order assigning the right to payment until notice of the order is received by the obligor. For the purpose of this section, "obligor" means the person who is obligated to make payments to the judgment debtor or who may become obligated to make payments to the judgment debtor depending upon future developments.

708.550. (a) The judgment debtor may claim that all or a portion of the right to payment is exempt from enforcement of a money judgment by application to the court on noticed motion filed not later than three days before the date set for the hearing on the judgment creditor's application for an assignment order. The judgment debtor shall execute an affidavit in support of the application that includes all of the matters set forth in subdivision (b) of Section 703.520. Failure of the judgment debtor to make a claim of exemption is a waiver of the exemption.

(b) The notice of the motion shall be personally served on the judgment creditor not later than three days before the date set for the hearing.

(c) The court shall determine any claim of exemption made pursuant to this section at the hearing on issuance of the assignment order.

708.560. (a) Either the judgment creditor or the judgment debtor may apply to the court on noticed motion for an order to modify or set aside the assignment order. The notice of motion shall be served on the other party. Service shall be made personally or by mail.

(b) The court shall make an order modifying or setting aside the assignment order upon a showing that there has been a material change in circumstances since the time of the previous hearing on the assignment order. The court may order a reassignment of the right to payments as necessary. The order shall state whether and to what extent it applies to payments already made.

Article 7. Receiver to Enforce Judgment

708.610. The provisions of Chapter 5 (commencing with Section 564) and Chapter 5a (commencing with Section 571) of Title 7 govern the appointment, qualifications, powers, rights, and duties of a receiver appointed under this article.

708.620. The court may appoint a receiver to enforce the judgment where the judgment creditor shows that, considering the interests of both the judgment creditor and the judgment debtor, the appointment of a receiver is a reasonable method to obtain the fair and orderly satisfaction of the judgment.

708.630. (a) The judgment debtor's interest in an alcoholic beverage license may be applied to the satisfaction of a money judgment only as provided in this section.

(b) The court may appoint a receiver for the purpose of transferring the judgment debtor's interest in an alcoholic beverage license that is transferable under Article 5 (commencing with Section 24070) of Chapter 6 of Division 9 of the Business and Professions Code, unless the judgment debtor shows in the proceeding to appoint a receiver that the amount of delinquent taxes described in Section 24049 of the Business and Professions Code and claims of creditors with priority over the judgment creditor pursuant to Section 24074 of the Business and Professions Code exceed the probable sale price of the license.

(c) The receiver may exercise the powers of the licensee as necessary and in exercising such powers shall comply with the applicable provisions of Division 9 (commencing with Section 23000) of the Business and Professions Code and applicable regulations of the Department of Alcoholic Beverage Control. An application shall be filed to transfer the license to the receiver and a temporary retail permit shall be obtained during the pendency of the transfer.

Article 8. Collection of Judgment Where Judgment Debtor Is Creditor of Public Entity

708.710. As used in this article:

(a) "Local public entity" means any public entity other than the state.

(b) "Public entity" means the state, a county, city, district, public authority, public agency, and any other political subdivision in the state.

(c) "State" means the State of California.

(d) "State agency" means a state office, officer, department, division, bureau, board, commission or agency claims against which are paid by warrants drawn by the Controller.

708.720. (a) If a public entity owes money to the judgment debtor, the obligation of the public entity may be applied to the satisfaction of the money judgment against the judgment debtor only in the manner provided by (1) this article, (2) Chapter 5

(commencing with Section 706.010) (wage garnishment), or (3) Article 5 (commencing with Section 708.410) (lien in pending action or proceeding).

(b) The earnings of a public officer or employee shall not be withheld pursuant to this article. Except as expressly provided by law, the earnings of a public officer or employee may be withheld for the payment of a money judgment only pursuant to Chapter 5 (commencing with Section 706.010).

(c) If the obligation of a public entity to pay money to the judgment debtor is the subject of a pending action or special proceeding, the procedure in this article does not apply. The payment of the obligation that is the subject of the pending action or special proceeding may be applied to the satisfaction of the money judgment against the judgment debtor only in the manner provided in Article 5 (commencing with Section 708.410).

708.730. (a) If money is owing and unpaid to the judgment debtor by a public entity, the judgment creditor may file, in the manner provided in this article, an abstract of the money judgment or a certified copy of the money judgment, together with an affidavit that states that the judgment creditor desires the relief provided by this article and states the exact amount then required to satisfy the judgment. The judgment creditor may state in the affidavit any fact tending to establish the identity of the judgment debtor.

(b) Promptly after filing the abstract or certified copy of the judgment and the affidavit with the public entity, the judgment creditor shall serve notice of the filing on the judgment debtor. Service shall be made personally or by mail.

708.740. (a) If money is owing and unpaid to the judgment debtor by a state agency, the judgment creditor shall file the abstract or certified copy of the judgment and the affidavit with the state agency owing the money to the judgment debtor prior to the time the state agency presents the claim of the judgment debtor to the Controller.

(b) When presenting the claim of the judgment debtor to the Controller, the state agency shall do all of the following:

(1) Note the fact of the filing of the abstract or certified copy of the judgment and the affidavit.

(2) State the amount required to satisfy the judgment as shown by the affidavit.

(3) State any amounts advanced to the judgment debtor by the state, or owed by the judgment debtor to the state, for expenses or for any other purpose.

(c) To discharge the claim of the judgment debtor, the Controller shall (1) deposit with the court, by a warrant or check payable to the court, the amount due the judgment debtor (after deducting an amount sufficient to reimburse the state for any amounts advanced to the judgment debtor or owed by the judgment debtor to the state) required to satisfy the money judgment as shown by the affidavit in full or to the greatest extent and (2) pay the balance thereof, if any,

to the judgment debtor.

708.750. If money is owing and unpaid to the judgment debtor by a public entity other than a state agency, the judgment creditor shall file the abstract or certified copy of the judgment and the affidavit with the auditor of the public entity or, if there is no auditor, with the official whose duty corresponds to that of auditor. To discharge the claim of the judgment debtor, the auditor or other official shall (1) deposit with the court by a warrant or check payable to the court, the amount due the judgment debtor (after deducting an amount sufficient to reimburse the public entity for any amounts advanced to the judgment debtor or owed by the judgment debtor to the public entity) required to satisfy the money judgment as shown by the affidavit in full or to the greatest extent and (2) pay the balance thereof, if any, to the judgment debtor.

708.760. (a) If the judgment debtor named in the abstract or certified copy of the judgment filed pursuant to this article is a contractor upon a public work, the cost of which is to be paid out of public moneys voted, appropriated, or otherwise set apart for such purpose, only so much of the contract price shall be deemed owing and unpaid within the meaning of Section 708.740 or 708.750 as may remain payable under the terms of the contractor's contract, upon the completion thereof, after deducting sums due and to become due to persons described in Section 3181 of the Civil Code. In ascertaining the sums due or to become due to such persons, only claims which are filed against the moneys due or to become due to the judgment debtor in accordance with the provisions of Chapter 4 (commencing with Section 3179) of Title 15 of Part 4 of Division 3 of the Civil Code shall be considered.

(b) The Controller, auditor, or other public disbursing officer whose duty it is to make payments under the provisions of the contract may not deposit an amount with the court pursuant to this article until the contract is completed, but may deposit an amount with the court to satisfy the claim of the judgment debtor before the payments specified in subdivision (a) are made so long as a sufficient amount is retained for the satisfaction of the claims of persons described in Section 3181 of the Civil Code.

708.770. (a) Promptly after deposit with the court by the public entity, the court clerk shall cause a notice of deposit to be served on the judgment debtor. Service shall be made personally or by mail.

(b) Within 10 days after service of the notice of deposit pursuant to subdivision (a), the judgment debtor who claims an exemption shall do both of the following:

(1) File with the court a claim of exemption and a notice of motion for an order determining the claim of exemption. The claim of exemption shall include all of the matters set forth in subdivision (b) of Section 703.520.

(2) Serve on the judgment creditor a copy of the notice of motion, a copy of the claim of exemption, and a notice of hearing on the motion. Service shall be made personally or by mail.

(c) The hearing on the motion shall be held not later than 30 days from the date the notice of motion was filed with the court unless continued by the court for good cause.

(d) Within 10 days after the judgment creditor is served under subdivision (b), the judgment creditor who opposes the motion shall do both of the following:

(1) File with the court a notice of opposition to the claim of exemption. The notice of opposition to the claim of exemption shall be executed under oath and shall include all of the matters set forth in Section 703.560.

(2) Serve on the judgment debtor a copy of the notice of opposition to the claim of exemption. Service shall be made personally or by mail.

(e) Subdivisions (a) to (d), inclusive, of Section 703.580 and Sections 703.590 and 703.600 apply to a claim of exemption made pursuant to this section.

(f) The failure of the judgment debtor to make a claim of exemption under this section constitutes a waiver of the exemption.

708.775. After the expiration of the period allowed for claiming an exemption under Section 708.770 if no exemption has been claimed, or after the determination of the claim of exemption if an exemption is claimed within the period allowed for claiming the exemption under Section 708.770, the court shall pay the nonexempt portion of the money deposited to which the judgment creditor is entitled to the judgment creditor and the balance thereof, if any, to the judgment debtor, unless some other disposition is required by law.

708.780. Filing of the abstract or certified copy of the judgment and the affidavit pursuant to this article creates a lien on the money owing and unpaid to the judgment debtor by the public entity in an amount equal to that which may properly be applied to the satisfaction of the money judgment under this article.

708.785. (a) The judgment creditor upon filing the abstract or certified copy of the judgment and the affidavit shall pay a fee of six dollars ($6) to the public entity with which it is filed.

(b) Fees received by the state under this section shall be deposited to the credit of the fund from which payments were, or would be, made on account of collection under this article.

708.790. No public officer or employee is liable for failure to perform a duty imposed by this article unless sufficient information is furnished by the abstract or certified copy of the judgment together with the affidavit to enable the officer or employee in the exercise of reasonable diligence to ascertain the identity of the judgment debtor therefrom and from the papers and records on file in the office in which the officer or employee works. The word "office" as used in this section does not include any branch or subordinate office located in a different city.

708.795. Nothing in this article authorizes the filing against an overpayment of tax, penalty, or interest, or interest allowable with

respect to an overpayment, under Part 10 (commencing with Section 17001) or Part 11 (commencing with Section 23001) of Division 2 of the Revenue and Taxation Code or under Division 6 (commencing with Section 13000) of the Unemployment Insurance Code.

Article 9. Enforcement Against Franchise

708.910. As used in this article, "franchise" means a franchise granted by a public entity and all the rights and privileges thereof, other than the franchise of being a corporation.

708.920. (a) The court may, in its discretion, order a franchise applied to the satisfaction of a money judgment upon application by the judgment creditor made on noticed motion. The notice of motion shall be served on the judgment debtor and the public entity that granted the franchise. Service shall be made personally or by mail. In exercising its discretion, the court shall determine whether application of the franchise to the satisfaction of the judgment is proper taking into account all the circumstances of the case, including but not limited to the nature of the franchise, whether the franchise is by its terms transferable, and the likelihood that application of the franchise to the satisfaction of the judgment will yield a substantial amount.

(b) If the court orders application of the franchise to the satisfaction of the judgment, application shall be by such means as appears proper to the court, including but not limited to sale of the franchise, assignment of the franchise or proceeds of the franchise, or appointment of a receiver. The court may include in its order, or make additional orders containing, provisions to effectuate the application of the franchise to the satisfaction of the judgment, including but not limited to provisions relating to the place of sale of the franchise, possession of the property of the judgment debtor necessary for the exercise of the franchise, receipt of proceeds of the franchise, recovery of penalties imposed by law and recoverable for injury to the franchise or for damages or other cause, and the judgment debtor's powers, duties, and liability for penalties and forfeitures.

708.930. Notwithstanding any other provision of this article, an order for application of a franchise to the satisfaction of a money judgment is subject to all applicable laws governing sale, transfer, or other actions concerning the franchise, including but not limited to any necessary approvals by the Public Utilities Commission or local public entities and compliance with statutory or administrative regulations.

Article 10. Other Enforcement Procedures

709.010. (a) As used in this section, "trust" has the meaning provided in Section 1138 of the Probate Code but includes a trust

subject to court supervision under Article 1 (commencing with Section 1120) of Chapter 19 of Division 3 of the Probate Code.

(b) The judgment debtor's interest as a beneficiary of a trust is subject to enforcement of a money judgment only upon petition under this section by the judgment creditor to the court prescribed in Chapter 19 (commencing with Section 1120) of Division 3 of the Probate Code (administration of trusts). The judgment debtor's interest in the trust may be applied to the satisfaction of the money judgment by such means as the court, in its discretion, determines are proper, including but not limited to imposition of a lien on or sale of the judgment debtor's interest, collection of trust income, and liquidation and transfer of trust assets by the trustee.

(c) Nothing in this section affects the law relating to enforcement of a money judgment against the judgment debtor's interest in a spendthrift trust, but surplus amounts from a spendthrift trust liable pursuant to Section 859 of the Civil Code are subject to enforcement of a money judgment under this section.

709.020. The judgment creditor may apply to the court on noticed motion for an order applying to the satisfaction of a money judgment a contingent remainder, executory interest, or other interest of the judgment debtor in property that is not vested in the judgment debtor. The interest of the judgment debtor may be applied to the satisfaction of the money judgment by such means as the court, in its discretion, determines are proper to protect the interests of both the judgment debtor and judgment creditor, including but not limited to the imposition of a lien on or the sale of the judgment debtor's interest.

709.030. Property in a guardianship or conservatorship estate is not subject to enforcement of a money judgment by a procedure provided in this division, but the judgment creditor may apply to the court in which the guardianship or conservatorship proceeding is pending under Division 4 (commencing with Section 1400) of the Probate Code for an order requiring payment of the judgment.

DIVISION 3. ENFORCEMENT OF NONMONEY JUDGMENTS

CHAPTER 1. GENERAL PROVISIONS

712.010. After entry of a judgment for possession or sale of property, a writ of possession or sale shall be issued by the clerk of the court upon application of the judgment creditor and shall be directed to the levying officer in the county where the judgment is to be enforced. A separate writ shall be issued for each county where the judgment is to be enforced. Writs may be issued successively until the judgment is satisfied, except that a new writ may not be issued for a county until the expiration of 180 days after the issuance of a prior writ for that county unless the prior writ is first returned.

712.020. A writ of possession or sale issued pursuant to this division shall require the levying officer to whom it is directed to

enforce the judgment and shall include the following information:

(a) The date of issuance of the writ.

(b) The title of the court where the judgment for possession or sale is entered and the cause and number of the action.

(c) The name and address of the creditor and the name and last known address of the judgment debtor.

(d) The date the judgment was entered, and the date of any subsequent renewals, and where entered in the records of the court.

(e) If the judgment for possession or sale includes a money judgment, the amount required to satisfy the money judgment on the date the writ is issued and the amount of interest accruing daily on the principal amount of the judgment from the date the writ is issued.

(f) Whether any person has requested notice of sale under the judgment and, if so, the name and address of such person.

(g) Any other information required to be included in the particular writ.

712.030. (a) Upon delivery of the writ of possession or sale to the levying officer to whom the writ is directed, together with the written instructions of the judgment creditor, the levying officer shall execute the writ in the manner prescribed by law.

(b) The levying officer may not levy upon or otherwise seize property under the writ after the expiration of 180 days from the date the writ was issued.

712.040. (a) A writ of possession or sale may be enforced as a writ of execution to satisfy any money judgment included in the judgment for possession or sale. If amounts due under the judgment are not satisfied pursuant to the writ of possession or sale, the judgment creditor may use a writ of execution to satisfy any money judgment included in the judgment after the writ of possession or sale has been returned or 180 days after its issuance, whichever is earlier. If the judgment creditor does not desire issuance of a writ of possession or sale (because possession has been voluntarily surrendered, the secured obligation has been voluntarily satisfied, or other reason), a writ of execution may be issued to satisfy any money judgment included in the judgment.

(b) Whether or not a writ of possession or sale has been issued, enforced, or returned, the judgment creditor may use any available remedies provided by Chapter 5 (commencing with Section 706.010) or Chapter 6 (commencing with Section 708.010) of Division 2 to satisfy any money judgment included in the judgment.

(c) Notwithstanding subdivisions (a) and (b), if so ordered in a judgment for sale, a money judgment included in the judgment may only be enforced as ordered by the court.

712.050. The return of a writ of possession or sale is governed by Section 699.560 (return of writ of execution).

712.060. The court may appoint a receiver pursuant to Article 7 (commencing with Section 708.610) of Chapter 6 of Division 2 to enforce a judgment for possession or sale of property.

712.070. Except as provided in Section 695.050, a judgment against a public entity is enforceable under this division.

CHAPTER 2. JUDGMENT FOR POSSESSION OF PERSONAL PROPERTY

714.010. (a) A judgment for possession of personal property may be enforced by a writ of possession of personal property issued pursuant to Section 712.010.

(b) In addition to the information required by Section 712.020, the writ of possession of personal property shall contain the following:

(1) A description of the property to be delivered to the judgment creditor in satisfaction of the judgment.

(2) The value of the property if specified in the judgment or a supplemental order.

714.020. (a) To execute the writ of possession of personal property, the levying officer shall search for the property specified in the writ and, if the property is in the possession of the judgment debtor or an agent of the judgment debtor, take custody of the property in the same manner as a levy under a writ of execution on such property in the possession of the judgment debtor. Custody of personal property used as a dwelling shall be taken as provided by Section 700.080. Custody of property in a private place shall be taken as provided by Section 699.030. If the levying officer obtains possession of the property specified in the writ of possession, the levying officer shall deliver the property to the judgment creditor in satisfaction of the judgment.

(b) If the property specified in the writ of possession cannot be taken into custody, the levying officer shall make a demand upon the judgment debtor for the property if the judgment debtor can be located. If custody of the property is not then obtained, the levying officer shall so state in the return. Thereafter the judgment for the possession of the property may be enforced in the same manner as a money judgment for the value of the property as specified in the judgment or a supplemental order.

(c) The writ of possession of personal property may, under the circumstances described in subdivision (b), be treated as a writ of execution.

714.030. (a) After entry of a judgment for possession of personal property, and whether or not a writ of possession of personal property has been issued, the judgment creditor may apply to the court for an order directing the judgment debtor to transfer possession of the property or documentary evidence of title to the property or both to the judgment creditor. The application shall be made on noticed motion if the court so directs or a court rule so requires. Otherwise, the application may be made ex parte.

(b) The court may issue an order pursuant to this section upon a showing of need for the order.

(c) The order shall be personally served on the judgment debtor

and shall contain a notice to the judgment debtor that failure to comply with the order may subject the judgment debtor to being held in contempt of court.

CHAPTER 3. JUDGMENT FOR POSSESSION OF REAL PROPERTY

715.010. (a) A judgment for possession of real property may be enforced by a writ of possession of real property issued pursuant to Section 712.010.

(b) In addition to the information required by Section 712.020, the writ of possession of real property shall contain the following:

(1) A description of the real property, possession of which is to be delivered to the judgment creditor in satisfaction of the judgment.

(2) A statement that if the real property is not vacated within five days from the date of service of a copy of the writ on the occupant or, if the copy of the writ is posted, within five days from the date a copy of the writ is served on the judgment debtor, the levying officer will remove the occupants from the real property and place the judgment creditor in possession.

(3) A statement that any personal property remaining on the real property after the judgment creditor has been placed in possession will be sold or otherwise disposed of in accordance with Section 1174 of the Code of Civil Procedure unless the judgment debtor or other owner pays the judgment creditor the reasonable cost of storage and takes possession of the personal property not later than 15 days after the time the judgment creditor takes possession of the real property.

(c) The writ of possession of real property shall be accompanied by a notice stating the address and telephone number of the levying officer's office and containing the following statement: "If you claim a right to possession of the property accruing prior to the commencement of the unlawful detainer action, or claim to have been in possession of the property on the date of the filing of the unlawful detainer action and are not named in the attached writ, contact the office of the levying officer set forth in this notice."

715.020. To execute the writ of possession of real property:

(a) The levying officer shall serve a copy of the writ of possession on one occupant of the property. Service on the occupant shall be made by leaving the copy of the writ with the occupant personally or, in the occupant's absence, with a person of suitable age and discretion found upon the property when service is attempted who is either an employee or agent of the occupant or a member of the occupant's household.

(b) If unable to serve an occupant described in subdivision (a) at the time service is attempted, the levying officer shall execute the writ of possession by posting a copy of the writ in a conspicuous place on the property and serving a copy of the writ of possession on the judgment debtor. Service shall be made personally or by mail. If the judgment debtor's address is not known, the copy of the writ may be served by mailing it to the address of the property.

(c) If the judgment debtor, members of the judgment debtor's household, and any other occupants holding under the judgment debtor do not vacate the property within five days from the date of service on an occupant pursuant to subdivision (a) or on the judgment debtor pursuant to subdivision (b), the levying officer shall remove the occupants from the property and place the judgment creditor in possession. The provisions of Section 684.120 extending time do not apply to the five-day period specified in this subdivision.

(d) Notwithstanding subdivision (c), unless the person is named in the writ, the levying officer may not remove any person from the property who claims a right to possession of the property accruing prior to the commencement of the unlawful detainer action or who claims to have been in possession of the property on the date of the filing of the unlawful detainer action.

715.030. The disposition of personal property remaining on the real property after the judgment creditor is placed in possession thereof pursuant to the writ of possession is governed by subdivisions (e) to (m), inclusive, of Section 1174. For this purpose, references in Section 1174 and in provisions incorporated by reference in Section 1174 to the "landlord" shall be deemed to be references to the judgment creditor and references to the "tenant" shall be deemed to be references to the judgment debtor or other occupant.

715.040. (a) A registered process server may execute the writ of possession of real property as provided in subdivisions (a) and (b) of Section 715.020 if a proper writ of possession is delivered to the sheriff, marshal, or constable and that officer does not execute the writ as provided in subdivisions (a) and (b) of Section 715.020 within three days (Saturday, Sunday, and legal holidays excluded) from the day the writ is delivered to that officer.

(b) Within five days after executing the writ under this section, all of the following shall be filed with the levying officer:

(1) The writ of possession of real property.

(2) An affidavit of the registered process server stating the manner in which the writ was executed.

(3) Proof of service of the writ.

(4) Instructions in writing, as required by the provisions of Section 687.010.

(c) Upon receipt of the fee provided by Section 26733 of the Government Code, the levying officer shall perform all other duties under the writ and shall return the writ to the court.

(d) The fee for services of a registered process server under this section may, in the court's discretion, be allowed as a recoverable cost upon a motion pursuant to Section 685.080. If allowed, the amount of the fee to be allowed is governed by Section 1032b.

CHAPTER 4. JUDGMENT FOR SALE OF PROPERTY

716.010. (a) A judgment for sale of real or personal property may be enforced by a writ of sale issued pursuant to Section 712.010.

(b) In addition to the information required by Section 712.020, the writ of sale shall contain a description of the property to be sold in satisfaction of the judgment for sale.

(c) The writ of sale delivered to the levying officer shall be accompanied by a certified copy of the judgment for sale.

716.020. To execute the writ of sale, the levying officer shall:

(a) Levy upon the property described in the writ of sale in the manner prescribed by Article 4 (commencing with Section 700.010) of Chapter 3 of Division 2 for levy under a writ of execution.

(b) Except as otherwise ordered by the court, give notice of sale and sell the property described in the writ of sale in the manner prescribed by Article 6 (commencing with Section 701.510) of Chapter 3 of Division 2 for giving notice and selling under a writ of execution.

(c) Apply the proceeds of the sale of the property in conformity with the judgment for sale.

716.030. (a) If a writ of sale is issued, the judgment creditor may apply to the court ex parte, or on noticed motion if the court so directs or a court rule so requires, for an order directing the judgment debtor to transfer to the levying officer:

(1) Possession of the property to be sold if the prescribed method of levy is by taking the property into custody.

(2) Possession of any documentary evidence of title to property to be sold. An order pursuant to this paragraph may be served when the property is levied upon or thereafter.

(b) The court may issue an order pursuant to this section upon a showing of need for the order.

(c) The order shall be personally served on the judgment debtor and shall contain a notice to the judgment debtor that failure to comply with the order may subject the judgment debtor to being held in contempt of court.

CHAPTER 5. OTHER JUDGMENTS

717.010. A judgment not otherwise enforceable pursuant to this title may be enforced by personally serving a certified copy of the judgment on the person required to obey it and invoking the power of the court to punish for contempt.

DIVISION 4. THIRD-PARTY CLAIMS AND RELATED PROCEDURES

CHAPTER 1. DEFINITIONS

720.010. Unless the provision or context otherwise requires, the

definitions in this chapter govern the construction of this division.

720.020. "Creditor" means the judgment creditor or, in the case of a levy under a writ of attachment or prejudgment writ of possession of personal property, the plaintiff.

720.030. "Debtor" means the judgment debtor or, in the case of a levy under a writ of attachment or prejudgment writ of possession of personal property, the defendant.

CHAPTER 2. THIRD-PARTY CLAIMS OF OWNERSHIP AND POSSESSION

720.110. A third person claiming ownership or the right to possession of property may make a third-party claim under this chapter in any of the following cases if the interest claimed is superior to the creditor's lien on the property:

(a) Where real property has been levied upon under a writ of attachment or a writ of execution.

(b) Where personal property has been levied upon under a writ of attachment, a writ of execution, a prejudgment or postjudgment writ of possession, or a writ of sale.

720.120. A person making a third-party claim under this chapter shall file the claim with the levying officer, together with two copies of the claim, after levy on the property but before the levying officer does any of the following:

(a) Sells the property.

(b) Delivers possession of the property to the creditor.

(c) Pays proceeds of collection to the creditor.

720.130. (a) The third-party claim shall be executed under oath and shall contain all of the following:

(1) The name of the third person and an address in this state where service by mail may be made on the third person.

(2) A description of the property in which an interest is claimed.

(3) A description of the interest claimed, including a statement of the facts upon which the claim is based.

(4) An estimate of the market value of the interest claimed.

(b) A copy of any writing upon which the claim is based shall be attached to the third-party claim. At a hearing on the third-party claim, the court in its discretion may exclude from evidence any writing a copy of which was not attached to the third-party claim.

720.140. (a) Not later than five days after the third-party claim is filed with the levying officer, the levying officer shall serve the following personally or by mail on the creditor:

(1) A copy of the third-party claim.

(2) A statement whether the third person has filed an undertaking to release the property pursuant to Chapter 6 (commencing with Section 720.610).

(3) If the third person has filed an undertaking to release the property, a notice that the property will be released unless, within the time allowed as specified in the notice, the creditor objects to the

undertaking.

(4) If the third person has not filed an undertaking to release the property, a notice that the property will be released unless, within the time allowed as specified in the notice, the creditor files with the levying officer an undertaking that satisfies the requirements of Section 720.160.

(b) The time allowed the creditor for objecting to the third person's undertaking to release the property or for filing an undertaking is 10 days after service under subdivision (a).

(c) Within the time allowed for service on the creditor under subdivision (a), the levying officer shall serve a copy of the papers specified in subdivision (a) on the debtor. Service shall be made personally or by mail.

(d) The levying officer may serve the copy of the third-party claim and the statement and notice pursuant to this section notwithstanding any defect, informality, or insufficiency of the claim.

720.150. (a) Except as otherwise provided by statute, if a third-party claim is timely filed, the levying officer may not do any of the following with respect to the property in which an interest is claimed:

(1) Sell the property.

(2) Deliver possession of the property to the creditor.

(3) Pay proceeds of collection to the creditor.

(b) The interest of the third person in the property levied upon is not affected by the third person's failure to file a third-party claim under this chapter.

720.160. (a) If the creditor files with the levying officer an undertaking that satisfies the requirements of this section within the time allowed under subdivision (b) of Section 720.140:

(1) The levying officer shall execute the writ in the manner provided by law unless the third person files an undertaking to release the property pursuant to Chapter 6 (commencing with Section 720.610).

(2) After sale, payment, or delivery of the property pursuant to the writ, the property is free of all claims of the third person for which the creditor has given the undertaking.

(b) Subject to Section 720.770, unless the creditor elects to file an undertaking in a larger amount, the amount of the undertaking filed by the creditor under this section shall be in the amount of:

(1) If the action is pending or the judgment was entered in the superior court, seven thousand five hundred dollars ($7,500), or twice the amount of the execution lien as of the date of levy or other enforcement lien as of the date it was created, whichever is the lesser amount.

(2) If the action is pending or the judgment was entered in a municipal or justice court, two thousand five hundred dollars ($2,500), or twice the amount of the execution lien as of the date of levy or other enforcement lien as of the date it was created, whichever is the lesser amount.

(c) An undertaking given by the creditor under this chapter shall:

(1) Be made in favor of the third person.

(2) Indemnify the third person against any loss, liability, damages, costs, and attorney's fees, incurred by reason of the enforcement proceedings.

(3) Be conditioned on a final judgment that the third person owns or has the right of possession of the property.

(d) If the creditor is a public entity exempt from giving an undertaking, the public entity shall, in lieu of filing the undertaking, file with the levying officer a notice stating that the public entity opposes the claim of the third person. When so filed, the notice is deemed to satisfy the requirement of this section that an undertaking be filed.

720.170. (a) In a case where the third person has not filed with the levying officer an undertaking to release the property pursuant to Chapter 6 (commencing with Section 720.610), if the creditor does not within the time allowed under subdivision (b) of Section 720.140 file with the levying officer an undertaking (or file a notice if the creditor is a public entity) that satisfies the requirements of Section 720.160, the levying officer shall release the property unless it is to be held under another lien or unless otherwise ordered by the court.

(b) Except as otherwise provided in this section, release is governed by Section 699.060.

(c) If personal property that has been taken into custody is to be released to the debtor pursuant to Section 699.060 and the debtor has not claimed the property within 10 days after notice was served pursuant to Section 699.060, the levying officer shall release the property to the third person making the claim.

(d) A hearing may be had on the third-party claim pursuant to Chapter 4 (commencing with Section 720.310) notwithstanding the release of the property pursuant to this section.

CHAPTER 3. THIRD-PARTY CLAIM OF SECURITY INTEREST OR LIEN

720.210. (a) Where personal property has been levied upon under a writ of attachment, a writ of execution, a prejudgment or postjudgment writ of possession, or a writ of sale, a third person claiming a security interest in or lien on the personal property may make a third-party claim under this chapter if the security interest or lien claimed is superior to the creditor's lien on the property.

(b) A secured party claiming a security interest in fixtures may make a third-party claim pursuant to this chapter if the security interest claimed is superior to the creditor's lien on the property. For this purpose, references in this division to "personal property" shall be deemed references to fixtures.

720.220. A person making a third-party claim under this chapter shall file the claim with the levying officer, together with two copies of the claim, after levy on the personal property but before the

levying officer does any of the following:

(a) Sells the property.

(b) Delivers possession of the property to the creditor.

(c) Pays proceeds of collection to the creditor.

720.230. (a) The third-party claim shall be executed under oath and shall contain all of the following:

(1) The name of the secured party or lienholder and an address in this state where service by mail may be made on the secured party or lienholder.

(2) A description of the personal property in which a security interest or lien is claimed.

(3) A detailed description of the security interest or lien claimed, including a statement of the facts upon which it is based.

(4) A statement of the total amount of sums due or to accrue under the security interest or lien and the applicable rate of interest on amounts due.

(b) In the case of a security interest, a copy of the security agreement and any financing statement shall be attached to the third-party claim. In the case of a lien, a copy of any writing upon which the claim is based shall be attached to the third-party claim. At a hearing on the third-party claim, the court in its discretion may exclude from evidence any writing a copy of which was not attached to the third-party claim.

720.240. (a) Not later than five days after the third-party claim is filed with the levying officer, the levying officer shall serve the following personally or by mail on the creditor:

(1) A copy of the third-party claim.

(2) A statement whether the third person has filed an undertaking to release the property pursuant to Chapter 6 (commencing with Section 720.610).

(3) If the third person has filed an undertaking to release the property, a notice that the property will be released unless, within the time allowed as specified in the notice, the creditor objects to the undertaking.

(4) If the third person has not filed an undertaking to release the property, a notice that the property will be released unless, within the time allowed as specified in the notice, the creditor does one of the following:

(A) Files with the levying officer an undertaking that satisfies the requirements of Section 720.260 and a statement under Section 720.280.

(B) Deposits with the levying officer the amount claimed plus interest at the applicable rate to the estimated date of tender to the secured party or lienholder.

(b) The time allowed the creditor for objecting to the third person's undertaking to release the property or for filing an undertaking and statement or making a deposit pursuant to subdivision (a) is 10 days after service under subdivision (a).

(c) Within the time allowed for service on the creditor under

subdivision (a), the levying officer shall serve a copy of the papers specified in subdivision (a) on the debtor. Service shall be made personally or by mail.

(d) The levying officer may serve the copy of the third-party claim and the statement and notice pursuant to this section notwithstanding any defect, informality, or insufficiency of the claim.

720.250. (a) Except as otherwise provided by statute, if a third-party claim is timely filed, the levying officer may not do any of the following with respect to the personal property in which the security interest or lien is claimed:

(1) Sell the property.

(2) Deliver possession of the property to the creditor.

(3) Pay proceeds of collection to the creditor.

(b) The interest of a secured party or lienholder in the property levied upon is not affected by the failure of the secured party or lienholder to file a third-party claim under this chapter.

720.260. (a) If the creditor within the time allowed under subdivision (b) of Section 720.240 either files with the levying officer an undertaking that satisfies the requirements of this section and a statement that satisfies the requirements of Section 720.280 or makes a deposit with the levying officer of the amount claimed under Section 720.230:

(1) The levying officer shall execute the writ in the manner provided by law unless, in a case where the creditor has filed an undertaking, the secured party or lienholder files an undertaking to release the property pursuant to Chapter 6 (commencing with Section 720.610).

(2) After sale, payment, or delivery of the property pursuant to the writ, the property is free of all claims or liens of the secured party or lienholder for which the creditor has given the undertaking or made the deposit.

(b) Subject to Section 720.770, unless the creditor elects to file an undertaking in a larger amount, the amount of the undertaking filed by the creditor under this section shall be in the amount of:

(1) If the action is pending or the judgment was entered in the superior court, seven thousand five hundred dollars ($7,500), or twice the amount of the execution lien as of the date of levy or other enforcement lien as of the date it was created, whichever is the lesser amount.

(2) If the action is pending or the judgment was entered in a municipal or justice court, two thousand five hundred dollars ($2,500), or twice the amount of the execution lien as of the date of levy or other enforcement lien as of the date it was created, whichever is the lesser amount.

(c) An undertaking given by the creditor under this chapter shall:

(1) Be made in favor of the secured party or lienholder.

(2) Indemnify the secured party or lienholder against any loss, liability, damages, costs, and attorney's fees, incurred by reason of the enforcement proceedings.

(3) Be conditioned on a final judgment that the security interest or lien of the third person is entitled to priority over the creditor's lien.

(d) If the creditor is a public entity exempt from giving an undertaking, the public entity shall, in lieu of filing the undertaking, file with the levying officer a notice stating that the public entity opposes the claim of the third person. When so filed, the notice is deemed to satisfy the requirement of this section that an undertaking be filed.

720.270. (a) In a case where the third person has not filed with the levying officer an undertaking to release the property pursuant to Chapter 6 (commencing with Section 720.610), if the creditor does not within the time allowed under subdivision (b) of Section 720.240 file with the levying officer an undertaking (or file a notice if the creditor is a public entity) that satisfies the requirements of Section 720.260 and a statement under Section 720.280, or deposit with the levying officer the amount claimed under Section 720.230, the levying officer shall release the personal property unless it is to be held under another lien or unless otherwise ordered by the court.

(b) Except as otherwise provided in this section, release is governed by Section 699.060.

(c) If property that has been taken into custody is to be released to the debtor pursuant to Section 699.060 and the debtor has not claimed the property within 10 days after notice was served pursuant to Section 699.060, the levying officer shall release the property to the secured party or lienholder making the claim.

(d) A hearing may be had on the third-party claim pursuant to Chapter 4 (commencing with Section 720.310) notwithstanding the release of the property pursuant to this section.

720.280. At the time the creditor files an undertaking with the levying officer in response to a third-party claim by a secured party, the creditor shall do all of the following:

(a) File with the levying officer a statement executed under oath that the security interest is invalid, that the security interest is not entitled to priority over the creditor's lien, or that the amount demanded in the claim exceeds the amount to which the secured party is entitled, for the reasons specified therein.

(b) Serve a copy of the statement on the secured party. Service shall be made personally or by mail.

(c) Serve a copy of the statement on the debtor. Service shall be made personally or by mail.

720.290. (a) If the levying officer receives a sufficient deposit from the creditor, the levying officer shall promptly tender or pay the deposit to the secured party or lienholder who made the third-party claim except that, if the deposit is made by personal check, the levying officer is allowed a reasonable time for the check to clear.

(b) If the tender is accepted, the interest of the secured party or lienholder in the property for which deposit is made passes to the

creditor making the deposit and, on distribution of any proceeds under Section 701.810, the creditor who makes the deposit shall be entitled to the proceeds to the extent of the deposit in the priority of the interest for which the deposit is made.

(c) If the tender is refused, the amount of the deposit shall be deposited with the county treasurer payable to the order of the secured party or lienholder.

CHAPTER 4. HEARING ON THIRD-PARTY CLAIM

720.310. (a) Not later than 15 days after the third-party claim is filed with the levying officer pursuant to Section 720.120 or 720.220, either the creditor or the third person may petition the court for a hearing to determine the validity of the third-party claim and the proper disposition of the property that is the subject of the claim.

(b) The hearing may be held whether or not an undertaking has been filed but not if a deposit has been made pursuant to Section 720.260.

(c) The hearing shall be held within 20 days after the filing of the petition unless continued by the court for good cause shown.

720.320. (a) Not less than 10 days prior to the hearing, the petitioner shall do both of the following:

(1) Serve notice of the time and place of the hearing on the creditor or the third person (whichever person is not the petitioner) and on the debtor. Service shall be made personally or by mail.

(2) File a copy of the notice of hearing with the levying officer.

(b) The notice of the hearing shall include a statement that the purpose of the hearing is to determine the validity of the third-party claim and the proper disposition of the property that is the subject of the third-party claim.

720.330. Promptly after receipt of the notice of the hearing on the third-party claim, the levying officer shall file the following papers with the court:

(a) The third-party claim that was filed with the levying officer pursuant to Section 720.120 or 720.220.

(b) Any statement filed by the creditor with the levying officer pursuant to Section 720.280 in opposition to the third-party claim of a secured party.

(c) Any undertaking of the creditor filed with the levying officer pursuant to Section 720.160 or Section 720.260.

(d) Any undertaking to release filed by a third person pursuant to Chapter 6 (commencing with section 720.610).

(e) Any notice filed by a public entity pursuant to Section 720.160 or 720.260.

720.340. If the creditor has not filed a statement with the levying officer pursuant to Section 720.280 in opposition to a third-party claim by a secured party:

(a) In a case where the creditor petitions for a hearing on the third-party claim, the creditor shall file the statement with the court

at the time the petition is filed and shall serve a copy thereof on the secured party with notice of the hearing served pursuant to Section 720.320.

(b) In a case where the secured party has petitioned for a hearing on the third-party claim, the creditor shall file the statement with the court and serve a copy of the statement on the secured party not later than five days before the date set for the hearing. Service shall be made personally or by mail.

720.350. (a) Subject to the power of the court to permit an amendment in the interest of justice:

(1) The third-party claim constitutes the pleading of the third person.

(2) In the case of a third-party claim by a secured party, the creditor's statement constitutes the pleading of the creditor.

(b) A third-party claim of ownership, right to possession, or a lien, shall be deemed controverted by the creditor.

720.360. At a hearing on a third-party claim, the third person has the burden of proof.

720.370. If the petition for a hearing was made by the third person, neither the petition nor the proceedings pursuant thereto may be dismissed without the consent of the creditor. If the petition for a hearing was made by the creditor, neither the petition nor the proceedings pursuant thereto may be dismissed without the consent of the third person.

720.380. (a) Notwithstanding any other provision of this title, the court may make an order staying the sale of the property under a writ or enjoining any transfer or other disposition of the property levied upon under a writ until proceedings for the determination of the rights of a third person can be commenced and prosecuted to termination and may require such undertaking as it considers necessary as a condition for making the order.

(b) After the filing of a third-party claim, notwithstanding Sections 720.160 and 720.260, the creditor, the debtor, or the third person may apply to the court for an order staying the sale of the property under a writ or enjoining any transfer or other disposition of the property until proceedings under this article can be commenced and prosecuted to termination. The application shall be made on noticed motion if the court so directs or a court rule otherwise so requires. Otherwise, the application may be made ex parte.

(c) An order made pursuant to this section may be modified or vacated by the court at any time prior to the termination of the proceedings upon such terms as are just.

720.390. At the conclusion of the hearing, the court shall give judgment determining the validity of the third-party claim and may order the disposition of the property or its proceeds in accordance with the respective interests of the parties. Subject to Section 720.420, the judgment is conclusive between the parties to the proceeding.

720.400. No findings are required in proceedings under this

chapter.

720.410. There is no right to a jury trial in a proceeding pursuant to this chapter.

720.420. An appeal may be taken from a judgment given pursuant to Section 720.390 in the manner provided for appeals from the court in which the proceeding takes place.

720.430. If property has been released pursuant to Section 720.170, 720.270, or 720.660, it may be levied upon or otherwise sought to be applied to the satisfaction of the judgment only if it is determined in the hearing on the third-party claim that the debtor has an interest in the property that may be levied upon or otherwise applied to the satisfaction of the judgment.

CHAPTER 5. CREDITOR'S DEMAND FOR THIRD-PARTY CLAIM BY SECURED PARTY OR LIENHOLDER

720.510. A creditor may make a demand as provided in this chapter that a secured party or lienholder file a third-party claim to personal property that has been levied upon under a writ of attachment or a writ of execution.

720.520. (a) The creditor's demand for a third-party claim by the secured party or lienholder, together with a copy of the demand, shall be filed with the levying officer after levy on the personal property but before the levying officer sells the property or pays proceeds of collection to the creditor.

(b) Promptly after the demand and a copy thereof are filed, the levying officer shall personally serve the demand on the secured party or lienholder. Service of the demand on the secured party or lienholder shall be attested by the certificate of the levying officer and the certificate shall be filed in the action promptly after service.

(c) The demand shall be served by the levying officer who levied on the property or by any other levying officer whose office is closer to the place of service. If service is made by another levying officer, such levying officer's costs shall be paid out of the costs prepaid to the levying officer who levied on the property.

720.530. The demand for a third-party claim served on a secured party or lienholder shall contain all of the following:

(a) The name and address of the secured party or lienholder.

(b) The name and address of the creditor.

(c) A detailed description of the personal property levied upon and the date of levy.

(d) A statement that if the secured party or lienholder does not file a third-party claim pursuant to Chapter 3 (commencing with Section 720.210) within 30 days after service of the demand, the secured party or lienholder shall be deemed to have waived any priority the security interest or lien may have over the creditor's lien on the property levied upon unless the property levied upon is released from the creditor's lien.

(e) A statement that if any priority of the security interest or lien

is waived, the secured party or lienholder may have a right to share in any excess proceeds of an execution sale of the property as provided in Section 701.810.

720.540. Except as otherwise provided by statute, the levying officer may not release, sell, or otherwise dispose of the personal property described in the demand before the expiration of 30 days after service of the demand on the secured party or lienholder.

720.550. (a) If the secured party or lienholder does not file a third-party claim with the levying officer pursuant to Chapter 3 (commencing with Section 720.210) within 30 days after service of the demand, the secured party or lienholder shall be deemed to have waived any priority the security interest or lien may have over the creditor's lien on the personal property levied upon and the property may be applied toward the satisfaction of the judgment free of the security interest or lien.

(b) If the secured party or lienholder is deemed to have waived any priority over the creditor's lien pursuant to subdivision (a) and the creditor's lien on the personal property is released, the security interest or lien is restored to its former position of priority.

CHAPTER 6. THIRD-PARTY UNDERTAKING TO RELEASE PROPERTY

720.610. A third person may give an undertaking to release property pursuant to this chapter in the following cases:

(a) Where the third person claims ownership or the right to possession of real property that has been levied upon under a writ of attachment or a writ of execution.

(b) Where the third person claims ownership or the right to possession of personal property that has been levied upon under a writ of attachment, a writ of execution, or a writ of sale.

(c) Where the third person claims a security interest in or a lien on personal property that has been levied upon under a writ of attachment, a writ of execution, or a writ of sale.

720.620. The third person shall file the undertaking to release property with the levying officer, together with two copies of the undertaking:

(a) At the time the third person files a third-party claim pursuant to Chapter 2 (commencing with Section 720.110) or Chapter 3 (commencing with Section 720.210).

(b) If the third person has previously filed a third-party claim to the property, at any time before the levying officer does any of the following:

(1) Sells the property.

(2) Delivers possession of the property to the creditor.

(3) Pays proceeds of collection to the creditor.

720.630. (a) The undertaking to release property shall contain a description of the property to be released and shall describe the interest of the third person.

(b) The undertaking shall be made in favor of the creditor and shall provide that, if the debtor is finally adjudged to have an interest in the property levied upon, the third person shall pay to the creditor the lesser of the following:

(1) The amount required to satisfy the judgment against the debtor of the creditor who had the lien on the property.

(2) A sum equal to the market value of the debtor's interest in the property levied upon.

(c) Except as provided in subdivision (d) and unless the third person elects to file an undertaking in a larger amount, the amount of the undertaking shall be the lesser of the following amounts:

(1) Twice the market value of the property sought to be released.

(2) Twice the amount of the creditor's lien on the property sought to be released.

(d) If the creditor has given an undertaking in response to the third person's claim regarding the property pursuant to Section 720.160 or 720.260, the third person's undertaking shall be in the amount of the creditor's undertaking.

720.640. (a) If the undertaking to release property is filed with the levying officer at the time the third-party claim is filed, the levying officer shall serve a copy of the undertaking on the creditor and on the debtor with the notice of the filing of the third-party claim served pursuant to Section 720.140 or 720.240.

(b) If the undertaking to release property is filed with the levying officer after the third-party claim is filed, not later than five days after the undertaking is filed, the levying officer shall serve a copy of the undertaking on the creditor and on the debtor with a notice that the property will be released unless, within the time allowed as specified in the notice, the creditor objects to the undertaking. Service shall be made personally or by mail.

720.650. The third person's undertaking becomes effective when the property described therein is released pursuant to this chapter.

720.660. The levying officer shall release the property described in the third person's undertaking in the manner provided by Section 720.170 promptly after the expiration of the time allowed under subdivision (b) of Section 720.760 for objecting to the undertaking, unless the creditor has objected to the undertaking, and filed with the levying officer a copy of the notice of motion as required by subdivision (b) of Section 720.760, prior to the expiration of that time.

CHAPTER 7. UNDERTAKINGS

720.710. The provisions of this chapter apply to undertakings given pursuant to this division.

720.720. As used in this chapter:

(a) "Beneficiary" means the person to be benefited by an undertaking.

(b) "Principal" means the person who files an undertaking.

720.730. An undertaking shall be executed by two or more

personal sureties or by one corporate surety possessing a certificate of authority from the Insurance Commissioner authorizing it to write surety insurance defined in Section 105 of the Insurance Code.

720.740. If the amount of an undertaking depends upon the value of property or an interest therein, the undertaking shall include the principal's estimate of the market value of the property or interest.

720.750. Except as otherwise provided by statute, an undertaking is effective upon filing.

720.760. (a) The beneficiary may object to an undertaking on either or both of the following grounds:

(1) The sureties are insufficient.

(2) The amount of the undertaking is insufficient.

(b) The objection to an undertaking shall be made by noticed motion within 10 days after service of a copy of the undertaking on the beneficiary. If no objection is made within such time, the beneficiary is deemed to have waived any objections. The notice of motion shall specify the precise ground for the objection and a copy of the notice of motion shall be served on the principal and a copy shall be filed with the levying officer. Service shall be made personally or by mail.

(c) If the objection is made on the ground that the market value of the property on which the amount of the undertaking depends exceeds the value estimated in the undertaking, the notice of motion shall state the beneficiary's estimate of the market value of the property.

720.770. (a) Unless the parties otherwise agree, the hearing on an objection shall be held not less than 10 nor more than 15 days after service of the notice of motion.

(b) The hearing shall be conducted in such manner as the court determines is proper. At the hearing, witnesses may be required to attend, and evidence may be procured and introduced, in the same manner as in the trial of a civil case. The court may appoint one or more disinterested persons to appraise property for the purpose of ascertaining its value.

(c) If the court determines that the undertaking is insufficient, the court shall specify in what respect it is insufficient and shall order that an undertaking with sufficient sureties and in a sufficient amount be filed within five days. If the order is not complied with, all rights obtained by filing the original undertaking immediately cease.

(d) If the court determines that an undertaking is insufficient, the undertaking remains in effect until an undertaking with sufficient sureties and in a sufficient amount is filed in its place.

(e) If the court determines that an undertaking is sufficient, no future objection to the undertaking may be made except upon a showing of changed circumstances.

(f) If the beneficiary objects to an undertaking on the ground that the amount is insufficient to indemnify the beneficiary, the court shall order the amount of the undertaking increased or decreased to

the amount it determines to be the probable recovery of the beneficiary if the beneficiary ultimately prevails in proceedings to enforce the liability on the undertaking. The court may order the amount of the undertaking decreased below the amount prescribed by Section 720.160 or 720.260.

720.780. If an objection to an undertaking is made on the ground that the market value of property on which the amount of the undertaking depends exceeds the value estimated in the undertaking, the principal may accept the beneficiary's estimate of the market value of the property and immediately file an increased undertaking based on the estimate. In such case, no hearing may be held on the objection, and the beneficiary is bound by the estimate of the market value of the property in any hearing on the sufficiency of the undertaking.

720.790. (a) Notwithstanding Section 2845 of the Civil Code, a judgment of liability on an undertaking shall be in favor of the beneficiary and against the sureties and may be enforced by the beneficiary directly against the sureties. The liability of a surety is limited to the amount of the undertaking. Nothing in this section affects any right of subrogation of a surety against the principal.

(b) The beneficiary may enforce the liability of sureties on the undertaking by a motion in the court pursuant to Section 1058a without the necessity of an independent action.

720.800. If an undertaking has been filed with a levying officer pursuant to this division, and the undertaking remains in the levying officer's possession when the writ is to be returned, the levying officer shall file the undertaking with the court at the time the writ is returned.

DIVISION 5. SATISFACTION OF JUDGMENT

CHAPTER 1. SATISFACTION OF JUDGMENT

724.010. (a) A money judgment may be satisfied by payment of the full amount required to satisfy the judgment or by acceptance by the judgment creditor of a lesser sum in full satisfaction of the judgment.

(b) Where a money judgment is satisfied by levy, the obligation of the judgment creditor to give or file an acknowledgment of satisfaction arises only when the judgment creditor has received the full amount required to satisfy the judgment from the levying officer.

(c) Where a money judgment is satisfied by payment to the judgment creditor by check or other form of noncash payment that is to be honored upon presentation by the judgment creditor for payment, the obligation of the judgment creditor to give or file an acknowledgment of satisfaction of judgment arises only when the check or other form of noncash payment has actually been honored upon presentation for payment.

724.020. The court clerk shall enter satisfaction of a money

judgment in the register of actions when the following occur:

(a) A writ is returned satisfied for the full amount of a lump-sum judgment.

(b) An acknowledgment of satisfaction of judgment is filed with the court.

(c) The court orders entry of satisfaction of judgment.

724.030. When a money judgment is satisfied, the judgment creditor immediately shall file with the court an acknowledgment of satisfaction of judgment. This section does not apply where the judgment is satisfied in full pursuant to a writ.

724.040. If an abstract of a money judgment has been recorded with the recorder of any county and the judgment is satisfied, the judgment creditor shall immediately do both of the following:

(a) File an acknowledgment of satisfaction of judgment with the court.

(b) Serve an acknowledgment of satisfaction of judgment on the judgment debtor. Service shall be made personally or by mail.

724.050. (a) If a money judgment has been satisfied, the judgment debtor, the owner of real or personal property subject to a judgment lien created under the judgment, or a person having a security interest in or a lien on personal property subject to a judgment lien created under the judgment may serve personally or by mail on the judgment creditor a demand in writing that the judgment creditor do one or both of the following:

(1) File an acknowledgment of satisfaction of judgment with the court.

(2) Execute, acknowledge, and deliver an acknowledgment of satisfaction of judgment to the person who made the demand.

(b) The demand shall include the following statement: "Important warning If this judgment has been satisfied, the law requires that you comply with this demand not later than 15 days after you receive it. If a court proceeding is necessary to compel you to comply with this demand, you will be required to pay my reasonable attorney's fees in the proceeding if the court determines that the judgment has been satisfied and that you failed to comply with the demand. In addition, if the court determines that you failed without just cause to comply with this demand within the 15 days allowed, you will be liable for all damages I sustain by reason of such failure and will also forfeit one hundred dollars to me."

(c) If the judgment has been satisfied, the judgment creditor shall comply with the demand not later than 15 days after actual receipt of the demand.

(d) If the judgment creditor does not comply with the demand within the time allowed, the person making the demand may apply to the court on noticed motion for an order requiring the judgment creditor to comply with the demand. The notice of motion shall be served on the judgment creditor. Service shall be made personally or by mail. If the court determines that the judgment has been satisfied and that the judgment creditor has not complied with the

demand, the court shall either (1) order the judgment creditor to comply with the demand or (2) order the court clerk to enter satisfaction of the judgment.

(e) If the judgment has been satisfied and the judgment creditor fails without just cause to comply with the demand within the time allowed, the judgment creditor is liable to the person who made the demand for all damages sustained by reason of such failure and shall also forfeit one hundred dollars ($100) to such person. Liability under this subdivision may be determined in the proceedings on the motion pursuant to subdivision (d) or in an action.

724.060. (a) An acknowledgment of satisfaction of judgment shall contain the following information:

(1) The title of the court.

(2) The cause and number of the action.

(3) The names and addresses of the judgment creditor, the judgment debtor, and the assignee of record if any. If an abstract of the judgment has been recorded in any county, the judgment debtor's name shall appear on the acknowledgment of satisfaction of judgment as it appears on the abstract of judgment.

(4) The date of entry of judgment and of any renewals of the judgment and where entered in the records of the court.

(5) A statement either that the judgment is satisfied in full or that the judgment creditor has accepted payment or performance other than that specified in the judgment in full satisfaction of the judgment.

(6) A statement whether an abstract of the judgment has been recorded in any county and, if so, a statement of each county where the abstract has been recorded and the book and page of the county records where the abstract has been recorded, and a notice that the acknowledgment of satisfaction of judgment (or a court clerk's certificate of satisfaction of judgment) will have to be recorded with the county recorder of each county where the abstract of judgment has been recorded in order to release the judgment lien on real property in that county.

(7) A statement whether a notice of judgment lien has been filed in the office of the Secretary of State and, if such a notice has been filed, a statement of the file number of such notice, and a notice that the acknowledgment of satisfaction of judgment (or a termination statement or a court clerk's certificate of satisfaction of judgment) will have to be filed in that office to terminate the judgment lien on personal property.

(b) The acknowledgment of satisfaction of judgment shall be made in the manner of an acknowledgment of a conveyance of real property.

(c) The acknowledgment of satisfaction of judgment shall be executed and acknowledged by one of the following:

(1) The judgment creditor.

(2) The assignee of record.

(3) The attorney for the judgment creditor or assignee of record

unless a revocation of the attorney's authority is filed.

724.070. (a) If a judgment creditor intentionally conditions delivery of an acknowledgment of satisfaction of judgment upon the performance of any act or the payment of an amount in excess of that to which the judgment creditor is entitled under the judgment, the judgment creditor is liable to the judgment debtor for all damages sustained by reason of such action or two hundred fifty dollars ($250), whichever is the greater amount.

(b) Subdivision (a) does not apply if the judgment creditor has agreed to deliver an acknowledgment of satisfaction of judgment to the judgment debtor prior to full satisfaction of the judgment in consideration for the judgment debtor's agreement either to furnish security or to execute a promissory note, or both, the principal amount of which does not exceed the amount to which the judgment creditor is entitled under the judgment.

724.080. In an action or proceeding maintained pursuant to this chapter, the court shall award reasonable attorney's fees to the prevailing party.

724.090. The damages recoverable pursuant to this chapter are not in derogation of any other damages or penalties to which an aggrieved person may be entitled by law.

724.100. (a) If satisfaction of a judgment has been entered in the register of actions, the court clerk shall issue a certificate of satisfaction of judgment upon application therefor and payment of a fee of three dollars ($3).

(b) The certificate of satisfaction of judgment shall contain the following information:

(1) The title of the court.

(2) The cause and number of the action.

(3) The names of the judgment creditor and the judgment debtor.

(4) The date of entry of judgment and of any renewals of the judgment and where entered in the records of the court.

(5) The date of entry of satisfaction of judgment and where it was entered in the register of actions.

CHAPTER 2. ACKNOWLEDGMENT OF PARTIAL SATISFACTION OF JUDGMENT

724.110. (a) The judgment debtor or the owner of real or personal property subject to a judgment lien created under a money judgment may serve on the judgment creditor a demand in writing that the judgment creditor execute, acknowledge, and deliver an acknowledgment of partial satisfaction of judgment to the person who made the demand. Service shall be made personally or by mail. If the judgment has been partially satisfied, the judgment creditor shall comply with the demand not later than 15 days after actual receipt of the demand.

(b) If the judgment creditor does not comply with the demand within the time allowed, the judgment debtor or the owner of the

real or personal property subject to a judgment lien created under the judgment may apply to the court on noticed motion for an order requiring the judgment creditor to comply with the demand. The notice of motion shall be served on the judgment creditor. Service shall be made personally or by mail. If the court determines that the judgment has been partially satisfied and that the judgment creditor has not complied with the demand, the court shall make an order determining the amount of the partial satisfaction and may make an order requiring the judgment creditor to comply with the demand.

724.120. An acknowledgment of partial satisfaction of judgment shall be made in the same manner and by the same person as an acknowledgment of satisfaction of judgment and shall contain the following information:

(a) The title of the court.

(b) The cause and number of the action.

(c) The names and addresses of the judgment creditor, the judgment debtor, and the assignee of record if any. If an abstract of the judgment has been recorded in any county, the judgment debtor's name shall appear on the acknowledgment of partial satisfaction of judgment as it appears on the abstract of judgment.

(d) The date of entry of judgment and of any renewals of the judgment and where entered in the records of the court.

(e) A statement of the amount received by the judgment creditor in partial satisfaction of the judgment.

(f) A statement whether an abstract of judgment has been recorded in any county and, if so, a statement of each county where the abstract has been recorded and the book and page of the county records where the abstract has been recorded.

(g) A statement whether a notice of judgment lien has been filed in the office of the Secretary of State and, if so, the file number of the notice.

CHAPTER 3. ACKNOWLEDGMENT OF SATISFACTION OF MATURED INSTALLMENTS UNDER INSTALLMENT JUDGMENT

724.210. As used in this chapter:

(a) "Installment judgment" means a money judgment under which a lien may be created on an interest in real property under Section 697.320.

(b) "Matured installments" means the sum of all of the following:

(1) All amounts and installments that have matured under an installment judgment on or before the date specified in the demand for an acknowledgment of satisfaction of matured installments under an installment judgment.

(2) The interest that has accrued on the installment judgment on the date specified in the demand.

(3) The costs that have been added to the installment judgment on or before the date specified in the demand pursuant to Chapter 5 (commencing with Section 685.010) of Division 1.

724.220. (a) If real property is subject to a judgment lien created under an installment judgment, the judgment debtor or the owner of real property subject to the judgment lien may serve on the judgment creditor a demand in writing that the judgment creditor execute, acknowledge, and deliver to the person who made the demand an acknowledgment of satisfaction of matured installments under an installment judgment. Service shall be made personally or by mail.

(b) The demand shall include the following statement: "Important warning. If the matured installments on this judgment have been satisfied as of date specified in this demand, the law requires that you comply with this demand not later than 15 days after you receive it. (The ' matured installments' are all amounts and installments that are due and payable on or before the date specified in this demand together with the accrued interest to that date and costs added to the judgment on or before that date.) If a court proceeding is necessary to compel you to comply with this demand, you will be required to pay my reasonable attorney's fees in the proceeding if the court determines that the matured installments have been satisfied and that you failed to comply with the demand. In addition, if the court determines that you failed without just cause to comply with this demand within the 15 days allowed, you will be liable for all damages I sustain by reason of such failure and will also forfeit one hundred dollars to me."

(c) If the matured installments have been satisfied as of the date specified in the demand, the judgment creditor shall comply with the demand not later than 15 days after actual receipt of the demand.

724.230. If the judgment creditor does not comply with the demand within the time allowed, the judgment debtor or the owner of the real property subject to a judgment lien created under the installment judgment may apply to the court on noticed motion for an order requiring the judgment creditor to comply with the demand. The notice of motion shall be served on the judgment creditor. Service shall be made personally or by mail. If the court determines that the matured installments have been satisfied as of the date specified in the demand and that the judgment creditor has not complied with the demand, the court shall either (1) order the judgment creditor to comply with the demand or (2) make an order determining that the matured installments as of the date specified in the demand have been satisfied.

724.240. (a) If the matured installments under the installment judgment have been satisfied as of the date specified in the demand and the judgment creditor fails without just cause to comply with the demand within the time allowed, the judgment creditor is liable to the person who made the demand for all damages sustained by reason of such failure and shall also forfeit one hundred dollars ($100) to such person. Liability under this subdivision may be determined in the proceedings on a motion pursuant to Section 724.230 or in an action.

(b) The damages recoverable pursuant to subdivision (a) are not in derogation of any other damages or penalties to which an aggrieved person may be entitled by law.

724.250. (a) An acknowledgment of satisfaction of matured installments under an installment judgment shall be made in the same manner and by the same person as an acknowledgment of satisfaction of judgment and shall contain the following information:

(1) The title of the court.

(2) The cause and number of the action.

(3) The names and addresses of the judgment creditor, the judgment debtor, and the assignee of record if any. The judgment debtor's name shall appear on the acknowledgment of satisfaction of matured installments as it appears on the certified copy of the judgment that was recorded to create the judgment lien.

(4) The date of entry of the judgment and of any renewals of the judgment and where entered in the records of the court.

(5) A statement that the matured installments under the installment judgment had been satisfied as of a specified date.

(6) A statement whether a certified copy of the judgment has been recorded in any county and, if so, a statement of each county where the certified copy has been recorded and the book and page of the county records where the certified copy of the judgment has been recorded.

(b) If any amount of child or spousal support provided in a support order has been directed to be made to an officer designated by the court pursuant to Section 4702 of the Civil Code or any other provision of law and such directive is set forth in the certified copy of the judgment that was recorded to create the judgment lien on real property, or in a similarly recorded certified copy of an amended or supplemental order, the acknowledgment of satisfaction of matured installments under the installment judgment is not effective and does not affect the judgment lien unless the acknowledgment is executed by or approved in writing by such designated officer.

SEC. 2.1. Section 699.080 is added to the Code of Civil Procedure, to read:

699.080. (a) A registered process server may levy under a writ of execution on the following types of property:

(1) Real property, pursuant to Section 700.015.

(2) Growing crops, timber to be cut, or minerals or the like (including oil and gas) to be extracted or accounts receivable resulting from the sale thereof at the wellhead or minehead, pursuant to Section 700.020.

(3) Personal property in the custody of a levying officer, pursuant to Section 700.050.

(4) Personal property used as a dwelling, pursuant to subdivision (a) of Section 700.080.

(5) Deposit accounts, pursuant to Section 700.140 or 700.160.

(6) Property in a safe deposit box, pursuant to Section 700.150 or

700.160.

(7) Accounts receivable or general intangibles, pursuant to Section 700.170.

(8) Final money judgments, pursuant to Section 700.190.

(9) Interest of a judgment debtor in personal property in the estate of a decedent, pursuant to Section 700.200.

(b) If a registered process server levies on property pursuant to subdivision (a), the registered process server shall do all of the following:

(1) Comply with the applicable levy, posting, and service provisions of Article 4 (commencing with Section 700.010).

(2) Deliver any undertaking required by Section 700.160.

(3) Request any third person served to give a garnishee's memorandum to the levying officer in compliance with Section 701.030.

(c) Within five days after levy under this section, all of the following shall be filed with the levying officer:

(1) The writ of execution.

(2) An affidavit of the registered process server stating the manner of levy performed.

(3) Proof of service of the copy of the writ and notice of levy on other persons as required by Article 4 (commencing with Section 700.010).

(4) Instructions in writing, as required by the provisions of Section 687.010.

(d) Upon receipt of the fee provided by Section 26721 of the Government Code, the levying officer shall perform all other duties under the writ as if the levying officer had levied under the writ and shall return the writ to the court.

(e) The fee for services of a registered process server under this section may, in the court's discretion, be allowed as a recoverable cost upon a motion pursuant to Section 685.080. If allowed, the amount of the fee to be allowed is governed by Section 1032.8.

SEC. 2.2. Section 706.101 is added to the Code of Civil Procedure, to read:

706.101. (a) An earnings withholding order shall be served by the levying officer upon the employer by delivery of the order to any of the following:

(1) The managing agent or person in charge, at the time of service, of the branch or office where the employee works or the office from which the employee is paid. In the case of a state employee, the office from which the employee is paid does not include the Controller's office unless the employee works directly for the Controller's office.

(2) Any person to whom a copy of the summons and of the complaint may be delivered to make service on the employer under Article 4 (commencing with Section 416.10) of Chapter 4 of Title 5.

(b) Service of an earnings withholding order shall be made by personal delivery as provided in Section 415.10 or 415.20 or by

delivery by registered or certified mail, postage prepaid, with return receipt requested. When service is made by mail, service is complete at the time the return receipt is executed by or on behalf of the recipient. If the levying officer attempts service by mail under this subdivision and does not receive a return receipt within 15 days from the date of deposit in the mail of the earnings withholding order, the levying officer shall make service as provided in Article 3 (commencing with Section 415.10) of Chapter 4 of Title 5.

(c) Except as provided in subdivision (b), service of any notice or document under this chapter may be made by first-class mail, postage prepaid. If service is made on the employer after the employer's return has been received by the levying officer, the service shall be made by first-class mail, postage prepaid, on the person designated in the employer's return to receive notices and at the address indicated in the employer's return, whether or not such address is within the county. Nothing in this subdivision precludes service by personal delivery (1) on the employer before the employer's return has been received by the levying officer or (2) on the person designated in the employer's return after its receipt.

(d) Notwithstanding subdivision (b), if the judgment creditor so requests, the levying officer shall make service of the earnings withholding order by personal delivery as provided in Section 415.10 or 415.20. If the judgment creditor requests that service be made under this subdivision, the fee provided in Section 26750 of the Government Code shall be increased by one dollar and fifty cents ($1.50).

(e) An earnings withholding order also may be served by a registered process server. When an earnings withholding order is served by a registered process server pursuant to this subdivision, the levying officer shall perform all other duties required by the provisions of this chapter, except for the actual service of the order, as if the levying officer had served the order. When an earnings withholding order is served by a registered process server, the court, in allowing costs for service pursuant to Section 1032.8, shall not allow a sum in excess of one dollar and fifty cents ($1.50).

SEC. 2.3. Section 715.040 is added to the Code of Civil Procedure, to read:

715.040. (a) A registered process server may execute the writ of possession of real property as provided in subdivisions (a) and (b) of Section 715.020 if a proper writ of possession is delivered to the sheriff, marshal, or constable and that officer does not execute the writ as provided in subdivisions (a) and (b) of Section 715.020 within three days (Saturday, Sunday, and legal holidays excluded) from the day the writ is delivered to that officer.

(b) Within five days after executing the writ under this section, all of the following shall be filed with the levying officer:

(1) The writ of possession of real property.

(2) An affidavit of the registered process server stating the manner in which the writ was executed.

(3) Proof of service of the writ.

(4) Instructions in writing, as required by the provisions of Section 687.010.

(c) Upon receipt of the fee provided by Section 26733 of the Government Code, the levying officer shall perform all other duties under the writ and shall return the writ to the court.

(d) The fee for services of a registered process server under this section may, in the court's discretion, be allowed as a recoverable cost upon a motion pursuant to Section 685.080. If allowed, the amount of the fee to be allowed is governed by Section 1032.8.

724.260. In an action or proceeding maintained pursuant to this chapter, the court shall award reasonable attorney's fees to the prevailing party.

SEC. 2.4. Section 26820.4 of the Government Code, as amended by Chapter 327 of the Statutes of 1982, is amended to read:

26820.4. The total fee for filing of the first paper in a civil action or proceeding in the superior court, except an adoption proceeding, shall be the sum fixed by the board of supervisors pursuant to Section 68090, which shall not exceed the following maximum amounts:

(1) In any county where a fee is collected for the court reporter fund, the total fee shall not exceed eighty-six dollars ($86).

(2) In any county where a fee is not collected for the court reporter fund, the total filing fee shall not exceed sixty-one dollars ($61).

This section applies to the initial complaint, petition, or application, and the papers transmitted from another court on the transfer of a civil action or proceeding, but does not include documents filed pursuant to Section 491.030, 704.750, or 708.160 of the Code of Civil Procedure.

SEC. 2.5. Section 26828 of the Government Code, as amended by Chapter 327 of the Statutes of 1982, is amended to read:

26828. The fee for issuing a writ of attachment, a writ of mandate, a writ of execution, a writ of sale, a writ of possession, a writ of prohibition, or any other writ for the enforcement of any order or judgment is three dollars and fifty cents ($3.50).

SEC. 2.6. Section 72055 of the Government Code, as amended by Chapter 327 of the Statutes of 1982, is amended to read:

72055. The total fee for filing of the first paper in a civil action or proceeding in the municipal or justice court, shall be the sum fixed by the board of supervisors pursuant to Section 68090, which shall not exceed the following maximum amounts:

(1) In any court where a fee is collected for the court reporter fund, the total fee shall not exceed forty dollars ($40).

(2) In any court where a fee is not collected for the court reporter fund, the total fee shall not exceed twenty-nine dollars ($29).

This section applies to the initial complaint, petition, or application, and any papers transmitted from another court on the transfer of a civil action or proceeding, but does not include documents filed pursuant to Section 491.030, 704.750, or 708.160 of the

Code of Civil Procedure.

The term "total fee" as used in this section and Section 72056 includes the clerk's fee, any amount allocated to the Judges' Retirement Fund pursuant to Section 72056.1, any amount allocated to the court reporter fund, and the law library fee pursuant to Article 2 (commencing with Section 6320) of Chapter 5 of Division 3 of the Business and Professions Code.

SEC. 3. (a) Except as provided in subdivisions (b) and (c), this act becomes operative on July 1, 1983.

(b) On and after the effective date of this act, the Judicial Council may adopt any forms necessary so that the forms may be used when this act becomes operative.

(c) On and after the effective date of this act, the courts may adopt any rules necessary so that the rules will be effective when this act becomes operative.

SEC. 4. No appropriation is made and no reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution or Section 2231 or 2234 of the Revenue and Taxation Code because the Legislature finds and declares that there are savings as well as costs in this act which, in the aggregate, do not result in additional net costs.

SEC. 5. It is the intent of the Legislature, if this bill is chaptered, that Sections 682.1 and 685.010 of the Code of Civil Procedure, as amended and added, respectively, by Chapter 150 of the Statutes of 1982 shall become effective on January 1, 1983, and shall remain operative until July 1, 1983, at which time they shall be repealed as provided by Section 1 of this act.

SEC. 6. It is the intent of the Legislature that if this bill and Senate Bill 1790 are both chaptered and become effective January 1, 1983, and Senate Bill 1790 amends and renumbers Section 1032b of the Code of Civil Procedure as Section 1032.8 of the Code of Civil Procedure that Sections 699.080, 706.101, and 715.040 shall be added to the Code of Civil Procedure in the form set forth in Sections 2.1, 2.2, and 2.3, respectively. Therefore, Sections 2.1, 2.2, and 2.3 of this act shall become operative only if this bill and Senate Bill 1790 are both chaptered and become effective January 1, 1983, and Senate Bill 1790 amends and renumbers Section 1032b of the Code of Civil Procedure as Section 1032.8 of the Code of Civil Procedure, and Sections 699.080, 706.101, and 715.040, but only those sections, as set forth in Section 2 of this act shall not become operative.

SEC. 7. It is the intent of the Legislature, if this bill is chaptered, that Sections 26820.4, 26828, and 72055 of the Government Code, as amended by Chapter 327 of the Statutes of 1982, shall be further amended on the operative date of this act in the form set forth in Sections 2.4, 2.5, and 2.6 of this act to incorporate the changes to those sections proposed by Chapter 497 of the Statutes of 1982 and to prevent the changes made to those sections by Chapter 327, an urgency statute, from being chaptered out by Chapter 497 on the effective date of Chapter 497. Therefore, Sections 26820.4, 26828, and

72055, as amended by Chapter 327 of the Statutes of 1982, shall remain operative only until the operative date of this act and on the operative date of this act Sections 26820.4, 26828, and 72055 shall be further amended in the form set forth in Sections 2.4, 2.5, and 2.6 of this act, and Sections 113, 114, and 121 of Chapter 497 of the Statutes of 1982 shall not become effective and shall not prevail over the changes made by Chapter 327 of the Statutes of 1982.

CHAPTER 1365

An act to add Section 1182.6 to the Labor Code, relating to the Industrial Welfare Commission.

[Approved by Governor September 23, 1982. Filed with Secretary of State September 24, 1982.]

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

SECTION 1. Section 1182.6 is added to the Labor Code, to read:

1182.6. (a) No employer who continuously operates a manufacturing facility 24 hours a day for seven days a week, and who has had in operation an established preexisting workweek arrangement, as defined in subdivision (b), shall be in violation of any provision of this code or any applicable wage order of the commission by instituting, pursuant to an agreement voluntarily executed by the employer and at least two-thirds of the affected employees before the performance of the work, a regularly scheduled workweek which includes three working days of not more than 12 hours a day, or regularly scheduled workweeks which include three working days of not more than 12 hours a day one week, and four working days of not more than 12 hours a day in the following week, for an average workweek of 42 hours over a two-week period.

(b) For purposes of this section only, a "preexisting workweek arrangement" is defined as, and limited to, a workweek arrangement that existed before November 1980, and had to be modifed or abandoned by an employer because the workweek arrangement did not qualify for any exemption provided by the Industrial Welfare Commission from its daily overtime requirements for collectively bargained arrangements, and did not otherwise comply with the daily overtime requirements of an applicable commission order.

(c) The agreement described in subdivision (a) shall be confirmed by an affirmative vote by secret ballot by at least two-thirds of the affected employees, and may be rescinded at any time by a two-thirds vote of the affected employees. A new vote on

whether the agreement described in subdivision (a) shall be continued shall be held every three years, and an affirmative vote by at least two-thirds of the affected employees shall be necessary to continue the agreement.

(d) The employer shall not be required to pay premium wage rates to employees working a schedule described in subdivision (a) unless the employee is required or permitted to work more than 12 hours in any workday, more than the scheduled three or four days in any workweek, or more than 40 hours in any workweek.

(e) This section shall not apply to any employer who is now, or in the future becomes, a party to a collective-bargaining agreement covering employees who would otherwise be covered by this section.

(f) No employee working a schedule described in subdivision (a) shall be required to work more than four consecutive days within seven consecutive days.

CHAPTER 1366

An act to amend Sections 423.3 and 426 of the Revenue and Taxation Code, relating to taxation.

[Approved by Governor September 23, 1982. Filed with Secretary of State September 24, 1982.]

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

SECTION 1. Section 423.3 of the Revenue and Taxation Code, is amended to read:

423.3. Any city or county may allow land subject to an enforceable restriction under the Williamson Act or a migratory waterfowl habitat contract to be assessed in accordance with one or more of the following:

(a) Land specified in subdivision (a) or (b) of Section 16142 of the Government Code shall be assessed at the value determined as provided in Section 423, but not to exceed a uniformly applied percentage of its base year value pursuant to Section 110.1, adjusted to reflect the percentage change in the cost of living not to exceed 2 percent per year. In no event shall that percentage be less than 70 percent.

(b) Land specified in subdivision (c) of Section 16142 of the Government Code shall be assessed at the value determined as provided in Section 423, but not to exceed a uniformly applied percentage of its base year value pursuant to Section 110.1, adjusted to reflect the percentage change in the cost of living not to exceed 2 percent per year. In no event shall that percentage be less than 75 percent.

(c) Prime commercial rangeland shall be assessed at the value determined as provided in Section 423, but not to exceed a uniformly

applied percentage of its base year value pursuant to Section 110.1, adjusted to reflect the percentage change in the cost of living not to exceed 2 percent per year. In no event shall that percentage be less than 80 percent.

For purposes of this subdivision "prime commercial rangeland" means rangeland which meets all of the following physical-chemical parameters:

(1) Soil depth of 12 inches or more.

(2) Soil texture of fine sandy loam to clay.

(3) Soil permeability of rapid to slow.

(4) Soil with at least 2.5 inches of available water holding capacity in profile.

(5) A slope of less than 30 percent.

(6) A climate with 80 or more frost-free days per year.

(7) Ten inches or more average annual precipitation.

(8) When managed at potential, the land generally requires less than 17 acres to support one animal unit per year.

Property owners of land specified in this subdivision, shall demonstrate that their land falls within the above definition when requested by the city or county.

(d) Land specified in subdivision (d) of Section 16142 of the Government Code shall be assessed at the value determined as provided in Section 423, but not to exceed a uniformly applied percentage of its base year value pursuant to Section 110.1, adjusted to reflect the percentage change in the cost of living not to exceed 2 percent per year. In no event shall that percentage be less than 90 percent.

(e) Waterfowl habitat shall be assessed at the value as provided in Section 423.7 but not to exceed a uniformly applied percentage of its base year value pursuant to Section 110.1, adjusted to reflect the percentage change in the cost of living not to exceed 2 percent per year. In no event shall that percentage be less than 90 percent.

SEC. 2. 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 or 51245 of the Government Code, the board, for purposes of surveys required by Section 1815, 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 or 51245 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 or 51245 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 1367

An act to amend Section 54235 of, and to add Section 54238.3 to, the Government Code, relating to surplus property.

[Approved by Governor September 23, 1982. Filed with Secretary of State September 24, 1982.]

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

SECTION 1. Section 54235 of the Government Code is amended to read:

54235. The Legislature reaffirms its finding that the disposition of surplus property owned by public agencies should be utilized to further state policies.

The Legislature reaffirms its finding that there exists within the urban and rural areas of the state a serious shortage of decent, safe, and sanitary housing which persons and families of low or moderate income can afford, and consequently a pressing and urgent need for the preservation and expansion of the low- and moderate-income housing supply. The Legislature further reaffirms its finding that highway and other state activities have contributed to the severe shortage of such housing. The Legislature reaffirms that the provision of decent housing for all Californians is a state goal of the highest priority. The Legislature finds and declares that actions of state agencies including the sales of surplus residential properties which result in the loss of decent and affordable housing for persons and families of low or moderate income is contrary to state housing, urban development, and environmental policies and is a significant environmental effect, within the meaning of Article XIX of the California Constitution, which will be mitigated by the sale of surplus residential property pursuant to the provisions of this article.

The Legislature further finds and declares that the displacement of large numbers of persons as a result of the sale of surplus residential property owned by agencies of the state is a significant environmental effect, within the meaning of Article XIX of the California Constitution which will be mitigated by sale of such properties pursuant to the provisions of this article.

The Legislature further finds and declares that the sale of surplus residential property pursuant to the provisions of this article will directly serve an important public purpose. Wherefore, the Legislature intends by this article to preserve, upgrade and expand the supply of housing available to persons and families of low or moderate income. The Legislature further intends by this article to mitigate the environmental effects, within the meaning of Article XIX, of the California Constitution, caused by highway activities.

SEC. 2. Section 54238.3 is added to the Government Code, to read:

54238.3. This article shall apply only to surplus residential properties which were acquired for a state project, for which at least 20 dwelling units were acquired and owned by the state on January 1, 1980, or on the date the properties were declared to be surplus, whichever date occurs later. For the purpose of this section, a freeway route and its interchanges shall be considered one state project.

CHAPTER 1368

An act to add Section 1263.015 to the Code of Civil Procedure, to add Section 15854.1 to the Government Code, and to add Sections 17580.1 and 24668.1 to the Revenue and Taxation Code, relating to the taxation of the proceeds of property acquisition.

[Approved by Governor September 23, 1982. Filed with Secretary of State September 24, 1982.]

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

SECTION 1. Section 1263.015 is added to the Code of Civil Procedure, to read:

1263.015. At the request of an owner of property acquired by eminent domain, the public entity may enter into an agreement with the owner specifying the manner of payment of compensation to which the owner is entitled as the result of the acquisition. The agreement may provide that the compensation shall be paid by the public entity to the owner over a period not to exceed 10 years from the date the owner's right to compensation accrues. The agreement may also provide for the payment of interest by the public entity; however, the rate of interest agreed upon may not exceed the maximum rate authorized by Section 16731 or 53531 of the Government Code, as applicable, in connection with the issuance of bonds.

SEC. 2. Section 15854.1 is added to the Government Code, to read:

15854.1. At the request of the owner of property acquired pursuant to this part, the board may enter into an agreement with the owner specifying the manner of payment of compensation to which the owner is entitled as the result of the acquisition. The agreement may provide that the compensation shall be paid by the board to the owner over a period not to exceed 10 years from the date the owner's right to compensation accrues. The agreement may also provide for the payment of interest by the board; however, the rate of interest agreed upon may not exceed the maximum rate authorized by Section 16731 or 53531 of the Government Code, as applicable, in connection with the issuance of bonds.

SEC. 3. Section 17580.1 is added to the Revenue and Taxation Code, to read:

17580.1. Any taxpayer who disposes of property as a result of the exercise of the power of requisition or condemnation may, at his or her election, have the income derived from that disposition taken into account pursuant to Section 17577, if the taxpayer and the acquiring entity have, in conformity with Section 1263.015 of the Code of Civil Procedure or Section 15854.1 of the Government Code, contracted for the payment of compensation for the acquisition in a manner which satisfies the requirements of Section 17577.

SEC. 4. Section 24668.1 is added to the Revenue and Taxation Code, to read:

24668.1. Any taxpayer who disposes of property as a result of the exercise of the power of requisition or condemnation may, at his or her election, have the income derived from that disposition taken into account pursuant to Section 24667, if the taxpayer and the acquiring entity have, in conformity with Section 1263.015 of the

Code of Civil Procedure or Section 15854.1 of the Government Code, contracted for the payment of compensation for the acquisition in a manner which satisfies the requirements of Section 24667.

CHAPTER 1369

An act to amend Sections 66770.5, 66796, 66796.20, 66796.21, 66796.33, and 66796.35 of, to add Section 66796.38 to, and to add and repeal Section 66796.39 of, the Government Code, relating to solid waste.

[Approved by Governor September 23, 1982. Filed with Secretary of State September 24, 1982.]

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

SECTION 1. Section 66770.5 of the Government Code is amended to read:

66770.5. (a) The board shall adopt, not later than January 1, 1981, performance standards as an alternative to state minimum standards requiring periodic cover.

(b) In order to protect the public health and the environment, the performance standards, referred to in subdivision (a), shall, at a minimum, address the control of vectors, odor, fire, litter, and moisture infiltration at solid waste disposal sites.

(c) The enforcement agency may elect to apply either the state minimum standard requiring periodic cover or the performance standards, described in subdivision (b), to solid waste disposal sites within its jurisdiction. Not later than 30 days prior to implementation of either performance standards or state minimum standards requiring periodic cover, the enforcement agency shall notify the board of the election.

(d) No collection vehicle shall be required to travel on the active face of a disposal site.

(e) This section does not prohibit the board from taking any enforcement action for which it is granted authority under this title.

(f) This section shall only apply to those solid waste disposal sites for which, as of January 1, 1983, the enforcement agency has elected to apply the performance standards authorized by this section.

(g) This section shall remain in effect only until January 1, 1984, and as of such date is repealed, unless a later enacted statute, which is chaptered before January 1, 1984, deletes or extends such date.

SEC. 2. Section 66796 of the Government Code is amended to read:

66796. On or before July 1, 1977, there shall be designated within each county an enforcement agency to carry out the provisions of this chapter. If an agency is not designated, the board, in addition to its other powers, shall be the enforcement agency within the county

failing to make the designation.

(a) The designation of the enforcement agency shall be made by any one of the following procedures:

(1) The board of supervisors of the county may designate the enforcement agency subject to the approval by a majority of the cities within the county which contain a majority of the population of the incorporated area of the county.

(2) The county and the cities within the county may enter into a joint exercise of powers agreement pursuant to Section 6500 of the Government Code for the purpose of establishing an enforcement agency.

(3) The county and each city within the county may designate an enforcement agency to carry out the provisions of this chapter. In the case of a city and county, the city and county shall designate the enforcement agency.

(b) No enforcement agency designated on or after January 1, 1983, may exercise the powers and duties of an enforcement agency until the designation is approved by the board. The board shall approve each designation unless it finds that the designated enforcement agency is not capable of fulfilling its responsibilities under the enforcement program or under the provisions of Section 66796.10 or 66796.39.

(c) If no enforcement agency is designated and the board becomes the enforcement agency, nothing in this chapter shall prevent a designation of an enforcement agency under subdivision (a) at a later date.

(d) A designation made pursuant to this section may be withdrawn in the same manner in which it was made.

(e) No local governmental department or agency which is the operating unit for a solid waste handling or disposal operation shall be the enforcement agency for the type of solid waste handling or disposal operation it conducts. A waiver to this requirement may be granted by the board upon submission of details by the local entity requesting such waiver. The board may review annually effects of the waiver.

(f) Notwithstanding any provision of law to the contrary, except as provided in Chapter 6.5 (commencing with Section 25100) of Division 20 of the Health and Safety Code and Section 731 of the Code of Civil Procedure, no local governing body acting in the capacity of an enforcement agency may enact, issue, enforce, suspend, revoke, or modify any ordinance, regulation, law, license, or permit relating to a facility that accepts both hazardous wastes and other solid wastes, such as municipal refuse, and which meets any of the criteria enumerated in subdivision (a) of Section 25148 of the Health and Safety Code, and was operating as of May 1, 1981, pursuant to a valid solid waste facility permit, so as to prohibit or unreasonably regulate the operation of, or the disposal, treatment, or recovery of resources from solid wastes at any such facility. However, nothing in this section shall authorize an operator of such a facility

to violate any term or condition of a local land use or facility permit or any other provision of law not in conflict with this section.

SEC. 3. Section 66796.20 of the Government Code is amended to read:

66796.20. The enforcement agency may, upon a majority vote of its local governing body, prescribe, revise, and collect fees or other charges from each operator of a solid waste facility or from any person who conducts solid waste handling. The fee or other charge shall be based on either the weight, volume, or type of solid waste which is received or handled by any such operator or person or on any other appropriate basis or any combination of the foregoing. In no case shall the fee or other charge imposed by the enforcement agency under this section exceed the actual cost of the solid waste enforcement authorized under this title. The local governing body having rate-setting authority shall grant the private operator adequate compensation for additional costs incurred pursuant to this section through necessary rate adjustments if it is determined to be justified by the local governing body.

SEC. 4. Section 66796.21 of the Government Code is amended to read:

66796.21. (a) The board shall review the proposed designation and the enforcement program and shall obtain the recommendation of the State Department of Health Services regarding the proposed designation of the enforcement agency and its enforcement program. The board shall consider the recommendation in determining its approval of the designation and its acceptance of the enforcement program.

(b) The board shall periodically review the enforcement agency and its implementation of the enforcement program. If the board finds that an agency is not consistently fulfilling its responsibilities under the enforcement program or under the provisions of Section 66796.10 or 66796.39, the board shall notify the enforcement agency of the particular reasons for finding that the enforcement agency is not fulfilling its responsibilities and of the board's intention to withdraw its approval of the designation if, within a time to be specified in that notification, but in no event less than 30 days, the enforcement agency does not take the corrective action specified by the board.

(c) If the board withdraws its approval of the designation of an enforcement agency, another enforcement agency shall be designated pursuant to subdivision (a) of Section 66796 within 90 days and approved by the board pursuant to subdivision (b) of Section 66796. If no designation is made within 90 days, the board shall become the enforcement agency within the jurisdiction of the enforcement agency until such time as the designated agency can demonstrate to the board that it can fulfill its responsibilities under the enforcement program or under Section 66796.10 or another agency is designated as the enforcement agency and the board approves the new designation.

SEC. 5. Section 66796.33 of the Government Code is amended to read:

66796.33. (a) When issuing, modifying, or revising any solid waste facilities permit, the enforcement agency shall ensure that primary consideration is given to preventing environmental damage and that the long-term protection of the environment is the guiding criteria. To achieve these purposes, the enforcement agency may prohibit or condition the handling or disposal of solid waste to protect, rehabilitate, or enhance the environmental quality of the state or to mitigate adverse environmental impacts. If an operator holds a permit issued under subdivision (a) of Section 66796.30, the permit shall control, and no condition imposed under this section shall be more restrictive than the terms of the permit issued under subdivision (a) of Section 66796.30.

(b) The enforcement agency may include in a solid waste facilities permit a reasonable time schedule for existing facilities for compliance with the standards adopted by the board and standards and conditions contained in the approved county solid waste management plan.

(c) Any permit may be suspended, modified, or revoked by the enforcement agency after a hearing for cause including, but not limited to, any of the following:

(1) Intentional or negligent violation of any term or condition contained in the permit.

(2) Obtaining the permit by misrepresentation, or failure to disclose fully all relevant facts.

(3) Failure to fulfill the terms of a compliance schedule developed pursuant to Section 66796.39.

(d) Any solid waste facilities permit issued, modified, or revised under this chapter shall be reviewed and, if necessary, revised at least every five years.

SEC. 6. Section 66796.35 of the Government Code is amended to read:

66796.35. (a) An enforcement agency or the board, in issuing or reviewing any solid waste facilities permit or in connection with any action relating thereto or authorized by this title, may investigate the operation by any person of a transfer/processing station, or disposal site, collection or handling equipment, or storage area for solid wastes within its jurisdiction.

(b) In such an investigation, the enforcement agency or the board may require that any person who is or proposes to become an operator of a transfer/processing station, disposal site, collection or handling equipment, or storage area for solid wastes within its jurisdiction, shall furnish, under penalty of perjury, such technical or monitoring program reports or other reports as the enforcement agency may specify.

(c) In such an investigation, the enforcement agency or the board may inspect the facility, equipment, or vehicle used for storage, collection, transportation, processing, or disposal of solid waste, as

necessary to ensure compliance with this title and to determine that solid waste facilities permits are being complied with. The inspection shall be made with the consent of the owner or possessor of the facilities or, if consent is refused, with a warrant duly issued pursuant to the procedure set forth in Title 13 (commencing with Section 1822.50) of Part 3 of the Code of Civil Procedure; provided, however, that in the event of an emergency affecting the public health or safety an inspection may be made without consent or the issuance of a warrant.

SEC. 7. Section 66796.38 is added to the Government Code, to read:

66796.38. (a) The board shall maintain an inventory of solid waste facilities which violate state minimum standards. To the extent it is practicable to do so, the board shall incorporate in this inventory existing information collected in the course of previous surveys of this type and similar information made available to the board by enforcement agencies. Whenever a solid waste facility is proposed to be included in the inventory, the board shall give notice thereof by certified mail to the affected enforcement agency, the disposal site owner, and the operator of the solid waste facility. If, within 90 days of that notice, the violation has not been corrected, the solid waste facility shall be included in the inventory. The board shall update and publish the inventory twice annually.

(b) The board shall maintain a file of all permitted solid waste facilities and shall inspect at least 50 percent of the permitted solid waste facilities that receive more than 100 tons of solid waste per day and at least 25 percent of all other permitted solid waste facilities every two years.

(c) Enforcement agencies, in cooperation with the board, shall also investigate illegal, abandoned, or closed solid waste disposal sites to assure that public health and safety and the environment are adequately protected.

(d) The board shall not conduct any inspections or make any investigations, as provided in this section, in any fiscal year in which funding for those purposes is not specifically appropriated by the Legislature.

SEC. 8. Section 66796.39 is added to the Government Code, to read:

66796.39. The enforcement agency shall develop a compliance schedule for a solid waste facility included in the inventory prepared pursuant to Section 66796.38. The compliance schedule shall assure that diligent progress will be made to bring the solid waste facility into compliance with state minimum standards within one year of the date on which actual notice is received that the solid waste facility was included in the inventory. If the solid waste facility is not in compliance within that period, the enforcement agency shall revoke the operating permit of the solid waste facility until such time as violations of state minimum standards are remedied. If a closed or abandoned disposal site is not in compliance within the one-year

period, the unremedied condition is prima facie evidence of negligence; and, in any action for damages against the owner of the property for injury caused by the unremedied condition, the burden of proving that the injury was not caused by the unremedied condition shall be on the owner of the property. The enforcement agency may recover any costs incurred pursuant to this section by charging the fee authorized by Section 66796.20.

This section shall remain in effect only until January 1, 1989, and as of that date is repealed, unless a later enacted statute, which is chaptered before January 1, 1989, deletes or extends that date.

SEC. 9. No appropriation is made and no reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution or Section 2231 or 2234 of the Revenue and Taxation Code because the local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the program or level of service mandated by this act.

CHAPTER 1370

An act to add and repeal Article 4.7 (commencing with Section 14148) of Chapter 7 of Part 3 of Division 9 of the Welfare and Institutions Code, relating to Medi-Cal.

[Approved by Governor September 23, 1982. Filed with Secretary of State September 24, 1982.]

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

SECTION 1. Article 4.7 (commencing with Section 14148) is added to Chapter 7 of Part 3 of Division 9 of the Welfare and Institutions Code, to read:

Article 4.7. Pilot Project for Temporo Mandibular Joint Syndrome

14148. There is hereby established in San Diego County a pilot project for the treatment of temporo mandibular joint syndrome.

14148.1. The pilot project shall be administered by an advisory board which shall consist of five members to be selected in the following manner:

(1) One physician shall be appointed by the Speaker of the Assembly, and one physician shall be appointed by the Senate Rules Committee.

(2) One dentist shall be appointed by the Speaker of the Assembly, and one dentist shall be appointed by the Senate Rules Committee.

(3) The director shall serve on the advisory board or appoint a designee to serve on the board.

14148.2. The advisory board shall select 50 persons residing in San Diego County eligible to receive services under this chapter who have medical problems which can be treated by treatment for temporo mandibular joint syndrome. Twenty-five of the selected recipients shall be treated by conventional means, with the other 25 receiving treatment for temporo mandibular joint syndrome. Recipients shall receive treatment pursuant to this section for a period of two years.

14148.3. Treatment for temporo mandibular joint syndrome performed pursuant to Section 14148.2 shall not utilize surgical procedures.

14148.4. No later than July 1, 1985, the advisory board shall submit a report to the department and to the Legislature upon the effectiveness of this pilot project. The report shall analyze the comparative results between those recipients treated by conventional means and those treated for temporo mandibular joint syndrome. The report shall also compare the cost of treatment, and the amount of treatment which is necessary for both groups of recipients.

14148.5. Any increased costs created due to the provisions of this article shall be paid from funds appropriated for the Medi-Cal program pursuant to the Budget Act.

14148.6. This article shall remain in effect only until July 1, 1985, and on that date is repealed, unless a later enacted statute chaptered prior to that date extends or deletes that date.

CHAPTER 1371

An act to add Section 14136.3 to the Welfare and Institutions Code, relating to Medi-Cal.

[Approved by Governor September 23, 1982. Filed with Secretary of State September 24, 1982.]

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

SECTION 1. Section 14136.3 is added to the Welfare and Institutions Code, to read:

14136.3. No prior authorization shall be necessary for the provision of nonemergency medical transportation services to Medi-Cal beneficiaries when the beneficiary is being transported from an acute care hospital following a stay as an inpatient to a skilled nursing facility or an intermediate care facility licensed pursuant to Section 1250 of the Health and Safety Code.

CHAPTER 1372

An act to add Section 14136.4 to the Welfare and Institutions Code, relating to Medi-Cal.

[Approved by Governor September 23, 1982. Filed with Secretary of State September 24, 1982.]

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

SECTION 1. Section 14136.4 is added to the Welfare and Institutions Code, to read:

14136.4. A written treatment authorization request for nonemergency medical transportation services for which a department employed medical consultant had provided conditional prior authorization to the provider of services via telephone, shall not be denied by the Medi-Cal field office when the written treatment authorization request subsequently submitted by the provider substantiates the medical information given with the earlier verbal request, so long as the beneficiary was eligible to receive such services.

CHAPTER 1373

An act to add Division 25.1 (commencing with Section 38050) to the Health and Safety Code, relating to health and welfare.

[Approved by Governor September 23, 1982. Filed with Secretary of State September 24, 1982.]

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

SECTION 1. Division 25.1 (commencing with Section 38050) is added to the Health and Safety Code, to read:

DIVISION 25.1. HEALTH AND WELFARE AGENCY—ADMINISTRATIVE APPEALS PROCESS FOR NONPROFIT HUMAN SERVICES AGENCIES

CHAPTER 1. LEGISLATIVE INTENT AND POLICY

38050. The Legislature hereby finds that in a contractual relationship between the Health and Welfare Agency, its component departments, and private, nonprofit human service organizations:

(a) Problems arise under cooperative agreements that end in disputes.

(b) The intent between the disputing parties is to resolve their controversy through an informal dispute process. The parties should

set a goal of no more than 60 days from receipt of a complaint to resolution.

(c) If the parties reach an impasse, then there should be a logical intermediate appeal authority as the next level in the appeal process.

(d) In California, there exists no process between informal dispute resolution and judicial review that is available to and can properly address controversies between the Health and Welfare Agency and human service organizations.

CHAPTER 2. APPEAL AUTHORITY

38055. A formal administrative appeal process shall be established and made available to all private, nonprofit human service organizations seeking resolution of any dispute arising out of a direct service contract with the Health and Welfare Agency or a component department of the agency, except as provided in Section 38030 of the Health and Safety Code.

This division shall not apply to contracts entered into pursuant to Chapter 7 (commencing with Section 14000) or Chapter 8 (commencing with Section 14200) of Part 3 of Division 9 of the Welfare and Institutions Code.

38056. Notwithstanding any other statutes to the contrary, this division shall prevail.

38057. The appeal authority shall be the Office of Administrative Hearings in the Department of General Services. The office is hereby charged with the responsibility to administer and conduct hearings, and to render proposed decisions about the matter in dispute.

The appeal authority may delay or set aside a state agency or departmental action related to the appeal.

The appeal authority shall provide flexibility in the appeal process, providing a range of review from the most formal to a level acceptable to both parties.

An appeal pursuant to this division shall not be considered by the appeal authority until the direct service contractor has attempted to resolve the dispute through the grievance procedure established in accordance with Section 38036 of the Health and Safety Code. If the department or agency has failed to establish such a procedure, the appeal authority shall assume immediate jurisdiction over the dispute.

CHAPTER 3. ADMINISTRATIVE APPEAL PROCESS

38060. An administrative appeal process means a process established by a state agency or department which allows a nonprofit human service agency to seek review and resolution of some complaint about a specific action or inaction of a state agency.

The hearings held pursuant to this division shall be conducted using current procedures presently established by the office.

If the dispute is brought pursuant to subdivisions (d) through (g) of Section 38061 and it involves a sum of money more than ten thousand dollars ($10,000), the appeal authority, taking into account the cash flow problems of the parties, may require the party holding the disputed funds to place the amount under dispute in a special deposit fund to earn and be paid interest with such earnings to be distributed to the party who succeeds upon appeal. If the amount is less than ten thousand dollars ($10,000), it may be placed in such a special deposit fund with the approval of both parties.

The appeal process shall include flexibility to modify procedures to accommodate the particular needs of a given case.

The state's portion of the cost of the appeal process shall be borne by the state agency or department which shall not include internal operating expenses of the Office of Administrative Hearings.

38061. An appeal may be taken under the following circumstances.

(a) Denial of a local contracting agency's application for funding.

(b) Denial of a local contracting agency's application for expansion or startup funding.

(c) Termination of a direct service contract.

(d) Suspension of a direct service contract.

(e) Denial of all or part of a direct service payment for services schedule.

(f) Demand for remittance of an overpayment.

(g) When allegations are asserted which, if true, would constitute a violation of a contract provision, or of federal or state law, regulations, or guidelines.

Decisions made pursuant to subdivisions (a) and (b) shall be limited to a determination as to the procedural propriety of the decisionmaking process, including the reason stated in the decision.

CHAPTER 4. IMPLEMENTATION OF ADMINISTRATIVE APPEAL PROCESS

38065. The Office of Administrative Hearings shall, by December 31, 1983, adopt regulations governing the hearings, which shall include all the following:

(a) Deadlines for filing petitions, commencing hearings and rendering decisions.

(b) Notice to affected parties.

(c) Hearings shall be conducted at the offices of the Office of Administrative Hearings in Los Angeles, Sacramento or San Francisco.

(d) Any other issues deemed appropriate by the Office of Administrative Hearings.

SEC. 2. It is the intent of the Legislature that funding for the costs of implementing Section 3 of this act by the Health and Welfare Agency and the Office of Administrative Hearings shall be provided through the regular budget process.

CHAPTER 1374

An act to add Article 3.5 (commencing with Section 15340) to Chapter 1 of Part 6.7 of Division 3 of the Government Code, and to amend Section 1274.3 of the Unemployment Insurance Code, relating to unemployment insurance.

[Approved by Governor September 23, 1982. Filed with Secretary of State September 24, 1982.]

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

SECTION 1. Article 3.5 (commencing with Section 15340) is added to Chapter 1 of Part 6.7 of Division 3 of the Government Code, to read:

Article 3.5. The California Economic Adjustment Team

15340. The Legislature declares the following:

(a) The state must meet the competitive challenges of the 1980's and provide sufficient employment opportunities for its population, and the mature sectors of the state's industrial base must be revitalized.

(b) In some instances, the revitalization process has and will continue to entail the closure of some plants and the attendant severe economic dislocations for displaced workers, their families, and the communities.

(c) The state has an obligation to its citizens to adopt policies which not only help alleviate the unemployment and economic distress of major plant closings, but which also promote a healthy business climate in order to facilitate the creation of new jobs to replace those lost to plant closings in the mature sectors of the economy.

(d) There is a need to assure that this assistance from the state is available on a systematic and coordinated basis and that workers, firms, and communities know of its availability.

(e) The availability of this assistance from the state can serve as an incentive for early notification to workers, local governments, and the state regarding anticipated plant closures or mass layoffs well in advance of their occurrence in order that special assistance may be offered to avert unnecessary closings or to prevent severe economic dislocation.

15341. There is hereby established in state government the California Economic Adjustment Team, which shall consist of six members. The members are the Director of the Department of Economic and Business Development, who shall serve as chairperson, the Director of the Employment Development Department, the Director of the Department of Industrial Relations, the Director of the Office of Planning and Research, the State

Superintendent of Public Instruction, and the Chancellor of the California Community Colleges.

15342. The responsibilities of the California Economic Adjustment Team shall include, but not be limited to, the following:

(a) Alleviating adverse conditions that might cause plant closures and, where these closures have been unavoidable, assisting local efforts to secure alternative employment and retraining opportunities for displaced workers.

(b) Seeking the participation and advice of individuals representative of local government, business, and labor in fulfilling its responsibilities. The advice of these knowledgeable community leaders shall be drawn upon to assure effective assistance by the state responsive to particular community needs and circumstances.

(c) Assisting, upon the request of local communities, in marshalling available state and federal resources to aid workers and communities affected by major plant closures and to foster long-term, continuing economic vitality, industrial growth, and job opportunities.

(d) Overseeing the collection of data and preparation of economic analyses and reporting intended to provide better and more detailed assessments of future trends within the industrial, commerical, and agricultural sectors of the economy.

(e) Studying and making recommendations to the Governor and the Legislature regarding changes needed in current federal and state statutes and programs in order to minimize harmful consequences of plant closures and promote rapid reemployment of workers and revitalization of communities.

(f) Cooperating with all other state, federal and local agencies, departments, and commissions as is necessary to carry out its responsibilities.

SEC. 2. Section 1274.3 of the Unemployment Insurance Code is amended to read:

1274.3. A determination of potential eligibility for benefits under this article shall be issued to an unemployed individual if the director finds that:

(a) The individual has been unemployed for four or more continuous weeks, or the individual is unemployed and unlikely to return to his or her most recent workplace because work opportunities in the individual's job classification are impaired by a plant closure or a substantial reduction in employment at the individual's most recent workplace, or by advancement in technological improvements, the effects of automation and relocation in the economy, and foreign competition as set forth in petitions certified under the federal Trade Act of 1974, as amended (Title 19, United States Code, Sections 2101 et seq.).

(b) One of the substantial causes of the individual's continuous unemployment is a lack of sufficient demand in the individual's labor market area for the occupational skills for which the individual is fitted by training and experience and that the lack of employment

opportunities is expected to continue for an extended period of time, or, if the individual's occupation is one for which there is a seasonable variation in demand in the labor market, that the lack of demand for the individual's skills is the result of a decline in demand, expected to continue for an extended period of time and is not the result of a seasonal fluctuation.

(c) The training or retraining course of instruction relates to an occupation or skill for which there are, or are expected to be in the immediate future, reasonable employment opportunities in the labor market area in this state in which the individual intends to seek work and there is not a substantial surplus of workers with requisite skills in the occupation in that area.

(d) The training or retraining course of instruction is one approved by the director and can be completed within one year.

(e) The training or retraining course is prescribed for the primary purpose of training the applicant in skills that will allow him or her to obtain immediate employment in a demand occupation and is not primarily intended to meet the requirements of any degree from a college, community college, or university.

(f) The individual can be reasonably expected to complete the training or retraining successfully.

SEC. 3. Notwithstanding Section 6 of Article XIII B of the California Constitution and Section 2231 or 2234 of the Revenue and Taxation Code, no appropriation is made by this act for the purpose of making reimbursement pursuant to these sections. It is recognized, however, that a local agency or school district may pursue any remedies to obtain reimbursement available to it under Chapter 3 (commencing with Section 2201) of Part 4 of Division 1 of that code.

CHAPTER 1375

An act to add Section 21085 to the Public Resources Code, relating to environmental quality.

[Approved by Governor September 23, 1982. Filed with Secretary of State September 24, 1982.]

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

SECTION 1. Section 21085 is added to the Public Resources Code, to read:

21085. With respect to a project which includes housing development, a public agency shall not, pursuant to this division, reduce the proposed number of housing units as a mitigation measure or project alternative for a particular significant effect on the environment if it determines that there is another feasible specific mitigation measure or project alternative that would provide

a comparable level of mitigation. This section shall not affect any other requirement regarding the residential density of that project.

SEC. 2. Notwithstanding Section 2231.5 of the Revenue and Taxation Code, this act does not contain a repealer, as required by that section; therefore, the provisions of this act shall remain in effect unless and until they are amended or repealed by a later enacted act.

SEC. 3. Notwithstanding Section 6 of Article XIII B of the California Constitution and Section 2231 or 2234 of the Revenue and Taxation Code, no appropriation is made by this act for the purpose of making reimbursement pursuant to these sections. It is recognized, however, that a local agency or school district may pursue any remedies to obtain reimbursement available to it under Chapter 3 (commencing with Section 2201) of Part 4 of Division 1 of that code.

CHAPTER 1376

An act to amend Sections 1269d and 1297 of, and to add and repeal Sections 1318.6 and 1318.8 to the Penal Code, relating to release of defendants, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 23, 1982. Filed with Secretary of State September 24, 1982.]

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

SECTION 1. Section 1269d of the Penal Code is amended to read:

1269d. (a) (1) If a defendant is arrested for or charged with a misdemeanor, he or she shall be released from custody upon deposit of a sum of money which is 10 percent of the amount of bail which has been fixed for the offense pursuant to Section 1269b and upon execution of a release agreement and an appearance bond as set forth in this section.

(2) Any person who has the authority to approve and accept the full amount of bail as provided for in Section 1269b shall also have the authority to approve and accept 10 percent of the amount of bail pursuant to this section and to issue and sign an order for the release of the defendant, and to set the time and place for the appearance of the defendant before the appropriate court and give notice thereof. At the time the deposit is made, the defendant shall execute a release agreement containing the conditions set forth in Section 1318 and shall execute an appearance bond whereby the defendant promises that should he or she willfully fail to appear before any court or magistrate as required, the defendant shall pay the treasurer of the county in which the defendant was ordered to appear the full amount of the bail set in the case.

(b) Upon depositing the sum and executing the release

agreement and the appearance bond as set forth in subdivision (a), the defendant shall be discharged from custody as to the offense for which the deposit is posted.

(c) If a defendant is charged with a misdemeanor, the court or magistrate in addition to or in lieu of any other methods of release authorized pursuant to this chapter, other than a release upon own recognizance, may require the defendant to agree to any or all of the following conditions when the defendant is personally before the court and the court finds that the imposition of a condition or conditions is necessary to assure the defendant's appearance in court:

(1) Require the defendant to report at reasonable intervals to a person designated by the court, who shall inform the court if the defendant does not report as ordered.

(2) Require the defendant to notify the court if he or she changes his or her place of residence.

(3) Require the defendant to secure the permission of the court before leaving the state.

(4) Require the defendant to submit the name and address of his or her employer, or any change thereof, to the court.

(d) When a defendant has deposited a sum of money with the clerk of the court as required under subdivision (a), and has properly made all appearances as required by the court and thereafter is released from any further obligation to appear before any court having jurisdiction over the case, the clerk of the court shall retain and deposit in the county general fund 10 percent of the deposit or ten dollars ($10), whichever is greater, and shall return the remainder of the deposit to the defendant.

(e) If a defendant who is released under the provisions of this section fails to appear as required, the court before which the defendant was ordered to appear shall forfeit the deposit posted. If the amount of the deposit exceeds one hundred dollars ($100), notice of such order of forfeiture shall be mailed forthwith by the clerk of the court to the last known address of the defendant. If the defendant does not appear and surrender to the court having jurisdiction within 90 days of the date of the forfeiture or within such period satisfy to the court that appearance and surrender by the defendant is impossible and without the fault of the defendant, the court may enter judgment for the full amount of the bail previously established at the time of release, and shall send notice of the entry of such judgment to the last known address of the defendant. The deposit shall be applied to the payment of costs. If any amount of such deposit remains after payment of costs, it shall be applied to payment of the judgment and transferred to the treasury of the county wherein the deposit was taken. The balance of the judgment may be enforced and collected in the same manner as a judgment entered in a civil action.

(f) This section shall not apply to any offense where the bail set is one hundred fifty dollars ($150) or less.

(g) Except by order of the court or magistrate, this section shall

not apply to a defendant in a proceeding who has failed to appear as required by law in such proceeding and for whom a warrant of arrest has been issued pursuant to Section 978.5 of this code or Section 40508 of the Vehicle Code.

The court or magistrate shall state on the warrant of arrest whether, when arrested, the defendant shall be entitled to release upon a 10 percent deposit or shall be entitled to release only upon posting of the full amount of bail stated on the warrant in either cash or surety bond.

(h) Except by order of the court or magistrate this section shall not apply to a defendant or arrestee who does not provide satisfactory evidence of personal identification.

(i) The Judicial Council shall prescribe a uniform statewide release agreement form, a uniform statewide appearance bond form, and a uniform deposit receipt form.

SEC. 2. Section 1297 of the Penal Code is amended to read:

1297. When money has been deposited, a receipt shall be issued in the name of the depositor. If the money remains on deposit at the time of a judgment for the payment of a fine, the clerk shall, under the direction of the court, if the defendant is the depositor, apply the money in satisfaction thereof, and after satisfying the fine and costs, shall refund the surplus, if any, to the defendant. If the person to whom the receipt for the deposit was issued was not the defendant, the deposit after judgment shall be returned to him within 10 days after he claims it by submitting the receipt, and, if a claim is not made within 10 days of the exoneration of bail, the clerk shall immediately notify the depositor of the exoneration of bail.

SEC. 3. Section 1318.6 is added to the Penal Code, to read:

1318.6. After a defendant has been released on his or her own recognizance, the court in which the charge is pending may require that the defendant either give bail in an amount specified by it or other security as provided elsewhere in this chapter upon a finding, made in open court that the defendant has failed to appear or has violated any condition of the order releasing him or her on his or her own recognizance, or that there has been a change of circumstances which increases the risk of failure to appear, or that additional facts have been presented which were not shown at the time of the original order releasing the defendant on his or her own recognizance. The court may order that the defendant be committed to actual custody unless he or she gives such bail or gives such other security.

SEC. 4. Section 1318.8 is added to the Penal Code, to read:

1318.8. The court to which the committing magistrate returns the depositions, or in which an indictment, information, or appeal is pending, or to which a judgment on appeal is remitted to be carried into effect, may, by an order entered upon its minutes, direct the arrest of any defendant who has been released upon his or her own recognizance and his or her commitment to the officer to whose custody he or she was committed at the time of release, and his or

her detention until legally discharged, in the following cases:

(a) When he or she has failed to appear as he or she agreed.

(b) When he or she was required to give bail or other security as provided in Section 1318.6 and has failed to do so.

(c) Upon an indictment being found or information filed in the cases provided in Section 985.

SEC. 5. The portions of Sections 1 and 2 of this act which relate to eligibility for a 10-percent deposit release are declaratory of existing law. It was the intent of the Legislature in enacting Chapter 873 of the Statutes of 1979 that 10 percent deposit in lieu of other forms of release authorized by that chapter be available to any defendant held in custody for a misdemeanor.

SEC. 6. Nothing in this act or in Chapter 873 of Statutes of 1979 shall be construed to affect any existing authority of law enforcement to detain an arrestee for the purposes of determining whether any wants, warrants or holds are outstanding.

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:

Provisions of law were inadvertently repealed which could result in the public safety being jeopardized unless this bill takes effect immediately.

SEC. 8. This act shall remain in effect until December 31, 1985.

CHAPTER 1377

An act to add Section 50740.1 to, and to add and repeal Chapter 5 (commencing with Section 50250) of Part 1 of Division 31 of, the Health and Safety Code, relating to housing, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 23, 1982. Filed with Secretary of State September 24, 1982.]

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

SECTION 1. Chapter 5 (commencing with Section 50250) is added to Part 1 of Division 31 of the Health and Safety Code, to read:

CHAPTER 5. HOME EQUITY PROTECTION

50250. (a) The Legislature finds that between 1969 and 1979 parcels of residential property located in south central Los Angeles were sold to satisfy claims by bondholders under the Improvement Act of 1911 (Division 7 (commencing with Section 5000) of the Streets and Highways Code).

(b) The Legislature also finds that because of unconstitutionally unclear language appearing on notices of delinquency, payment due, application for a deed, and certification of sale, pursuant to the Improvement Act of 1911, prior to January 1, 1980, as found by the Court of Appeal in Atkins v. Kessler, 97 Cal. App. 3d 784, unsuspecting homeowners may have lost their homes due to failure to pay the assessments owed, plus penalties and fees, as required by the act.

(c) The Legislature hereby declares that it serves a public purpose, and is of benefit to the state, to indemnify those needy residents of the State of California who, without adequate knowledge, lost their house due to a sale as a result of a lien acquired under the Improvement Act of 1911, prior to January 1, 1979.

50251. "Qualified homeowner," as used in this chapter, means any owner-occupant of residential property who, without knowledge or due to a lack of understanding, had his or her single-family residence sold as a result of a lien acquired under the Improvement Act of 1911 and who meets all of the following qualifications:

(a) The foreclosure sale occurred in the 10-year period between January 1, 1969, and January 1, 1979.

(b) The owner-occupant declares under oath that he or she had no actual knowledge or understanding of the sale of their residential property on or before the date of sale.

(c) The person was the owner of the property upon the date of foreclosure sale.

50252. (a) The State Board of Control shall supply and make available an application form for the purpose of allowing qualified homeowners to file a claim under this chapter. On receiving an application form that makes a claim for reimbursement under this chapter for lost equity in a single-family residential dwelling, the board shall consider the application at a hearing at a time and place of its choosing, and shall mail notices thereof to interested persons or agencies.

(b) At the hearing, agencies in the city or county where the property is located, the claimant, and other interested persons or agencies shall provide evidence to the board showing the following:

(1) The amount of equity the claimant had in the single-family residential dwelling at the time of loss of possession.

(2) The extent that the claimant was not compensated for his or her equity in the property from any other sources.

(3) How the claimant is a qualified homeowner under Section 50251.

(4) Other facts and information as the board may require.

(c) If the board determines, on the basis of a preponderance of the evidence, that the claimant is a qualified homeowner, it shall approve the claim for payment of the uncompensated lost equity in the property at the time of the loss of possession. However, no payment for any claim shall exceed twenty thousand dollars ($20,000).

(d) In addition to any claim approved under this chapter, the board may award as attorney's fees an amount representing the reasonable value of legal services rendered a claimant, but in no event shall an award of attorney's fees exceed 10 percent of the amount of the claim approved. No attorney shall charge, demand, receive, or collect for services rendered in connection with any proceedings under this chapter any amount other than that awarded as attorney's fees under this section.

50253. (a) Payment of claims approved pursuant to this chapter shall be made only from funds in the State Home Retention Account established in the Rental Housing Construction Fund pursuant to Section 50740.1.

(b) The priority for the use of moneys in the State Home Retention Account shall be as follows:

(1) Payment of administrative costs to local and state governmental agencies.

(2) Payment of approved claims of qualified homeowners.

50254. Any person shall have until December 31, 1984, to present a claim to the State Board of Control for reimbursement under this chapter.

50255. The qualified homeowner, after entering into a grant agreement with the State Board of Control, may use financial assistance received under this chapter only for any of the following purposes:

(a) Legal costs to recover the property, if recovery is otherwise permitted by law.

(b) Downpayment for a new home.

(c) Rental assistance.

50256. Notwithstanding any other provision of law, qualified homeowners who have a claim approved by the State Board of Control shall also be eligible under all state laws for first time homeowners' assistance in the purchase of a residential dwelling.

50257. The receipt of financial assistance under this chapter shall not affect a person's eligibility for public assistance for a period of nine months following receipt of the financial assistance.

50258. The State Board of Control may adopt rules and regulations necessary to carry out the purposes of this chapter. A rule or regulation, pursuant to Section 11346.1 of the Government Code, adopted by the board under this section shall be deemed an emergency regulation if so designated by the board.

50259. This chapter shall remain in effect only until January 1, 1986, and as of that date is repealed, unless a later enacted statute, which is chaptered before January 1, 1986, deletes or extends that date.

SEC. 2. Section 50740.1 is added to the Health and Safety Code, to read:

50740.1. (a) The State Home Retention Account is hereby created in the Rental Housing Construction Fund. Of the money from the fund utilized by the agency for development costs which

becomes available for encumbrance between June 30, 1982, and December 31, 1982, the sum of three hundred thousand dollars ($300,000) shall be transfered to and deposited in the account for payment of claims approved by the State Board of Control pursuant to Chapter 5 (commencing with Section 50250) of Part 1 until June 30, 1985.

(b) Notwithstanding Section 13340 of the Government Code, the money in the account is hereby continuously appropriated to the Department of Housing and Community Development for carrying out the purposes of subdivision (a), except that all interest or other increment resulting from investment or deposit of moneys in the account shall be deposited in the fund, notwithstanding Section 16305.7 of the Government Code. Money in the account shall not be subject to transfer to any other fund pursuant to any provision of Part 2 (commencing with Section 16300) of Division 4 of Title 2 of the Government Code, except to the Surplus Money Investment Fund. On June 30, 1985, or sooner if all claims filed with the State Board of Control by December 31, 1984, which have been reviewed and approved, are paid, the account shall cease to exist and all moneys in the account shall be transferred to the fund.

(c) If Senate Bill 1763 or Senate Bill 1829 of the 1981–82 Regular Session of the Legislature is chaptered, or both are chaptered, the moneys in the fund shall be allocated to the State Home Retention Account after allocation of the moneys set aside by paragraph 1 of subdivision (b) of Section 50740, but prior to allocation of moneys pursuant to paragraph 2 of subdivision (b) of Section 50740.

SEC. 3. Notwithstanding Section 6 of Article XIII B of the California Constitution and Section 2231 or 2234 of the Revenue and Taxation Code, no appropriation is made by this act for the purpose of making reimbursement pursuant to these sections. It is recognized, however, that a local agency or school district may pursue any remedies to obtain reimbursement available to it under Chapter 3 (commencing with Section 2201) of Part 4 of Division 1 of that code.

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 protect equity interests during a time when housing is hard to find, it is necessary that this act take effect immediately.

CHAPTER 1378

An act to amend Sections 13959 and 13964 of the Government Code, relating to victims of crimes, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 23, 1982. Filed with Secretary of State September 24, 1982.]

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

SECTION 1. Section 13959 of the Government Code is amended to read:

13959. It is in the public interest to indemnify and assist in the rehabilitation of those residents of the State of California who as the direct result of a crime suffer a pecuniary loss.

SEC. 2. Section 13964 of the Government Code is amended to read:

13964. 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 incurred an injury which resulted in a pecuniary loss.

(a) 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 involvement in the events leading to the crime or the involvement of the persons whose injury or death give rise to the application.

(b) No victim shall be eligible for assistance under the provisions of this article if:

(1) The board finds that the victim or the person whose injury or death gave rise to the application knowingly and willingly participated in the commission of the crime; or

(2) The victim or the person whose injury or death gave rise to the application failed to cooperate with a law enforcement agency in the apprehension and conviction of a criminal committing the crime.

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 assure the speedy and proper indemnification of victims of violent crimes in California, it is necessary that this act go into immediate effect.

CHAPTER 1379

An act to amend Section 313 of the Penal Code, relating to harmful matter.

[Approved by Governor September 23, 1982. Filed with Secretary of State September 24, 1982.]

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

SECTION 1. Section 313 of the Penal Code is amended to read:

313. As used in this chapter:

(a) "Harmful matter" means matter, taken as a whole, the predominant appeal of which to the average person, applying contemporary standards, is to prurient interest, i.e., a shameful or morbid interest in nudity, sex, or excretion, and is patently offensive to the prevailing standards in the adult community as a whole with respect to what is suitable material for minors, and is utterly without redeeming social importance for minors.

(1) When it appears from the nature of the matter or the circumstances of its dissemination, distribution or exhibition that it is designed for clearly defined deviant sexual groups, the predominant appeal of the matter shall be judged with reference to its intended recipient group.

(2) In prosecutions under this chapter, where circumstances of production, presentation, sale, dissemination, distribution, or publicity indicate that matter is being commercially exploited by the defendant for the sake of its prurient appeal, such evidence is probative with respect to the nature of the matter and can justify the conclusion that the matter is utterly without redeeming social importance for minors.

(b) "Matter" means any book, magazine, newspaper, or other printed or written material or any picture, drawing, photograph, motion picture, or other pictorial representation or any statue or other figure, or any recording, transcription, or mechanical, chemical, or electrical reproduction or any other articles, equipment, machines, or materials.

(c) "Person" means any individual, partnership, firm, association, corporation, or other legal entity.

(d) "Distribute" means to transfer possession of, whether with or without consideration.

(e) "Knowingly" means being aware of the character of the matter.

(f) "Exhibit" means to show.

(g) "Minor" means any natural person under 18 years of age.

CHAPTER 1380

An act to amend Sections 12024, 12024.2, and 12709 of, to add Section 12024.3 to, to add and repeal Article 2.1 (commencing with Section 12240) of Chapter 2 of Division 5 of, and to repeal Sections 12708 and 12711 of, the Business and Professions Code, relating to weights and measures.

[Approved by Governor September 23, 1982. Filed with Secretary of State September 24, 1982.]

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

SECTION 1. Section 12024 of the Business and Professions Code is amended to read:

12024. Every person, who by himself or herself, or through or for another, sells any commodity in less quantity than he or she represents it to be is guilty of a misdemeanor, except as provided in Section 12024.3.

SEC. 2. Section 12024.2 of the Business and Professions Code is amended to read:

12024.2. (a) It shall be unlawful for any person to compute at the time of sale of a commodity a value which is not a true extension of a price per unit which at that time is advertised, posted, or quoted.

A violation of this subdivision shall constitute a misdemeanor, punishable by a fine of not less than twenty-five dollars ($25) nor more than one thousand dollars ($1,000), by imprisonment in the county jail for a period not exceeding one year, or by both, if the violation is willful or grossly negligent, or when the difference between the value actually computed and the total true value of the commodity offered for sale (pursuant to the advertised, posted, or quoted price per unit) is more than one dollar ($1) greater than the total true value of the commodity offered for sale, or if the defendant has been convicted of two or more violations of this section within the 12-month period immediately preceding the third offense and the prior convictions are admitted by the defendant or alleged in the accusatory pleading, and the court or issuing agency has notified the employer in writing upon a second conviction that any subsequent violation of this section is a misdemeanor. For this purpose, a bail forfeiture shall be deemed to be a conviction of the offense charged.

(b) A violation of this section shall constitute an infraction when the difference between the value actually computed and the total true value of the commodity offered for sale (pursuant to the advertised, posted or quoted price per unit) is not more than one dollar ($1) greater than the total true value of the commodity offered for sale. The violation shall be punishable by a fine of not more than fifty dollars ($50) for a first offense within the 12-month period immediately preceding the commission of the offense and a fine of not more than one hundred dollars ($100) for a second offense within the 12-month period immediately preceding the commission of the offense.

SEC. 3. Section 12024.3 is added to the Business and Professions Code, to read:

12024.3. (a) For commodities prepackaged and sold or offered for sale on the same premises, a violation of Section 12024 is a misdemeanor punishable by a fine of not less than fifty dollars ($50) nor more than one thousand dollars ($1,000), by imprisonment in the

county jail for a period not exceeding one year, or by both, if any of the following occurs:

(1) The violation is willful.

(2) The total monetary value of the shortage, calculated on the basis of the average error of an individual lot, exceeds two dollars ($2).

(3) The total monetary value of shortages, calculated on the basis of the average error of each individual lot, as determined from a sample of packages selected following regulations established pursuant to Section 12211, within all lots found to be in violation of Section 12024 at a single location, exceeds ten dollars ($10).

(4) The defendant has been convicted of two or more violations of this section within the 12-month period immediately preceding the third offense and the prior convictions are admitted by the defendant or alleged in the accusatory pleading, and the court or issuing agency has notified the employer in writing upon a second conviction that any subsequent violation of this section is a misdemeanor. For this purpose, a bail forfeiture or failure to respond shall be deemed to be a conviction of the offense charged.

(b) For commodities prepackaged and sold or offered for sale on the same premises, a violation of Section 12024 shall constitute an infraction, punishable by a fine of not more than fifty dollars ($50) for the first offense within the 12-month period immediately preceding the commission of the offense and by a fine of not more than one hundred dollars ($100) for a second offense within the 12-month period immediately preceding the commission of the offense, if the violation is of less monetary value than the criteria established in subdivision (a) and it is not willful.

SEC. 4. Article 2.1 (commencing with Section 12240) is added to Chapter 2 of Division 5 of the Business and Professions Code, to read:

Article 2.1. Fees and Charges

12240. The board of supervisors may, by ordinance, charge an annual device registration fee to recover the costs of inspecting or testing weighing and measuring devices required of the county sealer pursuant to Section 12210. The fee shall not exceed the county's total cost of actually inspecting or testing the devices, as required by law, or the amount prescribed in the table in subdivision (b) of Section 12241, except that the county may collect the fees biennially in which case they shall not exceed twice the amount of an annual fee. The ordinance shall be adopted pursuant to Article 7 (commencing with Section 25120) of Chapter 1 of Part 2 of Division 2 of Title 2 of the Government Code.

12241. (a) The Director of Food and Agriculture shall, after consulation with representatives of industry groups and local officers, develop a schedule which classifies the types of weighing and measuring devises shown in the table in subdivision (b). It is the intent of the Legislature that the weighing and measuring devises

shall include small retail scales, taxi meters, and other devices of similar size or difficulty in testing.

(b) Table of Maximum Annual Charges

Number of Devices	1 to 3	4 to 9	Over 9
Charge Per Location	$20	$40	$60

(c) The provisions of subdivisions (a) and (b) shall not apply to any retail scale used primarily for the purpose of weighing feed and seed or retail gasoline pump meters.

12242. The revenue from any fee charged pursuant to Section 12280 shall be placed in the general fund of the county and used solely for the activities required by Section 12210.

12243. In addition to providing notice as otherwise required, before adopting an ordinance charging fees pursuant to Section 12280, the board of supervisors shall hold at least one public meeting, at which oral or written presentations can be made, as part of a regularly scheduled meeting. Notice of the time and place of the meeting, including a general explanation of the matter to be considered, and a statement that the information required by this section is available, shall be mailed at least 14 days prior to the meeting to any interested party who files a written request with the board of supervisors. Any written request for the mailed notices shall be valid for one year from the date on which it is filed unless a renewal request is filed. Renewal requests for the mailed notices shall be filed on or before April 1 of each year. The board of supervisors may establish a reasonable annual charge for sending the notices based on the estimated cost of providing that service. At least 10 days prior to the meeting, the board of supervisors shall make available to the public information indicating the amount of cost, or estimated cost, required to provide the service for which the fee is charged and the revenue sources anticipated to provide the service, including general fund revenues. If the fees create revenues in excess of actual cost, those revenues shall be used to reduce the fee creating the excess.

12244. Any costs incurred by the board of supervisors in conducting the required meeting may be recovered from fees charged for the services which were the subject of the meeting.

12245. On or before January 1, 1985, the Director of Food and Agriculture shall, after consultation with representatives of industry groups and local officials, review the statewide cumulative adoption, application, cost, and revenue effects of the ordinances authorized by this article. The director shall report the findings of this review to the Legislature.

12246. This article shall remain in effect only until January 1, 1986, and as of that date is repealed, unless a later enacted statute, which is chaptered before January 1, 1986, deletes or extends that date.

SEC. 5. Section 12708 of the Business and Professions Code is

repealed.

SEC. 6. Section 12709 of the Business and Professions Code is amended to read:

12709. The department may refuse to grant any license provided for by this chapter, or may refuse to renew any such license, and may revoke or suspend any such license when, after a hearing had in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, the department is satisfied the applicant or licensee is not qualified to capably or reliably perform the duties of a weighmaster or has otherwise been found guilty of a misdemeanor as provided in this chapter.

SEC. 7. Section 12711 of the Business and Professions Code is repealed.

SEC. 8. No appropriation is made and no reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution or Section 2231 or 2234 of the Revenue and Taxation Code because the only costs which may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, changes the definition of a crime or infraction, changes the penalty for a crime or infraction, or eliminates a crime or infraction.

CHAPTER 1381

An act to add Article 1.6 (commencing with Section 31496) to Chapter 3 of Part 3 of Division 4 of Title 3 of the Government Code, relating to the County Employees Retirement Law of 1937.

[Approved by Governor September 23, 1982. Filed with Secretary of State September 24, 1982.]

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

SECTION 1. Article 1.6 (commencing with Section 31496) is added to Chapter 3 of Part 3 of Division 4 of Title 3 of the Government Code, to read:

Article 1.6. Alternative Plan for Counties of the 10th Class

31496. (a) The retirement plan created by this article shall be known as Retirement Plan 3.

(b) This article shall be applicable in the retirement system of any county of the 10th class, if the board of supervisors executes a memorandum of understanding with employee representatives and adopts, by majority vote, a resolution providing that the article shall be applicable.

(c) The purpose of this article is to provide an optional, noncontributory retirement plan for general members as an

alternative to the provisions and benefits otherwise contained in this chapter.

(d) The retirement benefits of (1) all general members employed after the date this article is made operative and who elect the plan created by this article and (2) existing general members who transfer to the plan herein created, shall be governed by this article.

(e) In the event of a conflict, this article shall supersede and prevail over other provisions or application of provisions otherwise contained in this chapter.

(f) Except as otherwise provided below, the provisions contained in this chapter shall apply:

(1) Article 9 (commencing with Section 31700) of this chapter shall not be applicable.

(2) Article 10 (commencing with Section 31720) of this chapter shall not be applicable.

(3) Article 11 (commencing with Section 31760) of this chapter shall not be applicable.

(4) Article 12 (commencing with Section 31780) of this chapter shall not be applicable.

(5) Article 16.5 (commencing with Section 31870) of this chapter shall not be applicable.

(g) Article 15 (commencing with Section 31830) shall only be applicable for service retirement. Those provisions of Article 15 dealing with disability retirement, death benefits, and the requirement relating to the deposit of accumulated member contributions shall not be applicable.

(h) Except as otherwise provided, any member who upon retirement receives a retirement pension calculated in accordance with sections or provisions added to this article subsequent to the effective date of this article shall have his or her pension calculated under each such section or provision only for the period of time that those sections or provisions were in effect, unless otherwise mutually agreed between the employer and its employee representatives.

(i) Any amendments to or modifications of this chapter subsequent to the effective date of this article shall not affect the provisions of this article unless mutually agreed to by the employer and employee representatives and adopted by majority resolution of the board of supervisors.

31496.3. Unless the context otherwise requires, the definitions contained in this section govern the construction of this article.

(a) "Board" means the board of retirement.

(b) "Employer" means the county or district or agency whose employees are members of the retirement system of the county.

(c) "Federal system" means the Old Age and Survivors Insurance provisions of the Social Security Act.

(d) "Final compensation" means the average annual compensation earnable by a general member during any three years, whether or not consecutive, elected by the member at or before the time an application for retirement is filed or, if no election is made,

during the three years in which the member or former member last earned compensation preceding retirement. If a member or former member has less than three years of service, final compensation shall be determined by dividing total compensation by the number of months of service credited to the member or former member and multiplying by 12. In no event shall final compensation include any disability benefits received by the member or former member under a disability plan provided by the employer.

(e) "Member" or "general member" means an employee hired on a permanent basis, as defined by the employer, except an employee eligible for safety membership.

(f) "Primary insurance amount" means the monthly retirement benefit payable under the federal system at the age of 65.

(g) "Service" means the period of uninterrupted employment of a member and the time in which a member or former member (1) is totally disabled, and (2) is receiving disability benefits or is eligible to receive disability benefits either during or after any elimination or qualifying period, under a disability plan provided by the employer.

Except as otherwise herein provided, a member shall not be credited with service for any period of time in which the member is absent from work without pay.

Unless otherwise provided, service shall not include military service or public service other than service with the employer.

31496.7. (a) There shall be no general members' contributions under the plan created by this article.

(b) A member who transfers to the retirement plan created by this article shall have refunded, within a reasonable period of time, not to exceed nine months from the date of receipt of election to transfer by the board, the member's accumulated contributions, together with interest thereon, which are credited to the member's account. Interest shall be credited to the June 30 or December 31 date, whichever is later, immediately preceding the date of the refund warrant. Any refund under this section shall be payable to the member.

31497. (a) Except as provided in Section 31498.3 and under reciprocal provisions of this article, a member who was in public service prior to becoming a member may not elect to receive credit in this retirement plan for that public service time, and shall not receive credit for that prior public service.

(b) Absence from work or termination of employment while an eligible employee or disability beneficiary, as defined by a disability plan provided by the employer, shall not be considered as breaking the continuity of service.

(c) For the purposes of subdivision (b) of Section 31497.3, an unpaid leave of absence of not to exceed one year, or a leave of absence for which an employee receives any benefit which has been approved by the employer, shall not be considered an interruption of service. However, the period of time of unpaid leave shall not be

considered as service in calculating the benefits otherwise provided under this article.

31497.3. (a) Retirement of a member or former member who has met the requirements for age and service shall be made by the board, at which time the member or former member becomes a retired member.

(b) Any member who has completed 10 years of service shall be vested under the plan created by this article.

(c) Any vested member or vested former member who has attained the age of 65 years may be retired upon filing with the board a written application on a form provided by the board for normal retirement setting forth the desired effective retirement date.

(d) Any vested member or vested former member who has attained the age of 55 years may be retired upon filing with the board a written application on a form provided by the board for early retirement setting forth the desired effective retirement date.

(e) The normal retirement pension shall consist of an annual allowance payable in monthly installments for the life of the retired member equal to 2 percent of his or her final compensation multiplied by the number of years of service to the preceding completed month to which the member is entitled to be credited at retirement, not to exceed 35 years, added to 1 percent of the member's final compensation multiplied by the number of years of service in excess of 35, not to exceed 10 years, reduced by the estimated primary insurance amount, if any, multiplied by the fraction of the number of years of service with the employer subject to coverage under the federal system, not to exceed 35 years, divided by 35.

In no event shall the normal retirement pension, when added to the estimated primary insurance amount, exceed 70 percent of the member's final compensation unless the years of service to which the member is entitled to be credited at retirement exceeds 35, in which case the normal retirement pension, when added to the estimated primary insurance amount, shall not exceed 80 percent of the member's final compensation.

(f) The early retirement pension shall consist of an annual allowance payable in monthly installments for the life of the retired member in an amount which is the actuarial equivalent of the normal retirement pension to which the retired member would be entitled if otherwise eligible for normal retirement, which shall be computed by multiplying the normal retirement pension by the early retirement adjustment factor set forth opposite the member's age as of the birthday immediately preceding the date of retirement, in the following table:

Age	ERA Factor
55	.39
56	.43
57	.47

58	.51
59	.56
60	.61
61	.67
62	.74
63	.82
64	.90

The ERA Factors set forth in this subdivision shall be used until adjusted by the board in accordance with the interest and mortality tables adopted by the board.

(g) The board, upon the advice of the actuary, shall establish and adjust, as required, the table of estimated primary insurance amounts, which shall be utilized in computing the retirement benefit. For purposes of this article, the primary insurance amount shall be estimated based on the employee's age and salary as of the date of retirement or the date of termination of a vested member, whichever is applicable, provided that:

(1) An employee's prior career earnings shall be assumed to have been subject to the federal system and to have increased on a year-to-year basis at a rate equivalent to the rate of increase in the average per worker total wages reported by the Social Security Administration, and

(2) For those members who have not attained the normal retirement age under the federal system as of the date of retirement (i) future earnings in employment covered by the federal system shall be assumed to continue at the rate of pay received by the employee from the employer as of the date of retirement or the date of termination of a vested member, whichever is applicable, and (ii) future wage bases, as defined by the federal system, shall be assumed to continue at the wage base in effect in the year of retirement or the year of termination of a vested member, whichever is applicable, and (iii) cost-of-living increases in the year of retirement and delayed retirement credit provided under the federal system shall not be included in the calculation of the estimated primary insurance amount.

(h) The employer shall certify the years of service to be credited at retirement and the final compensation to be utilized in computing the normal and early retirement pension.

(i) At the time of application for retirement, the member or former member shall provide adequate proof (1) of age and (2) of the eligibility of persons, if any, who at that time would otherwise qualify for the survivor allowance provided for in Section 31497.7.

(j) Notwithstanding subdivision (e) of Section 31497.3, any retired member receiving a normal retirement pension shall, as soon as possible but not later than six months following retirement, present evidence required by the board of the retired member's actual primary insurance amount. For purposes of this subdivision, the actual primary insurance amount shall be the amount payable under

the federal system on the retired member's date of retirement without regard to delayed retirement credit or any deductions on account of work. Following receipt of that evidence, the board shall adjust the retired member's pension from the date of retirement 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 primary insurance amount.

31497.7. (a) Upon the death of a retired member, 50 percent of the retirement pension, if not modified in accordance with the optional survivor allowance in subdivision (b), shall be continued during and throughout the life of his or her surviving spouse, if he or she was married to the member at least one year prior to the date of retirement. If there is no surviving spouse entitled to this allowance, or if he or she dies before every child of the deceased retired member, including stepchild or adopted child, attains the age of 18 years, then the allowance which the surviving spouse would have received had she or he lived, shall be paid to the deceased retired member's child or children under the age of 18 years. If the survivor allowance is to be paid to surviving children, the allowance shall be divided among the children in equal amounts. However, the right of any child to share in the allowance shall cease upon his or her death, marriage, or upon attaining the age of 18 years.

Notwithstanding any other provisions of this subdivision, the allowance otherwise payable to the children of the retired member shall be paid to the children through the age of 21, if the children remain unmarried and are regularly enrolled as full-time students in any accredited school as determined by the board.

(b) A vested member, or vested former member, in lieu of the normal or early retirement pension for the retired member's life alone, may elect to have the actuarial equivalent of the retired member's pension as of the date of retirement applied to a lesser amount payable throughout the retired member's life, and thereafter to have a survivor allowance as approved by the board, upon the advice of the actuary, continued throughout the life of and paid to the person or persons having an insurable interest in the life of the retired member, as the member or former member nominates by written designation duly executed and filed with the board at the time of retirement.

(c) Designations pursuant to subdivision (b) shall not, in the opinion of the board and the actuary, place any additional burden upon the retirement system.

31498. Any person employed subsequent to the effective date of this article who would otherwise qualify as a member shall not become a member until he or she certifies to the board his or her election to be covered by the retirement plan established by this article or to be covered by the retirement provisions and benefits otherwise available to members on the date preceding the effective date of this article. As a condition of continued employment, the certification shall be made within 60 days of employment. The

employer shall make available to the person a disclosure of the elements of each of the available retirement plans prior to accepting his or her election.

31498.3. (a) General members may, within 180 days of the effective date of this article, elect to transfer to the retirement plan created by this article upon proper application executed by the member and filed with the board. Such transfer is voluntary and shall be irrevocable.

(b) The retirement benefits of the transferred members are governed and defined by this article.

(c) Transferring members relinquish and waive any and all previously available vested or accrued retirement, survivor, disability and death benefits. However, notwithstanding any other provision of this article, a transferring member shall receive credit for no more than 24 months of public service performed prior to December 31, 1969, including service with the employer, military service, and any other public service to which the member would otherwise be eligible under this chapter, except that member contributions shall not be collected.

(d) Any member who has elected or transferred to the plan created by this article and who terminates his or her employment and is later reemployed shall not be entitled to change his or her election upon such reemployment.

31498.7. Until the completion of the next regularly scheduled actuarial survey of the retirement system, the employer contribution required to finance the plan created by this article shall be established by the board, upon the recommendation of the actuary.

SEC. 2. If any provision of this act, or the application thereof, to any person or circumstances, is held invalid, the invalidity shall not affect other provisions or application of the act which can be given effect without the invalid provisions or application and, to this end the provisions of this act are severable.

SEC. 3. No appropriation is made and no reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution or Section 2231 or 2234 of the Revenue and Taxation Code because this act is in accordance with the request of a local agency or school district which desired legislative authority to carry out the program specified in this act.

CHAPTER 1382

An act to amend Sections 18654, 18901, 18933, 18934, 18936, 18937, 18938, 18938.5, 18939, 18940, 18941, and 18950 of, and to add Sections 18900.5, 18930.5, and 19822.5 to, the Government Code, relating to state officers and employees.

[Approved by Governor September 23, 1982. Filed with Secretary of State September 24, 1982.]

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

SECTION 1. Section 18654 of the Government Code is amended to read:

18654. The intention of the Legislature is hereby declared to be that the executive officer shall perform and discharge under the direction and control of the board the powers, duties, purposes, functions, and jurisdiction vested in the board and delegated to him by it.

Any power, duty, purpose, function, or jurisdiction which the board may lawfully delegate shall be conclusively presumed to have been delegated to the executive officer unless it is shown that the board by affirmative vote recorded in its minutes specifically has reserved the same for its own action. The executive officer may redelegate to his subordinates or to an appointing power he designates, unless by board rule or express provision of law he is specifically required to act personally.

SEC. 2. Section 18900.5 is added to the Government Code, to read:

18900.5. For purposes of this chapter, "designated appointing power" means an appointing power designated by the executive officer pursuant to Section 18654.

SEC. 3. Section 18901 of the Government Code is amended to read:

18901. (a) The board may remove all names from open and promotional eligible lists after they have remained thereon for more than one year from the date of the adoption of the lists that created their eligibility, and shall remove all names from lists of eligibles not later than four years after the adoption of the lists that created their eligibility.

Whenever an open or a promotional eligible list has fewer than three names of persons who are willing to accept employment, all names on the list may be removed even though one year has not elapsed from the date of the adoption of the list.

(b) When a list of eligibles becomes exhausted for temporary or permanent employment before the legal expiration of the list, and a new list of eligibles for the same class is created by examination to supply the demands of the service, such new list shall become a part of the list of eligibles to be certified to the positions covered by the list. Those holding places on the prior list shall be given preference for appointment until such time as the prior list may automatically expire or all names are removed therefrom by action of the board. When the prior list has expired by reason of limitation of time, or the names have been removed therefrom by order of the board, then certification shall be made solely from the latter list.

(c) The board or a designated appointing power shall include in

the announcement of any examination that the list of eligibles secured thereby will expire not less than one but less than four years after the adoption of such list.

(d) The board or a designated appointing power may make changes in its records to correct clerical errors both before and after the announcement of an eligible list; provided, that any changes of rank, or addition or subtraction of names, made on lists of eligibles because of clerical errors or reratings, shall not change the date of the adoption of such lists, nor give to any persons the right to claim beginning date of eligibility other than the date of the adoption of the original eligible list that created their eligibility.

SEC. 4. Section 18930.5 is added to the Government Code, to read:

18930.5. The board may designate an appointing power to design, announce, or administer examinations for the establishment of employment lists in accordance with Section 18654 and board rule. No later than January 1, 1987, the board shall authorize or assess the ability of appointing powers to design, announce, or administer designated examinations for the establishment of employment lists. The board may audit examinations and order corrective action or nullify any examination or parts thereof which have been conducted improperly.

A designated appointing power may contract with the board or another designated appointing power for the purpose of designing, publicizing, or administering an examination.

SEC. 5. Section 18933 of the Government Code is amended to read:

18933. Within a reasonable time before the scheduled date, the board or a designated appointing power shall announce or advertise examinations for the establishment of eligible lists. Such announcement shall contain such information as the board deems proper and information concerning:

(a) The date and place of the examination.

(b) The nature of the minimum qualifications.

(c) The general scope of the examination.

(d) The relative weight of its several parts if more than one type of test is to be utilized.

SEC. 6. Section 18934 of the Government Code is amended to read:

18934. Every applicant for examination shall file a formal signed application in the office of the board or a designated appointing power within a reasonable length of time before the date of examination. Blank application forms shall be furnished without charge to all persons requesting them. Such applications when filed and all other examination materials, including examination questions and booklets, are the property of the board and are confidential records open to inspection only if and as provided by board rule.

The application form shall include a place for listing volunteer experience and such experience shall be considered if it is relevant

to the position being applied for. Each form shall have prominently displayed on its face the fact that volunteer experience will be given consideration as qualifying experience for state employment.

SEC. 7. Section 18936 of the Government Code is amended to read:

18936. The final earned rating of each person competing in any examination shall be determined by the weighted average of the earned ratings on all phases of the examination, according to the weights for each phase established by the board or a designated appointing power in advance of the giving of the examination and published as a part of the announcement of the examination.

The board or a designated appointing power may set minimum qualifying ratings for each phase of an examination and may provide that competitors failing to achieve such ratings in any phase shall be disqualified from any further participation in the examination.

SEC. 8. Section 18937 of the Government Code is amended to read:

18937. The passing mark for an examination may be other than the true percentage or average published as a part of the announcement of the examination, if deemed by the board or a designated appointing power to be justified in order to provide an adequate eligible list or to adjust for the apparent difficulty of an examination. In establishing any eligible list or promotional list following an examination, the names of the persons who have attained the passing mark in such examination shall be placed on the list in the order of final earned ratings, except as such order may be modified by the application of veterans' preferences. When the order of names has been determined after applying the appropriate veterans' preference credits, the board may thereafter limit to suit the needs of the service the number of names to be placed on the employment list.

SEC. 9. Section 18938 of the Government Code is amended to read:

18938. The board or a designated appointing power may issue certificates of competence to candidates who are successful in certain phases of examinations involving a particular knowledge, ability or skill. For the period named in such a certificate, the board or a designated appointing power may accept it as evidence of the candidate's competence in lieu of participation in that phase of an examination.

SEC. 10. Section 18938.5 of the Government Code is amended to read:

18938.5. When the employment list resulting from examination has been established, each competitor shall be notified in writing of the results of the examination. For competitors unsuccessful in an oral examination, the board or a designated appointing power shall, upon the written request of the competitor, specify the reasons why such person was unsuccessful.

SEC. 11. Section 18939 of the Government Code is amended to

read:

18939. For classes of positions for which the board or a designated appointing power finds it difficult to maintain adequate eligible lists it may receive applications, conduct examinations, and create eligible lists continuously. The names of eligibles who took the same or a comparable examination on different dates may be ranked for purposes of certification in the order of final earned ratings, except as such order may be modified by the application of veterans preferences. Eligibility from a continuous examination may be deemed to be established as of the date of examination.

SEC. 12. Section 18940 of the Government Code is amended to read:

18940. (a) When an examination is scheduled to be given during the period from sundown on a Friday until sundown on the following day, and it is the practice of an applicant, based upon his religious convictions, to observe the Sabbath during such period, and the applicant therefore objects to taking the examination during such period, he may elect to avail himself of the procedure provided for in subdivision (b).

(b) On or before the final date for filing applications for an examination the applicant shall advise the board or a designated appointing power of his objections, his desire for the deferred examination and for surveillance described in subdivision (c), and his preference between individual and group surveillance. If, in the opinion of the board or a designated appointing power, the security of examination material does not require surveillance, the applicant may be given a deferred examination without surveillance.

(c) An applicant who gives notice to the board or a designated appointing power in accordance with subdivision (b) unless surveillance is waived by the board or a designated appointing power shall be entitled to receive such surveillance by a representative of the board, either individually or as part of a group, depending on the facilities of the board or a designated appointing power and the preference of the applicant, as will render it impossible for the candidate to learn of the contents of the examination. The surveillance shall continue from the time of commencement of the general examination until the commencement of the deferred examination of the applicant, which deferred examination shall be given promptly after the close of the Sabbath observed by the applicant. During the period of surveillance the board or a designated appointing power may require the presence of the applicant at such place or places as it deems appropriate, but the applicant shall be allowed the greatest freedom of movement consistent with the purposes of this section.

SEC. 13. Section 18941 of the Government Code is amended to read:

18941. The Board of Control shall by rule authorize such expenditures as are reasonably necessary for the meals, lodging or travel of persons who provide nonsalaried assistance to the State

Personnel Board or a designated appointing power in the preparation or conduct of written or oral examinations.

SEC. 14. Section 18950 of the Government Code is amended to read:

18950. Vacancies in positions shall be filled insofar as consistent with the best interests of the state from among employees holding positions in appropriate classes, and appropriate promotional lists shall be established to facilitate this purpose. Examinations shall be held on an open, nonpromotional basis when, in the judgment of the board, open competition will produce eligible lists with more highly skilled qualified candidates and is consistent with the best interests of the state.

The board may prescribe conditions under which state employees, persons on leave of absence, and persons whose names are on appropriate reemployment lists, may be permitted to compete in promotional examination and to attain eligibility for appointment.

The board may further prescribe conditions under which eligibility may be transferred from one promotional list to another promotional list when such lists are for the same class and have been established as a result of the same or a similar examination.

SEC. 15. Section 18950 of the Government Code is amended to read:

18950. Vacancies in positions shall be filled insofar as consistent with the best interests of the state from among employees holding positions in appropriate classes, and appropriate promotional lists shall be established to facilitate this purpose, except as provided in Section 18930. Examinations shall be held on an open, nonpromotional basis when, in the judgment of the board, open competition will produce eligible lists with more highly skilled qualified candidates and is consistent with the best interests of the state.

The board may prescribe conditions under which state employees, persons on leave of absence, and persons whose names are on appropriate reemployment lists, may be permitted to compete in promotional examination and to attain eligibility for appointment.

The board may further prescribe conditions under which eligibility may be transferred from one promotional list to another promotional list when such lists are for the same class and have been established as a result of the same or a similar examination.

SEC. 16. Section 19822.5 is added to the Government Code, to read:

19822.5. The department shall by rule authorize such expenditures as are reasonably necessary for the meals, lodging, or travel of persons who provide nonsalaried assistance to the State Personnel Board or a designated appointing power in the preparation or conduct of written or oral examinations.

SEC. 17. It is the intent of the Legislature, if this bill and Assembly Bill 3338 are both chaptered and become effective January 1, 1983, both bills amend Section 18950 of the Government Code, and

this bill is chaptered after Assembly Bill 3338, that the amendments to Section 18950 proposed by both bills be given effect and incorporated in Section 18950 in the form set forth in Section 15 of this act. Therefore, Section 15 of this act shall become operative only if this bill and Assembly Bill 3338 are both chaptered and become effective January 1, 1983, both amend Section 18950, and this bill is chaptered after Assembly Bill 3338, in which case Section 14 of this act shall not become operative.

SEC. 18. It is the intent of the Legislature, if Senate Bill 1636 is not chaptered, that Section 16 of this bill adding Section 19822.5 to the Government Code shall not become operative.

It is the further intent of the Legislature, if this bill and Senate Bill 1636 are both chaptered and become effective January 1, 1983, and Senate Bill 1636 repeals Section 18941 of, and adds Section 19822.5 to, the Government Code, that the amendment of Section 18941 of the Government Code proposed by Section 13 of this bill shall not become operative, and Section 16 of this bill adding Section 19822.5 to the Government Code shall become operative, and shall prevail over the provisions of Section 19822.5 of the Government Code added by Section 14 of Senate Bill 1636.

CHAPTER 1383

An act to amend Section 1021.6 of the Code of Civil Procedure, relating to actions and proceedings.

[Approved by Governor September 23, 1982. Filed with Secretary of State September 24, 1982.]

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

SECTION 1. Section 1021.6 of the Code of Civil Procedure is amended to read:

1021.6. Upon motion, a court after reviewing the evidence in the principal case may award attorney's fees to a person who prevails on a claim for implied indemnity if the court finds (a) that the indemnitee through the tort of the indemnitor has been required to act in the protection of the indemnitee's interest by bringing an action against or defending an action by a third person and (b) if that indemnitor was properly notified of the demand to bring the action or provide the defense and did not avail itself of the opportunity to do so, and (c) that the trier of fact determined that the indemnitee was without fault in the principal case which is the basis for the action in indemnity or that the indemnitee had a final judgment entered in his or her favor granting a summary judgment, a nonsuit, or a directed verdict.

CHAPTER 1384

An act to amend Section 6311 of the Labor Code, relating to occupational safety and health.

[Approved by Governor September 23, 1982. Filed with Secretary of State September 24, 1982.]

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

SECTION 1. Section 6311 of the Labor Code is amended to read:

6311. No employee shall be laid off or discharged for refusing to perform work in the performance of which this code, including Section 6400, any occupational safety or health standard or any safety order of the division or standards board will be violated, where such violation would create a real and apparent hazard to the employee or his fellow employees. Any employee who is laid off or discharged in violation of this section or is otherwise not paid because he refused to perform work in the performance of which this code, any occupational safety or health standard or any safety order of the division or standards board will be violated and where such violation would create a real and apparent hazard to the employee or his fellow employees shall have a right of action for wages for the time such employee is without work as a result of such layoff or discharge; provided, that such employee notifies his employer of his intention to make such a claim within 10 days after being laid off or discharged and files a claim with the Labor Commissioner within 30 days after being laid off, or discharged or otherwise not paid in violation of this section.

CHAPTER 1385

An act to amend and repeal Section 1274.35 of the Unemployment Insurance Code, relating to labor, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 23, 1982. Filed with Secretary of State September 24, 1982.]

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

SECTION 1. Section 1274.35 of the Unemployment Insurance Code, as added by Chapter 546 of the Statutes of 1982, is amended to read:

1274.35. (a) Notwithstanding any other provision of this division, any unemployed individual who, as determined by the director, has been laid off from work as a result of a plant closure or a substantial reduction in employment at the individual's most recent workplace

at the time the individual filed his or her parent claim, and whose benefit year has expired and who is not entitled to establish a benefit year, or who has exhausted benefits payable under this part, Part 3 (commencing with Section 3501), and Part 4 (commencing with Section 4001), or any other federal unemployment compensation law, after January 1, 1982, and who applies for a determination of potential eligibility for benefits under this article no later than December 31, 1982, and who is determined otherwise eligible for benefits under this division is eligible for an additional maximum of 26 times his or her most recent weekly benefit amount and shall not be denied benefits under this division in any week he or she is otherwise eligible for benefits under this article.

(b) Notwithstanding any other provision of this division, any other unemployed individual who, as determined by the director, has been laid off from work as a result of a plant closure or a substantial reduction in employment at the individual's most recent workplace at the time the individual filed his or her parent claim, and who is receiving benefits payable under this part, Part 3 (commencing with Section 3501), or Part 4 (commencing with Section 4001) or under any other federal unemployment compensation law, who, by December 31, 1982, applies for a determination of potential eligibility for benefits under this article and is determined otherwise eligible for benefits under this article, is eligible for an additional maximum of 26 times his or her weekly benefit amount under the provisions of this article.

(c) Notwithstanding any other provision of this division, any unemployed individual receiving benefits payable under this part, Part 3 (commencing with Section 3501), or Part 4 (commencing with Section 4001), or any other federal unemployment compensation law, who, after December 31, 1982, but before July 1, 1983, and no later than the 14th week of his or her unemployment, applies for a determination of potential eligibility for benefits under this article and is determined eligible for benefits under this article, is eligible for a maximum of 52 times his or her weekly benefit amount under the provisions of this division.

(d) Any claimant receiving benefits pursuant to subdivision (a), (b), or (c) who becomes eligible to file an unemployment compensation claim under state law or any other federal unemployment compensation law, shall file the claim in order to remain eligible under this article.

(e) Additional benefits paid under this section, and not otherwise payable under this division, shall be charged to individual employer reserve accounts, consistent with other provisions of this code.

(f) To the extent permitted by federal law, benefits payable under any federal unemployment compensation law shall be included as benefits payable under the provisions of this section.

(g) For the purposes of this section, the director shall only approve those training programs which meet the criteria described in Section 1274.3 and which are affiliated with an employer or a labor

organization.

(h) This section shall remain in effect only until a total of eight million dollars ($8,000,000) is expended from the Unemployment Fund pursuant to this section or until July 1, 1984, whichever date occurs first, and on that date is repealed, unless a later enacted statute chaptered before that date deletes or extends that date.

SEC. 2. Notwithstanding Section 6 of Article XIII B of the California Constitution and Section 2231 or 2234 of the Revenue and Taxation Code, no appropriation is made by this act for the purpose of making reimbursement pursuant to these sections. It is recognized, however, that a local agency or school district may pursue any remedies to obtain reimbursement available to it under Chapter 3 (commencing with Section 2201) of Part 4 of Division 1 of that 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 provide for the immediate retraining of workers whose unemployment benefits are about to be exhausted and to prevent the adverse consequences to workers, families, and communities and the costs to the state of long-term unemployment, it is necessary that this act take effect immediately.

CHAPTER 1386

An act to add Section 148.9 to, and to amend Section 1269d of the Penal Code, relating to identification.

[Approved by Governor September 23, 1982. Filed with Secretary of State September 24, 1982.]

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

SECTION 1. Section 148.9 is added to the Penal Code, to read:

148.9. Any person who falsely represents or identifies himself or herself as another person or as a fictitious person to a police officer, sheriff, deputy sheriff, member of the California Highway Patrol, or member of the California State Police, upon a lawful detention or arrest of the person, either to evade the process of the court, or to evade the proper identification of the person by the investigating officer is guilty of a misdemeanor.

SEC. 2. Section 1269d of the Penal Code is amended to read:

1269d. (a) (1) If a defendant is arrested for a misdemeanor, he or she shall be released from custody upon deposit of a sum of money which is 10 percent of the amount of bail which has been fixed pursuant to Section 1269b and upon execution of a release agreement and an appearance bond as set forth in this section.

(2) Any person who has the authority to approve and accept the full amount of bail as provided for in Section 1269b shall also have the authority to approve and accept 10 percent of the amount of bail pursuant to this section and to issue and sign an order for the release of the defendant, and to set the time and place for the appearance of the defendant before the appropriate court and give notice thereof. At the time the deposit is made, the defendant shall execute a release agreement containing the conditions set forth in Section 1318 and shall execute an appearance bond whereby the defendant promises that should he or she willfully fail to appear before any court or magistrate as required, the defendant shall pay the treasurer of the county in which the defendant was ordered to appear the full amount of the bail set in the case.

(b) Upon depositing the sum and executing the release agreement and the appearance bond as set forth in subdivision (a), the defendant shall be discharged from custody as to the offense or offenses for which the deposit is posted.

(c) If a defendant is charged with a misdemeanor, the court or magistrate in addition to or in lieu of any other methods of release authorized pursuant to this chapter, other than a release upon own recognizance, may require the defendant to agree to any or all of the following conditions when the defendant is personally before the court and the court finds that the imposition of a condition or conditions is necessary to assure the defendant's appearance in court:

(1) Require the defendant to report at reasonable intervals to a person designated by the court, who shall inform the court if the defendant does not report as ordered.

(2) Require the defendant to notify the court if he or she changes his or her place of residence.

(3) Require the defendant to secure the permission of the court before leaving the state.

(4) Require the defendant to submit the name and address of his or her employer, or any change thereof, to the court.

(d) When a defendant has deposited a sum of money with the clerk of the court as required under subdivision (a), and has properly made all appearances as required by the court and thereafter is released from any further obligation to appear before any court having jurisdiction over the case, the clerk of the court shall retain and deposit in the county general fund 10 percent of the deposit or ten dollars ($10), whichever is greater, and shall return the remainder of the deposit to the defendant.

(e) If a defendant who is released under the provisions of this section fails to appear as required, the court before which the defendant was ordered to appear shall forfeit the deposit posted. If the amount of the deposit exceeds one hundred dollars ($100), notice of such order of forfeiture shall be mailed forthwith by the clerk of the court to the last known address of the defendant. If the defendant does not appear and surrender to the court having jurisdiction within 90 days of the date of the forfeiture or within such period satisfy to

the court that appearance and surrender by the defendant is impossible and without the fault of the defendant, the court may enter judgment for the full amount of the bail previously established at the time of release, and shall send notice of the entry of such judgment to the last known address of the defendant. The deposit shall be applied to the payment of costs. If any amount of such deposit remains after payment of costs, it shall be applied to payment of the judgment and transferred to the treasury of the county wherein the deposit was taken. The balance of the judgment may be enforced and collected in the same manner as a judgment entered in a civil action.

(f) This section shall not apply to any case where the bail set is one hundred fifty dollars ($150) or less.

(g) Except by order of the court or magistrate, this section shall not apply to a defendant in a proceeding who has filed to appear as required by law in such proceeding and for whom a warrant of arrest has been issued pursuant to Section 978.5 of this code or Section 40508 of the Vehicle Code.

The court or magistrate shall state on the warrant of arrest whether, when arrested, the defendant shall be entitled to release upon a 10 percent deposit or shall be entitled to release only upon posting of the full amount of bail stated on the warrant in either cash or surety bond.

(h) Except by order of the court or magistrate, this section shall not apply to a defendant or arrestee who does not provide satisfactory evidence of personal identification.

(i) The Judicial Council shall prescribe a uniform statewide release agreement form, a uniform statewide appearance bond form, and a uniform deposit receipt form.

(j) It was the intention of the Legislature in enacting this section that it shall not apply to felonies and that is presently the intention of the Legislature.

SEC. 3. No appropriation is made and no reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution or Section 2231 or 2234 of the Revenue and Taxation Code because the only costs which may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, changes the definition of a crime or infraction, changes the penalty for a crime or infraction, or eliminates a crime or infraction.

CHAPTER 1387

An act to amend Section 14041 of the Education Code, relating to schools.

[Approved by Governor September 23, 1982. Filed with Secretary of State September 24, 1982.]

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

SECTION 1. Section 14041 of the Education Code is amended to read:

14041. (a) The Controller shall draw warrants on the State Treasury in favor of the county treasurer of each county in each month of each year in the amounts and manner as herein prescribed so as to provide in each warrant a portion of the total amount certified by the Superintendent of Public Instruction or Chancellor of the California Community Colleges as apportioned under the provisions of Sections 41330 to 41343 and 84320 to 84332, inclusive, and Chapter 4 (commencing with Section 41600) and Chapter 5 (commencing with Section 41700) and Article 2 (commencing with Section 42237) of Chapter 7 of Part 24 of Division 3 of Title 2, inclusive, during the fiscal year from the State School Fund to the school districts under the jurisdiction of the county superintendent of schools of the county, to the county school service fund, and to the county school tuition fund of the county.

(1) Warrants for amounts allowed to the county school service funds under subdivisions (a) and (b) of Section 14054 shall be for amounts equal to 6 percent in July, 12 percent in August, 10 percent in September, and 8 percent in each remaining month of the fiscal year of the amounts certified by the Superintendent of Public Instruction or Chancellor of the California Community Colleges as a part of the advance apportionment.

(2) Warrants for amounts apportioned to school districts and county school service funds for classes maintained by county superintendents of schools and to the county school tuition funds shall be for amounts equal to 6 percent in July, 12 percent in August, and 8 percent in September, October, November, December, and January, of the amounts certified by the Superintendent of Public Instruction or Chancellor of the California Community Colleges as a part of the advance apportionment.

(3) Warrants in the months of February to May, inclusive, shall be for amounts equal to one-sixth of the difference between the amounts certified by the Superintendent of Public Instruction or Chancellor of the California Community Colleges for school districts, community college districts, and county school service funds for classes maintained by county superintendents of schools and county school tuition funds as the first principal apportionment and the amounts required by paragraph (2). An additional one-sixth of such difference shall be included in the warrants for the month of February.

(4) Warrants for the month of June shall be for amounts equal to the difference between the amounts certified by the Superintendent of Public Instruction or Chancellor of the California Community

Colleges for school districts, community college districts, and county school service funds for classes maintained by county superintendents of schools and county school tuition funds as the second principal apportionment and the amounts required by paragraphs (2) and (3).

(5) Warrants in the months of September to November, inclusive, shall include one-tenth of the estimated total amounts of the special purpose apportionment, as determined by the Superintendent of Public Instruction or Chancellor of the California Community Colleges. Warrants in December shall include one-tenth of the amounts certified by the Superintendent of Public Instruction or Chancellor of the California Community Colleges as the special purpose apportionment, as adjusted, if necessary, to correct excesses or deficiencies in the estimates made for purposes of the warrants in the months of September to November, inclusive. An additional one-tenth of the amounts of the special purpose apportionment shall be included in the warrants for the months from January to June, inclusive.

(6) Warrants in June shall include the total amounts certified by the Superintendent of Public Instruction or Chancellor of the California Community Colleges as the final apportionment.

(7) Notwithstanding any provision of paragraph (2) to the contrary, for school districts which reported less than 5,000 units of average daily attendance in the 1979–80 fiscal year and which received 39 percent or more, but less than 75 percent, of their total revenue limits from local property taxes in that fiscal year, warrants for amounts apportioned to the districts shall be for amounts equal to 15 percent in July, August, September, and October; zero percent in November and December; and 6 percent in January of the amounts certified by the Superintendent of Public Instruction as a part of the advance apportionment. Warrants for amounts apportioned to the districts for the months of February to May, inclusive, shall be in accordance with paragraph (3), and for the month of June, shall be in accordance with paragraph (4).

(8) Notwithstanding any provision of paragraphs (2) or (7) to the contrary, for school districts which reported less than 5,000 units of average daily attendance in the 1979–80 fiscal year and which received 75 percent or more of their total revenue limits from local property taxes in that fiscal year, warrants for amounts apportioned to the districts shall be for amounts equal to 15 percent in July; 30 percent in August and September; 15 percent in October; zero percent in November and December; 6 percent in January; and zero percent in February, March, April, and May, of the amounts certified by the Superintendent of Public Instruction as a part of the advance apportionment. Warrants for the month of June shall be in accordance with paragraph (4).

(b) The drawing of the warrants required to be drawn during any one of the months mentioned may be postponed by the Controller for not to exceed 30 days, but the total amounts due the several

counties during any fiscal year shall be paid within the fiscal year. The warrants shall be paid by the State Treasurer from the State School Fund and are not subject to the provisions of Government Code Section 925.6.

SEC. 2. The governing board of the Modoc Joint Unified School District needs to conduct a continuation high school program in three classrooms of a school building in Alturas which does not conform to the so-called Field Act. As the district is unable under present law to sell bonds or to levy and collect an additional property tax to pay for a lease-purchase of additional buildings, it is necessary that the existing building be used for that purpose if the continuation high school program is to continue to exist.

SEC. 3. The governing board of the Fall River Joint Unified School District needs to conduct school programs in two bungalow classrooms at Fall River High School, two elementary classrooms at McArthur Elementary School, and the principal's office at Fall River Elementary School, which do not conform to the so-called Field Act. As the district is presently overcrowded and has no funds to purchase temporary portable classrooms, it is necessary that the existing classrooms, be used for school purposes.

SEC. 4. Notwithstanding Section 39227 of the Education Code, the governing board of the Modoc Joint Unified School District may use the existing school building in Alturas described in Section 2 of this act, to conduct a continuation high school program until permanent replacement facilities for this purpose are constructed and ready for occupancy, or until June 30, 1985, whichever occurs earlier. During the period of continued use authorized by this section, the buildings shall not be subject to Article 3 (commencing with Section 39140) or Article 6 (commencing with Section 39210) of Chapter 2 of Part 23 of the Education Code.

SEC. 5. Notwithstanding Section 39227 of the Education Code, the governing board of the Fall River Joint Unified School District may use the existing classrooms and principal's office described in Section 3 of this act, to conduct school programs until permanent replacement facilities for this purpose are constructed and ready for occupancy, or until June 30, 1985, whichever occurs earlier. During the period of use authorized by this section, the buildings shall not be subject to Article 3 (commencing with Section 39140) or Article 6 (commencing with Section 39210) of Chapter 2 of Part 23 of the Education Code.

SEC. 6. The Legislature finds and declares that the Sunol Glen Elementary School District stands to experience a substantial loss in apportionments for the 1982–83 fiscal year due to adjustments in the computation of the revenue limit per unit of average daily attendance for that district as a result of a decrease in average daily attendance of 10 students.

Notwithstanding any other provision of law, the Sunol Glen Elementary School District shall be exempt from the limitation on the minimum revenue limit guarantee imposed by Proviso 6 of Item

6100-101-001 of the Budget Act of 1982 (Stats. 1982, Ch. 326).

SEC. 7. Due to the unique circumstances concerning the construction of permanent facilities for the Modoc Joint Unified School District and the Fall River Joint Unified School District, as partially set forth in Sections 2 and 3 of this act, and concerning funding for the Sunol Glen Elementary School District, as partially set forth in Section 6 of this act, the Legislature finds and declares that a general statute cannot be made applicable within the meaning of Section 16 of Article IV of the Constitution.

SEC. 8. This act shall become effective January 1, 1983, pursuant to Section 8 of Article IV of the California Constitution. However, it is the intent of the Legislature to make changes in state apportionments to the Sunol Glen Elementary School District in the 1982–83 fiscal year. For the purpose of implementing the changes required by Section 6 of this act, the Superintendent of Public Instruction and other public officers shall take all necessary steps to effect the required adjustments, including the authority to adjust allowance computations, apportionments, and disbursements ordered from Section A of the State School Fund and other public funds.

CHAPTER 1388

An act to amend Sections 37252, 44252, 44830, 44911, and 45108 of, and to add Section 1275 to, and Article 3 (commencing with Section 44681) to Chapter 3.1 of Part 25 of, the Education Code, relating to schools, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 23, 1982. Filed with Secretary of State September 24, 1982.]

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

SECTION 1. Section 1275 is added to the Education Code, to read:

1275. Any county superintendent of schools may apply to the State Board of Education to establish a pilot project to assist selected school districts to recruit and select administrative personnel. The pilot project shall be funded annually in the Budget Act. The pilot project may do the following:

(a) Gather and organize information regarding effective techniques for selecting and evaluating management personnel.

(b) Serve as a clearinghouse for candidates and school districts.

(c) Assist school districts to evaluate candidates according to competencies prescribed by the districts.

(d) Conduct research regarding improved techniques for evaluating administrative talent.

(e) Train appropriate central district administrators in needs assessment and selection procedures used when hiring school principals and other administrative staff.

SEC. 2. Section 37252 of the Education Code is amended to read:

37252. (a) The governing board of each district maintaining any or all of grades 7 to 12, inclusive, shall offer summer school instructional programs for pupils enrolled in grades 7 to 12, inclusive, who were assessed as not meeting the district's adopted standards of proficiency in basic skills pursuant to Article 2.5 (commencing with Section 51215) of Chapter 2 of Part 28.

(b) The summer school programs shall also be offered to pupils who were enrolled in grade 12 during the prior school year after the completion of grade 12, and upon the successful completion of the summer program, these pupils may be reassessed for puposes of meeting the district's standards of proficiency.

SEC. 3. Section 44252 of the Education Code is amended to read:

44252. (a) The commission shall establish standards and procedures for the initial issuance and renewal of credentials.

(b) Commencing on February 1, 1983, the Commission for Teacher Preparation and Licensing shall not issue initially any credential, permit, certificate, or renewal of an emergency credential to any person to serve in the public schools unless the person has demonstrated proficiency in basic reading, writing, and mathematics skills in the English language as provided in Section 44252.5. The commission may exempt from the basic skills proficiency test requirement any of the following persons:

(1) A person credentialed solely for the purpose of teaching adults in an apprenticeship program.

(2) An applicant for an adult education designated subject credential for other than academic subject.

(3) A person credentialed in another state who is an applicant for employment in a school district in this state who has passed a basic skills proficiency examination which has been developed and administered by the school district offering that person employment. School districts administering a basic skills proficiency examination under this paragraph shall comply with the requirements of subdivision (h) of Section 44830. Such an applicant shall be granted a nonrenewable emergency credential, valid for not longer than one year, pending fulfillment of the basic skills proficiency requirement pursuant to Section 44261.5. The commission shall report to the Legislature no later than January 1, 1984, on the number of teachers receiving emergency credentials without fulfilling the basic skills proficiency requirement, the districts in which these teachers are employed, the number of teachers granted clear credentials after the expiration of an emergency credential granted under these conditions, and a comparison of success rate of these teachers on the basic skills test with the success rate of the general pool of credential applicants. This exemption shall remain in effect no later than June 30, 1984.

(c) By December 31, 1982, the Superintendent of Public Instruction shall adopt an appropriate state assessment instrument to measure proficiency in these basic skills. In adopting the instrument, the superintendent shall seek assistance from the commission and an advisory board. A majority of the members of the advisory board shall be classroom teachers. The board shall also include representatives of local school boards, school administrators, parents, and postsecondary institutions.

The superintendent shall adopt any normed test that the superintendent determines will sufficiently test basic skills for purposes of this section.

The superintendent, in conjunction with the commission and approved teacher training institutions, shall take steps necessary to insure the effective implementation of this provision.

(d) The commission shall compile data regarding the rate of passing the state assessment instrument to measure proficiency in basic skills by persons who have been trained in various institutions of higher education. The data shall be available to members of the public and particularly to persons who intend to enroll in teacher education programs.

SEC. 4. Article 3 (commencing with Section 44681) is added to Chapter 3.1 of Part 25 of the Education Code, to read:

Article 3. California Leadership Institute

44681. The Legislature recognizes that the principal plays a pivotal role in the life of a school. Research indicates that at schools where pupil achievement is higher than might be expected, principals provide strong leadership and support. Teachers at these schools report that their principals facilitate innovation, support teachers in efforts to promote new ideas, and assist staff to acquire needed skills and materials. Other studies show that the principal is the most effective agent for bringing about educational improvement.

The Legislature further recognizes that although principal leadership is essential to effective instruction, research shows that many principals are neither prepared nor encouraged to be educational leaders. According to principals and others, administrator training does not always match responsibilities of the job, and opportunities for continuing development are inadequate.

The Legislature, by the provisions of this article, intends to provide site and central district administrators ongoing opportunities to improve their management and leadership skills. The Legislature intends that administrator support and development activities funded by this article will result in direct improvements in services to California public school pupils. The Legislature further intends that current funding for duplicative educational programs be redirected to fund the provisions of this article.

44682. (a) Any school district or county superintendent of

schools which has established a professional development and program improvement center pursuant to Article 10 (commencing with Section 44630) of Chapter 3, a resource center pursuant to Article 2 (commencing with Section 44680), a county office, school district, or any other appropriate agency operating a program before January 1, 1982, which meets the basic requirements of this article, or a teacher center established pursuant to federal law shall be eligible for funds in order to establish a California leadership institute, which shall provide to school administrators support and development activities designed to improve his or her management and leadership skills.

(b) In order to receive funding for a California leadership institute a school district or county superintendent shall do all of the following:

(1) Develop a three-year plan for support and development activities, based on a systematic assessment of unmet needs of pupils and school personnel in the districts to be served.

(2) Increase membership on the resource center policy board established pursuant to Section 44680.4 to include additional representatives of school site administrators where appropriate.

44683. (a) The three-year plan developed pursuant to paragraph (1) of subdivision (b) of Section 44682 shall address, but need not be limited to, objectives identified pursuant to Sections 44670.4, 44680.2, 52014, and 52015, and the capacity of site and central district administrators to provide leadership necessary to do the following:

(1) Improve instructional, management, human development, and counseling skills.

(2) Ensure that curricula, instruction, and materials are keyed to the educational needs of each pupil, with particular emphasis on pupils who have not achieved proficiency in basic reading, writing, and computational skills, limited and non-English speaking pupils, disadvantaged pupils, and pupils with exceptional abilities or needs.

(3) Develop curricula and instructional materials in a wide variety of areas such as arts and humanities and physical, natural, and social sciences.

(4) Facilitate collaboration among the school staff, and among the staff and members of the school community, in planning, implementing, and evaluating the school program.

(5) Improve the school and classroom environment, including relationships between and among pupils, school personnel, and community members, including parents.

(6) Make available followup activities to assist participating individuals in using newly acquired skills on the job.

(b) Each three-year plan shall describe the following:

(1) General staff development objectives and steps necessary to achieve the objectives in subdivision (a), including intended outcomes.

(2) A proposed budget.

(3) Procedures for ongoing evaluation and modification of

institute activities, including evaluation on a continuing basis by participating administrators and outside personnel as necessary.

(c) California leadership institutes shall be designed and implemented under the direction of participating school and district administrators, including the district administrators or administrators responsible for supervision of curriculum and instruction, and in cooperation with teacher training institutes. The programs designed for the institute shall allow for diversity in development activities, including, but not limited to, small groups, self-directed learning, and systematic observation during visits to other schools.

The district administrator or administrators responsible for curriculum and instruction, or other central district administrators shall be included as active participants in one or more staff development activities pursuant to this article whenever appropriate.

44684. California leadership institutes shall set aside specific times throughout the school year to conduct institute programs. The times shall include, but not be limited to, periods when participating administrators are released from their regular duties.

44685. Any school district governing board, upon petition by a majority of the administrators designated to design a California leadership institute, may request the State Board of Education to grant a waiver, of any provision of this article.

44686. The State Board of Education shall adopt rules and regulations necessary to implement the provisions of this article.

44687. The State Department of Education may provide technical assistance, at the request of any entity involved in establishing and implementing a California leadership institute. At the request of the Legislature, the department shall assess the effectiveness of the training provided by California leadership institutes.

44688. (a) Federal and state funds appropriated or apportioned for the purposes of this article shall not be used to supplant funds currently expended by school districts for the purpose of administering or conducting staff development programs.

(b) Priority in funding shall be given to applicants who provide evidence of the following:

(1) Specific substantial district support to implement proposed administrator development activities.

(2) A high degree of collaborative planning of proposed activities among school principals, and between principals and central district administrators.

(3) A process to continue a high degree of collaboration among school principals and between principals and central district administrators in implementing, evaluating, and modifying development activities funded by this article and other state education programs.

(4) A direct relationship between proposed activities and specific

school improvement goals developed pursuant to an existing or new process which involves principals, central district administrators, teachers, other school personnel, secondary students, and parents.

(c) Lowest funding priority shall be given to programs designed for the primary purpose of granting a degree or a credential to participating staff.

44689. It is the intent of the Legislature that the California Leadership Institute be funded annually in each Budget Act.

SEC. 5. Section 44830 of the Education Code is amended to read:

44830. (a) Governing boards of school districts shall employ for positions requiring certification qualifications, only persons who possess the qualifications therefor prescribed by law. It shall be contrary to the public policy of this state for any person or persons charged, by the governing boards, with the responsibility of recommending such persons for employment by the boards to refuse or to fail to do so for reasons of race, color, religious creed, sex, or national origin of the applicants for such employment.

(b) Commencing on February 1, 1983, no school district governing board shall initially hire on a permanent, temporary, or substitute basis a certificated person seeking employment in the capacity designated in his or her credential unless that person has demonstrated basic skills proficiency as provided in Section 44252.5 or unless the person is exempted from the requirement by subdivisions (c), (d), (e), (f), and (g).

(1) The governing board of a school district, with the authorization of the Commission on Teacher Preparation and Licensing, may administer the basic skills proficiency test required under the provisions of Sections 44252 and 44252.5.

(2) The superintendent, in conjunction with the commission and local governing boards, shall take steps necessary to insure the effective implementation of this subdivision.

It is the intent of the Legislature that in effectively implementing the provisions of this subdivision, school district governing boards shall direct superintendents of schools to prepare for emergencies by developing a pool of qualified emergency substitute teachers. This preparation shall include public notice of the test requirements and of the dates and locations of administrations of the tests. District governing boards shall make special efforts to encourage individuals who are known to be qualified in other respects as substitutes to take the state basic skills proficiency test at its earliest administration.

(3) Demonstration of proficiency in reading, writing, and mathematics by any person pursuant to Section 44252 shall satisfy the requirements of this subdivision.

(c) A certificated person shall not be required to take the state basic skills proficiency test if he or she has been employed in a position requiring certification in another school district within 39 months prior to employment with the district.

(d) Nothing in this section shall require a person employed solely for purposes of teaching adults in an apprenticeship program,

approved by the Apprenticeship Standards Division of the Department of Industrial Relations, to pass the state proficiency assessment instrument as a condition of employment.

(e) If the basic skills proficiency test is not administered at the time of hiring, the holder of a vocational designated subject credential who has not already taken and passed the basic skills proficiency test may be hired on the condition that he or she will take the test at its next local administration.

(f) If the holder of a vocational designated subject credential does not pass a proficiency assessment in basic skills pursuant to this section, he or she shall be given one year in which to retake and pass the proficiency assessment in basic skills. If at the expiration of the one-year period he or she has not passed the proficiency assessment in basic skills, he or she shall be subject to dismissal under procedures established in Article 3 (commencing with Section 44930) of Chapter 4.

(g) Nothing in this section shall be construed as requiring the holder of an adult education designated subject credential for other than academic subjects, who is employed in an instructional setting for 20 hours or less per week, to pass the state proficiency assessment as a condition of employment.

(h) A school district may hire a teacher credentialed in another state who has not taken the state basic skills test if, at a public meeting, the school district governing board certifies that no person who meets the credentialing requirements and who has satisfied the basic skills requirement specified in Section 44261.5 is available to fill a position deemed necessary to the normal operation of the school curriculum. The board shall include in the certification a statement of the need to fill the position and the reasons for the need, proof of its attempts to recruit qualified teachers in California, and a statement attesting to the failure of those attempts. Such certification shall be submitted to the commission with the name of the teacher the board intends to employ pursuant to this section. The commission shall issue an emergency credential pursuant to paragraph 3 of subdivision (b) of Section 44252, upon receipt of this documentation.

SEC. 6. Section 44911 of the Education Code is amended to read:

44911. Service by a person under a provisional credential shall not be included in computing the service required as a prerequisite to attainment of, or eligibility to, classification as a permanent employee of a school district.

This section shall not be applicable to teachers granted a one-year emergency credential under the conditions specified in subdivision (b) of Section 44252 and subdivision (h) of Section 44830.

SEC. 7. Section 45108 of the Education Code is amended to read:

45108. If the governing board of any school district establishes positions in the categories described below and restricts initial appointments of new employees to persons in low-income groups or residing in specifically designated areas of the community, then such

positions shall, in addition to the regular class title, be classified as "restricted." The positions shall be part of the classified service and persons so employed shall be classified employees for all purposes except that (1) they shall not be subject to the provisions of Section 45272 or 45273, and (2) they shall not acquire permanent status or seniority credit and shall not be eligible for promotion into the regular classified service until they have complied with the provisions of subdivision (c) of Section 45105.

The categories of positions for which the governing board may establish restrictions under this section are:

(a) The position of instructional aide, as defined in Section 45343.

(b) Any other position involving personal contacts with pupils or parents, that is established to assist school staff personnel responsible for school-community relations; educational support services for such areas as counseling, library, or health; or the correction or prevention of behavioral problems.

This section shall apply to districts that have adopted the merit system in the same manner and effect as if it were a part of Article 6 (commencing with Section 45240) of this chapter.

SEC. 8. Notwithstanding Section 6 of Article XIII B of the California Constitution and Section 2231 or 2234 of the Revenue and Taxation Code, no appropriation is made by this act for the purpose of making reimbursement pursuant to these sections. It is recognized, however, that a local agency or school district may pursue any remedies to obtain reimbursement available to it under Chapter 3 (commencing with Section 2201) of Part 4 of Division 1 of that code.

SEC. 9. Notwithstanding Section 2231.5 of the Revenue and Taxation Code, this act does not contain a repealer, as required by that section; therefore, the provisions of this act shall remain in effect unless and until they are amended or repealed by a later enacted act.

SEC. 10. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order that county superintendents of schools may apply to the State Board of Education to establish a pilot project to assist selected school districts to recruit and select administrative personnel, and in order that school districts or county superintendents of schools may apply for funds to establish a California leadership institute in accordance with the provisions of this act at the earliest possible time, it is necessary that this act take effect immediately.

CHAPTER 1389

An act to amend Sections 2551.3 and 22706.5 of, and to add and repeal Section 87768.5 of, the Education Code, relating to education, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 23, 1982. Filed with Secretary of State September 24, 1982.]

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

SECTION 1. Section 2551.3 of the Education Code is amended to read:

2551.3. (a) For the 1979–80 fiscal year and each fiscal year thereafter, the Superintendent of Public Instruction shall make the following computations to determine the state aid to be allocated for pregnant minors programs operated by county superintendents of schools:

(1) The Superintendent of Public Instruction shall determine expenditures made by the county office for the 1979–80 fiscal year and shall divide such amount by the average daily attendance in such program for the 1979–80 fiscal year.

(2) For the 1980–81 fiscal year, the quotient computed pursuant to paragraph (1) shall be increased by 9 percent, and shall be cumulatively increased in each fiscal year thereafter by the average inflation allowance applied to unified school district revenue limits.

(3) The amount computed pursuant to paragraph (2) shall be multiplied by the average daily attendance in pregnant minors programs for the then current fiscal year.

(b) The product computed pursuant to paragraph (3) of subdivision (a) shall be added to the sum computed pursuant to subdivision (a) of Section 2558.

(c) County superintendents who operate pregnant minors programs for the 1979–80 fiscal year shall continue to operate pregnant minors programs in the 1980–81 fiscal year and each fiscal year thereafter, unless the program is transferred by mutual agreement to another local education agency, or unless the county superintendent demonstrates that programs and services for pregnant minors, such as continuation school, home instruction, or independent instruction, are available from other local education agencies in the county and the local education agencies agree to offer those programs and services, pursuant to pregnant minors program rules and regulations developed by the Superintendent of Public Instruction.

(d) County superintendents who did not operate pregnant minors programs in the 1979–80 fiscal year may apply to the Superintendent of Public Instruction for approval to operate such programs. The revenue limit adjustment for the program shall be the statewide average amount for the then fiscal current year as

computed pursuant to subdivision (a) of Section 42241.5.

(e) Funds received for average daily attendance in pregnant minors programs shall be expended on such programs.

(f) The Superintendent of Public Instruction shall adopt rules and regulations for the effective administration of pregnant minors programs.

SEC. 2. Section 22706.5 of the Education Code is amended to read:

22706.5. A member shall receive full credit for time during which the member serves as an elected officer of an employee organization while on a compensated leave of absence pursuant to Section 44987 or 87768.5, if all of the following conditions are met:

(a) The member was employed and performed service in a position requiring membership in this system in the month prior to commencement of the leave of absence.

(b) The member contributes to the Teachers' Retirement Fund the amount that would have been contributed had the member been employed full time.

(c) The member's employing agency contributes to the Teachers' Retirement Fund an amount based upon the salary that would have been paid to the member had the member been employed full time and at a rate specified by the board.

The maximum amount of credit earned by a member for service as an elected officer of an employee organization shall not exceed eight calendar years.

A member shall not be eligible for disability under this system while on a leave of absence to serve as a full-time elected officer of an employee organization.

SEC. 3. Section 87768.5 is added to the Education Code, to read:

87768.5. (a) The governing board of a community college district shall grant to any employee, upon request, a leave of absence without loss of compensation for the purpose of enabling such employee to serve as an elected officer of any statewide public employee organization, national organization with which the statewide organization is affiliated, or local community college district public employee organization which is affiliated with the state and national organizations.

The leave shall include, but is not limited to, absence for purposes of attendance by the employee at periodic, stated, special, or regular meetings of the body of the organization on which such employee serves as an officer. Compensation during the leave shall include retirement fund contributions required of the community college district as employer. Required retirement contributions shall include the amount necessary to pay any unfunded liability cost for such retirement plan. The employee shall earn full service credit during the leave of absence and shall pay member contributions as prescribed by Section 22804. The maximum amount of the service credit earned shall not exceed eight calendar years. Any employee who serves as a full-time officer of a public employee organization

shall not be eligible for disability benefits under the State Teachers' Retirement System while on the leave of absence.

Following the community college district's payment of the employee for the leave of absence, the community college district shall be reimbursed by the employee organization of which the employee is an elected officer for all compensation paid the employee on account of the leave. Reimbursement by the employee organization shall be made within 10 days after its receipt of the community college district's certification of payment of compensation to the employee.

The leave of absence without loss of compensation provided for by this section is in addition to the released time without loss of compensation granted to representatives of an exclusive representative by subdivision (c) of Section 3543.1 of the Government Code.

(b) An employee who after August 31, 1978, was absent on account of elected-officer service, shall receive full service credit in the State Teachers' Retirement System; provided that, not later than April 30, 1983: (1) the employee makes a written request to the employer for a leave of absence for the period of the elected-officer service, and (2) the employee organization of which the employee is an elected officer pays to the employee's community college district an amount equal to the required State Teachers' Retirement System member and employer retirement contributions, as prescribed by this section.

The community college district, following the written request and payment, shall transmit the amount received to the State Teachers' Retirement System, informing it of the period of the employee's leave of absence. The State Teachers' Retirement System shall credit the employee with all service credit earned for the period of the elected-officer leave of absence.

In the event that the employee has been compensated by the community college district for the period of the service, then, as a condition to the employee's entitlement to service credit for the period, the community college district shall be reimbursed by the employee organization for the amount of the compensation.

The provisions of this subdivision shall apply retroactively to all service as an elected officer in a public employee organization occurring after August 31, 1978.

This section shall remain in effect only until January 1, 1988, and as of that date is repealed, unless a later enacted statute, which is chaptered before January 1, 1988, deletes or extends that date.

SEC. 4. Subdivision (c) of Section 2551.3 of the Education Code, as amended by Section 1 of this act, is deemed to have become operative on June 1, 1981.

SEC. 5. Notwithstanding Section 6 of Article XIII B of the California Constitution and Section 2231 or 2234 of the Revenue and Taxation Code, no appropriation is made by this act for the purpose of making reimbursement pursuant to these sections. It is

recognized, however, that a local agency or school district may pursue any remedies to obtain reimbursement available to it under Chapter 3 (commencing with Section 2201) of Part 4 of Division 1 of that code.

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:

Chapter 1272 of the Statutes of 1980 provided that school districts shall grant to any employee, upon request, a leave of absence without loss of compensation where such employee served as an elected officer of certain categories of public employee organizations, and provided, also, that the employee shall earn full State Teachers' Retirement System service credit during such leave of absence, upon certain terms and conditions. Chapter 1272 of the Statutes of 1980 omitted coverage of community colleges and their instructors. In order to correct the inequity which resulted from such omission as soon as possible, and to clarify the operation of pregnant minors programs by county superintendents of schools as soon as possible, it is necessary that this act take effect immediately.

CHAPTER 1390

An act to add Chapter 7 (commencing with Section 15985) to Part 13 of Division 3 of Title 2 of the Government Code, and to amend Section 226 of the Public Utilities Code, relating to transportation.

[Approved by Governor September 23, 1982. Filed with Secretary of State September 24, 1982.]

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

SECTION 1. Chapter 7 (commencing with Section 15985) is added to Part 13 of Division 3 of Title 2 of the Government Code, to read:

CHAPTER 7. IMPLEMENTATION

15985. Provisions of the Public Utilities Code and orders and regulations of the Public Utilities Commission relating to common carriers of passengers shall not apply to social service transportation delivered by a nonprofit social service transportation provider or to a locally licensed or franchised for-profit transportation provider which operates, in dedicated vehicles, social service transportation pursuant to contract with a nonprofit social service transportation provider organization.

This section does not apply to a nonprofit social service transportation provider that uses one or more vehicles which are

designed for carrying more than 16 persons including the driver or that operates vehicles which offer transportation services over regularly scheduled or fixed routes and allows any person to use those transportation services for a fee.

15986. No county, city, or district may impose a special license or fee for social service transportation provided by a nonprofit social service transportation provider organization or by a for-profit transportation provider, operating under local license or franchise, which provides social service transportation pursuant to contract with a nonprofit social service transportation provider organization.

SEC. 2. Section 226 of the Public Utilities Code, as amended by Chapter 185 of the Statutes of 1982, is amended to read:

226. (a) "Passenger stage corporation" includes every corporation or person engaged as a common carrier, for compensation, in the ownership, control, operation, or management of any passenger stage over any public highway in this state between fixed termini or over a regular route except those whose operations, as measured by total route mileage operated, are 98 percent or more exclusively within the limits of a single city or city and county or whose operations consist solely in the transportation of bona fide pupils attending an institution of learning between their homes and that institution.

For the purposes of this section, the percentage of the route mileage within the limits of any city shall be determined by the Public Utilities Commission on the first day of January of each year, and the percentage so determined shall be presumed to continue for the year.

(b) "Passenger stage corporation" does not include that part of the operations of any corporation or person engaged in the ownership, control, operation, or management of any passenger stage over any public highway in this state, whether between fixed termini or over a regular route or otherwise, engaged in the transportation of any pupils or students to and from a public or private school, college, or university or to and from activities of a public or private school, college, or university, where the rate, charge, or fare for that transportation is not computed, collected, or demanded on an individual fare basis.

(c) "Passenger stage corporation" does not include the transportation of persons between home and work locations or of persons having a common work-related trip purpose in a vehicle having a seating capacity of 15 passengers or less, including the driver, which is used for the purpose of ridesharing, as defined in Section 522 of the Vehicle Code, when the ridesharing is incidental to another purpose of the driver. This exemption does not apply if the primary purpose for the transportation of those persons is to make a profit. "Profit," as used in this subdivision, does not include the recovery of the actual costs incurred in owning and operating a vanpool vehicle, as defined in Section 668 of the Vehicle Code.

(d) "Passenger stage corporation" does not include that part of

the operations of any corporation or person engaged in the ownership, control, operation, or management of any medical transportation vehicles.

(e) "Passenger stage corporation" does not include social service transportation delivered by a nonprofit social service transportation provider or a locally licensed or franchised for-profit transportation provider which operates, in dedicated vehicles, social service transportation pursuant to contract with a nonprofit social service transportation provider organization as long as the provider does not use a vehicle designed for carrying more than 16 persons including the driver or does not operate vehicles which offer transportation services over regularly scheduled or fixed routes.

SEC. 3. If this bill and Senate Bill 1532 are both chaptered and become effective January 1, 1983, and both bills amend Section 226 of the Public Utilities Code, Section 226 as proposed by Senate Bill 1532 shall become operative and Section 2 of this act shall not become operative regardless of whether Senate Bill 1532 is chaptered before or after this act.

CHAPTER 1391

An act to add Sections 14528.5, 14528.6, 14528.7, and 14528.8 to the Government Code, relating to highways.

[Approved by Governor September 23, 1982. Filed with Secretary of State September 24, 1982.]

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

SECTION 1. Section 14528.5 is added to the Government Code, to read:

14528.5. (a) To resolve local transportation problems resulting from the infeasibility of a planned state transportation facility on State Highway 238, the city or county in which the planned facility was to be located, or the transportation planning commission having jurisdiction over the city or county, may develop and file with the commission a local alternative transportation improvement program that addresses transportation problems and opportunities in the county which was to be served by the planned facility.

(b) The department may be requested to develop the local alternative transportation improvement program. In such a case, the local program shall be submitted as a part of the proposed state transportation improvement program under Section 14526.

(c) Prior to filing the local alternative transportation improvement program with the commission, the local program shall be submitted for review by the transportation planning agency and the department in the same manner as the regional transportation improvement program. If the transportation planning agency or the

department does not adopt the local program as a part of the regional transportation improvement program or the proposed state transportation improvement program, the entity that developed and filed the local program, and the transportation planning agency if it has approved the local program, may request the commission to include the local program in the state transportation improvement program.

(d) The commission shall have the final authority regarding the content and approval of the local alternative transportation improvement program. The local program, if approved by the commission, shall be included in the state transportation improvement program adopted by the commission pursuant to Section 14529. The commission shall not approve any local alternative transportation improvement program submitted under this section after January 1, 1986.

(e) At the time the commission approved the local alternative transportation improvement program, the commission shall authorize the department to sell, at the prevailing fair market price, the excess properties acquired for the planned state transportation facilities, provided that any properties required for the implementation of a local alternative transportation improvement project shall not be sold. Article 8.5 (commencing with Section 54235) of Chapter 5 of Part 1 of Division 2 of Title 5 does not apply to the sale of excess property pursuant to this section. All proceeds from the sale of the excess properties, less any reimbursements due to the federal government and all costs incurred in the sale of those excess properties, shall be allocated by the commission to fund the approved local program and shall not be subject to Sections 188 and 188.8. The proceeds shall be used only for highway purposes. The estimated amount of the proceeds shall be included in the adopted regional transportation improvement program and the state transportation improvement program.

(f) This section does not apply to those highways that are in the National System of Interstate and Defense Highways.

(g) This section applies only to State Highway Route 238.

SEC. 2. Section 14528.6 is added to the Government Code, to read:

14528.6. A local alternative transportation improvement program, approved pursuant to Section 14528.5, shall include all of the following:

(a) A program to provide relocation assistance for residents eligible for relocation assistance pursuant to Chapter 16 (commencing with Section 7260) of Division 7 of Title 1 of this code and guidelines adopted pursuant to Section 50460 of the Health and Safety Code.

(b) A program to provide relocation assistance for all lower income households, regardless of their eligibility for assistance pursuant to subdivision (a), who will be displaced from their residences because of actions taken to finance or implement the local

alternative improvement transportation program, including sale or removal of their residences. To be eligible for assistance, lower income households shall have occupied their residence on the date that the local alternative transportation improvement program was approved by the commission. The program shall comply with the requirements, except eligibility requirements, of Chapter 16 (commencing with Section 7260) of Division 7 of Title 1 of this code and with guidelines adopted pursuant to Section 50460 of the Health and Safety Code.

(c) A program to provide all persons or families who are not otherwise eligible for assistance pursuant to subdivisions (a) and (b), with relocation advice and moving expenses, as defined in Section 7261 and subdivisions (a) and (b) of Section 7262.

(d) A program to provide replacement housing units for persons and families of low or moderate income at an affordable housing cost. At a minimum, the program shall provide that the total number of new units for persons or families of low or moderate income to be provided shall be equal to or greater than the number of units occupied by persons or families of low or moderate income displaced by the local alternative transportation improvement program, and that the total number of new housing units to be provided for lower income households shall be equal to or greater than the number of units occupied by lower income households displaced by the local alternative transportation improvement program. The number of units so provided shall be determined at least one year prior to the date the commission approves the local alternative transportation improvement program. If it is not feasible to replace the total number of units required on surplus public property, other types of property shall be used in order to provide the replacement units. Replacement of the units shall be completed utilizing funds other than those derived from the sale of excess properties and shall be completed within four years of the date the persons or families are displaced or, if unoccupied, from the date of demolition or removal. Unoccupied units shall be replaced in the same ratio as units occupied by persons and families of low and moderate income in the right-of-way. It shall be an objective of the program that, where financially feasible, the number of new housing units of persons and families of low or moderate income shall be not less than 20 percent of all new housing units developed on the aggregate surplus public property.

(e) For purposes of this section, the terms "affordable housing cost," "lower income households," and "persons and families of low or moderate income" shall be defined as provided in Division 31 (commencing with Section 50000) of the Health and Safety Code.

(f) Unless specifically stated, this section shall in no way reduce or limit any requirements for the provision of housing for persons or families of low or moderate income as contained in any other provision of law.

(g) No state highway account funds shall be expended for

planning or implementing the housing provisions of the local alternative transportation improvement program which are required to be carried out pursuant to subdivisions (b) to (d), inclusive.

(h) Neither the excess property nor the proceeds from the sale of the excess property shall be used for housing purposes. The excess property may be used for housing purposes after sale by the department.

SEC. 3. Section 14528.7 is added to the Government Code, to read:

14528.7. A city or county acting jointly with the transportation planning agency having jurisdiction over the city or county may adopt a resolution requesting the rescission of a state highway route location within the city or county, as the case may be. The city or county, acting jointly with the transportation planning agency, may submit an alternative state highway project proposal with the resolution. If the commission concurs in the resolution, the route location shall be rescinded, and the department shall proceed with the sale of excess real properties that were acquired for the rescinded route location.

In the case of a city or county under the jurisdiction of a county transportation commission, only the county transportation commission may adopt the resolution and submit an alternative state highway project proposal.

SEC. 4. Section 14528.8 is added to the Government Code, to read:

14528.8. When the department sells any real property or interest therein acquired for a state highway route location rescinded pursuant to Section 14528.7, the proceeds from the sale shall be allocated by the commission for expenditure by the department to fund the alternative state highway project proposed by the city or county, as the case may be, if it is approved by the commission. Expenditure of the proceeds for an alternative state highway project within the same county is not subject to Sections 188 and 188.8 of the Streets and Highways Code if the route location was rescinded pursuant to Section 14528.7 between January 1, 1983, and December 31, 1985.

SEC. 5. Sections 14528.5 and 14528.6 of the Government Code, as proposed by Sections 1 and 2 of this act, shall become operative only if Senate Bill 1711 of the 1981–82 Regular Session of the Legislature is chaptered. In that case, Sections 14528.4, 14528.5, and 14528.6, as proposed by Sections 1, 2, and 3 of Senate Bill 1711 shall not become operative.

CHAPTER 1392

An act to amend Section 798.73 of, and to add Section 798.87 to, the Civil Code, relating to the Mobilehome Residency Law.

[Approved by Governor September 24, 1982. Filed with Secretary of State September 24, 1982.]

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

SECTION 1. Section 798.73 of the Civil Code is amended to read:

798.73. The management shall not require the removal of a mobilehome from the park in the event of its sale to a third party during the term of the tenant's rental agreement. However, in the event of a sale to a third party, in order to upgrade the quality of the park, the management may require that a mobilehome be removed from the park where:

(a) It is less than 10 feet wide.

(b) It is more than 20 years old, or more than 25 years old if manufactured after September 15, 1971, and is 20 feet wide or more and the mobilehome does not comply with the health and safety standards provided in Sections 18550, 18552, and 18605 of the Health and Safety Code, and the regulations established thereunder.

(c) The mobilehome is more than 17 years old, or more than 25 years old if manufactured after September 15, 1971, and is less than 20 feet wide and the mobilehome does not comply with the construction and safety standards under Sections 18550, 18552, and 18605 of the Health and Safety Code, and the regulations established thereunder.

(d) It is in a significantly rundown condition or in disrepair, as determined by the general condition of the mobilehome and its acceptability to the health and safety of the occupants and to the public, exclusive of its age. The management shall use reasonable discretion in determining the general condition of the mobilehome and its accessory structures. The management shall bear the burden of demonstrating that the mobilehome is in a significantly rundown condition or in disrepair.

SEC. 2. Section 798.87 is added to the Civil Code, to read:

798.87. (a) The failure of the management to provide and maintain physical improvements in the common facilities in good working order and condition shall be deemed a public nuisance. Notwithstanding the provisions of Section 3491, such a nuisance only may be remedied by a civil action or abatement.

(b) The violation of a mobilehome park rule shall be deemed a public nuisance. Notwithstanding the provisions of Section 3491, such a nuisance only may be remedied by a civil action or abatement.

CHAPTER 1393

An act to amend Section 18114 of, and to add and repeal Section 18114.1 of, the Health and Safety Code, and to amend Sections 9250 and 9250.8 of the Vehicle Code, relating to mobilehomes, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 24, 1982. Filed with Secretary of State September 24, 1982.]

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

SECTION 1. Section 18114 of the Health and Safety Code is amended to read:

18114. An annual registration fee of eleven dollars ($11) shall be paid the department at the time of registration or renewal for each transportable section of a mobilehome or commercial coach registered pursuant to this part. A registration fee not paid on or before the expiration of the previous registration year is delinquent. A charge of three dollars ($3) for each transportable section shall be added to delinquent registration fees. No additional charge shall be imposed on a registration fee received by mail after the date of delinquency if the fee was, by evidence of postmark, placed in the mail before midnight on the date of delinquency.

SEC. 2. Section 18114.1 is added to the Health and Safety Code, to read:

18114.1. (a) The department shall, on or before October 1, 1982, estimate jointly with the Department of Finance the unencumbered balance which will be in the Mobilehome Revolving Fund as of December 31, 1982. Notwithstanding Section 18114, the department shall reduce registration renewal fees for the 1983 calendar year by an amount equal to a pro rata share of that projected balance.

(b) The department shall determine the amount of registration fee reduction per transportable section which will result from the return of the estimated amount of the unencumbered balance to mobilehome owners pursuant to subdivision (a), and include that determination in the registration renewal notices sent to mobilehome owners by the department as part of the annual renewal process for the 1983 calendar year.

(c) The department shall prepare and submit a report on the estimate and determination made pursuant to subdivisions (a) and (b) to the Chairman of the Joint Legislative Budget Committee at least 30 days before the issuance of renewal notices which identify the reduced fee level.

This section shall remain in effect only until December 31, 1983, and as of that date is repealed, unless a later enacted statute, which is chaptered before December 31, 1983, deletes or extends that date.

SEC. 3. Section 9250 of the Vehicle Code is amended to read:

9250. (a) A registration fee of twenty-two dollars ($22) shall be

paid to the department for the registration of every vehicle or trailer coach of a type subject to registration under this code, except as are expressly exempted under this code from the payment of registration fees.

The registration fee imposed by this section shall apply to all vehicles described in Section 5004, whether or not special identification plates are issued to such vehicle.

(b) Trailer coaches shall be subject to the fee provided in subdivision (a) for each unit of the trailer coach.

SEC. 4. Section 9250.8 of the Vehicle Code is amended to read:

9250.8. (a) In addition to any other fees specified in this code and the Revenue and Taxation Code, a fee of one dollar ($1) shall be paid at the time of registration or renewal of registration of every vehicle subject to registration under this code beginning January 1, 1982, and ending December 31, 1985, except those vehicles that are expressly exempted under this code from the payment of registration fees.

(b) This section shall remain in effect only until December 31, 1985, and as of that date is repealed unless a later enacted statute which is chaptered before December 31, 1985, deletes or extends that date.

SEC. 5. Section 1 of this act shall become operative January 1, 1983.

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 exclude mobilehomes, which are not considered to be vehicles, but, rather, a form of housing, from vehicle registration fee increases, and in order to give the Department of Housing and Community Development the statutory authority necessary to institute a one-year-only fee reduction with minimal impact on state programs at the earliest possible time, it is necessary that this act take effect immediately.

CHAPTER 1394

An act to amend Section 12140 of the Insurance Code, to amend Section 853.5 of the Penal Code, and to amend Section 40512 of, and to add Section 40305.5 to, the Vehicle Code, relating to driving offenses.

[Approved by Governor September 24, 1982. Filed with Secretary of State September 24, 1982.]

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

SECTION 1. Section 12140 of the Insurance Code is amended to read:

12140. This part shall not apply to any of the following:

(a) A duly authorized attorney at law acting in the usual course of his profession.

(b) Any admitted insurer.

(c) Any association of motor carriers.

SEC. 2. Section 853.5 of the Penal Code is amended to read:

853.5. Except as otherwise provided by law, in any case in which a person is arrested for an offense declared to be an infraction, the person may be released according to the procedures set forth by this chapter for the release of persons arrested for an offense declared to be a misdemeanor. In all cases, except as specified in Sections 40302, 40303, 40305, and 40305.5 of the Vehicle Code, in which a person is arrested for an infraction, a peace officer shall only require the arrestee to present his driver's license or other satisfactory evidence of his identity for examination and to sign a written promise to appear. Only if the arrestee refuses to present such identification or, refuses to sign such a written promise may the arrestee be taken into custody.

SEC. 3. Section 40305.5 is added to the Vehicle Code, to read:

40305.5. (a) Whenever a nonresident is arrested for violating any section of this code while driving a commercially registered motor vehicle, excluding house cars, with an unladen weight of 7,000 pounds or more, and does not furnish satisfactory evidence of identity and an address within this state at which he or she can be located, the arresting officer may, in lieu of the procedures set forth in Section 40305, accept a guaranteed traffic arrest bail bond certificate, and the nonresident shall be released from custody upon giving a written promise to appear as provided in Article 2 (commencing with Section 40500).

(b) Every guaranteed traffic arrest bail bond certificate shall contain all of the following information:

(1) The name and address of the surety and of the issuer, if other than the surety.

(2) The name, address, driver's license number and signature of the individual covered by the certificate.

(3) The maximum amount guaranteed.

(4) Exclusions from coverage.

(5) A statement that the issuing company guarantees the appearance of a person to whom a guaranteed traffic arrest bail bond certificate is issued and, in the event of failure of the person to appear in court at the time of trial, the issuing company shall pay any fine or forfeiture imposed on the person, not to exceed the amount stated on the certificate.

(6) The expiration date of the certificate.

(c) A guaranteed traffic arrest bail bond certificate may be issued by a surety admitted in this state. The certificate may also be issued by an association of motor carriers if all of the following conditions

are met:

(1) The association is incorporated, or authorized to do business, in this state.

(2) The association is covered by a guaranteed traffic arrest bail bond issued by a surety admitted in this state.

(3) The association agrees to pay fines or bail assessed against the guaranteed traffic arrest bail bond certificate.

(4) The surety guarantees payment of fines or bail assessed against the guaranteed traffic arrest bail bond certificates issued by the association.

(d) The arresting officer shall file the guaranteed traffic arrest bail bond certificate with the notice to appear required to be filed by Section 40506.

(e) A "guaranteed traffic arrest bail bond certificate" is a document which guarantees the payment of fines or bail assessed against an individual for violation of this code, except driving while under the influence of alcohol or drugs, driving without a license or driving with a suspended or revoked license, operating a motor vehicle without the permission of the owner, or any violation punishable as a felony.

(f) A "guaranteed traffic arrest bail bond" is a bond issued by a surety guaranteeing the obligations of the issuer of guaranteed traffic arrest bail bond certificates. The bond shall be in the amount of fifty thousand dollars ($50,000) and shall be filed with the Secretary of State. Any court in this state may assess against the surety the amount of covered fines or bail which the issuer of a guaranteed traffic arrest bail bond certificate fails to pay.

SEC. 4. Section 40512 of the Vehicle Code is amended to read:

40512. (a) If at the time when the case is called for arraignment before the magistrate the defendant does not appear, either in person or by counsel, the magistrate may declare the bail forfeited and may in his or her discretion order that no further proceedings be had in the case, unless the defendant has been charged with violation of Section 23111 or 23112, or subdivision (a) of Section 23113, and he or she has been previously convicted of the same offense, except in cases where the magistrate finds that undue hardship will be imposed upon the defendant by requiring him or her to appear, the magistrate may declare the bail forfeited and order that no further proceedings shall be had in the case.

(b) Upon the making of the order that no further proceedings be had, all sums deposited as bail shall forthwith be paid into the city or county treasury, as the case may be.

(c) If a guaranteed traffic arrest bail bond certificate has been filed, the clerk of the court shall bill the issuer for the amount of bail fixed by the uniform countywide schedule of bail required under subdivisions (b) and (d) of Section 1296 of the Penal Code.

(d) Upon presentation by a court of the bill for a fine or bail assessed against an individual covered by a guaranteed traffic arrest bail bond certificate, the issuer shall pay to the court the amount of

the fine or forfeited bail which is within the maximum amount guaranteed by the terms of the certificate.

(e) The court shall return the guaranteed traffic arrest bail bond certificate to the issuer upon receipt of payment in accordance with subdivision (d).

CHAPTER 1395

An act to amend Section 18114 of, to add and repeal Section 18114.1 of, the Health and Safety Code, and to add Section 10760 to the Revenue and Taxation Code, and to amend Sections 9250 and 9250.8 of the Vehicle Code, relating to mobilehomes, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 24, 1982. Filed with Secretary of State September 24, 1982.]

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

SECTION 1. Section 18114 of the Health and Safety Code is amended to read:

18114. An annual registration fee of eleven dollars ($11) shall be paid the department at the time of registration or renewal for each transportable section of a mobilehome or commercial coach registered pursuant to this part. A registration fee not paid on or before the expiration of the previous registration year is delinquent. A charge of three dollars ($3) for each transportable section shall be added to delinquent registration fees. No additional charge shall be imposed on a registration fee received by mail after the date of delinquency if the fee was, by evidence of postmark, placed in the mail before midnight on the date of delinquency.

SEC. 2. Section 18114.1 is added to the Health and Safety Code, to read:

18114.1. (a) The department shall, on or before October 1, 1982, estimate jointly with the Department of Finance the amount of the unencumbered balance which will be in the Mobilehome Revolving Fund on December 31, 1982. Notwithstanding Section 18114, the department shall reduce registration renewal fees during the 1983 calendar year by an amount equal to a pro rata share of that projected balance.

(b) The department shall determine the amount of registration fee reduction per transportable section which will result from the return of the estimated amount of the unencumbered balance to mobilehome owners pursuant to subdivision (a), and include that determination in the registration renewal notices sent to mobilehome owners by the department as part of the annual renewal process during the 1983 calendar year.

(c) The department shall prepare and submit a report on the

estimate and determination made pursuant to subdivisions (a) and (b) to the Chairman of the Joint Legislative Budget Committee at least 30 days before the issuance of renewal notices which identify the reduced fee level.

This section shall remain in effect only until December 31, 1983, and as of that date is repealed, unless a later enacted statute, which is chaptered before December 31, 1983, deletes or extends that date.

SEC. 3. Section 10760 is added to the Revenue and Taxation Code, to read:

10760. (a) Notwithstanding any other provision of law, any owner of a mobilehome for which the license fee required to be paid became delinquent between July 1, 1980, and March 1, 1982, and who paid the delinquent fee due or furnishes proof or verification by a county tax collector that payment of property taxes on the mobilehome is current as of the date of filing a waiver of delinquency with the Department of Housing and Community Development, shall not be subject to penalty or local property taxation, if a request for waiver of the delinquency postmarked between the effective date of this section and June 30, 1983, is filed with the department.

(b) Notwithstanding any other provision of law, payment of the first installment on property taxes due and payable in fiscal year 1982–83 by delinquent mobilehome owners filing a waiver of delinquency under this section shall be deemed full payment of that 1982–83 property tax liability, if the waiver of delinquency is filed and postmarked no later than April 9, 1983.

(c) The department shall establish a vehicle license fee renewal date for mobilehome owners paying property taxes on the mobilehome for the 1982–83 calendar year, who file a waiver of delinquency and are reinstated pursuant to this section not sooner than 180 days after the delinquency date on which property taxes for 1982–83 are due and payable, as follows:

(1) For those mobilehome owners filing a waiver of delinquency no later than April 9, 1983, pursuant to subdivision (b), December 10th.

(2) For those mobilehome owners filing a waiver of delinquency pursuant to subdivision (a) between April 10th and June 30th, April 10th, 1983.

(d) Forms for filing the waiver of delinquency shall be provided by the Department of Housing and Community Development through its offices and county assessors and shall include provisions for the county tax collector to verify any payment of local property taxes on the mobilehome by the mobilehome owner.

SEC. 4. Section 9250 of the Vehicle Code is amended to read:

9250. (a) A registration fee of twenty-two dollars ($22) shall be paid to the department for the registration of every vehicle or trailer coach of a type subject to registration under this code, except as are expressly exempted under this code from the payment of registration fees.

The registration fee imposed by this section shall apply to all

vehicles described in Section 5004, whether or not special identification plates are issued to such vehicle.

(b) Trailer coaches shall be subject to the fee provided in subdivision (a) for each unit of the trailer coach.

SEC. 5. Section 9250.8 of the Vehicle Code is amended to read:

9250.8. (a) In addition to any other fees specified in this code and the Revenue and Taxation Code, a fee of one dollar ($1) shall be paid at the time of registration or renewal of registration of every vehicle subject to registration under this code beginning January 1, 1982, and ending December 31, 1985, except those vehicles that are expressly exempted under this code from the payment of registration fees.

(b) This section shall remain in effect only until December 31, 1985, and as of that date is repealed unless a later enacted statute which is chaptered before December 31, 1985, deletes or extends that date.

SEC. 6. Section 1 of this act shall become operative January 1, 1983.

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:

In order to exclude mobilehomes which are not considered to be vehicles but, rather, a form of housing, from vehicle registration fee increases, to give the Department of Housing and Community Development the statutory authority necessary to institute a one-year only fee reduction with minimal impact on state programs, and to provide a one-time waiver for delinquent registration fees payable because of a lack of notice of the change in delinquent penalties and confusion resulting from changes in the administration of mobilehome registration fees, at the earliest possible time, it is necessary that this act take effect immediately.

SEC. 8. No appropriation is made by this act pursuant to Section 6 of Article XIII B of the California Constitution or Section 2231 or 2234 of the Revenue and Taxation Code because the Director of Finance, based on cost information provided by the counties, shall include in the Governor's 1983–84 budget an appropriation to reimburse counties for county administrative costs associated with this act.

CHAPTER 1396

An act to amend Sections 50078, 50078.2, 50078.12, 50078.15, 53972.5, and 56470 of, to amend the heading of Article 3.6 (commencing with Section 50078) of Chapter 1 of Part 1 of Division 1 of Title 1 of, to add Sections 50078.1, 50078.3, 50078.5, 50078.11, 50078.17, 50078.19, and 53973 to, and to repeal Sections 53972, 53973, 53974, 53975, 53976, and 53977 of, the Government Code, and to add Section 13111 to the

Health and Safety Code, relating to fire suppression.

[Approved by Governor September 24, 1982. Filed with Secretary of State September 24, 1982.]

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

SECTION 1. The heading of Article 3.6 (commencing with Section 50078) of Chapter 1 of Part 1 of Division 1 of Title 1 of the Government Code is amended to read:

Article 3.6. Fire Suppression Assessments

SEC. 2. Section 50078 of the Government Code is amended to read:

50078. Any district, including a county service area created pursuant to the County Service Area Law, Chapter 2.2 (commencing with Section 25210.1) of Part 2 of Division 2 of Title 3, which provides fire suppression services directly, by contract with another governmental agency, or which provides fire suppression services pursuant to the Fire Protection District Law of 1961, Part 2.7 (commencing with Section 13801) of Division 12 of the Health and Safety Code, any county, including any county which provides fire suppression services to any area pursuant to Section 25643, or any city may, by ordinance adopted after notice and hearing, determine and levy an assessment for fire suppression services pursuant to this article. The assessment may be made for the purpose of obtaining, furnishing, operating, and maintaining fire suppression equipment or apparatus or for the purpose of paying the salaries and benefits of firefighting personnel, or both, whether or not fire suppression services are actually used by or upon a parcel, improvement, or property.

SEC. 3. Section 50078.1 is added to the Government Code, to read:

50078.1. As used in this article:

(a) "Legislative body" means the board of directors, trustees, governors, or any other governing body of any district specified in Section 50078, a county board of supervisors for those areas receiving county fire suppression services pursuant to Section 25643, or the governing body of a city.

(b) "Governmental agency" means the State of California and any of its agencies, or any city or county, whether general law or chartered, special district, community services district, or any other municipal corporation or district.

SEC. 4. Section 50078.2 of the Government Code is amended to read:

50078.2. The ordinance shall establish uniform schedules and rates based upon the type of use of property and the risk classification of the structures or other improvements on, or the use of, the

property. The risk classification may include, but need not be limited to, the amount of water required for fire suppression on that property, the structure size, type of construction, structure use, and other factors relating to potential fire and panic hazards and the costs of providing the fire suppression by the district to that property. The assessment shall be related to the benefits to the property assessed.

SEC. 5. Section 50078.3 is added to the Government Code, to read:

50078.3. Any ordinance adopted by a local agency pursuant to this article establishing uniform schedules and rates for assessments for fire suppression services which substantially conforms with the model ordinance which the State Fire Marshal is authorized to adopt pursuant to Section 13111 of the Health and Safety Code shall be presumed to be in compliance with the requirements of Section 50078.2.

SEC. 6. Section 50078.5 is added to the Government Code, to read:

50078.5. (a) The legislative body may establish zones or areas of benefit within the district, county, or city and may restrict the imposition of assessments to areas lying within one or more of the zones or areas of benefit established within the district.

(b) The benefit assessment shall be levied on a parcel, class of improvement to property, or use of property basis, or a combination thereof, within the boundaries of the district, zone, or area of benefit.

The assessment may be levied against any parcel, improvement, or use of property to which such services may be made available whether or not such service is actually used.

SEC. 6.3. Section 50078.11 is added to the Government Code, to read:

50078.11. If the legislative body of a county or city finds that the protest is made by holders of property interests proposed to be assessed and who will be obligated to pay the proposed assessment for fire suppression service representing more than 5 percent but less than one-third of the total amount of expected revenue from the assessment, and protests are not withdrawn so as to reduce the same to less than 5 percent, the proposed assessment so protested shall either be submitted to approval by two-thirds of the voters of the county or city voting on the proposition or abandoned.

If the value of the protests equals one-third or more of the total amount of expected revenue from the assessment, and protests are not withdrawn so as to reduce the same to less than one-third, the proposed assessment so protested shall be abandoned.

SEC. 6.5. Section 50078.12 of the Government Code is amended to read:

50078.12. If the legislative body of a district finds that the protest is made by holders of property interests proposed to be assessed and who will be obligated to pay the proposed assessment for fire suppression service representing more than 5 percent but less than 50 percent of the total amount of expected revenue from the

assessment, and protests are not withdrawn so as to reduce the same to less than 5 percent, the proposed assessment so protested shall either be submitted to approval by a majority of the voters of the district voting on the proposition or abandoned.

If the value of the protests equal 50 percent or more of the total amount of expected revenue from the assessment, and protests are not withdrawn so as to reduce the same to less than 50 percent, the proposed assessment so protested shall be abandoned.

SEC. 7. Section 50078.15 of the Government Code is amended to read:

50078.15. If no protests or objections in writing have been delivered to the clerk up to the hour set for hearing thereon, or if valid protests have been found by the legislative body to be less than 5 percent of the total amount of expected revenue, the legislative body may, upon the conclusion of the hearing adopt, revise, change, reduce, or modify each or any assessment. The legislative body shall make a determination upon each assessment as described in the report or as determined at the hearing, and thereafter, by ordinance, shall determine and levy the assessment.

SEC. 8. Section 50078.17 is added to the Government Code, to read:

50078.17. Any judicial action or proceeding to attack, review, set aside, void, or annul an ordinance levying an assessment, or modifying or amending an existing assessment, shall be commenced within 120 days of the effective date of the ordinance or May 1, 1983, whichever date is later.

If an ordinance provides for an automatic adjustment in an assessment, and the automatic adjustment results in an increase in the amount of an assessment, any action or proceeding to attack, review, set aside, void, or annul the increase shall be commenced within 120 days of the effective date of the increase or May 1, 1983, whichever date is later.

Any such action or proceeding shall be brought pursuant to Chapter 9 (commencing with Section 860) of Title 10 of Part 2 of the Code of Civil Procedure and any appeal from a final judgment in such action or proceeding shall be filed within 30 days after entry of that judgment.

SEC. 8.5. Section 50078.19 is added to the Government Code, to read:

50078.19. This article does not limit or prohibit the levy or collection of any other fee, charge, assessment, or tax for fire suppression services authorized by any other provisions of law.

SEC. 9. Section 53972 of the Government Code is repealed.

SEC. 10. Section 53972.5 of the Government Code is amended to read:

53972.5. A proposal for the creation within the County of San Diego of a local agency for the purpose of providing fire protection or prevention services directly, by contract with another local agency, or pursuant to the Fire Protection District Law of 1961, Part

2.7 (commencing with Section 13801) of Division 12 of the Health and Safety Code, or police protection services, may be combined with a proposal for the adoption by the local agency of a special tax pursuant to Section 53978, and presented to the voters as a single ballot proposition. If both proposals are presented as a single ballot proposition, the proposed local agency shall not be created, and the special tax shall not take effect, unless the proposition is approved by two-thirds of the voters voting upon the proposition. The local agency created shall not be eligible to participate in the distribution of funds from the Special District Augmentation Fund created pursuant to Section 98.6 of the Revenue and Taxation Code.

SEC. 11. Section 53973 of the Government Code is repealed.

SEC. 12. Section 53973 is added to the Government Code, to read:

53973. The proceedings of any local agency which has, prior to the effective date of this section, adopted by ordinance or resolution, and received voter approval of, a standby or availability charge pursuant to statutes repealed by the act which enacted this section, shall be deemed to be in compliance with the provisions of Section 53978. The local agency may levy such assessment pursuant to the provisions of such ordinance or resolution for all fiscal years following the effective date of this section pursuant to Section 53978.

SEC. 13. Section 53974 of the Government Code, is repealed.

SEC. 14. Section 53975 of the Government Code is repealed.

SEC. 15. Section 54976 of the Government Code is repealed.

SEC. 16. Section 53977 of the Government Code is repealed.

SEC. 17. Section 56470 of the Government Code is amended to read:

56470. Any change of organization or reorganization may provide for, or be made subject to one or more of, the following terms and conditions, provided that any of the following terms and conditions shall not 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 (1) special, extraordinary, or additional taxes or assessments, or (2) special, extraordinary, or additional service charges, rentals, or rates, or (3) both, for the purpose of providing for any payment required pursuant to subdivision (a) of this section.

(c) The imposition, exemption, transfer, division, or apportionment, as among any affected cities, counties, districts, and 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 therein and the levying or fixing and the collection of any (1) taxes

or assessments, or (2) service charges, rentals, or rates or, (3) both in the same manner as provided in the original authorization of the bonds and in the amount necessary to provide for such payment.

(d) If, as a result of any term or condition made pursuant to subdivision (c), the liability of any affected city, county, or district for payment of the principal of any bonded indebtedness shall be increased or decreased, the term and condition may specify the amount, if any, of such increase or decrease which shall be included in, or excluded from, the outstanding bonded indebtedness of any such agency for the purpose of the application of any statute or charter provision imposing a limitation upon the principal amount of outstanding bonded indebtedness of such agency.

(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 district, including territory being annexed to any district, or of any existing or proposed new improvement district therein. The new indebtedness may be the obligation solely of territory to be annexed provided the district 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 district.

(g) The issuance and sale of any bonds, including authorized but unissued bonds of a subject district, either by such district or by a district designated as the successor to any district which shall be 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 of any other property, real or personal.

(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 thereof, if, and to the extent that, any such matters shall be 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 district which shall be 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 district

with respect to enforcement, performance or payment of any outstanding bonds, including revenue bonds, or other contracts and obligations of said extinguished district.

(n) The designation (1) of the method for the selection of members of the legislative body of a district or (2) the number of such members, (3) or 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 such selection or for varying numbers of such members, or both.

(o) The initiation, conduct, or completion of proceedings on a proposal made under and pursuant to the Knox-Nisbet Act, Chapter 6.6 (commencing with Section 54773) of Division 2, Title 5.

(p) The fixing of the effective date of any change of organization, subject to the limitations of Section 56456.

(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 currently provided or previously authorized by official act of the district to be provided.

(s) The approval by the voters of the levy of a special tax.

(t) Any other matters necessary or incidental to any of the foregoing.

SEC. 18. Section 13111 is added to the Health and Safety Code, to read:

13111. The State Fire Marshal may adopt a model ordinance for adoption by any local agency authorized pursuant to Article 3.6 (commencing with Section 50078) of Chapter 1 of Part 1 of Division 1 of Title 5 of the Government Code to establish uniform schedules and rates for assessments for fire suppression services as provided in Section 50078.2 of the Government Code.

CHAPTER 1397

An act to amend Sections 798.8, 798.9, 798.11, 798.12, 798.15, 798.18, 798.19, 798.25, 798.26, 798.27, 798.28, 798.30, 798.31, 798.32, 798.33, 798.34, 798.35, 798.36, 798.37, 798.38, 798.50, 798.51, 798.55, 798.56, 798.58, 798.59, 798.70, 798.72, 798.73, 798.74, 798.77, 798.78, 798.79, and 798.86 of, and to amend the heading of Article 5 (commencing with Section 798.50) of Chapter 2, of Part 2 of Division 2 of, the Civil Code, and to add and repeal Section 65863.8 of the Government Code, relating to mobilehome parks.

[Approved by Governor September 24, 1982. Filed with Secretary of State September 24, 1982]

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

SECTION 1. Section 798.8 of the Civil Code is amended to read:

798.8. "Rental agreement" is an agreement between the management and the homeowner establishing the terms and conditions of a park tenancy. A lease is a rental agreement.

SEC. 2. Section 798.9 of the Civil Code is amended to read:

798.9. "Homeowner" is a person who has a tenancy in a mobilehome park under a rental agreement.

SEC. 3. Section 798.11 of the Civil Code is amended to read:

798.11. "Resident" is a homeowner or other person who lawfully occupies a mobilehome.

SEC. 4. Section 798.12 of the Civil Code is amended to read:

798.12. "Tenancy" is the right of a homeowner to the use of a site within a mobilehome park on which to locate, maintain, and occupy a mobilehome, site improvements, and accessory structures for human habitation, including the use of the services and facilities of the park.

SEC. 5. Section 798.15 of the Civil Code is amended to read:

798.15. The rental agreement shall be in writing and shall contain, in addition to the provisions otherwise required by law to be included, all of the following:

(a) The term of the tenancy and the rent therefor.

(b) The rules and regulations of the park.

(c) The language of the provisions of this chapter. A copy of the text of this chapter attached as an exhibit shall be deemed to satisfy the requirements of this section.

(d) A provision specifying that it is the responsibility of the management to provide and maintain physical improvements in the common facilities in good working order and condition.

(e) A description of the physical improvements to be provided the homeowner during his or her tenancy.

(f) A provision listing those services which will be provided at the time the rental agreement is executed and will continue to be offered for the term of tenancy and the fees, if any, to be charged for those services.

(g) All other provisions governing the tenancy.

SEC. 6. Section 798.18 of the Civil Code is amended to read:

798.18. (a) A homeowner shall be offered a rental agreement for (1) a term of 12 months, or (2) a lesser period as the homeowner may request, or (3) a longer period as mutually agreed upon by both the homeowner and management.

(b) No such agreement shall contain any terms or conditions with respect to charges for rent, utilities, or incidental reasonable service charges that would be different during the first 12 months of the agreement from the corresponding terms or conditions that would be offered to the homeowners on a month-to-month basis.

SEC. 7. Section 798.19 of the Civil Code is amended to read:

798.19. No rental agreement for a mobilehome shall contain a

provision by which the homeowner waives his or her rights under the provisions of Articles 1 to 8, inclusive, of this chapter. Any such waiver shall be deemed contrary to public policy and void.

SEC. 8. Section 798.25 of the Civil Code is amended to read:

798.25. A rule or regulation of the park may be amended at any time with the consent of a homeowner, or without his or her consent upon written notice to him or her of not less than six months, except for regulations applicable to recreational facilities which may be amended without his consent upon written notice to him or her of not less than 60 days. Written notice to a new homeowner whose tenancy commences within the required period of notice, of a proposed amendment shall constitute compliance with this section where the written notice is given to him or her before the inception of his tenancy.

SEC. 9. Section 798.26 of the Civil Code is amended to read:

798.26. (a) Except as provided in subdivision (b), and notwithstanding any other provision of law to the contrary, the ownership or management of a park, subdivision, cooperative, or condominium for mobilehomes shall have no right of entry to a mobilehome without the prior written consent of the occupant. Such consent may be revoked in writing by the occupant at any time. The ownership or management shall have a right of entry upon the land upon which a mobilehome is situated for maintenance of utilities, for maintenance of the premises in accordance with the rules and regulations of the park when the homeowner or resident fails to so maintain the premises, and protection of the mobilehome park, subdivision, cooperative, or condominium at any reasonable time, but not in a manner or at a time which would interfere with the occupant's quiet enjoyment.

(b) The ownership or management of a park, subdivision, cooperative, or condominium for mobilehomes may enter a mobilehome without the prior written consent of the occupant in case of an emergency or when the occupant has abandoned the mobilehome.

SEC. 10. Section 798.27 of the Civil Code is amended to read:

798.27. (a) The management shall give written notice to all homeowners and prospective homeowners concerning the following matters: (1) the nature of the zoning or use permit under which the mobilehome park operates. If the mobilehome park is operating pursuant to a permit subject to a renewal or expiration date, the relevant information and dates shall be included in the notice. (2) The duration of any lease of the mobilehome park, or any portion thereof, in which the management is a lessee.

(b) If a change occurs concerning the zoning or use permit under which the park operates or a lease in which the management is a lessee, all homeowners shall be given written notice within 30 days of such change. Notification regarding the change of use of the park, or any portion thereof, shall be governed by subdivision (f) of Section 798.56. A prospective homeowner shall be notified prior to

the inception of the tenancy.

SEC. 11. Section 798.28 of the Civil Code is amended to read:

798.28. The management of a mobilehome park shall disclose, in writing, the name of the mobilehome park owner upon the request of a homeowner.

SEC. 12. Section 798.30 of the Civil Code is amended to read:

798.30. The management shall give a homeowner written notice of any increase in his or her rent at least 60 days before the date of the increase.

SEC. 13. Section 798.31 of the Civil Code is amended to read:

798.31. A homeowner shall not be charged a fee for other than rent, utilities, and incidental reasonable charges for services actually rendered.

SEC. 14. Section 798.32 of the Civil Code is amended to read:

798.32. A homeowner shall not be charged a fee for services actually rendered which are not listed in the rental agreement unless he or she has been given written notice thereof by the management, at least 60 days before imposition of the charge.

SEC. 15. Section 798.33 of the Civil Code is amended to read:

798.33. A homeowner shall not be charged a fee for keeping a pet in the park unless the management actually provides special facilities or services for pets. If special pet facilities are maintained by the management, the fee charged shall reasonably relate to the cost of maintenance of the facilities or services and the number of pets kept in the park.

SEC. 16. Section 798.34 of the Civil Code is amended to read:

798.34. A homeowner shall not be charged a fee for a guest who does not stay with him or her for more than a total of 20 consecutive days or a total of 30 days in a calendar year. Such a guest will not be required to register with the management.

SEC. 17. Section 798.35 of the Civil Code is amended to read:

798.35. A homeowner shall not be charged a fee based on the number of members in his or her immediate family. As used in this section, the "immediate family" includes the homeowner, his or her spouse, their parents, and their children.

SEC. 18. Section 798.36 of the Civil Code is amended to read:

798.36. A homeowner shall not be charged a fee for the enforcement of any of the rules and regulations of the park.

SEC. 19. Section 798.37 of the Civil Code is amended to read:

798.37. A homeowner shall not be charged a fee for the entry, installation, hookup, or landscaping as a condition of tenancy, but reasonable landscaping and maintenance requirements may be included in the park rules and regulations. The management shall not require a homeowner or prospective homeowner to purchase, rent, or lease goods or services for landscaping from any person, company, or corporation.

SEC. 20. Section 798.38 of the Civil Code is amended to read:

798.38. Where the management provides both master meter and submeter service of utilities to a homeowner, for each billing period

the cost of the charges for the period shall be separately stated along with the opening and closing readings for his meter. The management shall post in a conspicuous place, the prevailing residential utilities rate schedule as published by the serving utility.

SEC. 21. The heading of Article 5 (commencing with Section 798.50) of Chapter 2.5 of Part 2 of Division 2 of the Civil Code is amended to read:

Article 5. Homeowner Meetings

SEC. 22. Section 798.50 of the Civil Code is amended to read:

798.50. The management shall permit meetings by homeowners or occupants of a mobilehome in the park, or any or all of them, relating to mobilehome living and affairs to be held in any of the park community or recreation halls if the meeting is held at a reasonable hour and when the facility is not otherwise in use.

SEC. 23. Section 798.51 of the Civil Code is amended to read:

798.51. The management shall meet and consult with the homeowners, upon written request, either individually, collectively, or with representatives of a group of homeowners who have signed a request to be so represented on the following matters:

(a) Amendments to park rules and regulations.

(b) Standards for maintenance of physical improvements in the park.

(c) Addition, alteration, or deletion of service, equipment or physical improvements.

Any collective meeting shall be conducted only after notice thereof has been given to all the requesting homeowners 10 days or more before the meeting.

SEC. 24. Section 798.55 of the Civil Code is amended to read:

798.55. (a) The Legislature finds and declares that, because of the high cost of moving mobilehomes, the potential for damage resulting therefrom, the requirements relating to the installation of mobilehomes, and the cost of landscaping or lot preparation, it is necessary that the owners of mobilehomes occupied within mobilehome parks be provided with the unique protection from actual or constructive eviction afforded by the provisions of this chapter.

(b) The management shall not terminate or refuse to renew a tenancy, except for a reason specified in this article and upon the giving of written notice to the homeowner in the manner prescribed by Section 1162 of the Code of Civil Procedure, to remove the mobilehome from the park within a period of not less than 60 days, which period shall be specified in the notice. A copy of this notice shall be sent to the legal owner and registered owner of the mobilehome, if other than the homeowner, by United States mail on the same day as notice is given to the homeowner, addressed to the legal and registered owners at their addresses, as set forth in the registration card specified in Section 18075.28 of the Health and

Safety Code.

SEC. 25. Section 798.56 of the Civil Code is amended to read:

798.56. A tenancy shall be terminated by the management only for one or more of the following reasons:

(a) Failure of the homeowner to comply with a local ordinance or state law or regulation relating to mobilehomes within a reasonable time after the homeowner receives a notice of noncompliance from the appropriate governmental agency.

(b) Conduct by the homeowner, upon the park premises, which constitutes a substantial annoyance to other homeowners.

(c) Failure of the homeowner to comply with a reasonable rule or regulation of the park as set forth in the rental agreement or any amendment thereto.

No act or omission of the homeowner shall constitute such a failure to comply unless and until the management has given the homeowner written notice of the alleged rule or regulation violation and the homeowner has failed to adhere to the rule or regulation within seven days.

(d) Nonpayment of rent, utility charges, or reasonable incidental service charges; provided, that the homeowner shall be given a three-day written notice to pay the amount due or to vacate the tenancy. The three-day written notice shall be given to the homeowner in the manner prescribed by Section 1162 of the Code of Civil Procedure. Such notice may be given at the same time as the 60 days' notice required for termination of the tenancy. Payment by the homeowner prior to the expiration of the three-day notice period, or payment by the legal owner, as defined in Section 18007 of the Health and Safety Code, or registered owner, as defined in Section 18010.2 of the Health and Safety Code, if other than the homeowner, on behalf of the homeowner prior to the expiration of 30 calendar days following the mailing of the notice to the legal owner or registered owner provided in subdivision (b) of Section 798.55, shall cure a default under this subdivision with respect to such payment. The homeowner shall remain liable for all payments due up until the time the tenancy is vacated. Cure of a default of rent, utility charges, or reasonable incidental service charges by the legal owner or registered owner, if other than the homeowner, as provided by this subdivision, may not be exercised more than twice during the term of the tenancy.

(e) Condemnation of the park.

(f) Change of use of the park or any portion thereof, provided:

(1) The management gives the homeowners at least 15 days' written notice that the management will be appearing before a local governmental board, commission, or body to request permits for a change of use of the mobilehome park.

(2) After all required permits requesting a change of use have been approved by the local governmental board, commission, or body, the management shall give the homeowners six months' or more written notice of termination of tenancy.

If the change of use requires no local governmental permits, then notice shall be given 12 months or more prior to the management's determination that a change of use will occur. The management in the notice shall disclose and describe in detail the nature of the change of use.

(3) The management gives each proposed homeowner written notice thereof prior to the inception of his tenancy that the management is requesting a change of use before local governmental bodies or that a change of use request has been granted.

(4) The notice requirements for termination of tenancy set forth in Sections 798.56 and 798.57 shall be followed if the proposed change actually occurs.

(5) A notice of a proposed change of use given prior to January 1, 1980, which conforms to the requirements in effect at that time shall be valid. The requirements for a notice of a proposed change of use imposed by this subdivision shall be governed by the law in effect at the time the notice was given.

SEC. 25.5. Section 798.56 of the Civil Code is amended to read:

798.56. A tenancy shall be terminated by the management only for one or more of the following reasons:

(a) Failure of the homeowner to comply with a local ordinance or state law or regulation relating to mobilehomes within a reasonable time after the homeowner receives a notice of noncompliance from the appropriate governmental agency.

(b) Conduct by the homeowner, upon the park premises, which constitutes a substantial annoyance to other homeowners.

(c) Failure of the homeowner to comply with a reasonable rule or regulation of the park as set forth in the rental agreement or any amendment thereto.

No act or omission of the homeowner shall constitute such a failure to comply unless and until the management has given the homeowner written notice of the alleged rule or regulation violation and the homeowner has failed to adhere to the rule or regulation within seven days. However, if a homeowner has been given a written notice of an alleged violation of the same rule or regulation on three or more occasions within a 12-month period after the homeowner has violated that rule or regulation, no written notice shall be required for a subsequent violation of the same rule or regulation.

Nothing in this subdivision shall relieve the management from its obligation to demonstrate that a rule or regulation has in fact been violated.

(d) Nonpayment of rent, utility charges, or reasonable incidental service charges; provided, that the homeowner shall be given a three-day written notice to pay the amount due or to vacate the tenancy. The three-day written notice shall be given to the homeowner in the manner prescribed by Section 1162 of the Code of Civil Procedure. Such notice may be given at the same time as the

60 days' notice required for termination of the tenancy. Payment by the homeowner prior to the expiration of the three-day notice period, or payment by the legal owner, as defined in Section 18007 of the Health and Safety Code, or registered owner, as defined in Section 18010.2 of the Health and Safety Code, if other than the homeowner, on behalf of the homeowner prior to the expiration of 30 calendar days following the mailing of the notice to the legal owner or registered owner provided in subdivision (b) of Section 798.55, shall cure a default under this subdivision with respect to such payment. The homeowner shall remain liable for all payments due up until the time the tenancy is vacated. Cure of a default of rent, utility charges, or reasonable incidental service charges by the legal owner or registered owner, if other than the homeowner, as provided by this subdivision, may not be exercised more than twice during the term of the tenancy.

(e) Condemnation of the park.

(f) Change of use of the park or any portion thereof, provided:

(1) The management gives the homeowners at least 15 days' written notice that the management will be appearing before a local governmental board, commission, or body to request permits for a change of use of the mobilehome park.

(2) After all required permits requesting a change of use have been approved by the local governmental board, commission, or body, the management shall give the homeowners six months' or more written notice of termination of tenancy.

If the change of use requires no local governmental permits, then notice shall be given 12 months or more prior to the management's determination that a change of use will occur. The management in the notice shall disclose and describe in detail the nature of the change of use.

(3) The management gives each proposed homeowner written notice thereof prior to the inception of his tenancy that the management is requesting a change of use before local governmental bodies or that a change of use request has been granted.

(4) The notice requirements for termination of tenancy set forth in Sections 798.56 and 798.57 shall be followed if the proposed change actually occurs.

(5) A notice of a proposed change of use given prior to January 1, 1980, which conforms to the requirements in effect at that time shall be valid. The requirements for a notice of a proposed change of use imposed by this subdivision shall be governed by the law in effect at the time the notice was given.

SEC. 26. Section 798.58 of the Civil Code is amended to read:

798.58. No tenancy shall be terminated for the purpose of making a homeowner's site available for a person who purchased a mobilehome from the owner of the park or his agent.

SEC. 27. Section 798.59 of the Civil Code is amended to read:

798.59. A homeowner shall give written notice to the

management of not less than 60 days before vacating his or her tenancy.

SEC. 28. Section 798.70 of the Civil Code is amended to read:

798.70. A homeowner may advertise the sale or exchange of his or her mobilehome or, if not prohibited by the terms of an agreement with the management, may advertise the rental of his or her mobilehome by displaying a sign in the window of the mobilehome stating that the mobilehome is for sale or exchange or, if not prohibited, for rent by the owner of the mobilehome or his or her agent. The sign shall state the name, address, and telephone number of the owner of the mobilehome or his or her agent and may be at least 12 inches in width and 12 inches in length.

SEC. 29. Section 798.72 of the Civil Code is amended to read:

798.72. The management shall not charge a homeowner or his or her agent a transfer or selling fee as a condition of a sale of his mobilehome within a park unless the management performs a service in the sale. The management shall not perform any such service in connection with the sale unless so requested, in writing, by the homeowner or his or her agent.

SEC. 30. Section 798.73 of the Civil Code is amended to read:

798.73. The management shall not require the removal of a mobilehome from the park in the event of its sale to a third party during the term of the homeowner's rental agreement. However, in the event of a sale to a third party, in order to upgrade the quality of the park, the management may require that a mobilehome be removed from the park where:

(a) It is less than 10 feet wide.

(b) It is more than 20 years old, or more than 25 years old if manufactured after September 15, 1971, and is 20 feet wide or more.

(c) The mobilehome is more than 17 years old, or more than 25 years old if manufactured after September 15, 1971, and is less than 20 feet wide.

(d) It is in rundown condition or in disrepair. The management shall use reasonable discretion in determining the condition of the mobilehome and its accessory structures.

SEC. 30.5. Section 798.73 of the Civil Code is amended to read:

798.73. The management shall not require the removal of a mobilehome from the park in the event of its sale to a third party during the term of the homeowner's rental agreement. However, in the event of a sale to a third party, in order to upgrade the quality of the park, the management may require that a mobilehome be removed from the park where:

(a) It is less than 10 feet wide.

(b) It is more than 20 years old, or more than 25 years old if manufactured after September 15, 1971, and is 20 feet wide or more and the mobilehome does not comply with the health and safety standards provided in Sections 18550, 18552, and 18605 of the Health and Safety Code, and the regulations established thereunder.

(c) The mobilehome is more than 17 years old, or more than 25

years old if manufactured after September 15, 1971, and is less than 20 feet wide and the mobilehome does not comply with the construction and safety standards under Sections 18550, 18552, and 18605 of the Health and Safety Code, and the regulations established thereunder.

(d) It is in a significantly rundown condition or in disrepair, as determined by the general condition of the mobilehome and its acceptability to the health and safety of the occupants and to the public, exclusive of its age. The management shall use reasonable discretion in determining the general condition of the mobilehome and its accessory structures. The management shall bear the burden of demonstrating that the mobilehome is in a significantly rundown condition or in disrepair.

SEC. 31. Section 798.74 of the Civil Code is amended to read:

798.74. The management may require the right of prior approval of a purchaser of a mobilehome that will remain in the park and that the selling homeowner or his or her agent give notice of the sale to the management before the close of the sale. Approval cannot be withheld if the purchaser has the financial ability to pay the rent and charges of the park unless the management reasonably determines that, based on the purchaser's prior tenancies, he or she will not comply with the rules and regulations of the park. If the ownership or management rejects a purchaser as a prospective homeowner, the ownership or management shall inform the selling homeowner in writing of its reasons for such rejection.

SEC. 32. Section 798.77 of the Civil Code is amended to read:

798.77. No rental or sale agreement shall contain a provision by which the purchaser or homeowner waives his rights under this article. Any such waiver shall be deemed contrary to public policy and shall be void and unenforceable.

SEC. 32.5. Section 798.78 of the Civil Code, as amended by Chapter 477 of the Statutes of 1982, is amended to read:

798.78. An heir or joint tenant who gains ownership of a mobilehome in the mobilehome park through the death of the owner of the mobilehome who is a homeowner shall have the right to sell the mobilehome to a third party in accordance with the provisions of this article, but only if all the homeowner's responsibilities and liabilities to the management regarding rent, utilities, and reasonable maintenance of the mobilehome and its premises which have arisen after the transfer of ownership to the heir or joint tenant have been satisfied up until the date the mobilehome is resold.

SEC. 33. Section 798.79 of the Civil Code is amended to read:

798.79. Any legal owner who has repossessed a mobilehome located in a mobilehome park shall have the right to sell the mobilehome within the park to a third party in accordance with the provisions of this article, but only if all the homeowner's responsibilities and liabilities to the management regarding rent and utilities are satisfied by the legal owner.

SEC. 33.5. Section 798.79 of the Civil Code is amended to read:

798.79. Any legal owner who has repossessed a mobilehome located in a mobilehome park shall have the right to sell the mobilehome within the park to a third party in accordance with the provisions of this article, but only if all the homeowner's responsibilities and liabilities to the management regarding rent, utilities, and reasonable maintenance of a mobilehome and its premises are satisfied by the legal owner until the date the mobilehome is resold.

SEC. 34. Section 798.86 of the Civil Code is amended to read:

798.86. In the event a homeowner or former homeowner of a park is the prevailing party in a civil action against the owner to enforce his rights under the provisions of this chapter, the homeowner, in addition to damages afforded by law, may, in the discretion of the court, be awarded an amount not to exceed five hundred dollars ($500) for each willful violation of those provisions by the owner.

SEC. 35. Section 65863.8 is added to the Government Code, to read:

65863.8. A local agency to which application has been made for the conversion of a mobilehome park to another use shall, at least 30 days prior to a hearing or any other action on the application, inform the applicant in writing of the provisions of Section 798.56 of the Civil Code and all applicable local requirements which impose upon the applicant a duty to notify residents and mobilehome owners of the mobilehome park of the proposed change in use, and shall specify therein the manner in which the applicant shall verify that residents and mobilehome owners of the mobilehome park have been notified of the proposed change in use. Neither a hearing on the application, nor any other action thereon, shall be taken by the local agency before the applicant has satisfactorily verified that the residents and mobilehome owners have been so notified, in the manner prescribed by law or local regulation.

This section shall remain in effect only until January 1, 1989, and as of that date is repealed, unless a later enacted statute, which is chaptered before January 1, 1989, deletes or extends that date.

SEC. 36. Sections 1, 2, 3, and 4 of this act, which revise the definitions contained in Sections 798.8, 798.9, 798.11, and 798.12 of the Civil Code, do not constitute a change in, but are declaratory of existing law, and are not intended by the Legislature to effect any change in the Mobilehome Residency Law.

SEC. 37. Notwithstanding Section 6 of Article XIII B of the California Constitution and Section 2231 or 2234 of the Revenue and Taxation Code, no appropriation is made by this act for the purpose of making reimbursement pursuant to these sections. It is recognized, however, that a local agency or school district may pursue any remedies to obtain reimbursement available to it under Chapter 3 (commencing with Section 2201) of Part 4 of Division 1 of that code.

SEC. 38. It is the intent of the Legislature, if this bill and

Assembly Bill 3640 are both chaptered and become effective January 1, 1983, both bills amend Section 798.56 of the Civil Code, and this bill is chaptered after Assembly Bill 3640, that the amendments to Section 798.56 proposed by both bills be given effect and incorporated in Section 798.56 in the form set forth in Section 25.5 of this act. Therefore, Section 25.5 of this act shall become operative only if this bill and Assembly Bill 3640 are both chaptered and become effective January 1, 1983, both amend Section 798.56, and this bill is chaptered after Assembly Bill 3640, in which case Section 25 of this act shall not become operative.

SEC. 39. It is the intent of the Legislature, if this bill and Assembly Bill 1324 are both chaptered and become effective January 1, 1983, both bills amend Section 798.73 of the Civil Code, and this bill is chaptered after Assembly Bill 1324, that the amendments to Section 798.73 proposed by both bills be given effect and incorporated in Section 798.73 in the form set forth in Section 30.5 of this act. Therefore, Section 30.5 of this act shall become operative only if this bill and Assembly Bill 1324 are both chaptered and become effective January 1, 1983, both amend Section 798.73, and this bill is chaptered after Assembly Bill 1324, in which case Section 30 of this act shall not become operative.

SEC. 40. It is the intent of the Legislature, if this bill and Assembly Bill 3660 are both chaptered and become effective January 1, 1983, both bills amend Section 798.79 of the Civil Code, and this bill is chaptered after Assembly Bill 3660, that the amendments to Section 798.79 proposed by both bills be given effect and incorporated in Section 798.79 in the form set forth in Section 33.5 of this act. Therefore, Section 33.5 of this act shall become operative only if this bill and Assembly Bill 3660 are both chaptered and become effective January 1, 1983, both amend Section 798.79, and this bill is chaptered after Assembly Bill 3660, in which case Section 33 of this act shall not become operative.

CHAPTER 1398

An act to add Sections 18962 and 18963 to the Welfare and Institutions Code, and to repeal Section 5 of Chapter 1334 of the Statutes of 1978, relating to public social services, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 24, 1982. Filed with Secretary of State September 24, 1982.]

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

SECTION 1. The Legislature finds and declares that:

(a) Children are a precious resource in this country and in this state.

(b) Persons abused and neglected as children are prone to commit violent crimes as adults.

(c) Child abuse and neglect prevention and intervention programs help protect children, stabilize families, and contribute to a reduction in crimes.

SEC. 2. Section 18962 is added to the Welfare and Institutions Code, to read:

18962. It is the intention of the Legislature that public and private child abuse and neglect prevention and intervention programs be encouraged by the funding of agencies addressing needs of high-risk children.

Programs funded by this act shall be selected through a competitive process which shall include utilizing the following criteria:

(1) Priority shall be given to programs currently serving the needs of children at risk of abuse or neglect which have demonstrated effectiveness in prevention or intervention.

(2) Public and private agencies shall be eligible for funding provided that evidence is submitted as part of the application for funding to demonstrate broad-based community support. This evidence shall further demonstrate that proposed services are not duplicated in the community, are based on needs of the child at risk, and are supported by a local public agency, including, but not limited to one of the following:

(a) County welfare department.

(b) Public law enforcement.

(c) County probation department.

(d) Board of supervisors.

(e) Public health department.

(f) Mental health department.

(g) Public schools.

(3) Services shall be culturally and linguistically appropriate to the populations served.

(4) Applicant agencies shall demonstrate the existence of a 10-percent cash or in-kind match, other than State Department of Social Services funding, which will support the goals of child abuse and neglect prevention and intervention.

(5) Services funded under this act may include the following: family counseling, day care, respite care, teaching and demonstrating homemakers, family workers, transportation, temporary in-home caretakers, psychiatric evaluations, health services, multidisciplinary services teams, and special law enforcement services. Three percent of the funding provided for by this act shall be expended on statewide training and technical assistance operated by private nonprofit agencies pursuant to contract with the Office of Child Abuse Prevention.

(6) Priority for services shall be given to children who are at high risk. These children shall include those who are being served by the county welfare departments for being neglected and other children who are referred for services by legal, medical, or social services agencies.

(7) Geographic equity throughout the state and service to minority populations shall be reflected in the funding of programs.

(8) Programs funded shall clearly be related to the needs of children, especially those from birth to 14 years.

Nothing in the act shall preclude the Office of Child Abuse Prevention from entering into interagency agreements which shall facilitate the funding of programs. Monitoring responsibilities shall, however, be maintained by the Office of Child Abuse Prevention.

The State Department of Social Services shall allocate funds appropriated by this act to counties based upon criteria which reflect the reported number of abused and neglected children in a county, such as police reports, including reports to the Criminal Identification and Information Branch of the Department of Justice, reports made to Child Protective Services, or other public reports which indicate a need for services. The State Department of Social Services shall develop a reporting instrument relevant to both urban and rural areas, which shall reflect recognized potential abuse factors such as unemployment levels, by percentage, drug and alcohol abuse, and teenage birth rate. This instrument shall be approved after consultation with the appropriate state level advisory committees, legislative committees, and private nonprofit agencies operating statewide in the area of child abuse and neglect prevention. This instrument shall be used to develop future reports regarding the potential for child abuse and neglect. Rural counties shall be provided a base allocation of fifty thousand dollars ($50,000) per county. Rural counties are those having populations of under 125,000.

SEC. 3. Section 18963 is added to the Welfare and Institutions Code, to read:

18963. (a) The board of supervisors of each county shall notify the State Department of Social Services of its intent to contract with private, nonprofit agencies and public agencies to provide services to children at risk of abuse or neglect within 60 days of notification by the department of the county's allocation. For the 1982–83 fiscal year, public agencies shall only be used for services provided under this section and Section 18962 if they comply with the provisions of Section 18962. County agencies shall only be eligible for funding if the county is continuing to expend the 24-hour emergency response funding at no less than the 1981–82 fiscal year level. Notification to the counties of the funding level shall occur within 30 days of the effective date of this section. In the event that the board of supervisors indicates that it will not contract for services, the Office of Child Abuse Prevention in the department shall contract for services. Priority shall be given to private, nonprofit agencies and

public agencies which are located in counties in which the board of supervisors has refused to contract for services within the 60-day period.

In counties which have established multidisciplinary councils, these councils shall be utilized to provide recommendations to the board of supervisors for the funding processes and priorities.

The board of supervisors or the Office of Child Abuse Prevention shall fund agencies through a competitive process.

(b) The Auditor General shall evaluate compliance with the competitive process for contracting with agencies pursuant to the provisions of this section and Section 18962, including timely distribution of funds. In addition, the evaluation shall include a description of the impact of ameliorating child abuse or neglect in a representative sample of counties. The Auditor General shall report to the Legislature on his or her findings no later than March 15, 1983.

SEC. 4. (a) In order to carry out the purposes of this act, there is hereby appropriated from the General Fund, for the 1982–83 fiscal year the sum of ten million dollars ($10,000,000) as follows:

(1) The sum of nine million dollars ($9,000,000) shall be appropriated to the State Department of Social Services to be allocated to the counties or the Office of Child Abuse Prevention pursuant to Sections 2 and 3 of this act.

(2) The sum of one million dollars ($1,000,000) shall be appropriated directly to the Office of Child Abuse Prevention within the State Department of Social Services for innovative, child centered approaches which indicate promise of quality, cost-effective services to prevent child abuse and neglect.

(b) Funding for subsequent years shall be subject to Budget Act appropriation. Funds appropriated by this act and unspent during the 1982–83 fiscal year shall be carried over to the subsequent fiscal year and annualized through a Budget Act augmentation.

(c) Continuation of the projects in Monterey, Humboldt, San Francisco, in the Watts section of Los Angeles and Kings Counties funded through Item 5180-101-001 of the Budget Act of 1982 shall be funded for the 1983–84 fiscal year through any funds not encumbered before June 30, 1983, under paragraph (1) of subdivision (a).

To the extent that federal funds are available, these funds shall be used for implementation of this act.

SEC. 5. Not more than 5 percent of the amount appropriated under Section 4 of this act for allocation to the State Department of Social Services shall be used for administrative costs.

SEC. 6. Section 5 of Chapter 1334 of the Statutes of 1978 is repealed.

SEC. 7. This act shall become operative on October 1, 1982.

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 that services for children under risk of abuse or neglect continue during the 1982–83 fiscal year, it is necessary that this act go into immediate effect.

CHAPTER 1399

An act to amend Section 10605 of the Health and Safety Code, and to add Article 5 (commencing with Section 18965) to Chapter 11 of Part 6 of Division 9 of the Welfare and Institutions Code, relating to minors.

[Approved by Governor September 24, 1982. Filed with Secretary of State September 24, 1982.]

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

SECTION 1. Section 10605 of the Health and Safety Code is amended to read:

10605. (a) A fee of three dollars ($3) shall be paid by the applicant for a certified copy of a fetal death, death, marriage, or marriage dissolution record.

(b) A fee of three dollars ($3) shall be paid by a public agency applicant for a certified copy of a birth certificate that the agency is required to obtain in the ordinary course of business. A fee of seven dollars ($7) shall be paid by any other applicant for a certified copy of a birth certificate. Four dollars ($4) of any seven dollar ($7) fee shall be exempt from subdivision (c) and shall be paid to either a county children's trust fund or to the State Children's Trust Fund, in conformity with Article 5 (commencing with Section 18965) of Chapter 11 of Part 6 of Division 9 of the Welfare and Institutions Code.

(c) Each local registrar or county recorder collecting a fee pursuant to this section shall transmit 15 percent of the fee for each certified copy to the State Registrar by the 10th day of the month following the month in which the fee was received.

SEC. 2. Article 5 (commencing with Section 18965) is added to Chapter 11 of Part 6 of Division 9 of the Welfare and Institutions Code, to read:

Article 5. Children's Trust Fund

18965. A county board of supervisors may designate an existing local voluntary commission, board or council in order to carry out the purposes of this article. The commission shall either be a commission whose duties are primarily related to services for children, with special emphasis upon child abuse and neglect prevention and intervention services, or whose duties relate to human services.

18966. Whenever a county board of supervisors designates a

commission pursuant to Section 18965, the board of supervisors shall establish a county children's trust fund. The children's trust fund shall consist of the fees for birth certificates, collected pursuant to Section 10605 of the Health and Safety Code, grants, gifts, or bequests from private sources to be used for child abuse and neglect prevention and intervention programs, and any funds appropriated to the county for the trust fund by the Legislature. The local registrar or county recorder shall, however, retain a percentage, not to exceed 10 percent, of the fees collectible pursuant to Section 10605 of the Health and Safety Code, in order to defray the costs of collection.

18967. Money in the children's trust fund of each county shall be used to fund child abuse and neglect prevention and intervention programs operated by private nonprofit organizations. The designated commission shall establish criteria for determining those programs which shall receive funding. The commission shall accept all program proposals, shall prioritize these proposals, and shall make recommendations to the board of supervisors as to those proposals which the commission feels should receive funding. The board of supervisors shall make the final decision as to which programs shall be funded.

18968. In any county where the board of supervisors does not designate a commission to carry out the purposes of this article, pursuant to Section 18965, except for a percentage of the receipts necessary for purposes of collection, the amount collected for the surcharge upon birth certificates pursuant to Section 10605 of the Health and Safety Code shall be transferred by the county clerk to the State Treasurer for deposit in the State Children's Trust Fund.

18969. 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 pursuant to subdivision (b) of Section 10605 of the Health and Safety Code, grants, gifts, or bequests made to the state from private sources to be used for child abuse and neglect prevention 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. Money in the State Children's Trust Fund shall be appropriated to the State Department of Social Services for the purpose of funding child abuse and neglect prevention and intervention programs as provided by the Legislature in the annual Budget Act. The department shall use no more than 5 percent of the funds appropriated pursuant to this section for administrative costs.

18970. Funds appropriated pursuant to Section 18969 shall be used to fund child abuse and neglect prevention and intervention programs operated by private nonprofit organizations in counties where the board of supervisors has not designated a commission pursuant to Section 18965. The department is also authorized to use funds appropriated to it from the State Children's Trust Fund for

evaluation, research, or dissemination of information concerning existing program models. The department shall establish criteria for determining which programs shall be funded. Applicants for funding shall submit proposals to the department.

SEC. 3. No appropriation is made and no reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution or Section 2231 or 2234 of the Revenue and Taxation Code because the local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the program or level of service mandated by this act.

CHAPTER 1400

An act to amend Sections 2037, 2037.1, 2037.2, 2037.3, 2037.4, and 2037.5 of the Code of Civil Procedure, relating to discovery.

[Approved by Governor September 24, 1982. Filed with Secretary of State September 27, 1982.]

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

SECTION 1. Section 2037 of the Code of Civil Procedure is amended to read:

2037. (a) Not later than the 10th day after a trial date is selected or 70 days prior to the date set for the commencement of trial, whichever is later, any party may serve on any party a demand to exchange lists of expert witnesses. The demand may also include a request to exchange each identified expert witness's reports and writings, as provided by Section 2037.3. Thereafter, the court may, upon motion and a showing of good cause, permit any party to serve the demand upon any other party.

The demand shall include a statement in substantially the following form:

"You are requested to serve a list of expert witnesses in compliance with Section 2037 of the Code of Civil Procedure not later than the date of exchange thereby established. Except as otherwise provided in that article, your failure to do so will constitute a waiver of your right to call unlisted expert witnesses at the trial."

If a request to exchange reports and writings is included, the demand shall include an additional statement in substantially the following form:

"You are also requested to produce for inspection and copying, at the time and place set forth herein, all discoverable reports and writings of each identified expert witness's proposed testimony and preparations to testify."

The time and place for the inspection and copying of reports and writings shall be set forth in the demand and may be any reasonable time after the date of exchange as provided in Section 2037.1. At the time specified in the request to produce, the party who served the request and the party on whom the request was served shall each produce their discoverable reports and writings.

SEC. 2. Section 2037.1 of the Code of Civil Procedure is amended to read:

2037.1. For the purposes of this article, the "date of exchange" for the exchange of lists of expert witnesses shall be 20 days after the date of service of the demand on the party or 50 days prior to the date set for commencement of the trial, whichever is later, unless, upon motion and a showing of good cause, the court requires an earlier exchange of lists and documents pursuant to this article. If the demand to exchange lists of witnesses is served by mail, all parties, including the party serving the demand shall not have the additional time to comply with this article as provided in Section 1013, so that the exchange of lists and documents shall be simultaneous.

In courts where the trial date is set less than 90 days after the trial setting conference, good cause exists for an earlier exchange of lists and documents pursuant to this article.

SEC. 2.5. Section 2037.2 of the Code of Civil Procedure is amended to read:

2037.2. Not later than the date of exchange:

(a) A party who served a demand shall serve his or her list and discoverable reports and writings upon each party on whom he or she served the demand.

(b) Each party on whom a demand is served shall serve his or her list upon the party who served the demand.

SEC. 3. Section 2037.3 of the Code of Civil Procedure is amended to read:

2037.3. Each witness list shall include the name and business or residence address of each expert witness whom the party expects to call in person or through deposition and a brief narrative statement of the qualifications of such witnesses and the general substance of the testimony which the witness is expected to give.

If the demand contains a request to produce reports and writings, for each expert witness identified, all discoverable reports and writings concerning each expert witness's proposed testimony and preparations to testify shall be produced according to the provisions of this article. Any party may move for an order for compliance under subdivision (a) of Section 2034 with respect to any failure to respond to the request to permit inspection and copying.

For the purpose of this article, the term "writing" shall have the meaning set forth in Section 250 of the Evidence Code.

SEC. 4. Section 2037.4 of the Code of Civil Procedure is amended to read:

2037.4. A party who is required to exchange lists of witnesses shall *diligently* give notice to the parties upon whom his or her list was

served if, after service of it, he or she determines to call an expert witness not included in it, and a party shall make available for deposition such expert witnesses as he or she has determined to call and shall immediately make available for inspection and copying all of such expert witness's discoverable reports and writings.

SEC. 5. Section 2037.5 of the Code of Civil Procedure is amended to read:

2037.5. Except as provided in Section 2037.6, upon objection of a party who has served his list of witnesses in compliance with Section 2037.2, no party required to serve a list of expert witnesses on the objecting party may call an expert witness to testify, except for purposes of impeachment, unless the requirements of Section 2037.3 for that witness have been met.

CHAPTER 1401

An act to add Chapter 2.1 (commencing with Section 56) to Division 1 of the Probate Code, relating to wills.

[Approved by Governor September 24, 1982. Filed with Secretary of State September 27, 1982.]

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

SECTION 1. Chapter 2.1 (commencing with Section 56) is added to Division 1 of the Probate Code, to read:

CHAPTER 2.1. CALIFORNIA STATUTORY WILLS

56. For purposes of this chapter, the following definitions and rules of construction shall apply unless, in a particular case, the context clearly requires otherwise:

(a) "Testator" means any person choosing to adopt a California statutory will.

(b) "Spouse" means the testator's husband or wife at the time the testator signs a California statutory will.

(c) "Executor" means both the person so designated in a California statutory will and any other person acting at any time as the executor or administrator under a California statutory will.

(d) "Trustee" means both the person so designated in a California statutory will and any other person acting at any time as the trustee under a California statutory will.

(e) "Descendants" means children, grandchildren, and their lineal descendants of all degrees.

(f) A class designation of "decendants" or "children" includes (1) persons legally adopted into the class during minority and (2) persons naturally born into the class (in or out of wedlock). The reference to "descendants" in the plural includes a single descendant

where the context so requires.

(g) Masculine pronouns include the feminine, and plural and singular words include each other, where appropriate.

(h) If a California statutory will states that a person shall perform an act, the person is required to perform that act. If a California statutory will states that a person may do an act, the person's decision to do or not to do the act shall be made in the exercise of the person's fiduciary powers.

(i) Whenever a distribution under a California statutory will is to be made to a person's descendants, the property is to be divided into as many equal shares as there are then living descendants of the nearest degree of living descendants and deceased descendants of that same degree who leave descendants then living; and each living descendant of the nearest degree shall receive one share and the share of each deceased descendant of that same degree shall be divided among his or her descendants in the same manner.

(j) "Person" includes individuals and institutions.

56.1. Any person of sound mind and over the age of 18 may execute a California statutory will under the provisions of this chapter.

56.2. The only method of executing a California statutory will is for the following to occur:

(a) The testator shall do the following:

(1) Complete the appropriate blanks.

(2) Sign the will.

(b) The witnesses shall do the following:

(1) Observe the testator's signing.

(2) Sign their names in the presence of the testator.

The execution of the attestation clause provided in the California statutory will by two or more witnesses shall satisfy Section 329.

56.3. There are two California statutory wills: a California statutory will and a California statutory will with trust. Each will includes: (1) The contents of the appropriate California Statutory Will Form, including the notices that are set forth in Sections 56.7 and 56.8, and (2) by reference, the full texts of each of the following:

(a) The definitions and rules of construction set forth in Section 56.

(b) The clause set forth in Section 56.9.

(c) The property disposition clause adopted by the testator.

(d) The mandatory clauses set forth in Sections 56.12 and, if applicable, 56.13.

56.4. If more than one property disposition clause appearing in paragraph 2.3 of a California Statutory Will Form is selected, or if none is selected, the property of a testator who signs a California statutory will shall be distributed to the testator's heirs as if the testator did not make a will.

56.5. Only the texts of the property disposition clauses and the mandatory clauses shall be considered in determining their meaning. Their titles shall be disregarded.

56.6. (a) A California statutory will may be revoked and may be amended by codicil in the same manner as other wills.

(b) Any additions to or deletions from the California statutory will on the face of the California Statutory Will Form, other than in accordance with the instructions, shall be ineffective and shall be disregarded.

56.7. The following is the California Statutory Will Form:

CALIFORNIA STATUTORY WILL

NOTICE TO THE PERSON WHO SIGNS THIS WILL:

1. IT MAY BE IN YOUR BEST INTEREST TO CONSULT WITH A CALIFORNIA LAWYER BECAUSE THIS STATUTORY WILL HAS SERIOUS LEGAL EFFECTS ON YOUR FAMILY AND PROPERTY.

2. THIS WILL DOES NOT DISPOSE OF PROPERTY WHICH PASSES ON YOUR DEATH TO ANY PERSON BY OPERATION OF LAW OR BY ANY CONTRACT. FOR EXAMPLE, THE WILL DOES NOT DISPOSE OF JOINT TENANCY ASSETS OR YOUR SPOUSE'S SHARE OF COMMUNITY PROPERTY, AND IT WILL NOT NORMALLY APPLY TO PROCEEDS OF LIFE INSURANCE ON YOUR LIFE OR YOUR RETIREMENT PLAN BENEFITS.

3. THIS WILL IS NOT DESIGNED TO REDUCE DEATH TAXES OR ANY OTHER TAXES. YOU SHOULD DISCUSS THE TAX RESULTS OF YOUR DECISIONS WITH A COMPETENT TAX ADVISOR.

4. YOU CANNOT CHANGE, DELETE, OR ADD WORDS TO THE FACE OF THIS CALIFORNIA STATUTORY WILL. YOU MAY REVOKE THIS CALIFORNIA STATUTORY WILL AND YOU MAY AMEND IT BY CODICIL.

5. IF THERE IS ANYTHING IN THIS WILL THAT YOU DO NOT UNDERSTAND, YOU SHOULD ASK A LAWYER TO EXPLAIN IT TO YOU.

6. THE FULL TEXT OF THIS CALIFORNIA STATUTORY WILL, THE DEFINITIONS AND RULES OF CONSTRUCTION, THE PROPERTY DISPOSITION CLAUSES, AND THE MANDATORY CLAUSES FOLLOW THE END OF THIS WILL AND ARE CONTAINED IN THE PROBATE CODE OF CALIFORNIA.

7. THE WITNESSES TO THIS WILL SHOULD NOT BE PEOPLE WHO MAY RECEIVE PROPERTY UNDER THIS WILL. YOU SHOULD CAREFULLY READ AND FOLLOW THE WITNESSING PROCEDURE DESCRIBED AT THE END OF THIS WILL. ALL OF THE WITNESSES MUST WATCH YOU SIGN THIS WILL.

8. YOU SHOULD KEEP THIS WILL IN YOUR SAFE-DEPOSIT BOX OR OTHER SAFE PLACE.

9. THIS WILL TREATS MOST ADOPTED CHILDREN AS IF THEY ARE NATURAL CHILDREN.

10. IF YOU MARRY OR DIVORCE AFTER YOU SIGN THIS WILL, YOU SHOULD MAKE AND SIGN A NEW WILL.
11. IF YOU HAVE CHILDREN UNDER 21 YEARS OF AGE, YOU MAY WISH TO USE THE CALIFORNIA STATUTORY WILL WITH TRUST OR ANOTHER TYPE OF WILL.

[A printed form for a California statutory will shall set forth the above notice in 10-point bold face type.]

CALIFORNIA STATUTORY WILL OF

_____

(Insert Your Name)

Article 1. Declaration

This is my will and I revoke any prior wills and codicils.

Article 2. Disposition of My Property

2.1. PERSONAL AND HOUSEHOLD ITEMS. I give all my furniture, furnishings, household items, personal automobiles and personal items to my spouse, if living; otherwise they shall be divided equally among my children who survive me.
2.2. CASH GIFT TO A PERSON OR CHARITY. I make the following cash gift to the person or charity in the amount stated in words and figures in the box which I have completed and signed. If I fail to sign in the box, no gift is made. If the person mentioned does not survive me, or the charity designated does not accept the gift, then no gift is made. No death tax shall be paid from this gift.

FULL NAME OF PERSON OR CHARITY TO RECEIVE CASH GIFT (Name only one. Please print.).	AMOUNT OF GIFT $ _____ AMOUNT WRITTEN OUT: _____ Dollars
	_____ Signature of Testator

2.3. ALL OTHER ASSETS (MY "RESIDUARY ESTATE"). I adopt only one Property Disposition Clause in this paragraph 2.3 by writing my signature in the box next to the title of the Property Disposition

Clause I wish to adopt. I sign in only one box. I write the words "not used" in the remaining boxes. If I sign in more than one box or if I fail to sign in any box, the property will go under Property Disposition Clause (c) and I realize that means the property will be distributed as if I did not make a will.

PROPERTY DISPOSITION CLAUSES (Select one.)

(a) TO MY SPOUSE IF LIVING; IF NOT LIVING, THEN TO MY CHILDREN AND THE DESCENDANTS OF ANY DECEASED CHILD. ☐

(b) TO MY CHILDREN AND THE DESCENDANTS OF ANY DECEASED CHILD. I LEAVE NOTHING TO MY SPOUSE, IF LIVING. _____ ☐

(c) TO BE DISTRIBUTED AS IF I DID NOT HAVE A WILL. _____ ☐

Article 3. Nominations of Executor and Guardian

3.1. EXECUTOR (Name at least one.)

I nominate the person or institution named in the first box of this paragraph 3.1 to serve as executor of this will. If that person or institution does not serve, then I nominate the others to serve in the order I list them in the other boxes.

FIRST EXECUTOR. _____ ☐

SECOND EXECUTOR. _____ ☐

THIRD EXECUTOR. _____

3.2. GUARDIAN (If you have a child under 18 years of age, you should name at least one guardian of the child's person and at least one guardian of the child's property. The guardian of the child's person and the guardian of the child's property may, but need not, be the same. An individual can serve as guardian of either the person or the property, or as guardian of both. An institution can serve only as guardian of the property.)

If a guardian is needed for any child of mine, then I nominate the individual named in the first box of this paragraph 3.2 to serve as guardian of the person of that child, and I nominate the individual or institution named in the second box of this paragraph 3.2 to serve as guardian of the property of that child. If that person or institution does not serve, then the others shall serve in the order I list them in the other boxes.

FIRST GUARDIAN OF THE PERSON. _____

FIRST GUARDIAN OF THE PROPERTY. _____

SECOND GUARDIAN OF THE PERSON. _____

SECOND GUARDIAN OF THE PROPERTY. _____

THIRD GUARDIAN OF THE PERSON. _____

THIRD GUARDIAN OF THE PROPERTY. _____

3.3. BOND

My signature in this box means that a bond is not required for any individual executor or guardian named in this will. If I do not sign in this box, then a bond is required for each of those persons as set forth in the Probate Code.

I sign my name to this California Statutory Will on _____ at _____, _____.
Date City State

_____
Signature of Testator

STATEMENT OF WITNESSES (You must use two adult witnesses and three would be preferable.)

Each of us declares under penalty of perjury under the laws of California that the testator signed this California statutory will in our presence, all of us being present at the same time, and we now, at the testator's request, in the testator's presence, and in the presence of each other, sign below as witnesses, declaring that the testator appears to be of sound mind and under no duress, fraud, or undue influence.

Signature _____ Residence Address: _____
Print Name
Here: _____ _____

Signature _____ Residence Address: _____
Print Name
Here: _____ _____

Signature _____ Residence Address: _____
Print Name
Here: _____ _____

56.8. The following is the California Statutory Will With Trust Form:

CALIFORNIA STATUTORY WILL WITH TRUST

NOTICE TO THE PERSON WHO SIGNS THIS WILL:

1. THIS FORM CONTAINS A TRUST FOR YOUR DESCENDANTS. IF YOU DO NOT WANT TO CREATE A TRUST, DO NOT USE THIS FORM.

2. IT MAY BE IN YOUR BEST INTEREST TO CONSULT WITH A CALIFORNIA LAWYER BECAUSE THIS STATUTORY WILL HAS SERIOUS LEGAL EFFECTS ON YOUR FAMILY AND PROPERTY.

3. THIS WILL DOES NOT DISPOSE OF PROPERTY WHICH PASSES ON YOUR DEATH TO ANY PERSON BY OPERATION OF LAW OR BY ANY CONTRACT. FOR EXAMPLE, THE WILL DOES NOT DISPOSE OF JOINT TENANCY ASSETS OR YOUR SPOUSE'S SHARE OF COMMUNITY PROPERTY, AND IT WILL NOT NORMALLY APPLY TO PROCEEDS OF LIFE INSURANCE ON YOUR LIFE OR YOUR RETIREMENT PLAN BENEFITS.

4. THIS WILL IS NOT DESIGNED TO REDUCE DEATH TAXES OR ANY OTHER TAXES. YOU SHOULD DISCUSS THE TAX RESULTS OF YOUR DECISIONS WITH A COMPETENT TAX ADVISOR.

5. YOU CANNOT CHANGE, DELETE, OR ADD WORDS TO THE FACE OF THIS CALIFORNIA STATUTORY WILL. YOU MAY REVOKE THIS CALIFORNIA STATUTORY WILL AND YOU MAY AMEND IT BY CODICIL.

6. IF THERE IS ANYTHING IN THIS WILL THAT YOU DO NOT UNDERSTAND, YOU SHOULD ASK A LAWYER TO EXPLAIN IT TO YOU.

7. THE FULL TEXT OF THIS CALIFORNIA STATUTORY WILL, THE DEFINITIONS AND RULES OF CONSTRUCTION, THE PROPERTY DISPOSITION CLAUSES, AND THE MANDATORY CLAUSES FOLLOW THE END OF THIS WILL AND ARE CONTAINED IN THE PROBATE CODE OF CALIFORNIA.

8. THE WITNESSES TO THIS WILL SHOULD NOT BE PEOPLE WHO MAY RECEIVE PROPERTY UNDER THIS WILL. YOU SHOULD CAREFULLY READ AND FOLLOW THE WITNESSING PROCEDURE DESCRIBED AT THE END OF THIS WILL. ALL OF THE WITNESSES MUST WATCH YOU SIGN THIS WILL.

9. YOU SHOULD KEEP THIS WILL IN YOUR SAFE-DEPOSIT BOX OR OTHER SAFE PLACE.

10. THIS WILL TREATS MOST ADOPTED CHILDREN AS IF THEY ARE NATURAL CHILDREN.

11. IF YOU MARRY OR DIVORCE AFTER YOU SIGN THIS WILL, YOU SHOULD MAKE AND SIGN A NEW WILL.

[A printed form for a California Statutory Will With Trust shall set forth the above notice in 10-point bold face type.]

CALIFORNIA STATUTORY WILL
WITH TRUST OF

_____

(Insert Your Name)

Article 1. Declaration

This is my will and I revoke any prior wills and codicils.

Article 2. Disposition of My Property

2.1. PERSONAL AND HOUSEHOLD ITEMS. I give all my furniture, furnishings, household items, personal automobiles, and personal items to my spouse, if living; otherwise they shall be divided equally among my children who survive me.

2.2. CASH GIFT TO A PERSON OR CHARITY. I make the following cash gift to the person or charity and in the amount stated in words and figures in the box which I have completed and signed. If I fail to sign in the box, no gift is made. If the person mentioned does not survive me, or the charity designated does not accept the gift, then no gift is made. No death tax shall be paid from this gift.

FULL NAME OF PERSON OR CHARITY TO RECEIVE CASH GIFT (Name only one. Please print.).	AMOUNT OF GIFT $____ _____ AMOUNT WRITTEN OUT: _____ Dollars
	_____ Signature of Testator

2.3. ALL OTHER ASSETS (MY "RESIDUARY ESTATE"). I adopt only one Property Disposition Clause in this paragraph 2.3 by writing my signature in the box next to the title of the Property Disposition Clause I wish to adopt. I sign in only one box. I write the words "not used" in the remaining boxes. If I sign in more than one box or if I fail to sign in any box, the property will be distributed as if I did not make a will.

PROPERTY DISPOSITION CLAUSES (Select one.)

(a) TO MY SPOUSE IF LIVING; IF NOT LIVING, THEN IN ONE TRUST TO PROVIDE FOR THE SUPPORT AND EDUCATION OF MY CHILDREN AND THE DESCENDANTS OF ANY DECEASED CHILD UNTIL I HAVE NO LIVING CHILD UNDER 21 YEARS OF AGE. _____ [ ]

(b) TO MY CHILDREN AND THE DESCENDANTS OF ANY DECEASED CHILD IN ONE TRUST TO PROVIDE FOR THEIR SUPPORT AND EDUCATION UNTIL I HAVE NO LIVING CHILD UNDER 21 YEARS OF AGE. I LEAVE NOTHING TO MY SPOUSE, IF LIVING. ____ [ ]

Article 3. Nominations of Executor, Trustee, and Guardian

3.1. EXECUTOR (Name at least one.)

I nominate the person or institution named in the first box of this paragraph 3.1 to serve as executor of this will. If that person or institution does not serve, then the others shall serve in the order I list them in the other boxes.

FIRST EXECUTOR. _____ [ ]

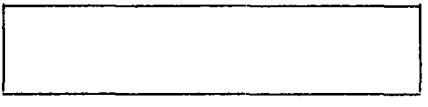
SECOND EXECUTOR. _____ [ ]

THIRD EXECUTOR. _____ 

3.2. TRUSTEE (Name at least one.)

Because it is possible that after I die my property may be put into a trust, I nominate the person or institution named in the first box of this paragraph 3.2 to serve as trustee of that trust. If that person or institution does not serve, then the others shall serve in the order I list them in the other boxes.

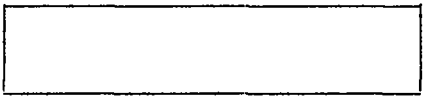
FIRST TRUSTEE. _____ 

SECOND TRUSTEE. _____ 

THIRD TRUSTEE. _____ 

3.3. GUARDIAN (If you have a child under 18 years of age, you should name at least one guardian of the child's person and at least one guardian of the child's property. The guardian of the child's person and the guardian of the child's property may, but need not, be the same. An individual can serve as guardian of either the person or the property, or as guardian of both. An institution can serve only as guardian of the property.)

If a guardian is needed for any child of mine, then I nominate the individual named in the first box of this paragraph 3.3 to serve as guardian of the person of that child, and I nominate the individual or institution named in the second box of this paragraph 3.3 to serve as guardian of the property of that child. If that person or institution does not serve, then the others shall serve in the order I list them in the other boxes.

FIRST GUARDIAN OF THE PERSON. _____ 

FIRST GUARDIAN OF THE PROPERTY. _____ 

SECOND GUARDIAN OF THE PERSON. _____ [ ]

SECOND GUARDIAN OF THE PROPERTY. _____ [ ]

THIRD GUARDIAN OF THE PERSON. _____ [ ]

THIRD GUARDIAN OF THE PROPERTY. _____ [ ]

3.4. BOND

My signature in this box means that a bond is not required for any individual (a) executor, (b) trustee, or (c) guardian named in this will. If I do not sign in this box, then a bond is required for each of those persons as set forth in the Probate Code.

[ ]

I sign my name to this California Statutory Will With Trust on _____ at _____, _____.
Date City State

_____
Signature of Testator

STATEMENT OF WITNESSES (You must use two adult witnesses, and three witnesses would be preferable.)

Each of us declares under penalty of perjury under the laws of California that the testator signed this California statutory will with trust in our presence, all of us being present at the same time, and we now, at the testator's request, in the testator's presence, and in the presence of each other, sign below as witnesses, declaring that the testator appears to be of sound mind and under no duress, fraud, or undue influence.

Signature _____ Residence Address: _____
Print Name
Here: _____ _____

Signature _____ Residence Address: _____
Print Name
Here: _____ _____

Signature _____ Residence Address: _____
Print Name
Here: _____ _____

56.9. The following is the full text of paragraph 2.1 of both California Statutory Will Forms appearing in this chapter:

If my spouse survives me, I give my spouse all my books, jewelry, clothing, personal automobiles, household furnishings and effects, and other tangible articles of a household or personal use. If my spouse does not survive me, the executor shall distribute those items among my children who survive me, and shall distribute those items in as nearly equal shares as feasible in the executor's discretion. If none of my children survive me, the items described in this paragraph shall become part of the residuary estate.

56.10. The following are the full texts of the property disposition clauses referred to in paragraph 2.3 of the California Statutory Will Form set forth in Section 56.7:

(a) TO MY SPOUSE IF LIVING; IF NOT LIVING, THEN TO MY CHILDREN AND THE DESCENDANTS OF ANY DECEASED CHILD.

If my spouse survives me, then I give all my residuary estate to my spouse. If my spouse does not survive me, then I give all my residuary estate to my descendants who survive me.

(b) TO MY CHILDREN AND THE DESCENDANTS OF ANY DECEASED CHILD. I LEAVE NOTHING TO MY SPOUSE, IF LIVING.

I give all my residuary estate to my descendants who survive me. I leave nothing to my spouse, even if my spouse survives me.

(c) TO BE DISTRIBUTED AS IF I DID NOT HAVE A WILL:

The executor shall distribute my residuary estate to my heirs at law, their identities and respective shares to be determined according to the laws of the State of California in effect on the date of my death and relating to the succession of separate property not acquired from a parent, grandparent, or predeceased spouse.

56.11. The following are the full texts of the property disposition clauses referred to in paragraph 2.3 of the California Statutory Will With Trust Form set forth in Section 56.8:

(a) TO MY SPOUSE IF LIVING; IF NOT LIVING, THEN IN ONE TRUST TO PROVIDE FOR THE SUPPORT AND EDUCA-

TION OF MY CHILDREN AND THE DESCENDANTS OF ANY DECEASED CHILD UNTIL I HAVE NO LIVING CHILD UNDER 21 YEARS OF AGE.

(1) If my spouse survives me, then I give all my residuary estate to my spouse.

(2) If my spouse does not survive me and if any child of mine under 21 years of age survives me, then I give all my residuary estate to the trustee, in trust, on the following terms:

(A) As long as any child of mine under 21 years of age is living, the trustee shall distribute from time to time to or for the benefit of any one or more of my children and the descendants of any deceased child (the beneficiaries) of any age as much, or all, of the (i) principal or (ii) net income of the trust, or (iii) both, as the trustee deems necessary for their health, support, maintenance, and education of my descendants. Any undistributed income shall be accumulated and added to the principal. "Education" includes, but is not limited to, college, graduate, postgraduate, and vocational studies, and reasonably related living expenses. Consistent with the trustee's fiduciary duties, the trustee may distribute trust income or principal in equal or unequal shares and to any one or more of the beneficiaries to the exclusion of other beneficiaries. In deciding on distributions, the trustee may take into account, so far as known to the trustee, the beneficiaries' other income, outside resources, or sources of support, including the capacity for gainful employment of a beneficiary who has completed his or her education.

(B) The trust shall terminate when there is no living child of mine under 21 years of age. The trustee shall distribute any remaining principal and accumulated net income of the trust to my descendants who are then living.

(3) If my spouse does not survive me and if no child of mine under 21 years of age survives me, then I give all my residuary estate to my descendants who survive me.

(b) TO MY CHILDREN AND THE DESCENDANTS OF ANY DECEASED CHILD IN ONE TRUST TO PROVIDE FOR THEIR SUPPORT AND EDUCATION UNTIL I HAVE NO LIVING CHILD UNDER 21 YEARS OF AGE. I LEAVE NOTHING TO MY SPOUSE, IF LIVING.

(1) I give all my residuary estate to the trustee, in trust, on the following terms:

(A) As long as any child of mine under 21 years of age is living, the trustee shall distribute from time to time to or for the benefit of any one or more of my children and the descendants of any deceased child (the beneficiaries) of any age as much or all, of the (i) principal, or (ii) net income of the trust, or (iii) both as the trustee deems necessary for their health, support, maintenance, and education. Any undistributed income shall be accumulated and added to the principal. "Education" includes, but is not limited to, college, graduate, postgraduate, and vocational studies, and reasonably related living expenses. Consistent with the trustee's fiduciary duties, the trustee

may distribute trust income or principal in equal or unequal shares and to any one or more of the beneficiaries to the exclusion of other beneficiaries. In deciding on distributions, the trustee may take into account, so far as known to the trustee, the beneficiaries' other income, outside resources, or sources of support, including the capacity for gainful employment of a beneficiary who has completed his or her education.

(B) The trust shall terminate when there is no living child of mine under 21 years of age. The trustee shall distribute any remaining principal and accumulated net income of the trust to my descendants who are then living.

(2) If no child of mine under 21 years of age survives me, then I give all my residuary estate to my descendants who survive me.

(3) I leave nothing to my spouse, even if my spouse survives me.

56.12. The mandatory clauses of all California statutory wills are as follows:

(a) INTESTATE DISPOSITION. If the testator has not made an effective disposition of the residuary estate, the executor shall distribute it to the testator's heirs at law, their identities and respective shares to be determined according to the laws of the State of California in effect on the date of the testator's death and relating to the succession of separate property not acquired from a parent, grandparent, or predeceased spouse.

(b) POWERS OF EXECUTOR.

(1) In addition to any powers now or hereafter conferred upon executors by law, including all powers granted under the Independent Administration of Estates Act, the executor shall have the power to: (A) sell estate assets at public or private sale, for cash or on credit terms, (B) lease estate assets without restriction as to duration, and (C) invest any surplus moneys of the estate in real or personal property, as the executor deems advisable.

(2) The executor may distribute estate assets otherwise distributable to a minor beneficiary to (A) the guardian of the minor's person or estate, (B) any adult person with whom the minor resides and who has the care, custody or control of the minor, or (C) a custodian, serving on behalf of the minor under the Uniform Gifts to Minors Act of any state.

The executor is free of liability and is discharged from any further accountability for distributing assets in compliance with the provisions of this paragraph.

(3) On any distribution of assets from the estate, the executor shall have the discretion to partition, allot, and distribute the assets (1) in kind, including undivided interests in an asset or in any part of it, or (2) partly in cash and partly in kind, or (3) entirely in cash. If a distribution is being made to more than one beneficiary, the executor shall have the discretion to distribute assets among them on a pro rata or non-pro rata basis, with the assets valued as of the date of distribution.

(c) POWERS OF GUARDIAN. A guardian of the person nominat-

ed in the California statutory will shall have the same authority with respect to the person of the ward as a parent having legal custody of a child would have. A guardian of the estate nominated in a California statutory will shall have all of the powers conferred by law. All powers granted to guardians in this paragraph may be exercised without court authorization.

56.13. In addition to the mandatory clauses contained in Section 56.12, the California Statutory Will With Trust Form shall also incorporate the following mandatory clauses:

(a) INEFFECTIVE DISPOSITION. If, at the termination of any trust created in the California statutory will with trust, there is no effective disposition of the remaining trust assets, then the trustee shall distribute those assets to the testator's then living heirs at law, their identities and respective shares to be determined as though the testator had died on the date of the trust's termination and according to the laws of the State of California then in effect and relating to the succession of separate property not acquired from a parent, grandparent, or predeceased spouse.

(b) POWERS OF TRUSTEE. (1) In addition to any powers now or hereafter conferred upon trustees by law, the trustee shall have all the powers listed in Section 1120.2. The trustee may exercise those powers without court authorization.

(2) In addition to the powers granted in the foregoing paragraph, the trustee may:

(A) Hire and pay from the trust the fees of investment advisors, accountants, tax advisors, agents, attorneys, and other assistants for the administration of the trust and for the management of any trust asset and for any litigation affecting the trust.

(B) On any distribution of assets from the trust, the trustee shall have the discretion to partition, allot, and distribute the assets (i) in kind, including undivided interests in an asset or in any part of it, or (ii) partly in cash and partly in kind, or (iii) entirely in cash. If a distribution is being made to more than one beneficiary, the trustee shall have the discretion to distribute assets among them on a pro rata or non-pro rata basis, with the assets valued as of the date of distribution.

(C) The trustee may, upon termination of the trust, distribute assets to a custodian for a minor beneficiary under the Uniform Gifts to Minors Act of any state.

The trustee is free of liability and is discharged from any further accountability for distributing assets in compliance with the provisions of this paragraph.

(c) TRUST ADMINISTRATIVE PROVISIONS. The following provisions shall apply to any trust created by a California statutory will with trust:

(1) The interests of trust beneficiaries shall not be transferable by voluntary or involuntary assignment or by operation of law and shall be free from the claims of creditors and from attachment, execution, bankruptcy, or other legal process to the fullest extent permissible by

law.

(2) Any trustee serving hereunder shall be entitled to reasonable compensation for ordinary and extraordinary services, and for all services in connection with the complete or partial termination of any trust created by this will.

(3) All persons who have any interest in a trust under a California statutory will with trust are bound by all discretionary determinations the trustee makes in good faith under the authority granted in the California statutory will with trust.

56.14. Except as specifically provided in other parts of this chapter, a California statutory will shall include only the texts of the property disposition clauses and the mandatory clauses as they exist on the day the California statutory will is executed.

SEC. 2. Except as specifically provided, nothing in this bill is intended to change the substantive law of California.

CHAPTER 1402

An act to amend Section 583 of, and to add Sections 575.1 and 575.2 to, the Code of Civil Procedure, relating to trials.

[Approved by Governor September 24, 1982. Filed with Secretary of State September 27, 1982.]

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

SECTION 1. Section 575.1 is added to the Code of Civil Procedure, to read:

575.1. The presiding judge of each superior court may prepare with the assistance of appropriate committees of the court, proposed local rules designed to expedite and facilitate the business of the court. The rules need not be limited to those actions on the civil active list, but may provide for the supervision and judicial management of actions from the date they are filed. Rules prepared pursuant to this section shall be submitted for consideration to the judges of the court and, upon approval by a majority of the judges, the judges shall have the proposed rules published and submitted to the local bar for consideration and recommendations. After a majority of the judges have officially adopted the rules, 61 copies shall be filed with the Judicial Council as required by Section 68071 of the Government Code and the local rules shall also be published for general distribution. Rules adopted pursuant to this section shall not be inconsistent with law or with the rules adopted and prescribed by the Judicial Council.

SEC. 2. Section 575.2 is added to the Code of Civil Procedure, to read:

575.2. (a) Local rules promulgated pursuant to Section 575.1 may provide that if any counsel, a party represented by counsel, or a party if in pro se, fails to comply with any of the requirements thereof, the court on motion of a party or on its own motion may strike out all or any part of any pleading of that party, or, dismiss the action or proceeding or any part thereof, or enter a judgment by default against that party, or impose other penalties of a lesser nature as otherwise provided by law, and may order that party or his or her counsel to pay to the moving party the reasonable expenses in making the motion, including reasonable attorney fees.

(b) It is the intent of the Legislature that if a failure to comply with these rules is the responsibility of counsel and not of the party, any penalty shall be imposed on counsel and shall not adversely affect the party's cause of action or defense thereto.

SEC. 3. Section 583 of the Code of Civil Procedure is amended to read:

583. (a) The court, in its discretion, on motion of a party or on its own motion, may dismiss an action for want of prosecution pursuant to this subdivision if it is not brought to trial within two years after it was filed. The procedure for obtaining such dismissal shall be in accordance with rules adopted by the Judicial Council.

(b) Any action heretofore or hereafter commenced shall be dismissed by the court in which the same shall have been commenced or to which it may be transferred on motion of the defendant, after due notice to plaintiff or by the court upon its own motion, unless such action is brought to trial within five years after the plaintiff has filed his action, except where the parties have filed a stipulation in writing that the time may be extended.

(c) When in any action after judgment, a motion for a new trial has been made and a new trial granted, such action shall be dismissed on motion of defendant after due notice to plaintiff, or by the court of its own motion, if no appeal has been taken, unless such action is brought to trial within three years after the entry of the order granting a new trial, except when the parties have filed a stipulation in writing that the time may be extended. When in an action after judgment, an appeal has been taken and judgment reversed with cause remanded for a new trial (or when an appeal has been taken from an order granting a new trial and such order is affirmed on appeal), the action must be dismissed by the trial court, on motion of defendant after due notice to plaintiff, or of its own motion, unless brought to trial within three years from the date upon which remittitur is filed by the clerk of the trial court. Nothing in this subdivision shall require the dismissal of an action prior to the expiration of the five-year period prescribed by subdivision (b).

(d) When in any action a trial has commenced but no judgment has been entered therein because of a mistrial or because a jury is unable to reach a decision, such action shall be dismissed on the motion of defendant after due notice to plaintiff or by the court of its own motion, unless such action is again brought to trial within

three years after entry of an order by the court declaring the mistrial or disagreement by the jury, except where the parties have filed a stipulation in writing that the time may be extended.

(e) For the purposes of this section, "action" includes an action commenced by cross-complaint.

(f) The time during which the defendant was not amenable to the process of the court and the time during which the jurisdiction of the court to try the action is suspended shall not be included in computing the time period specified in any subdivision of this section.

CHAPTER 1403

An act to amend Sections 11154, 11161, and 11167 of the Health and Safety Code, relating to controlled substances.

[Approved by Governor September 24, 1982. Filed with Secretary of State September 27, 1982.]

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

SECTION 1. Section 11154 of the Health and Safety Code is amended to read:

11154. (a) Except in the regular practice of his or her profession, no person shall knowingly prescribe, administer, dispense, or furnish a controlled substance to or for any person or animal which is not under his or her treatment for a pathology or condition other than addiction to a controlled substance, except as provided in this division.

(b) No person shall knowingly solicit, direct, induce, aid, or encourage a practitioner authorized to write a prescription to unlawfully prescribe, administer, dispense, or furnish a controlled substance.

SEC. 2. Section 11161 of the Health and Safety Code is amended to read:

11161. Prescription blanks shall be issued by the Department of Justice in serially numbered groups of not more than 100 forms each in triplicate, and shall be furnished to any practitioner authorized to write a prescription for controlled substances classified in Schedule II. The Department of Justice may charge a fee for such prescription blanks, not to exceed the actual costs of printing and distribution. Such prescription blanks shall not be transferable. The Department of Justice shall not, during any 30-day period, issue more than 100 triplicate prescription blanks to any authorized practitioner, until written justification has been received and approved by the Department of Justice. Any person possessing any such triplicate prescription blank otherwise than as herein provided is guilty of a misdemeanor.

SEC. 3. Section 11167 of the Health and Safety Code is amended to read:

11167. In the event of an epidemic or accident or calamity, any controlled substance classified in Schedule II may be dispensed upon an oral prescription if failure to issue such a prescription might result in loss of life or intense suffering. Prior to filling such a prescription, the pharmacist shall reduce it to writing. The date of issue of the prescription and all the information required for a written prescription by Section 11164 shall be included in such written record of the prescription.

Additionally, in such an emergency a prescriber may issue a written prescription for a controlled substance classified in Schedule II upon a form other than the official prescription form issued by the Department of Justice. However, such a prescription shall in all other respects comply with the requirements of subdivision (a) of Section 11164.

When an emergency oral or written prescription is issued pursuant to this section, the prescriber shall within 72 hours submit the prescription in the form required by Section 11164 to the pharmacy or pharmacist filling the prescription. If the prescriber does not provide such a prescription within 72 hours, the pharmacist filling the emergency prescription shall, within 144 hours of the time the prescription was filled, so inform the Department of Justice, and in addition, shall maintain for three years a written, readily retrievable record identifying (1) the prescriber; (2) the name, strength, and quantity of the controlled substance dispensed; (3) the circumstances under which the emergency prescription was filled; and (4) the date and method of notifying the Department of Justice, including the name or names of any departmental agents to whom oral notice was furnished.

SEC. 4. No appropriation is made and no reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution or Section 2231 or 2234 of the Revenue and Taxation Code because the only costs which may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, changes the definition of a crime or infraction, changes the penalty for a crime or infraction, or eliminates a crime or infraction.

CHAPTER 1404

An act to amend Section 207 of, and to amend, add, and repeal Section 12022.5 of, the Penal Code, relating to crimes.

[Approved by Governor September 24, 1982. Filed with Secretary of State September 27, 1982]

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

SECTION 1. Section 207 of the Penal Code is amended to read:

207. (a) Every person who forcibly steals, takes, or arrests any person in this state, and carries the person into another country, state, or county, or into another part of the same county, is guilty of kidnapping.

(b) Every person, who for the purpose of committing any act defined in Section 288, hires, persuades, entices, decoys, or seduces by false promises, misrepresentations, or the like, any child under the age of 14 to go out of this country, state, or county, or into another part of the same county, is guilty of kidnapping.

(c) Every person who forcibly takes or arrests any person, with a design to take the person out of this state, without having established a claim, according to the laws of the United States, or of this state, or who hires, persuades, entices, decoys, or seduces by false promises, misrepresentations, or the like, any person to go out of this state, or to be taken or removed therefrom, for the purpose and with the intent to sell such person into slavery or involuntary servitude, or otherwise to employ such person for his or her own use, or to the use of another, without the free will and consent of such persuaded person, is guilty of kidnapping.

(d) Every person who, being out of this state, abducts or takes by force or fraud any person contrary to the law of the place where such act is committed, and brings, sends, or conveys such person within the limits of this state, and is afterwards found within the limits thereof, is guilty of kidnapping.

SEC. 2. Section 12022.5 of the Penal Code is amended to read:

12022.5. Any person who personally uses a firearm in the commission or attempted commission of a felony shall, upon conviction of such felony or attempted felony, in addition and consecutive to the punishment prescribed for the felony or attempted felony of which he has been convicted, be punished by an additional term of two years, unless use of a firearm is an element of the offense of which he was convicted.

The additional term provided by this section may be imposed in cases of assault with a firearm under paragraph (2) of subdivision (a) of Section 245, or assault with a deadly weapon which is a firearm under subdivision (b) of Section 245.

This section shall remain in effect only until January 1, 1983, and as of such date is repealed.

SEC. 2.1. Section 12022.5 is added to the Penal Code, to read:

12022.5. Any person who personally uses a firearm in the commission or attempted commission of a felony shall, upon conviction of such felony or attempted felony, in addition and consecutive to the punishment prescribed for the felony or attempted felony of which he or she has been convicted, be punished by an additional term of imprisonment in the state prison for two years, unless use of a firearm is an element of the offense of which

he or she was convicted.

The additional term provided by this section may be imposed in cases of assault with a firearm under paragraph (2) of subdivision (a) of Section 245, or assault with a deadly weapon which is a firearm under Section 245.

When a person is found to have personally used a firearm in the commission or attempted commission of a felony as provided in this section and the firearm is owned by that person, the court shall order that the firearm be deemed a nuisance and disposed of in the manner provided in Section 12028.

SEC. 2.2. Section 12022.5 is added to the Penal Code, to read:

12022.5. Any person who personally uses a firearm in the commission or attempted commission of a felony shall, upon conviction of such felony or attempted felony, in addition and consecutive to the punishment prescribed for the felony or attempted felony of which he or she has been convicted, be punished by an additional term of imprisonment in the state prison for three years, unless use of a firearm is an element of the offense of which he or she was convicted.

The additional term provided by this section may be imposed in cases of assault with a firearm under paragraph (2) of subdivision (a) of Section 245, or assault with a deadly weapon which is a firearm under Section 245.

When a person is found to have personally used a firearm in the commission or attempted commission of a felony as provided in this section and the firearm is owned by that person, the court shall order that the firearm be deemed a nuisance and disposed of in the manner provided in Section 12028.

SEC. 2.3. Section 2.1 of this act shall become operative on January 1, 1983, except as provided in Section 2.4.

SEC. 2.4. It is the intent of the Legislature that if this bill and Assembly Bill 269 are both chaptered and amend Section 12022.5 of the Penal Code, and this bill is chaptered last, that the amendments to Section 12022.5 proposed by both bills be given effect. Therefore, if both this bill and Assembly Bill 269 are chaptered and amend Section 12022.5, and this bill is chaptered last, then Section 12022.5 as added by Section 2.2 of this act shall become operative on January 1, 1983, and Section 2.1 of this act shall not become operative.

SEC. 3. No appropriation is made and no reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution or Section 2231 or 2234 of the Revenue and Taxation Code because the only costs which may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, changes the definition of a crime or infraction, changes the penalty for a crime or infraction, or eliminates a crime or infraction.

CHAPTER 1405

An act to amend Section 77 of, and to add Section 76 to, the Penal Code, relating to crimes.

[Approved by Governor September 24, 1982. Filed with Secretary of State September 27, 1982.]

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

SECTION 1. Section 76 is added to the Penal Code, to read:

76. Every person who knowingly and willingly threatens the life of any elected state official, exempt appointee of the Governor, or judge of the Supreme Court or court of appeals with the intent, and the apparent ability, to carry out such threat, is guilty of a public offense, punishable as follows:

(1) Upon a first conviction, the offense is punishable by a fine not exceeding five thousand dollars ($5,000), or by imprisonment in the state prison, or in a county jail not exceeding one year, or by both such fine and imprisonment.

(2) If the person has been previously convicted of a violation of this section, the previous conviction shall be charged in the accusatory pleading, and if the previous conviction is found to be true by the jury, upon a jury trial, or by the court, upon a court trial, or is admitted by the defendant, the offense is punishable by imprisonment in the state prison.

Any law enforcement agency which has knowledge of a violation of this section shall immediately report such information to the California State Police.

SEC. 2. Section 77 of the Penal Code is amended to read:

77. The various provisions of this title, except Section 76, apply to administrative and ministerial officers, in the same manner as if they were mentioned therein.

SEC. 3. No appropriation is made and no reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution or Section 2231 or 2234 of the Revenue and Taxation Code because the only costs which may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, changes the definition of a crime or infraction, changes the penalty for a crime or infraction, or eliminates a crime or infraction.

CHAPTER 1406

An act to amend Sections 2713.1 and 3000 of, and to add Section 3000.1 to, the Penal Code, relating to prisoners.

[Approved by Governor September 24, 1982. Filed with Secretary of State September 27, 1982.]

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

SECTION 1. Section 2713.1 of the Penal Code is amended to read:

2713.1. In addition to any other payment to which he is entitled by law, each prisoner upon his release shall be paid the sum of two hundred dollars ($200), from such appropriations that may be made available for the purposes of this section.

The department may prescribe rules and regulations (a) to limit or eliminate any payments provided for in this section to prisoners who have not served for at least six consecutive months prior to their release in instances where the department determines that such a payment is not necessary for rehabilitation of the prisoner, (b) to establish procedures for the payment of the sum of two hundred dollars ($200) within the first 60 days of a prisoner's release, and (c) to eliminate any payment provided for in this section to a parolee who upon release has not been paid the entire amount prescribed by this section and who willfully absconds after release on parole, but before any remaining balance of the two hundred dollar ($200) release funds has been paid.

The provisions of this section shall not be applicable if a prisoner is released to the custody of another state or to the custody of the federal government.

SEC. 2. Section 3000 of the Penal Code is amended to read:

3000. The Legislature finds and declares that the period immediately following incarceration is critical to successful reintegration of the offender into society and to positive citizenship. It is in the interest of public safety for the state to provide for the supervision of and surveillance of parolees and to provide educational, vocational, family and personal counseling necessary to assist parolees in the transition between imprisonment and discharge. A sentence pursuant to Section 1168 or 1170 shall include a period of parole, unless waived, as provided in this section. Notwithstanding any provision to the contrary in Article 3 (commencing with Section 3040) of this chapter:

(a) At the expiration of a term of imprisonment of one year and one day, or a term of imprisonment imposed pursuant to Section 1170, or at the expiration of such term as reduced pursuant to Section 2931, if applicable, the inmate shall be released on parole for a period not exceeding three years, unless the board for good cause waives parole and discharges the inmate from custody of the department.

(b) In the case of any inmate sentenced under Section 1168, the period of parole shall not exceed five years in the case of an inmate imprisoned for any offense other than first or second degree murder for which the inmate has received a life sentence, and shall not exceed three years in the case of any other inmate, unless in either

case the board for good cause waives parole and discharges the inmate from custody of the department. This subdivision shall be also applicable to inmates who committed crimes prior to July 1, 1977, to the extent specified in Section 1170.2.

(c) The board shall consider the request of any inmate regarding the length of his parole and the conditions thereof.

(d) Upon successful completion of parole, or at the end of the maximum statutory period of parole specified for the inmate under subdivision (a) or (b), as the case may be, whichever is earlier, the inmate shall be discharged from custody. The date of the maximum statutory period of parole under this subdivision and subdivisions (a) and (b) shall be computed from the date of initial parole, or July 1, 1977, whichever is later, and shall be a period chronologically determined. Time during which parole is suspended because the prisoner has absconded or has been returned to custody as a parole violator shall not be credited toward such period of parole unless the prisoner is found not guilty of the parole violation. However, in no case, except as provided in Section 3064, may a prisoner subject to three years on parole be retained under parole supervision or in custody for a period longer than four years from the date of his initial parole, and, except as provided in Section 3064, in no case may a prisoner subject to five years on parole be retained under parole supervision or in custody for a period longer than seven years from the date of his initial parole.

(e) It is not the intent of this section to diminish resources presently allocated to the Department of Corrections for parole functions.

(f) The Department of Corrections shall meet with each inmate at least 30 days prior to his good time release date, unless such release date is within 30 days of July 1, 1977, and shall provide, under guidelines specified by the Board of Prison Terms, the conditions of parole and the length of parole up to the maximum period of time provided by law. The inmate has the right to reconsideration of the length of parole and conditions thereof by the Board of Prison Terms.

SEC. 3. Section 3000.1 is added to the Penal Code to read:

3000.1. (a) In the case of any inmate sentenced under Section 1168 for any offense of first or second degree murder with a maximum term of life imprisonment, the period of parole, if parole is granted, shall be the remainder of the inmate's life.

(b) Notwithstanding any other provision of law, when any person referred to in subdivision (a) has been released on parole from the state prison, and has been on parole continuously for seven years in the case of any person imprisoned for first degree murder, and five years in the case of any person imprisoned for second degree murder, since release from confinement, the board shall, within 30 days, discharge such person from parole, unless the board, for good cause, determines that such person will be retained on parole. The board shall make a written record of its determination and transmit a copy thereof to the parolee.

(c) In the event of a retention on parole, the parolee shall be entitled to a review by the board each year thereafter.

(d) There shall be a hearing as provided in Sections 3041.5 and 3041.7 within 12 months of the date of any revocation of parole to consider the release of the inmate on parole, and notwithstanding the provisions of paragraph (2) of subdivision (b) of Section 3041.5, there shall be annual parole consideration hearings thereafter, unless the person is released or otherwise ineligible for parole release. The panel or board shall release the person within one year of the date of the revocation unless it determines that the circumstances and gravity of the parole violation are such that consideration of the public safety requires a more lengthy period of incarceration or unless there is a new prison commitment following a conviction.

(e) The provisions of Section 3042 shall not apply to any hearing held pursuant to this section.

SEC. 4. This act applies only to cases where the crime is committed on or after the effective date of this act.

CHAPTER 1407

An act to add Section 3003 to the Penal Code, relating to parole.

[Approved by Governor September 24, 1982 Filed with Secretary of State September 27, 1982]

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

SECTION 1. Section 3003 is added to the Penal Code, to read:

3003. (a) An inmate who is released on parole shall be returned to the county from which he or she was committed.

(b) Notwithstanding subdivision (a), an inmate may be returned to another county in a case where that would be in the best interests of the public and of the parolee. If the authority setting the conditions of parole decides on a return to another county, it shall place its reasons in writing in the parolee's permanent record. In making its decision, the authority may consider, among others, the following factors:

(1) The need to protect the life or safety of a victim, the parolee, a witness or any other person.

(2) Public concern that would reduce the chance that the inmate's parole would be successfully completed.

(3) The verified existence of a work offer, or an educational or vocational training program.

(4) The last legal residence of the inmate having been in another county.

(5) The existence of family in another county with whom the inmate has maintained strong ties and whose support would increase the chance that the inmate's parole would be successfully completed.

(c) An inmate may be paroled to another state pursuant to any other provision of law.

CHAPTER 1408

An act to amend Sections 1141.21 and 1141.28 of the Code of Civil Procedure, and to amend Sections 905 and 905.5 of, and to amend, repeal, and add Section 933 of, the Penal Code, relating to administration of justice.

[Approved by Governor September 24, 1982. Filed with Secretary of State September 27, 1982.]

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

SECTION 1. Section 1141.21 of the Code of Civil Procedure is amended to read:

1141.21. (a) If the judgment upon the trial de novo is not more favorable in either the amount of damages awarded or the type of relief granted for the party electing the trial de novo than the arbitration award, the court shall order that party to pay the following nonrefundable costs and fees, unless the court finds in writing and upon motion that the imposition of such costs and fees would create such a substantial economic hardship as not to be in the interest of justice:

(i) To the county, the compensation actually paid to the arbitrator, less any amount paid pursuant to paragraph (iv).

(ii) To the other party or parties, all costs including, but not limited to, those specified in Sections 1032.5, 1032.6, 1032a, and 1032b, and the party electing the trial de novo shall not recover his costs.

(iii) To the other party or parties, the reasonable costs of the services of expert witnesses, who are not regular employees of any party, actually incurred or reasonably necessary in the preparation or trial of the case.

(iv) To the other party or parties, the compensation paid by the other party or parties to the arbitrator, pursuant to subdivision (b) of Section 1141.28.

Such costs and fees, other than the compensation of the arbitrator, shall include only those incurred from the time of election of the trial de novo.

(b) If the party electing the trial de novo has proceeded in the action in forma pauperis and has failed to obtain a more favorable judgment, the costs and fees under paragraphs (ii) and (iii) of subdivision (a) shall be imposed only as an offset against any damages awarded in favor of that party.

(c) If the party electing the trial de novo has proceeded in the action in forma pauperis and has failed to obtain a more favorable judgment, the costs under paragraph (i) of subdivision (a) shall be

imposed only to the extent that there remains a sufficient amount in the judgment after the amount offset under subdivision (b) has been deducted from the judgment.

SEC. 2. Section 1141.28 of the Code of Civil Procedure is amended to read:

1141.28. (a) All administrative costs of arbitration, including compensation of arbitrators, shall be paid for by the county in which the arbitration costs are incurred, except as otherwise provided in subdivision (b) and in Section 1141.21.

(b) The actual costs of compensation of arbitrators in any proceeding which would not otherwise be subject to the provisions of this chapter but in which arbitration is conducted pursuant to this chapter solely because of the stipulation of the parties, shall be paid for in equal shares by the parties. If the imposition of these costs would create such a substantial economic hardship for any party as not to be in the interest of justice, as determined by the arbitrator, that party's share of costs shall be paid for by the county in which the arbitration costs are incurred. The determination as to substantial economic hardship may be reviewed by the court.

SEC. 3. Section 905 of the Penal Code is amended to read:

905. In all counties there shall be at least one grand jury drawn and impaneled in each year.

SEC. 4. Section 905.5 of the Penal Code is amended to read:

905.5. (a) Except as otherwise provided in subdivision (b), the grand jury shall be impaneled and serve during the fiscal year of the county in the manner provided in this chapter.

(b) The board of supervisors of a county may provide that the grand jury shall be impaneled and serve during the calendar year. The board of supervisors shall provide for an appropriate transition from fiscal year term to calendar year term for the grand jury.

SEC. 5. Section 933 of the Penal Code is amended to read:

933. (a) No later than one month after the end of each fiscal or calendar year of a county, each grand jury impaneled during that fiscal or calendar year shall submit to the presiding judge of the superior court a final report of its findings and recommendations that pertain to county government matters other than fiscal matters during the fiscal or calendar year.

(b) No later than six months after the end of each fiscal or calendar year, each grand jury impaneled during that fiscal or calendar year shall submit to the presiding judge of the superior court a final report of its findings and recommendations that pertain to fiscal matters of county government during the fiscal or calendar year of the county.

(c) No later than 90 days after the grand jury submits a final report on the operations of any public agency subject to its reviewing authority, the governing body of the public agency shall comment on the findings and recommendations. All such comments and reports shall forthwith be submitted to the presiding judge of the superior court who impaneled the grand jury. A copy thereof shall be placed

on file with the clerk of the public agency and shall remain on file in that office.

(d) This section shall remain in effect only until January 1, 1989, and as of that date is repealed, unless a later enacted statute which is chaptered before January 1, 1989, deletes or extends that date.

SEC. 6. Section 933 is added to the Penal Code, to read:

933. (a) No later than one month after the end of each fiscal year of a county, each grand jury impaneled during that fiscal year shall submit to the presiding judge of the superior court a final report of its findings and recommendations that pertain to county government matters other than fiscal matters during the fiscal year.

(b) No later than six months after the end of each fiscal year, each grand jury impaneled during that fiscal year shall submit to the presiding judge of the superior court a final report of its findings and recommendations that pertain to fiscal matters of county government during the fiscal year of the county.

(c) No later than 90 days after the grand jury submits any final report, the board of supervisors shall comment on the findings and recommendations of the grand jury that pertain to county government matters under the control of the board and every elective county officer shall report to the board of supervisors on the findings and recommendations pertaining to such county officer. All such comments and reports shall forthwith be submitted to the presiding judge of the superior court who impaneled the grand jury for the fiscal year. A copy thereof shall be placed on file with the county clerk and shall remain on file in the office of the county clerk.

(d) This section shall become operative January 1, 1989.

SEC. 7. No appropriation is made and no reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution or Section 2231 or 2234 of the Revenue and Taxation Code because the Legislature finds and declares that there are savings as well as costs in this act which, in the aggregate, do not result in additional net costs.

CHAPTER 1409

An act to amend Sections 8103 and 8104 of the Welfare and Institutions Code, relating to firearms.

[Approved by Governor September 24, 1982. Filed with Secretary of State September 27, 1982.]

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

SECTION 1. Section 8103 of the Welfare and Institutions Code is amended to read:

8103. (a) (1) No person who after October 1, 1955, has been adjudicated by a court of any state to be a danger to others as a result

of mental disorder or mental illness, or who has been adjudicated to be a mentally disordered sex offender, shall have in his or her possession, custody, or control any firearm unless there has been issued to such person a certificate as hereafter described in this section and such person has not, subsequent to the issuance of such certificate, again been adjudicated by a court to be a danger to others as a result of a mental disorder or mental illness.

(2) A certificate meeting the requirements of this section must be a written statement that is either part of a broader certificate of competency or a separate document and that is issued, on application of the person who was so adjudicated, either at the time of release from treatment under such adjudication or at a later date, by the medical director of any California state hospital, stating that in the opinion of the person issuing the certificate based either on his own knowledge or on the opinions of members of his staff or on records of the institution, the applicant is a person who may possess a firearm without endangering others. If a person applies to a medical director of a California state hospital for such a certificate and the applicant has not been treated in that hospital, or if the medical director believes that a current mental examination is necessary to enable him to determine whether or not such a certificate shall be issued, the medical director shall cause such person to be examined by a member of the staff of the hospital and may otherwise investigate the case. The medical director may charge a reasonable fee for such examination and investigation.

(3) Refusal of a medical director to issue a certificate of competency or separate document as described in the preceding provisions of this section is reviewable by mandamus in the superior court of the county of which the applicant is a resident or the county in which the hospital of which the medical director is head. Upon a showing to the satisfaction of the court of abuse of discretion by the medical director the court shall issue its writ directing the medical director to issue its certificate or document.

(b) No person who has been found, pursuant to Section 1026 of the Penal Code or the law of any other state or the United States, not guilty by reason of insanity of murder, mayhem, a violation of Section 207 or 209 of the Penal Code in which the victim suffers intentionally inflicted great bodily injury, robbery in which the victim suffers great bodily injury, a violation of Section 447a of the Penal Code involving a trailer coach, as defined in Section 635 of the Vehicle Code, or any dwelling house, a violation of subdivision 2 or 3 of Section 261 of the Penal Code, a violation of Section 459 of the Penal Code in the first degree, assault with intent to commit murder, a violation of Section 220 of the Penal Code in which the victim suffers great bodily injury, a violation of Section 12303.1, 12303.2, 12303.3, 12308, 12309, or 12310 of the Penal Code, or of a felony involving death, great bodily injury, or an act which poses a serious threat of bodily harm to another person, or a violation of the law of any other state or the United States which includes all the elements of any of

the above felonies as defined under California law, shall have in his possession or under his custody or control any firearm.

(c) Every person who possesses or has under his custody or control any firearm in violation of this section is guilty of a felony which is punishable by imprisonment in the state prison, or in the county jail for not more than one year, and which is subject to subdivision (b) of Section 17 of the Penal Code.

SEC. 2. Section 8104 of the Welfare and Institutions Code is amended to read:

8104. The Department of Mental Health shall keep and maintain records necessary to identify persons who are currently being treated, or have been treated, in mental health facilities in California who come within the provisions of this chapter. Such records shall be made available to the Department of Justice upon request. The Department of Justice shall make such requests only with respect to its duties with regard to applications for permits for explosives as defined in Section 12000 of the Health and Safety Code, concealable weapons as defined in Section 12001 of the Penal Code, machineguns as defined in Section 12200 of the Penal Code and destructive devices as defined in Section 12301 of the Penal Code. Such records shall not be furnished or made available to any person unless the department determines that disclosure of any information in such records is necessary to carry out its duties with respect to applications for permits for explosives, destructive devices, concealable weapons, and machineguns.

SEC. 3. No appropriation is made and no reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution or Section 2231 or 2234 of the Revenue and Taxation Code because the only costs which may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, changes the definition of a crime or infraction, changes the penalty for a crime or infraction, or eliminates a crime or infraction.

CHAPTER 1410

An act to amend Sections 5255, 5256, and 5258 of, and to add Chapter 16.5 (commencing with Section 3050) to Division 1 of, the Financial Code, relating to financial institutions, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 24, 1982. Filed with Secretary of State September 27, 1982.]

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

SECTION 1. Chapter 16.5 (commencing with Section 3050) is added to Division 1 of the Financial Code, to read:

CHAPTER 16.5. CONVERSION: BANKS AND SAVINGS AND LOAN ASSOCIATIONS

3050. In this chapter, unless the context otherwise requires:

(a) "Appropriate regulator" means:

(1) In the case of the conversion of a state savings and loan association into a state bank, the superintendent.

(2) In the case of the conversion of a state bank into a state savings and loan association, the Savings and Loan Commissioner.

(b) "Conversion" means the conversion of a state savings and loan association into a state bank or the conversion of a state bank into a state savings and loan association.

(c) "Share," when used with respect to a state savings and loan association, means a share of guarantee stock.

(d) "Shareholder," when used with respect to a state savings and loan associaiton, means the holder of record of a share of guarantee stock.

(e) "State bank" means a commercial bank organized under the laws of this state.

(f) "State savings and loan association" means a savings and loan association organized under the laws of this state. However, "state savings and loan association" does not include any mutual savings and loan association.

3051. (a) (1) A state savings and loan association may, with the approval of the superintendent, convert into a state bank pursuant to the provisions of this chapter. Notwithstanding any other provision of law, no such conversion shall be deemed to be prohibited or restricted by any provision of Division 2 (commencing with Section 5000) or to require any approval, consent, or other authorization of the Savings and Loan Commissioner.

(2) Paragraph (1) shall not apply to a state savings and loan association the ownership of which is such that the establishment of a new state bank by the same ownership would be prohibited by Section 3(d) of the Bank Holding Company Act of 1956.

(b) A state bank may, with the approval of the Savings and Loan Commissioner, convert into a state savings and loan association pursuant to the provisions of this chapter. Notwithstanding any other provision of law, no such conversion shall be deemed to be prohibited or restricted by any provision of this division, other than the provisions of this chapter, or to require any approval, consent, or other authorization of the superintendent.

3052. The provisions of the General Corporation Law (Division 1 (commencing with Section 100) of Title 1 of the Corporations Code) shall apply to a conversion. However, whenever any provision of this chapter or of any regulation or order issued under this chapter is inconsistent with any provision of the General Corporation Law,

such provision of this chapter or of such regulation or order shall apply and such provision of the General Corporation Law shall not apply.

3053. Each application filed with the appropriate regulator under this chapter or under any regulation or order issued pursuant to this chapter shall be in such form, shall contain such information, shall be signed in such manner, and shall, if the appropriate regulator so requires, be verified in such manner, as the appropriate regulator may require.

3054. Fees shall be paid to, and collected by, the appropriate regulator, as follows:

(a) The fee for filing an application for approval of a conversion under subdivision (a) of Section 3055 shall be three thousand dollars ($3,000).

(b) If the appropriate regulator examines a converting corporation which has filed an application for approval of a conversion, the fee for the examination shall be two hundred dollars ($200) per day for each examiner engaged in the examination, plus, if it is necessary for any examiner engaged in the examination to travel outside the state, the travel expenses of the examiner.

(c) The fee for issuing a certificate of authority or license under subdivision (b) of Section 3058 shall be one thousand dollars ($1,000).

3055. (a) A converting corporation shall file with the appropriate regulator an application for approval of the conversion.

(b) With respect to an application for approval of a conversion, the appropriate regulator shall approve the application if he or she makes all of the following findings:

(1) That the shareholders' equity of the resulting corporation will be adequate, and the financial condition of the resulting corporation will be satisfactory.

(2) That the directors, executive officers, and any controlling person of the resulting corporation will be satisfactory.

(3) That the name of the resulting corporation will not resemble so closely as to be likely to cause confusion the name of any other bank or savings and loan association, as the case may be, which is transacting or has recently transacted business in this state.

(4) That the resulting corporation will afford reasonable promise of successful operation, and it is reasonable to believe that the resulting corporation will be operated in a safe and sound manner and in compliance with all applicable laws.

(5) In the case of a conversion of a state savings and loan association into a state bank, that the conversion will not have a serious adverse effect on the total availability of financing for housing in the market area of the converting state savings and loan association or that any such effect is clearly outweighed in the public interest by the probable effect of the conversion in meeting the convenience and needs of the community to be served. Nothing in this paragraph shall be deemed to authorize the superintendent to require the resulting state bank to make financing for housing

available.

If the appropriate regulator finds otherwise, the appropriate regulator shall deny the application for approval of the conversion.

3056. (a) A converting corporation shall adopt, and shall file with the appropriate regulator an application for approval of, any amendments to its articles as may be necessary to carry out the conversion. Section 904 of the Corporations Code shall not apply to the amendments.

(b) A converting corporation shall adopt, and shall file with the appropriate regulator an application for approval of, any amendments to its bylaws as may be necessary to carry out the conversion. The amendments shall not take effect until they are approved by the appropriate regulator and the conversion becomes effective.

(c) In obtaining the approval of its outstanding shares or shareholders for any amendment to its articles or bylaws called for in either subdivision (a) or (b), a converting corporation shall provide to its shareholders any information the appropriate regulator requires. In determining the information to be required, the appropriate regulator shall give due consideration to regulations regarding such matters issued under Section 14 of the Securities Exchange Act of 1934 relating to proxy statements.

3057. (a) Before a conversion becomes effective, the converting corporation shall give notice of the conversion to its depositors that the appropriate regulator requires.

(b) In case the rate of interest paid on a deposit will be reduced as a result of the conversion, the depositor may, subject to the provisions of any applicable federal statute or regulation, withdraw the deposit on demand at any time during the period commencing with the giving of the notice called for in subdivision (a) and ending on the 60th day after the conversion becomes effective.

3058. (a) After an application for approval of a conversion has been approved and all conditions precedent to the conversion have been fulfilled, the appropriate regulator shall approve the amendments to the articles of the converting corporation, endorse the approval on the certificate of amendment or other instrument containing the amendments, and specify the time at which the certificate of amendment or other instrument is to be filed with the Secretary of State. The certificate of amendment or other instrument shall be filed with the Secretary of State at the time so specified by the appropriate regulator, and at the time of the filing, the conversion shall become effective for all purposes.

(b) As of the time when a conversion becomes effective, the appropriate regulator shall:

(1) (A) In case the resulting corporation is a state bank, issue to the resulting corporation a certificate of authority authorizing it to transact commercial banking business or commercial banking business and trust business, as the case may be.

(B) In case the resulting corporation is a state savings and loan

association, issue to the resulting corporation a license authorizing it to transact business as a state savings and loan association.

(2) In any case, issue to the resulting corporation certificates of authority, licenses, or other appropriate authorizations for the branch offices, places of business, extensions of offices, and other facilities which the converting corporation was operating and which the resulting corporation is to continue to operate.

3059. Promptly after a conversion becomes effective, the resulting corporation shall surrender to the regulator of the converting corporation, for cancellation, the certificates of authority or licenses issued to the converting corporation by the regulator and shall file with the regulator any report regarding the conversion that the regulator requires.

3060. Notwithstanding any other provision of law:

(a) In the case of a conversion of a state savings and loan association into a state bank, if the resulting state bank, upon the conversion, has any asset or liability, or is engaged in any activity which was permitted to the converting state savings and loan association but which is prohibited to state banks, the superintendent may permit the resulting state bank a reasonable period of time, not to exceed six months, within which to divest itself of the asset, liability, or activity, or to conform it to law.

(b) In the case of a conversion of a state bank into a state savings and loan association, if the resulting state savings and loan association, upon the conversion, has any asset or liability or is engaged in any activity which was permitted to the converting state bank but which is prohibited to state savings and loan associations, the Savings and Loan Commissioner may permit the resulting state savings and loan association a reasonable time, not to exceed six months, within which to divest itself of the asset, liability, or activity, or to conform it to law. However, the Savings and Loan Commissioner may not permit the resulting state savings and loan association to accept or maintain any deposit account which is not permitted to state savings and loan associations.

SEC. 2. Section 5255 of the Financial Code is amended to read:

5255. The commissioner may promulgate, amend, supplement, and revoke in whole or in part, rules and regulations not inconsistent with the provisions of this division or other laws of this state, governing procedure before the commissioner and the exercise by the commissioner of the powers, discretions, rights, and privileges vested in him under this division and under Chapter 16.5 (commencing with Section 3050) of Division 1.

SEC. 3. Section 5256 of the Financial Code is amended to read:

5256. The commissioner may commence and prosecute actions and proceedings to enjoin violations of the provisions of this division, violations of the provisions of Chapter 16.5 (commencing with Section 3050) of Division 1, or violations of orders or decisions of the commissioner rendered pursuant to such provisions, and for the enforcement of any and all civil penalties provided for by this

division.

SEC. 4. Section 5258 of the Financial Code is amended to read:

5258. Every order, decision, approval, certificate, license, permit, or the denial of any approval, certificate, license or permit, or other official act of the commissioner provided for in Articles 1 (commencing with Section 5500), 2 (commencing with Section 5550), and 4 (commencing with Section 5650) of Chapter 3, Chapter 5 (commencing with Section 6000), Sections 6450 to 6455, inclusive, Section 7616, and Article 1 (commencing with Section 9200) of Chapter 18, of Part 1 of this division, or in Part 4 (commencing with Section 11500), and Part 5 (commencing with Section 11700) of this division or Chapter 16.5 (commencing with Section 3050) of Division 1 is subject to judicial review in accordance with law. Except for review of proceedings conducted in accordance with Chapter 5 (commencing with Section 11500) of Part 1, Division 3, Title 2 of the Government Code, an action or proceeding for judicial review pursuant to this section must be commenced within 60 days after the issuance of such order, decision, approval, certificate, license or permit, or within 60 days after such denial, or other official act, or in the event of a hearing held under Section 11708, within 60 days after the issuance of the final decision of the commissioner either approving or denying the application for acquisition of control.

SEC. 5. For purposes of, and notwithstanding any contrary provisions of, Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, in case the Superintendent of Banks or the Savings and Loan Commissioner adopts any regulation or order of repeal to implement, interpret, or make specific any provision of this act within six months after the effective date of this act, he or she may, without describing specific facts showing the need for immediate action, find that adoption of the regulation or order of repeal is necessary for the immediate preservation of the public peace, health and safety, or general welfare, and such regulation or order of repeal shall be deemed to be necessary for the immediate preservation of the public peace, health and safety, or general welfare.

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:

State savings and loan associations are being permitted by the Comptroller of the Currency to convert into national banks. Under present law, however, state savings and loan associations are not authorized to convert into state banks. Allowing state savings and loan associations to convert only into national banks and not into state banks may undermine the dual system of chartering banks and savings and loan associations in this state. In order to authorize state savings and loan associations to convert into state banks this year and to prevent erosion of the dual system of chartering banks and savings and loan associations in this state, it is necessary that this act take

effect immediately.

CHAPTER 1411

An act to amend Sections 122, 5255, 5256, and 5258 of, to add Section 140.5 and Division 1.5 (commencing with Section 4800) to, and to repeal Chapter 16.5 (commencing with Section 3030) of Division 1 of, the Financial Code, relating to financial institutions.

[Approved by Governor September 24, 1982. Filed with Secretary of State September 27, 1982.]

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

SECTION 1. Section 122 of the Financial Code is amended to read:

122. "Approved by (or approval of) the board" means approved or ratified by the vote of the board or by the vote of a committee authorized to exercise the powers of the board, except as to any matter not within the competence of the committee under Section 311 of the Corporations Code or any matter for which this division also requires approval of the shareholders or approval of the outstanding shares.

SEC. 2. Section 140.5 is added to the Financial Code, to read:

140.5. "Officers' certificate" has the meaning set forth in Section 173 of the Corporations Code.

SEC. 2.5. Chapter 16.5 (commencing with Section 3050) of Division 1 of the Financial Code is repealed.

SEC. 3. Division 1.5 (commencing with Section 4800) is added to the Financial Code, to read:

DIVISION 1.5. DEPOSITORY CORPORATIONS—SALE, MERGER, AND CONVERSION

CHAPTER 1. GENERAL PROVISIONS

Article 1. Short Title, Construction, and Severability

4800. This division shall be known and may be cited as the "Depository Corporation Sale, Merger, and Conversion Law."

4801. In this division, unless otherwise expressly provided:

(a) A reference to a statute or to a regulation includes the statute or regulation, as amended, whether before or after the effective date of this division, as well as any new statute or regulation substituted for the statute or regulation after the effective date of this division.

(b) A reference to a governmental agency or to a public officer includes any governmental agency or public officer which succeeds after the effective date of this division to substantially the same

functions as those performed by the governmental agency or public officer on the effective date of this division.

4802. If any provision of this division or the application thereof to any person or circumstances is held invalid, illegal, or unenforceable, such invalidity, illegality, or unenforceability shall not affect other provisions or applications of this division which can be given effect without the invalid, illegal, or unenforceable provision or application, and, to this end, the provisions of this division are declared to be severable.

Article 2. Definitions

4805. Subject to additional definitions contained in this division which are applicable to specific provisions of this division and unless the context otherwise requires:

(a) The definitions in this article apply throughout this division.

(b) The definitions in Chapter 1 (commencing with Section 99) of Division 1 apply throughout this division. For such purpose, "this division," as used in Sections 123 and 124, shall be deemed to mean:

(1) In the case of a state bank, Division 1 (commencing with Section 99) and this division; and

(2) In the case of a state savings and loan association, this division and Division 2 (commencing with Section 5000).

4806. "Commissioner" means the Savings and Loan Commissioner.

4807. "Depository corporation" means a state or federal depository corporation.

4808. "Federal depository corporation" means a national banking association or federal savings and loan association.

4809. "Federal savings and loan association" means a federal savings and loan association headquartered in this state.

4810. "National banking association" means a national banking association headquartered in this state.

4811. "Share" means:

(a) When used with respect to a state savings and loan association which is authorized to issue guarantee stock, a share of guarantee stock.

(b) When used with respect to a federal savings and loan association which is authorized to issue capital stock, a share of capital stock.

4812. "Shareholder" means:

(a) When used with respect to a state savings and loan association which is authorized to issue guarantee stock, a holder of record of a share of guarantee stock.

(b) When used with respect to a federal savings and loan association which is authorized to issue capital stock, a holder of record of a share of capital stock.

4813. "State bank" means a bank organized under the laws of this state.

4814. "State depository corporation" means a state bank or state savings and loan association.

4815. "State savings and loan association" means a savings and loan association organized under the laws of this state.

Article 3. Other General Provisions

4820. For purposes of this division, a national banking association or federal savings and loan association shall be deemed to be a corporation.

4821. The provisions of the General Corporation Law (Division 1 (commencing with Section 100) of Title 1 of the Corporations Code) shall apply to any transaction which is subject to this division. However, whenever any provision of this division or of any regulation or order issued under this division is inconsistent with any provision of the General Corporation Law, the provision of this division or of the regulation or order shall apply and the provision of the General Corporation Law shall not apply.

4822. (a) References in this division to the voting of the shares of a state depository corporation shall be construed in accordance with Section 111 of the Corporations Code.

(b) If the articles of a state depository corporation provide for more or less than one vote for any share on any matter which is subject to this division, the references in Sections 123 and 124 (which are made applicable to this division by Section 4805) to a majority or other proportion of shares means, as to such matter, a majority or other proportion of the votes entitled to be cast.

(c) Whenever shares of a state depository corporation are disqualified under any applicable law from voting on any matter which is subject to this division, the shares shall not be considered outstanding for the determination of a quorum at any meeting to act upon, or the required vote to approve action upon, such matter.

4823. References in this division to shareholders' equity mean shareholders' equity determined in accordance with generally accepted accounting principles, subject, in the case of state banks, to the provisions of Section 118 and, in the case of state savings and loan associations, to the provisions of Division 2 (commencing with Section 5000).

4824. In determining for purposes of this division whether the shareholders' equity of a state depository corporation will be adequate:

(a) In the case the corporation is, or is to convert into, a state bank, the superintendent shall consider the factors specified in Section 660.

(b) In case the corporation is, or is to convert into, a state savings and loan association, the commissioner shall consider factors equivalent to those specified in Section 660.

4825. Notwithstanding any other provision of law:

(a) No state bank shall merge or convert into a mutual savings and loan association.

(b) No national banking association shall merge or convert into a state mutual savings and loan association.

(c) No state mutual savings and loan association shall merge or convert into a state bank or national banking association.

(d) No federal mutual savings and loan association shall merge or convert into a state bank.

4826. Notwithstanding any other provision of law, no savings and loan association may convert into a bank if the ownership of the savings and loan association is such that the establishment of a new state bank or national banking association by the same ownership would be prohibited by Section 3(d) of the Bank Holding Company Act of 1956 (12 U.S.C. Sec. 1842 (d)).

4827. Notwithstanding any other provision of law:

(a) No sale, merger, or conversion which may be effected pursuant to the provisions of this division with the approval of the superintendent shall be deemed to be prohibited or restricted by any provision of Division 2 (commencing with Section 5000) or to require any approval, consent, or other authorization of the commissioner.

(b) No sale, merger, or conversion which may be effected pursuant to the provisions of this division with the approval of the commissioner shall be deemed to be prohibited or restricted by any provision of Division 1 (commencing with Section 99) or to require any approval, consent, or other authorization of the superintendent.

4828. Notwithstanding any other provision of law:

(a) If, as a result of any sale, merger, or conversion effected pursuant to the provisions of this division, a state bank acquires any asset or liability, or becomes engaged in any activity which was permitted to the selling, disappearing, or converting savings and loan association but which is prohibited to state banks, the superintendent may permit the state bank a reasonable period of time (not to exceed six months) within which to divest itself of the asset, liability, or activity or to conform it to law.

(b) If, as a result of a sale, merger, or conversion effected pursuant to the provisions of this division, a state savings and loan association acquires any asset or liability, or becomes engaged in any activity which was permitted to the selling, merging, or converting bank but which is prohibited to state savings and loan associations, the commissioner may permit the savings and loan association a reasonable period of time (not to exceed six months) within which to divest itself of the asset, liability, or activity or to conform it to law. However, the commissioner may not, pursuant to this subdivision, permit the state savings and loan association to accept or maintain any deposit account which is not permitted to state savings and loan associations.

CHAPTER 2. ADMINISTRATION

4835. Each application and report filed with the superintendent or commissioner under this division or under any regulation or order

issued under this division shall be in such form, shall contain such information, shall be signed in such manner and shall, if the superintendent or commissioner, as the case may be, so requires, be verified in such manner, as the superintendent or commissioner, as the case may be, may require.

4836. Fees shall be paid to, and collected by, the superintendent or commissioner, as the case may be, as follows:

(a) The fee for filing an application for approval of a sale under Section 4854 shall be two thousand five hundred dollars ($2,500).

(b) The fee for filing an application for approval of a merger under Section 4884 shall be two thousand five hundred dollars ($2,500).

(c) (1) The fee for filing an application for approval of a conversion under Section 4924 or 4944 shall be three thousand dollars ($3,000).

(2) The fee for issuing a certificate of authority or license under Section 4928(a) or 4948(a) shall be one thousand dollars ($1,000).

(e) The fee for issuing a certificate under Section 4862, 4891, 4930, or 4952 shall be twenty-five dollars ($25).

(f) In case the superintendent or commissioner makes an examination in connection with a pending application, as described in paragraph (1), (2), or (3), the applicant shall pay a fee for the examination in the sum of two hundred dollars ($200) per day for each examiner engaged in the examination plus, if it is necessary for any examiner engaged in the examination to travel outside this state, the travel expenses of the examiner.

(1) Examination of the selling depository corporation in connection with a pending application for approval of a sale under Article 2 (commencing with Section 4845) of Chapter 3 of this division.

(2) Examination of the disappearing depository corporation in connection with a pending application for approval of a merger under Article 1 (commencing with Section 4880) of Chapter 4 of this division.

(3) Examination of the converting depository corporation in connection with a pending application for approval of a conversion under Article 1 (commencing with Section 4920) or Article 2 (commencing with Section 4940) of Chapter 5 of this division.

CHAPTER 3. SALE

Article 1. General Provisions

4840. In this chapter, unless the context otherwise requires:

(a) "Business unit" means all or substantially all of any of the following:

(1) The business of a depository corporation.

(2) The business of any office, other than the head office, of a depository corporation.

(3) In the case of a depository corporation which transacts trust business:

(A) The trust business of the depository corporation.

(B) The trust business of any office of the depository corporation.

(C) The business, other than trust business, of the depository corporation.

(D) The business, other than trust business, of any office of the depository corporation.

(b) "Fiduciary asset," when used with respect to a depository corporation which transacts trust business, means any asset which the depository corporation holds in its capacity as fiduciary.

(c) "Purchaser" means a depository corporation which purchases a business unit from another depository corporation pursuant to the provisions of this chapter.

(d) "Seller" means a depository corporation which sells a business unit to another depository corporation pursuant to the provisions of this chapter.

4841. The provisions of Section 1001 of the Corporations Code shall not apply to any transaction which is subject to this chapter.

4842. (a) Terms used in this section which are defined in Section 1700 have the meanings set forth in Section 1700. In addition, in this section:

(1) "State-licensed foreign (other nation) bank" means a foreign (other nation) bank which is licensed by the superintendent to maintain a retail branch office in this state or, in the case of a sale where such bank is the purchaser, which is to be so licensed before or at the time when the sale becomes effective.

(2) "Federally licensed foreign (other nation) bank" means a foreign (other nation) bank which is authorized under federal law to maintain a federal retail branch office in this state or, in the case of a sale where such bank is the purchaser, which is to be so authorized before or at the time when the sale becomes effective.

(b) For purposes of this chapter, a state-licensed foreign (other nation) bank shall be deemed to be a state bank and a federally licensed foreign (other nation) bank shall be deemed to be a national banking association, subject to the following:

(1) In the case of a sale where the state-licensed or federally licensed foreign (other nation) bank is the seller:

(A) Paragraph (1) and subparagraphs (A) and (C) of paragraph (3) of subdivision (a) of Section 4840 shall not apply.

(B) Paragraph (2) of subdivision (a) of Section 4840 shall be deemed to refer to the business of any retail branch office of the state-licensed or federally licensed foreign (other nation) bank in this state.

(C) Subparagraph (B) of paragraph (3) of subdivision (a) of Section 4840 shall be deemed to refer to the trust business of any retail branch office of the state-licensed or federally licensed foreign (other nation) bank in this state.

(D) Subparagraph (D) of paragraph (3) of subdivision (a) of

Section 4840 shall be deemed to refer to the business (other than trust business) of any retail branch office of the state-licensed or federally licensed foreign (other nation) bank in this state.

(2) In the case of a sale where the state-licensed or federally licensed foreign (other nation) bank is the seller or purchaser:

(A) Section 4848 shall be deemed to require that the agreement of sale be approved by the state-licensed or federally licensed foreign (other nation) bank in accordance with the laws of its domicile and any other applicable laws.

(B) Subdivision (a) of Section 4849 shall be deemed to require that any amendment to the agreement of sale be approved by the state-licensed or federally licensed foreign (other nation) bank in accordance with the laws of its domicile and any other applicable laws.

(C) Sections 4850, 4851, and 4852 shall not apply to the state-licensed or federally licensed foreign (other nation) bank.

(c) Nothing in this section shall be deemed to do any of the following:

(1) To authorize a state-licensed or federally licensed foreign (other nation) bank to transact trust business in this state.

(2) To exempt a state-licensed foreign (other nation) bank from compliance with all applicable provisions of Division 1 (commencing with Section 99), including (by way of illustration and without limitation), in the case of a sale where such state-licensed foreign (other nation) bank is the purchaser and proposes to establish additional retail branch offices in this state in connection with the sale, Section 1753.

Article 2. Sale to State Depository Corporation

4845. In this article, unless the context otherwise requires:

(a) "Appropriate regulator" means:

(1) In the case of a sale where the purchaser is a state bank, the superintendent.

(2) In the case of a sale where the purchaser is a state savings and loan association, the commissioner.

(b) "Sale" means any of the following:

(1) The sale of a business unit of a state savings and loan association to a state bank.

(2) The sale of a business unit of a state bank to a state savings and loan association.

(3) The sale of a business unit of a federal savings and loan association to a state bank.

(4) The sale of a business unit of a national banking association to a state savings and loan association.

4846. (a) A state savings and loan association may, with the approval of the superintendent, sell a business unit to a state bank pursuant to the provisions of this article.

(b) A state bank may, with the approval of the commissioner, sell

a business unit to a state savings and loan association pursuant to the provisions of this article.

(c) A federal savings and loan association may, with the approval of the superintendent, sell a business unit to a state bank pursuant to the provisions of federal law and the provisions of this article.

(d) A national banking association may, with the approval of the commissioner, sell a business unit to a state savings and loan association pursuant to the provisions of federal law and the provisions of this article.

4847. A seller and purchaser shall make an agreement of sale, providing:

(a) That the seller shall sell to the purchaser, and the purchaser shall purchase from the seller, a business unit, describing it.

(b) In case the business unit is the type described in paragraph (1) of subdivision (a) of Section 4840, that the purchaser will assume and be subject to all the debts and liabilities of the seller in the same manner as if the purchaser had itself incurred them.

(c) Such other provisions as may be appropriate.

4848. The agreement of sale shall be approved by the seller and purchaser, as follows:

(a) In the case of a state depository corporation:

(1) If the sale constitutes a reorganization, as defined in Section 181 of the Corporations Code, the agreement of sale shall be approved as required by Chapter 12 (commencing with Section 1200) of Division 1 of Title 1 of the Corporations Code.

(2) If the sale does not constitute a reorganization, as defined in Section 181 of the Corporations Code, and if the state depository corporation is the seller:

(A) If the business unit to be sold is the type described in paragraph (2) of subdivision (a) of Section 4840 or subparagraph (B) or (D) of paragraph (3) of subdivision (a) of Section 4840, and if, as of the time when the agreement of sale is made, the deposits of the business unit are less than 10 percent of the total deposits of the seller, and the fiduciary assets, if any, of the business unit are less than 10 percent of the total fiduciary assets of the seller, the agreement of sale shall be approved by the board of the seller.

(B) Otherwise, the agreement of sale shall be approved by the board of the seller, and the principal terms of the agreement of sale shall be approved by the outstanding shares of the seller.

(3) If the sale does not constitute a reorganization, as defined in Section 181 of the Corporations Code, and if the state depository corporation is the purchaser:

(A) If, as of the time when the agreement of sale is made, the deposits of the business unit to be sold are less than 10 percent of the total deposits of the purchaser, and the fiduciary assets, if any, of the business unit are less than 10 percent of the total fiduciary assets of the purchaser, the agreement of sale shall be approved by the board of the purchaser.

(B) Otherwise, the agreement of sale shall be approved by the

board of the purchaser, and the principal terms of the agreement of sale shall be approved by the outstanding shares of the purchaser.

(4) For purposes of paragraphs (2) and (3):

(A) The amount of deposits shall be determined as of the end of the calendar quarter immediately preceding the making of the agreement of sale.

(B) The value of fiduciary assets shall be the net carrying value, as determined in conformity with generally accepted accounting principles, as of the end of the calendar quarter immediately preceding the making of the agreement of sale.

(b) In the case of a federal depository corporation, the agreement of sale shall be approved as required by federal law.

4849. (a) Any amendment to an agreement of sale shall be approved by the seller and purchaser, as follows:

(1) In the case of a state depository corporation, by the board of the corporation, and, if the principal terms of the agreement of sale were required to be approved by the outstanding shares of the corporation under Section 4848 and if the amendment changes any of the principal terms of the agreement of sale, by the outstanding shares of the corporation.

(2) In the case of a federal depository corporation, as required by federal law.

(b) If an agreement of sale is amended and if the amendment is approved as required by subdivision (a), the agreement of sale, as thus amended, shall constitute the agreement of sale.

4850. In the case of a seller or purchaser which is a state depository corporation, any approval of the outstanding shares of the corporation required by Section 4848 or 4849 may be given before or after the approval of the board of the corporation.

4851. In obtaining any approval of outstanding shares for an agreement of sale required by Section 4848 or 4849 or by federal law, the purchaser and, in case the purchaser is to issue securities in consideration of the sale, the seller shall each provide to its shareholders such information as the appropriate regulator may require. In determining the information to be required, the appropriate regulator shall give due consideration to regulations relating to proxy statements issued under Section 14 of the Securities Exchange Act of 1934 (15 U.S.C. Sec. 78n) by, in the case of a depository corporation which is a bank, the federal bank regulatory agencies and, in the case of a depository corporation which is a savings and loan association, the Federal Home Loan Bank Board.

4852. The board of the purchaser, or, in case the seller is a state depository corporation, the board of the seller, may in its discretion and without further approval of the outstanding shares, abandon the sale at any time before the sale becomes effective, subject to the contractual rights, if any, of third parties, including the seller or purchaser, as the case may be.

4853. The provisions of Chapter 13 (commencing with Section 1300) of Division 1 of Title 1 of the Corporations Code shall not apply

to the shareholders of the purchaser in a sale.

4854. A purchaser shall file the following with the appropriate regulator:

(a) A copy of the agreement of sale.

(b) An officers' certificate of the purchaser, certifying that the agreement of sale has been approved by the purchaser as required by Sections 4848 and 4849.

(c) An officers' certificate of the seller, certifying that the agreement of sale has been approved by the seller as required by Sections 4848 and 4849.

(d) An application for approval of the sale.

4855. If the appropriate regulator finds all of the following with respect to an application for approval of a sale, the appropriate regulator shall approve the application:

(a) That the sale will not result in a monopoly and will not be in furtherance of any combination or conspiracy to monopolize or to attempt to monopolize the banking and savings and loan business in any part of this state.

(b) That the sale will not have the effect in any section of this state of substantially lessening competition, tending to create a monopoly, or otherwise being in restraint of trade, or that any such anticompetitive effect is clearly outweighed in the public interest by the probable effect of the sale in meeting the convenience and needs of the community to be served.

(c) That the shareholders' equity of the purchaser will be adequate and that the financial condition of the purchaser will be satisfactory.

(d) That the directors and executive officers of the purchaser will be satisfactory.

(e) That the purchaser will afford reasonable promise of successful operation and that it is reasonable to believe that the purchaser will be operated in a safe and sound manner and in compliance with all applicable laws.

(f) That the sale will be fair, just, and equitable. For purposes of this subdivision, in the case of any term of the sale which has been determined by agreement between the seller and the purchaser in an arm's length transaction, the appropriate regulator shall find that such term is fair, just, and equitable to the seller and the purchaser.

(g) In the case of a sale of a business unit of a state or federal savings and loan association to a state bank, that the sale will not have a seriously adverse effect on the total availability of financing for housing in the market area of the seller or that any such effect is clearly outweighed in the public interest by the probable effect of the sale in meeting the convenience and needs of the community to be served. Nothing in this subdivision shall be deemed to authorize the superintendent to require the purchaser to make financing for housing available.

If the appropriate regulator finds otherwise, the appropriate regulator shall deny the application for approval of the sale.

4856. (a) Before a sale becomes effective, the seller or purchaser shall give to the depositors of the seller such notice of the sale as the appropriate regulator may require.

(b) In case the rate of interest paid on any deposit at the seller will be reduced as a result of the sale, the depositor may, subject to the provisions of any applicable federal statute or regulation, withdraw the deposit on demand at any time during the period commencing with the giving of the notice called for in subdivision (a) and ending on the 60th day after the date on which the sale becomes effective.

4857. After an application for approval of a sale has been approved and all conditions precedent to the sale have been fulfilled, the appropriate regulator shall approve the agreement of sale and endorse the approval on the agreement of sale, and at that time the sale shall become effective for all purposes.

4858. When a sale becomes effective, the appropriate regulator shall issue to the purchaser such certificates of authority, licenses, and other authorizations as may be necessary to authorize the purchaser to transact the business and to establish and maintain the branch offices, places of business, extensions of offices, and other facilities purchased from the seller in the sale.

4859. When a sale becomes effective:

(a) In case the business unit sold is the type described in paragraph (1) of subdivision (a) of Section 4840:

(1) The purchaser shall succeed, without other transfer, to all the rights and property of the seller except any rights and property of the seller which are specifically not sold to the purchasing corporation under the agreement of sale.

(2) The purchaser shall assume and be subject to all the debts and liabilities of the seller in the same manner as if the purchaser had itself incurred them.

(3) All rights of creditors of the seller and all liens upon the property of the seller shall be preserved unimpaired, provided that such liens upon the property of the seller shall be limited to the property affected thereby immediately prior to the time when the sale becomes effective.

(4) Any action or proceeding pending by or against the seller may be prosecuted to judgment, which shall bind the purchaser, or the purchaser may be proceeded against or substituted in place of the seller.

(5) Any reference to the seller in any writing, whether executed or taking effect before or after the sale, shall be deemed a reference to the purchaser, if not inconsistent with the other provisions of the writing.

(6) In case the seller was transacting trust business, the purchaser shall succeed, without further transfer, to the rights, obligations, properties, assets, investments, deposits, demands, agreements, and trusts of the seller under all trusts, executorships, administrations, guardianships, agencies, and all other fiduciary or representative capacities to the same extent as if the purchaser had originally

assumed such fiduciary or representative capacities, and the purchaser shall be entitled to take and execute the appointment to all executorships, trusteeships, guardianships, and other fiduciary or representative capacities to which the seller is or may be named in wills, whenever probated, or to which the seller is or may be named or appointed by any other instrument.

(b) In case the business unit sold is the type described in paragraph (2) or (3) of subdivision (a) of Section 4840:

(1) The purchaser shall succeed, without other transfer, to all rights and property of the seller which are sold to the purchaser under the agreement of sale.

(2) The purchaser shall assume in the same manner as if the purchaser had itself incurred such debts and liabilities and shall be subject to all debts and liabilities of the seller transferred to the purchaser under the agreement of sale.

(3) All rights of creditors of the seller and all liens upon the property of the seller shall be preserved unimpaired.

(4) Any action or proceeding pending by or against the seller which was sold or transferred to the purchaser under the agreement of sale may be prosecuted to judgment, which shall bind the purchaser, or the purchaser may be proceeded against or substituted in place of the seller.

(c) In case the business unit sold is the type described in subparagraph (A) of paragraph (3) of subdivison (a) of Section 4840, the purchaser shall succeed, without further transfer, to the rights, obligations, properties, assets, investments, deposits, demands, agreements, and trusts of the seller under all trusts, executorships, administrations, guardianships, agencies, and all other fiduciary or representative capacities to the same extent as if the seller had originally assumed such fiduciary or representative capacities, and the purchaser shall be entitled to take and execute the appointment to all executorships, trusteeships, guardianships, and other fiduciary or representative capacities to which the seller is or may be named in wills, whenever probated, or to which the seller is or may be named or appointed by any other instrument.

(d) In case the business unit sold is the type described in subparagraph (B) of paragraph (3) of subdivision (a) of Section 4840, the purchaser shall succeed, without further transfer, to the rights, obligations, properties, assets, investments, deposits, demands, agreements, and trusts of the seller under all trusts, executorships, administrations, guardianships, agencies, and all other fiduciary or representative capacities sold to the purchaser under the agreement of sale, to the same extent as if the purchaser had originally assumed such fiduciary or representative capacities.

4860. No action on account of any debt or liability assumed by a purchaser in a sale may be commenced against the seller more than one year after the time when the sale becomes effective.

4861. Promptly after a sale becomes effective:

(a) The seller shall:

(1) Surrender to its regulator for cancellation the certificates of authority or licenses issued to it by the regulator which relate to the business unit sold; and

(2) File with its regulator such report regarding the sale as the regulator may require.

(b) In case the business unit sold was the type described in paragraph (1) of subdivision (a) of Section 4840, the seller shall wind up and dissolve. However, if the seller is a state bank, the seller may, in the alternative and with the approval of the superintendent, change into a nonbank corporation by amending its articles and changing its name.

4862. (a) After a sale becomes effective, the appropriate regulator shall issue, upon application, a certificate under his or her official seal, stating that the seller sold a business unit to the purchaser, describing the business unit, and specifying the time at which the sale became effective.

(b) Any certificate pursuant to subdivision (a) shall be prima facie evidence of the fact of the sale and of the regularity of the proceedings taken for the sale and shall be conclusive evidence of such matters in favor of any innocent purchaser or encumbrancer for value.

Article 3. Sale to Federal Depository Corporation

4870. In this article, unless the context otherwise requires, "sale" means the sale of a business unit of a state bank to a federal savings and loan association or the sale of a business unit of a state savings and loan association to a national banking association.

4871. (a) A state bank may sell a business unit to a federal savings and loan association pursuant to the provisions of federal law. No provision of Division 1 (commencing with Section 99) or of this division other than the provisions of this article shall be deemed to prohibit or restrict the sale of a business unit of a state bank to a federal savings and loan association.

(b) A state savings and loan association may sell a business unit to a national banking association pursuant to the provisions of federal law. No provision of this division other than the provisions of this article or of Division 2 (commencing with Section 5000) shall be deemed to prohibit or restrict the sale of a business unit of a state savings and loan association to a national banking association.

4872. A sale shall be subject to the provisions of Sections 4847 to 4850, inclusive, and 4852 as if the sale were a sale of the type described in Section 4845.

4873. A sale shall have the same effect as provided in Sections 4859 and 4860 in the case of a sale of the type described in Section 4845.

4874. Promptly after a sale becomes effective:

(a) The seller shall:

(1) Surrender to its regulator for cancellation the certificates of

authority or licenses issued to it by the regulator which relate to the business unit sold; and

(2) File with its regulator such report of the sale as the regulator may require.

(b) In case the business unit sold was the type described in paragraph (1) of subdivision (a) of Section 4840, the seller shall wind up and dissolve However, if the seller is a state bank, the seller may, in the alternative and with the approval of the superintendent, change into a nonbank corporation by amending its articles and changing its name.

4875. (a) After a sale becomes effective, the seller or purchaser may issue an officer's certificate stating that the seller sold a business unit to the purchaser, describing the business unit, and specifying the time at which the sale became effective.

(b) Any certificate issued pursuant to subdivision (a) shall be prima facie evidence of the fact of the sale and of the regularity of the proceedings taken for the sale and shall be conclusive evidence of such matters in favor of any innocent purchaser or encumbrancer for value.

CHAPTER 4. MERGER

Article 1. Merger into State Depository Corporation

4880. In this article, unless the context otherwise requires:

(a) "Appropriate regulator" means:

(1) In the case of a merger where the surviving depository corporation is a state bank, the superintendent.

(2) In the case of a merger where the surviving depository corporation is a state savings and loan association, the commissioner.

(b) "Merger" means any of the following:

(1) The merger of a state savings and loan association into a state bank.

(2) The merger of a state bank into a state savings and loan association.

(3) The merger of a federal savings and loan association into a state bank.

(4) The merger of a national banking association into a state savings and loan association.

4881. (a) A state savings and loan association may merge into a state bank pursuant to the provisions of this article with the approval of the superintendent.

(b) A state bank may merge into a state savings and loan association pursuant to the provisions of this article with the approval of the commissioner.

(c) A federal savings and loan association may merge into a state bank pursuant to the provisions of federal law and the provisions of this article, with the approval of the superintendent.

(d) A national banking association may merge into a state savings

and loan association pursuant to the provisions of federal law and the provisions of this article, with the approval of the commissioner.

4882. In obtaining any approval of outstanding shares required for a merger, the surviving depository corporation and, in case the surviving depository corporation is to issue securities in consideration of the merger, the disappearing depository corporation shall each provide to its shareholders such information as the appropriate regulator may require. In determining the information to be required, the appropriate regulator shall give due consideration to regulations relating to proxy statements issued under Section 14 of the Securities Exchange Act of 1934 (15 U.S.C. Sec. 78n) by, in the case of a depository corporation which is a bank, the federal bank regulatory agencies and, in the case of a depository corporation which is a savings and loan association, the Federal Home Loan Bank Board.

4883. The provisions of Chapter 13 (commencing with Section 1300) of Division 1 of Title 1 of the Corporations Code shall not apply to the shareholders of the surviving depository corporation in a merger.

4884. A surviving depository corporation shall file with the appropriate regulator an application for approval of the merger.

4885. If the appropriate regulator finds all of the following with respect to an application for approval of a merger, the appropriate regulator shall approve the application:

(a) That the merger will not result in a monopoly and will not be in furtherance of any combination or conspiracy to monopolize or to attempt to monopolize the banking and savings and loan business in any part of this state.

(b) That the merger will not have the effect in any section of this state of substantially lessening competition, tending to create a monopoly, or otherwise being in restraint of trade, or that any such anticompetitive effect is clearly outweighed in the public interest by the probable effect of the merger in meeting the convenience and needs of the community to be served.

(c) That the shareholders' equity of the surviving depository corporation will be adequate and that the financial condition of the surviving depository corporation will be satisfactory.

(d) That the directors and executive officers of the surviving depository corporation will be satisfactory.

(e) That the surviving depository corporation will afford reasonable promise of successful operation and that it is reasonable to believe that the surviving depository corporation will be operated in a safe and sound manner and in compliance with all applicable laws.

(f) That the merger will be fair, just, and equitable. For purposes of this subdivision, in the case of any term of the merger which has been determined by agreement between the disappearing depository corporation and the surviving depository corporation in an arm's length transaction, the appropriate regulator shall find that

such term is fair, just, and equitable to the disappearing depository corporation and the surviving depository corporation.

(g) In the case of a merger of a state or federal savings and loan association into a state bank, that the merger will not have a seriously adverse effect on the total availability of financing for housing in the market area of the disappearing savings and loan association or that any such effect is clearly outweighed in the public interest by the probable effect of the merger in meeting the convenience and needs of the community to be served. Nothing in this subdivision shall be deemed to authorize the superintendent to require the surviving state bank to make financing for housing available.

If the appropriate regulator finds otherwise, the appropriate regulator shall deny the application for approval of the merger.

4886. (a) Before a merger becomes effective, the disappearing or surviving depository corporation shall give to the depositors of the disappearing depository corporation such notice of the merger as the appropriate regulator may require.

(b) In case the rate of interest paid on any deposit at the disappearing depository corporation will be reduced as a result of the merger, the depositor may, subject to the provisions of any applicable federal statute or regulation, withdraw the deposit on demand at any time during the period commencing with the giving of the notice called for in subdivision (a) and ending on the 60th day after the date on which the merger becomes effective.

4887. (a) After an application for approval of a merger has been approved and all conditions precedent to the merger have been fulfilled, the appropriate regulator shall approve the agreement of merger and endorse the approval on the agreement of merger.

(b) After the agreement of merger has been filed with the Secretary of State, the surviving depository corporation shall file with the appropriate regulator a copy of the agreement of merger certified by the Secretary of State, and at that time the merger shall become effective for all purposes.

4888. When a merger becomes effective, the appropriate regulator shall issue to the surviving depository corporation such certificates of authority, licenses, and other authorizations as may be necessary to authorize the surviving depository corporation to transact the business and to establish and maintain the branch offices, places of business, extensions of offices, and other facilities acquired from the disappearing depository corporation in the merger.

4889. (a) When a merger becomes effective:

(1) Any reference to the disappearing depository corporation in any writing, whether executed or taking effect before or after the merger, shall be deemed a reference to the surviving corporation, if not inconsistent with the other provisions of the writing.

(2) In case the disappearing depository corporation was transacting trust business, the surviving depository corporation shall succeed, without further transfer, to the rights, obligations,

properties, assets, investments, deposits, demands, agreements, and trusts of the disappearing depository corporation under all trusts, executorships, administrations, guardianships, agencies, and all their fiduciary or representative capacities to the same extent as if the surviving depository corporation had originally assumed such fiduciary or representative capacities, and the surviving depository corporation shall be entitled to take and execute the appointment to all executorships, trusteeships, guardianships, and other fiduciary or representative capacities to which the disappearing depository corporation is or may be named in wills, whenever probated, or to which the disappearing depository corporation is or may be named or appointed by any other instrument.

(b) Subdivision (a) shall be construed as clarifying and amplifying, not as limiting or restricting, the provisions of Section 1107 of the Corporations Code.

4890. Promptly after a merger becomes effective:

(a) The surviving depository corporation shall:

(1) Surrender to the regulator of the disappearing depository corporation for cancellation the certificates of authority or licenses issued to the disappearing depository corporation by the regulator; and

(2) File with the regulator of the disappearing depository corporation such report regarding the merger as the regulator may require.

(b) The appropriate regulator shall file a report regarding the merger with the Secretary of State.

4891. (a) After a merger becomes effective, the appropriate regulator shall, upon application, issue a certificate under his or her official seal, stating that the disappearing depository corporation merged into the surviving depository corporation and specifying the time at which the merger became effective.

(b) Any certificate issued pursuant to subdivision (a) shall be prima facie evidence of the fact of the merger and of the regularity of the proceedings taken for the merger and shall be conclusive evidence of such matters in favor of any innocent purchaser or encumbrancer for value.

Article 5. Merger into Federal Depository Corporation

4900. In this article, unless the context otherwise requires, "merger" means the merger of a state bank into a federal savings and loan association or the merger of a state savings and loan association into a national banking association.

4901. (a) A state bank may merge into a federal savings and loan association pursuant to the provisions of federal law. No provision of Division 1 (commencing with Section 99) or of this division other than the provisions of this article shall be deemed to prohibit or restrict the merger of a state bank into a federal savings and loan association.

(b) A state savings and loan association may merge into a national banking association pursuant to the provisions of federal law. No provision of this division other than the provisions of this article or of Division 2 (commencing with Section 5000) shall be deemed to prohibit or restrict the merger of a state savings and loan association into a national banking association.

4902. A merger shall be subject to the provisions of Section 1108 of the Corporations Code.

4903. A merger shall have the same effect as provided in Section 1107 of the Corporations Code and as provided in Section 4889 in the case of a merger of the type described in Section 4880.

4904. Promptly after a merger becomes effective, the surviving depository corporation shall:

(1) Surrender to the regulator of the disappearing depository corporation for cancellation the certificates of authority or licenses issued by the regulator to the disappearing depository corporation; and

(2) File with the regulator of the disappearing depository corporation such report of the merger as the regulator may require.

4905. (a) After a merger becomes effective, the surviving corporation may issue an officer's certificate, stating that the disappearing depository corporation merged into the surviving depository corporation and specifying the time at which the merger became effective.

(b) Any certificate issued pursuant to subdivision (a) shall be prima facie evidence of the fact of the merger and of the regularity of the proceedings taken for the merger and shall be conclusive evidence of such matters in favor of any innocent purchaser or encumbrancer for value.

CHAPTER 5. CONVERSION

Article 1. Conversion of State Depository Corporation into State Depository Corporation

4920. In this article, unless the context otherwise requires:

(a) "Appropriate regulator" means:

(1) In the case of a conversion of a state savings and loan association into a state bank, the superintendent.

(2) In the case of a conversion of a state bank into a state savings and loan association, the commissioner.

(b) "Conversion" means the conversion of a state savings and loan association into a state bank or the conversion of a state bank into a state savings and loan association.

4921. (a) A state savings and loan association may convert into a state bank pursuant to the provisions of this article, with the approval of the superintendent.

(b) A state bank may convert into a state savings and loan association pursuant to the provisions of this article, with the

approval of the commissioner.

4922. (a) A converting depository corporation shall adopt, and shall file with the appropriate regulator an application for approval of, such amendments to its articles as may be necessary to carry out the conversion. Section 904 of the Corporations Code shall not apply to the amendments.

(b) A converting depository corporation shall adopt, and shall file with the appropriate regulator an application for approval of, such amendments to its bylaws as may be necessary to carry out the conversion. The amendments shall not take effect until they are approved by the appropriate regulator and the conversion becomes effective.

4923. In obtaining the approval of outstanding shares or shareholders for any amendment to articles or bylaws called for in Section 4922, a converting depository corporation shall provide to its shareholders such information as the appropriate regulator may require. In determining the information to be required, the appropriate regulator shall give due consideration to regulations relating to proxy statements issued under Section 14 of the Securities Exchange Act of 1934 (15 U.S.C. Sec. 78n) by, in the case of a depository corporation which is a bank, the federal bank regulatory agencies and, in the case of a depository corporation which is a savings and loan association, the Federal Home Loan Bank Board.

4924. A converting depository corporation shall file with the appropriate regulator an application for approval of the conversion.

4925. If the appropriate regulator finds all of the following with respect to an application for approval of a conversion, the appropriate regulator shall approve the application:

(a) That the shareholders' equity of the resulting depository corporation will be adequate and that the financial condition of the resulting depository corporation will be satisfactory.

(b) That the directors, executive officers, and any controlling person of the resulting corporation will be satisfactory.

(c) That the name of the resulting depository corporation will not resemble so closely as to be likely to cause confusion the name of any other bank or savings and loan association, as the case may be, which is transacting or has recently transacted business in this state.

(d) That the resulting depository corporation will afford reasonable promise of successful operation and that it is reasonable to believe that the resulting depository corporation will be operated in a safe and sound manner and in compliance with all applicable laws.

(e) In the case of a conversion of a savings and loan association into a state bank, that the conversion will not have a seriously adverse effect on the total availability of financing for housing in the market area of the converting savings and loan association or that any such effect is clearly outweighed in the public interest by the probable effect of the conversion in meeting the convenience and needs of the community to be served. Nothing in this subdivision shall be deemed

to authorize the superintendent to require the resulting state bank to make financing for housing available.

If the appropriate regulator finds otherwise, the appropriate regulator shall deny the application for approval of the conversion.

4926. (a) Before a conversion becomes effective, the converting depository corporation shall give to its depositors such notice of the conversion as the appropriate regulator may require.

(b) In case the rate of interest paid on a deposit will be reduced as a result of the conversion, the depositor may, subject to the provisions of any applicable federal statute or regulation, withdraw the deposit on demand at any time during the period commencing with the giving of the notice called for in subdivision (a) and ending on the 60th day after the conversion becomes effective.

4927. After an application for approval of a conversion has been approved and all conditions precedent to the conversion have been fulfilled, the appropriate regulator shall approve the amendments to the articles of the converting depository corporation called for in Section 4922, endorse the approval on the certificate of amendment or other instrument containing the amendments, and specify the time at which the certificate of amendment or other instrument is to be filed with the Secretary of State. The certificate of amendment or other instrument shall be filed with the Secretary of State at the time so specified by the appropriate regulator, and at the time of the filing, the conversion shall become effective for all purposes.

4928. When a conversion becomes effective, the appropriate regulator shall:

(a) (1) In case the resulting depository corporation is a state bank, issue to the resulting depository corporation a certificate of authority authorizing it to transact commercial banking business or commercial banking business and trust business, as the case may be.

(2) In case the resulting depository corporation is a state savings and loan association, issue to the resulting depository corporation a license authorizing it to transact business as a state savings and loan association.

(b) In any case, issue to the resulting depository corporation certificates of authority, licenses, or other appropriate authorizations for the branch offices, places of business, extensions of offices, and other facilities which the converting depository corporation was operating and which the resulting depository corporation is to continue to operate.

4929. Promptly after a conversion becomes effective, the resulting depository corporation shall:

(a) Surrender to the regulator of the converting depository corporation for cancellation the certificates of authority or licenses issued to the converting depository corporation by the regulator; and

(b) File with the regulator of the converting depository corporation such report regarding the conversion as the regulator may require.

4930. (a) After a conversion becomes effective, the appropriate

regulator shall issue, upon application, a certificate under his or her official seal, stating that the converting depository corporation converted into the resulting depository corporation and specifying the time at which the conversion became effective.

(b) Any certificate issued pursuant to subdivision (a) shall be prima facie evidence of the fact of the conversion and of the regularity of the proceedings taken for the conversion and shall be conclusive evidence of such matters in favor of any innocent purchaser or encumbrancer for value.

Article 2. Conversion of Federal Depository Corporation into State Depository Corporation

4940. In this article, unless the context otherwise requires:

(a) "Appropriate regulator" means:

(1) In the case of the conversion of a federal savings and loan association into a state bank, the superintendent.

(2) In the case of the conversion of a national banking association into a state savings and loan association, the commissioner.

(b) "Conversion" means the conversion of a federal savings and loan association into a state bank or the conversion of a national banking association into a state savings and loan association.

4941. (a) A federal savings and loan association may convert into a state bank pursuant to the provisions of federal law and the provisions of this article, with the approval of the superintendent.

(b) A national banking association may convert into a state savings and loan association pursuant to the provisions of federal law and the provisions of this article, with the approval of the commissioner.

4942. A converting depository corporation shall adopt a plan of conversion pursuant to the provisions of federal law.

4943. In obtaining any approval of outstanding shares for a plan of conversion required by federal law, a converting depository corporation shall provide to its shareholders such information as the appropriate regulator may require. In determining the information to be required, the appropriate regulator shall give due consideration to regulations relating to proxy statements issued under Section 14 of the Securities Exchange Act of 1934 (15 U.S.C. Sec. 78n) by, in the case of a depository corporation which is a bank, the federal bank regulatory agencies and, in the case of a depository corporation which is a savings and loan association, the Federal Home Loan Bank Board.

4944. (a) A converting depository corporation shall file the following with the appropriate regulator:

(a) The plan of conversion.

(b) An officer's certificate certifying that the plan of conversion has been approved as required by federal law.

(c) An application for approval of the conversion.

4945. If the appropriate regulator finds all of the factors set forth

in Section 4925 with respect to an application for approval of a conversion, the appropriate regulator shall approve the application. If the appropriate regulator finds otherwise, the appropriate regulator shall deny the application for approval of the conversion.

4946. After an application for approval of a conversion has been approved by the appropriate regulator but before the conversion becomes effective:

(a) The converting depository corporation shall file with the appropriate regulator an application for approval of the articles of the resulting depository corporation. When the appropriate regulator approves the articles, the appropriate regulator shall endorse the approval on the articles. After the articles are filed with the Secretary of State, the resulting depository corporation shall file with the appropriate regulator a copy of the articles certified by the Secretary of State.

(b) The resulting depository corporation shall file with the appropriate regulator an application for approval of its bylaws. The bylaws shall not take effect unless and until they are approved by the appropriate regulator.

4947. (a) Before a conversion becomes effective, the converting depository corporation shall give to its depositors such notice of the conversion as the appropriate regulator may require.

(b) In case the rate of interest paid on a deposit will be reduced as a result of the conversion, the depositor may withdraw, subject to the provisions of any applicable federal statute or regulation, the deposit on demand at any time during the period commencing with the giving of the notice called for in subdivision (a) and ending on the 60th day after the conversion becomes effective.

4948. (a) After an application for approval of a conversion has been approved and all conditions precedent to the conversion have been fulfilled, the appropriate regulator shall:

(1) In case the resulting depository corporation is a state bank, issue to the resulting depository corporation a certificate of authority authorizing it to transact commercial banking business or commercial banking business and trust business, as the case may be.

(2) In case the resulting depository corporation is a state savings and loan association, issue to the resulting depository corporation a license authorizing it to transact business as a state savings and loan association.

(b) Upon the issuance of the certificate of authority or license pursuant to subdivision (a), the conversion shall become effective for all purposes.

4949. When a conversion becomes effective, the appropriate regulator shall issue to the resulting depository corporation certificates of authority, licenses, or other appropriate authorizations for the branch offices, places of business, extensions of offices, and other facilities which the converting depository corporation was operating and which the resulting depository corporation is to continue to operate.

4950. When a conversion becomes effective:

(a) The converting depository corporation shall cease to exist.

(b) The resulting depository corporation shall succeed, without other transfer, to all the rights and property of the converting depository corporation and shall be subject to all the debts and liabilities of the converting depository corporation in the same manner as if the resulting depository corporation had itself incurred them.

(c) All rights of creditors of the converting depository corporation and all liens upon the property of the converting depository corporation shall be preserved unimpaired, provided that such liens upon the property of the converting depository corporation shall be limited to the property affected thereby immediately prior to the time when the conversion becomes effective.

(d) Any action or proceeding pending by or against the converting depository corporation may be prosecuted to judgment, which shall bind the resulting depository corporation, or the resulting depository corporation may be proceeded against or substituted in place of the converting depository corporation.

(e) Any reference to the converting depository corporation in any writing, whether executed or taking effect before or after the conversion, shall be deemed a reference to the resulting depository corporation if not inconsistent with the other provisions of such writing.

(f) In case the converting depository corporation was transacting trust business, the resulting depository corporation shall succeed, without further transfer, to the rights, obligations, properties, assets, investments, deposits, demands, agreements, and trusts of the converting depository corporation under all trusts, executorships, administrations, guardianships, agencies, and all other fiduciary or representative capacities to the same extent as if the resulting depository corporation had originally assumed such fiduciary or representative capacities, and the resulting depository corporation shall be entitled to take and execute the appointment to all executorships, trusteeships, guardianships, and other fiduciary or representative capacities to which the converting depository corporation is or may be named in wills, whenever probated, or to which the converting depository corporation is or may be named or appointed by any other instrument.

4951. Promptly after a conversion becomes effective, the resulting depository corporation shall:

(a) Surrender to the regulator of the converting depository corporation for cancellation the certificates of authority or licenses issued to the converting depository corporation by the regulator; and

(b) File with the regulator of the converting depository corporation such report regarding the conversion as the regulator may require.

4952. (a) After a conversion becomes effective, the appropriate regulator shall issue, upon application, a certificate under his or her

official seal, stating that the converting depository corporation was converted into the resulting depository corporation and specifying the time at which the conversion became effective.

(b) Any certificate issued pursuant to subdivision (a) shall be prima facie evidence of the fact of the conversion and of the regularity of the proceedings taken for the conversion and shall be conclusive evidence of such matters in favor of any innocent purchaser or encumbrancer for value.

Article 3. Conversion of State Depository Corporation into Federal Depository Corporation

4960. In this article, unless the context otherwise requires, "conversion" means the conversion of a state bank into a federal savings and loan association or the conversion of a state savings and loan association into a national banking association.

4961. (a) A state bank may convert into a federal savings and loan association pursuant to the provisions of federal law. No provision of Division 1 (commencing with Section 99) or of this division other than the provisions of this article shall be deemed to prohibit or restrict the conversion of a state bank into a federal savings and loan association.

(b) A state savings and loan association may convert into a national banking association pursuant to the provisions of federal law. No provision of this division other than the provisions of this article or of Division 2 (commencing with Section 5000) shall be deemed to prohibit or restrict the conversion of a state savings and loan association into a national banking association.

4962. (a) A converting depository corporation shall make a plan of conversion, stating:

(1) That the converting depository corporation shall be converted into the resulting depository corporation.

(2) Proposed articles of the resulting depository corporation.

(3) Manner of converting the securities of the converting depository corporation into securities of the resulting depository corporation.

(4) Such other provisions as may be appropriate.

(b) (1) The plan of conversion shall be approved by the board of the converting depository corporation, and the principal terms of the plan of conversion shall be approved by the outstanding shares of the converting depository corporation.

(2) (A) Any amendment to the plan of conversion shall be approved by the board of the converting depository corporation and, if the amendment changes any of the principal terms of the plan of conversion, by the outstanding shares of the converting depository corporation.

(B) If the plan of conversion is amended and if the amendment is approved as required by subparagraph (A), the plan of conversion, as thus amended, shall constitute the plan of conversion.

(3) Any approval of the outstanding shares of the converting depository corporation required by this subdivision may be given before or after the approval of the board of the converting depository corporation.

(c) The board of the converting depository corporation may, in its discretion and without further approval of the outstanding shares, abandon the conversion at any time before the conversion becomes effective.

4963. A conversion shall have the same effect as provided in Section 4950 in the case of a conversion of the type described in 4940.

4964. Promptly after a conversion becomes effective, the resulting depository corporation shall:

(a) Surrender to the regulator of the converting depository corporation for cancellation the certificates of authority or licenses issued by the regulator to the converting depository corporation; and

(b) File with the regulator of the converting depository corporation such report of the conversion as the regulator may require.

4965. (a) After a conversion becomes effective, the resulting depository corporation may issue an officers' certificate, stating that the converting depository corporation converted into the resulting depository corporation and specifying the time at which the conversion became effective.

(b) Any certificate issued pursuant to subdivision (a) shall be prima facie evidence of the fact of the conversion and of the regularity of the proceedings taken for the conversion and shall be conclusive evidence of such matters in favor of any innocent purchaser or encumbrancer for value.

SEC. 4. Section 5255 of the Financial Code is amended to read:

5255. The commissioner may promulgate, amend, supplement, and revoke in whole or in part, rules and regulations not inconsistent with the provisions of this division or other laws of this state, governing procedure before the commissioner and the exercise by the commissioner of the powers, discretions, rights, and privileges vested in him under this division and under Division 1.5 (commencing with Section 4800).

SEC. 5. Section 5256 of the Financial Code is amended to read:

5256. The commissioner may commence and prosecute actions and proceedings to enjoin violations of the provisions of this division, violations of the provisions of Division 1.5 (commencing with Section 4800), or violations of orders or decisions of the commissioner rendered pursuant to such provisions, and for the enforcement of any and all civil penalties provided for by this division.

SEC. 6. Section 5258 of the Financial Code is amended to read:

5258. Every order, decision, approval, certificate, license, permit, or the denial of any approval, certificate, license or permit, or other official act of the commissioner provided for in Articles 1 (commencing with Section 5500), 2 (commencing with Section 5550), and 4 (commencing with Section 5650) of Chapter 3, Chapter

5 (commencing with Section 6000), Sections 6450 to 6455, inclusive, Section 7616, and Article 1 (commencing with Section 9200) of Chapter 18, of Part 1 of this division, or in Part 4 (commencing with Section 11500), and Part 5 (commencing with Section 11700) of this division or Division 1.5 (commencing with Section 4800) is subject to judicial review in accordance with law. Except for review of proceedings conducted in accordance with Chapter 5 (commencing with Section 11500) of Part 1, Division 3, Title 2 of the Government Code, an action or proceeding for judicial review pursuant to this section must be commenced within 60 days after the issuance of such order, decision, approval, certificate, license or permit, or within 60 days after such denial, or other official act, or in the event of a hearing held under Section 11708, within 60 days after the issuance of the final decision of the commissioner either approving or denying the application for acquisition of control.

SEC. 7. For the purposes of, and notwithstanding any contrary provisions of, Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, in case the Superintendent of Banks or the Savings and Loan Commissioner adopts any regulation or order of repeal to implement, interpret, or make specific any provision of this act within six months of the effective date of this act, he or she may, without describing specific facts showing the need for immediate action, find that adoption of such regulation or order of repeal is necessary for the immediate preservation of the public peace, health, and safety, or general welfare, and such regulation or order of repeal shall be deemed to be necessary for the immediate preservation of the public peace, health, and safety, or general welfare.

SEC. 8. Section 2.5 of this act shall become operative only if Assembly Bill No. 1495 is enacted and adds Chapter 16.5 (commencing with Section 3050) to Division 1 of the Financial Code.

CHAPTER 1412

An act to amend Section 1203.1 of the Penal Code, relating to probation.

[Approved by Governor September 24, 1982. Filed with Secretary of State September 27, 1982.]

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

SECTION 1. Section 1203.1 of the Penal Code is amended to read:

1203.1. (a) The court or judge thereof, in the order granting probation, may suspend the imposing, or the execution of the sentence and may direct that such suspension may continue for such period of time not exceeding the maximum possible term of such

sentence, except as hereinafter set forth, and upon such terms and conditions as it shall determine. The court, or judge thereof, in the order granting probation and as a condition thereof may imprison the defendant in the county jail for a period not exceeding the maximum time fixed by law in the instant case; provided, however, that where the maximum possible term of such sentence is five years or less, then such period of suspension of imposition or execution of sentence may, in the discretion of the court, continue for not over five years; may fine the defendant in such sum not to exceed the maximum fine provided by law in such case; or may in connection with granting probation, impose either imprisonment in county jail, or fine, or both, or neither; may provide for reparation in proper cases; and may require bonds for the faithful observance and performance of any or all of the conditions of probation.

(b) The court shall order the defendant as a condition of probation to make restitution to the victim or the Indemnity Fund if assistance has been granted to the victim pursuant to Article 1 (commencing with Section 13959) of Chapter 5 of Part 4 of Division 3 of Title 2 of the Government Code, unless the court finds that such restitution is beyond the defendant's ability to pay. The defendant shall be provided with notice of the amount of restitution demanded and may request the court to conduct a hearing on the amount of restitution. In the event of a hearing, the defendant shall be entitled to have proof presented by competent evidence concerning the extent of monetary loss by the victim.

(c) If the court makes a finding on the record that the defendant is unable to pay restitution, the court shall require the defendant to perform community service as a condition of probation. If the court finds that restitution or community service is inappropriate, it shall state its reasons therefore, on the record.

(d) In counties or cities and counties where road camps, farms, or other public work is available the court may place the probationer in such camp, farms, or other public work instead of in jail, and Section 25359 of the Government Code shall apply to probation and the court shall have the same power to require adult probationers to work, as prisoners confined in the county jail are required to work, at public work as therein provided; and supervisors of the several counties are hereby authorized to provide public work and to fix the scale of compensation of such adult probationers in their respective counties. In all cases of probation the court is authorized to require as a condition of probation that the probationer go to work and earn money for the support of his or her dependents or to pay any fine imposed or reparation condition, to keep an account of his or her earnings, to report the same to the probation officer and apply such earnings as directed by the court.

(e) In all such cases if as a condition of probation a judge of the superior court sitting by authority of law elsewhere than at the county seat requires a convicted person to serve sentence at intermittent periods such sentence may be served on the order of the

judge at the city jail nearest to the place at which the court is sitting, and the cost of his or her maintenance shall be a county charge.

(f) The court may impose and require any or all of the above-mentioned terms of imprisonment, fine and conditions and other reasonable conditions, as it may determine are fitting and proper to the end that justice may be done, that amends may be made to society for the breach of the law, for any injury done to any person resulting from such breach and generally and specifically for the reformation and rehabilitation of the probationer, that should the probationer violate any of the terms or conditions imposed by the court in the instant matter, it shall have authority to modify and change any and all such terms and conditions and to reimprison the probationer in the county jail within the limitations of the penalty of the public offense involved. Upon the defendant being released from the county jail under the terms of probation as originally granted or any modification subsequently made, and in all cases where confinement in a county jail has not been a condition of the grant of probation, the court shall place the defendant or probationer in and under the charge of the probation officer of the court, for the period or term fixed for probation; provided, however, that upon the payment of any fine imposed and the fulfillment of all conditions of probation, probation shall cease at the end of the term of probation, or sooner, in the event of modification. In counties and cities and counties in which there are facilities for taking fingerprints, such marks of identification of each probationer must be taken and a record thereof kept and preserved.

(g) Any other provision of law to the contrary notwithstanding, all fines collected by a county probation officer in any of the courts of this state, as a condition of the granting of probation, or as a part of the terms of probation, shall be paid into the county treasury and placed in the general fund, for the use and benefit of the county.

(h) If the court orders restitution to be made to the victim, the board of supervisors may add a fee to cover the actual administrative cost of collecting restitution but not to exceed 2 percent of the total amount ordered to be paid. The fees shall be paid into the general fund of the county treasury for the use and benefit of the county.

CHAPTER 1413

An act to amend Section 8101 of the Health and Safety Code, to amend Sections 243.5, 594, and 1203.1 of, to add Section 1203.04 to, and to repeal Section 1202.5 of, the Penal Code, and to add Section 729.6 to the Welfare and Institutions Code, relating to crimes.

[Approved by Governor September 24, 1982. Filed with Secretary of State September 27, 1982.]

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

SECTION 1. Section 8101 of the Health and Safety Code is amended to read:

8101. Every person is guilty of a crime and punishable by imprisonment in the state prison or by imprisonment in the county jail for not exceeding one year, who maliciously does any of the following:

(a) Destroys, cuts, mutilates, effaces, or otherwise injures, tears down, or removes any tomb, monument, memorial, or marker in a cemetery, or any gate, door, fence, wall, post or railing, or any inclosure for the protection of a cemetery or mortuary or any property in a cemetery or mortuary.

(b) Obliterates any grave, vault, niche, or crypt.

(c) Destroys, cuts, breaks or injures any mortuary building or any building, statuary, or ornamentation within the limits of a cemetery.

(d) Disturbs, obstructs, detains or interferes with any person carrying or accompanying human remains to a cemetery or funeral establishment, or engaged in a funeral service, or an interment.

SEC. 2. Section 243.5 of the Penal Code is amended to read:

243.5. (a) When a person commits an assault or battery on school property during hours when school activities are being conducted, a peace officer may, without a warrant, notwithstanding subdivision (2) or (3) of Section 836, arrest the person who commits the assault or battery:

(1) Whenever the person has committed the assault or battery, although not in his presence.

(2) Whenever the peace officer has reasonable cause to believe that the person to be arrested has committed the assault or battery, whether or not it has in fact been committed.

(b) School as used in this section means any school established pursuant to Chapter 3 (commencing with Section 25500) of Division 18.5 of the Education Code, and any elementary school, junior high school, four-year high school, senior high school, adult school or any branch thereof, opportunity school, continuation high school, regional occupational center, evening high school, or technical school.

SEC. 3. Section 594 of the Penal Code is amended to read:

594. (a) Every person who maliciously (1) defaces with paint or any other liquid, (2) damages or (3) destroys any real or personal property not his own, in cases otherwise than those specified by state law, is guilty of vandalism.

(b) (1) If the amount of defacement, damage or destruction is one thousand dollars ($1,000) or more, vandalism is punishable by imprisonment for six months in the county jail, imprisonment in the state prison not to exceed one year and one day, a fine of five thousand dollars ($5,000), or both such fine and imprisonment.

(2) If the amount of defacement, damage or destruction is less than one thousand dollars ($1,000), vandalism is punishable by

imprisonment in the county jail for not more than six months, or by a fine of not more than one thousand dollars ($1,000), or by both such fine and imprisonment.

SEC. 4. Section 1202.5 of the Penal Code is repealed.

SEC. 5. Section 1203.04 is added to the Penal Code, to read:

1203.04. (a) Upon conviction of a crime, when the court grants probation, the court as a condition of probation, except in any case in which the court makes a finding and states on the record its reasons that such a condition would be inappropriate, shall require that the person make restitution. If restitution is found to be inappropriate, the court shall require as a condition of probation, except in any case in which the court makes a finding and states on the record its reasons that such a condition would be inappropriate, that the defendant perform specified community service. Nothing in this section shall be construed to limit the authority of the court to grant or deny probation or provide conditions of probation.

(b) For purposes of this section:

(1) Restitution, full or partial, is appropriate in all criminal proceedings in which there is a victim.

(2) Subdivision (a) does not prohibit a court from ordering both restitution and community service.

(3) Restitution means payment to the aggrieved parties for the value of stolen or damaged property, medical expenses, and wages or profits lost due to injury or to time spent as a witness or in assisting the police or prosecution, which losses were caused by the defendant as a result of committing the crime for which he or she was convicted. The value of stolen or damaged property shall be the replacement cost of like property, or the actual cost of repairing the property when repair is possible. Comparative negligence is not applicable in determining restitution, and damages compensated for by restitution shall not be actionable in a civil suit against the defendant.

SEC. 6. Section 1203.1 of the Penal Code is amended to read:

1203.1. The court or judge thereof, in the order granting probation, may suspend the imposing, or the execution of the sentence and may direct that such suspension may continue for such period of time not exceeding the maximum possible term of such sentence, except as hereinafter set forth, and upon such terms and conditions as it shall determine. The court, or judge thereof, in the order granting probation and as a condition thereof may imprison the defendant in the county jail for a period not exceeding the maximum time fixed by law in the instant case; provided, however, that where the maximum possible term of such sentence is five years or less, then such period of suspension of imposition or execution of sentence may, in the discretion of the court, continue for not over five years; may fine the defendant in such sum not to exceed the maximum fine provided by law in such case; or may in connection with granting probation, impose either imprisonment in county jail, or fine, or both, or neither; shall provide for restitution in proper

cases; and may require bonds for the faithful observance and performance of any or all of the conditions of probation.

The court shall consider whether the defendant as a condition of probation shall make restitution to the victim or the Indemnity Fund if assistance has been granted to the victim pursuant to Article 1 (commencing with Section 13959) of Chapter 5 of Part 4 of Division 3 of Title 2 of the Government Code. In counties or cities and counties where road camps, farms, or other public work is available the court may place the probationer in such camp, farms, or other public work instead of in jail, and Section 25359 of the Government Code shall apply to probation and the court shall have the same power to require adult probationers to work, as prisoners confined in the county jail are required to work, at public work as therein provided; and supervisors of the several counties are hereby authorized to provide public work and to fix the scale of compensation of such adult probationers in their respective counties. In all cases of probation the court is authorized to require as a condition of probation that the probationer go to work and earn money for the support of his or her dependents or to pay any fine imposed or reparation condition, to keep an account of his or her earnings, to report the same to the probation officer and apply such earnings as directed by the court.

In all such cases if as a condition of probation a judge of the superior court sitting by authority of law elsewhere than at the county seat requires a convicted person to serve sentence at intermittent periods such sentence may be served on the order of the judge at the city jail nearest to the place at which the court is sitting, and the cost of his or her maintenance shall be a county charge.

The court may impose and require any or all of the above-mentioned terms of imprisonment, fine and conditions and other reasonable conditions, as it may determine are fitting and proper to the end that justice may be done, that amends may be made to society for the breach of the law, for any injury done to any person resulting from such breach and generally and specifically for the reformation and rehabilitation of the probationer, that should the probationer violate any of the terms or conditions imposed by the court in the instant matter, it shall have authority to modify and change any and all such terms and conditions and to reimprison the probationer in the county jail within the limitations of the penalty of the public offense involved. Upon the defendant being released from the county jail under the terms of probation as originally granted or any modification subsequently made, and in all cases where confinement in a county jail has not been a condition of the grant of probation, the court shall place the defendant or probationer in and under the charge of the probation officer of the court, for the period or term fixed for probation; provided, however, that upon the payment of any fine imposed and the fulfillment of all conditions of probation, probation shall cease at the end of the term of probation, or sooner, in the event of modification. In counties and cities and

counties in which there are facilities for taking fingerprints, such marks of identification of each probationer must be taken and a record thereof kept and preserved.

Any other provision of law to the contrary notwithstanding, all fines collected by a county probation officer in any of the courts of this state, as a condition of the granting of probation, or as a part of the terms of probation, shall be paid into the county treasury and placed in the general fund, for the use and benefit of the county.

If the court orders restitution to be made to the victim, the board of supervisors may add a fee to cover the actual administrative cost of collecting restitution but not to exceed 2 percent of the total amount ordered to be paid. The fees shall be paid into the general fund of the county treasury for the use and benefit of the county.

SEC. 7. Section 729.6 is added to the Welfare and Institutions Code, to read:

729.6. (a) If a minor is found to be a person described in Section 602, and the court does not remove the minor from the physical custody of the parent or guardian, the court as a condition of probation, except in any case in which the court makes a finding and states on the record its reasons that such condition would be inappropriate, shall require the minor to make restitution. If restitution is found to be inappropriate, the court, except in any case in which the court makes a finding and states on the record its reasons that such condition would be inappropriate, shall require the minor to perform specified community service. Nothing in this section shall be construed to limit the authority of a juvenile court to provide conditions of probation.

(b) For purposes of this section:

(1) Restitution, full or partial, is appropriate in all juvenile proceedings involving a criminal offense in which there is a victim.

(2) Subdivision (a) does not prohibit a juvenile court from ordering both restitution and community service when appropriate.

(3) Restitution means payment to the aggrieved parties for the value of stolen or damaged property, medical expenses, and wages or profits lost due to injury or to time spent as a witness or in assisting the police or prosecution, which losses were caused by the defendant as a result of committing the crime for which he or she was convicted. The value of stolen or damaged property shall be the replacement cost of like property, or the actual cost of repairing the property when repair is possible. Comparative negligence is not applicable in determining restitution, and damages compensated for by restitution shall not be actionable in a civil suit against the defendant.

CHAPTER 1414

An act to amend, repeal, and add Section 1203.1 of the Penal Code, relating to crimes.

[Approved by Governor September 24, 1982. Filed with Secretary of State September 27, 1982.]

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

SECTION 1. Section 1203.1 of the Penal Code is amended to read:

1203.1. The court or judge thereof, in the order granting probation, may suspend the imposing, or the execution of the sentence and may direct that such suspension may continue for such period of time not exceeding the maximum possible term of such sentence, except as hereinafter set forth, and upon such terms and conditions as it shall determine. The court, or judge thereof, in the order granting probation and as a condition thereof may imprison the defendant in the county jail for a period not exceeding the maximum time fixed by law in the instant case; provided, however, that where the maximum possible term of such sentence is five years or less, then such period of suspension of imposition or execution of sentence may, in the discretion of the court, continue for not over five years; may fine the defendant in such sum not to exceed the maximum fine provided by law in such case; or may in connection with granting probation, impose either imprisonment in county jail, or fine, or both, or neither; may provide for reparation in proper cases; and may require bonds for the faithful observance and performance of any or all of the conditions of probation.

The court shall consider whether the defendant as a condition of probation shall make restitution to the victim or the Indemnity Fund if assistance has been granted to the victim pursuant to Article 1 (commencing with Section 13959) of Chapter 5 of Part 4 of Division 3 of Title 2 of the Government Code. Any restitution payment received by a probation department in the form of cash or money order shall be forwarded to the victim within 30 days from the date the payment is received by the department. Any restitution payment received by a probation department in the form of a check or draft shall be forwarded to the victim within 45 days from the date the payment is received by the department. In cases where the court has ordered the defendant to pay restitution to multiple victims and where the administrative cost of disbursing restitution payments to multiple victims involves a significant cost, any restitution payment received by a probation department shall be forwarded to multiple victims when it is cost- effective to do so, but in no event shall restitution disbursements be delayed beyond 90 days from the date the payment is received by the probation department. In counties or cities and counties where road camps, farms, or other public work is

available the court may place the probationer in such camp, farms, or other public work instead of in jail, and Section 25359 of the Government Code shall apply to probation and the court shall have the same power to require adult probationers to work, as prisoners confined in the county jail are required to work, at public work as therein provided; and supervisors of the several counties are hereby authorized to provide public work and to fix the scale of compensation of such adult probationers in their respective counties. In all cases of probation the court is authorized to require as a condition of probation that the probationer go to work and earn money for the support of his or her dependents or to pay any fine imposed or reparation condition, to keep an account of his or her earnings, to report the same to the probation officer and apply such earnings as directed by the court.

In all such cases if as a condition of probation a judge of the superior court sitting by authority of law elsewhere than at the county seat requires a convicted person to serve sentence at intermittent periods such sentence may be served on the order of the judge at the city jail nearest to the place at which the court is sitting, and the cost of his or her maintenance shall be a county charge.

The court may impose and require any or all of the above-mentioned terms of imprisonment, fine and conditions and other reasonable conditions, as it may determine are fitting and proper to the end that justice may be done, that amends may be made to society for the breach of the law, for any injury done to any person resulting from such breach and generally and specifically for the reformation and rehabilitation of the probationer, that should the probationer violate any of the terms or conditions imposed by the court in the instant matter, it shall have authority to modify and change any and all such terms and conditions and to reimprison the probationer in the county jail within the limitations of the penalty of the public offense involved. Upon the defendant being released from the county jail under the terms of probation as originally granted or any modification subsequently made, and in all cases where confinement in a county jail has not been a condition of the grant of probation, the court shall place the defendant or probationer in and under the charge of the probation officer of the court, for the period or term fixed for probation; provided, however, that upon the payment of any fine imposed and the fulfillment of all conditions of probation, probation shall cease at the end of the term of probation, or sooner, in the event of modification. In counties and cities and counties in which there are facilities for taking fingerprints, such marks of identification of each probationer must be taken and a record thereof kept and preserved.

Any other provision of law to the contrary notwithstanding, all fines collected by a county probation officer in any of the courts of this state, as a condition of the granting of probation, or as a part of the terms of probation, shall be paid into the county treasury and placed in the general fund, for the use and benefit of the county.

If the court orders restitution to be made to the victim, the board of supervisors may add a fee to cover the actual administrative cost of collecting restitution but not to exceed 2 percent of the total amount ordered to be paid. The fees shall be paid into the general fund of the county treasury for the use and benefit of the county.

This section shall remain in effect only until January 1, 1989, and as of that date is repealed, unless a later enacted statute which is chaptered before January 1, 1989, deletes or extends that date.

SEC. 1.5. Section 1203.1 of the Penal Code is amended to read:

1203.1. The court or judge thereof, in the order granting probation, may suspend the imposing, or the execution of the sentence and may direct that such suspension may continue for such period of time not exceeding the maximum possible term of such sentence, except as hereinafter set forth, and upon such terms and conditions as it shall determine. The court, or judge thereof, in the order granting probation and as a condition thereof may imprison the defendant in the county jail for a period not exceeding the maximum time fixed by law in the instant case; provided, however, that where the maximum possible term of such sentence is five years or less, then such period of suspension of imposition or execution of sentence may, in the discretion of the court, continue for not over five years; may fine the defendant in such sum not to exceed the maximum fine provided by law in such case; or may in connection with granting probation, impose either imprisonment in county jail, or fine, or both, or neither; shall provide for restitution in proper cases; and may require bonds for the faithful observance and performance of any or all of the conditions of probation.

The court shall consider whether the defendant as a condition of probation shall make restitution to the victim or the Indemnity Fund if assistance has been granted to the victim pursuant to Article 1 (commencing with Section 13959) of Chapter 5 of Part 4 of Division 3 of Title 2 of the Government Code. Any restitution payment received by a probation department in the form of cash or money order shall be forwarded to the victim within 30 days from the date the payment is received by the department. Any restitution payment received by a probation department in the form of a check or draft shall be forwarded to the victim within 45 days from the date the payment is received by the department. In cases where the court has ordered the defendant to pay restitution to multiple victims and where the administrative cost of disbursing restitution payments to multiple victims involves a significant cost, any restitution payment received by a probation department shall be forwarded to multiple victims when it is cost effective to do so, but in no event shall restitution disbursements be delayed beyond 90 days from the date the payment is received by the probation department. In counties or cities and counties where road camps, farms, or other public work is available the court may place the probationer in such camp, farms, or other public work instead of in jail, and Section 25359 of the Government Code shall apply to probation and the court shall have

the same power to require adult probationers to work, as prisoners confined in the county jail are required to work, at public work as therein provided; and supervisors of the several counties are hereby authorized to provide public work and to fix the scale of compensation of such adult probationers in their respective counties. In all cases of probation the court is authorized to require as a condition of probation that the probationer go to work and earn money for the support of his or her dependents or to pay any fine imposed or reparation condition, to keep an account of his or her earnings, to report the same to the probation officer and apply such earnings as directed by the court.

In all such cases if as a condition of probation a judge of the superior court sitting by authority of law elsewhere than at the county seat requires a convicted person to serve sentence at intermittent periods such sentence may be served on the order of the judge at the city jail nearest to the place at which the court is sitting, and the cost of his or her maintenance shall be a county charge.

The court may impose and require any or all of the above-mentioned terms of imprisonment, fine and conditions and other reasonable conditions, as it may determine are fitting and proper to the end that justice may be done, that amends may be made to society for the breach of the law, for any injury done to any person resulting from such breach and generally and specifically for the reformation and rehabilitation of the probationer, that should the probationer violate any of the terms or conditions imposed by the court in the instant matter, it shall have authority to modify and change any and all such terms and conditions and to reimprison the probationer in the county jail within the limitations of the penalty of the public offense involved. Upon the defendant being released from the county jail under the terms of probation as originally granted or any modification subsequently made, and in all cases where confinement in a county jail has not been a condition of the grant of probation, the court shall place the defendant or probationer in and under the charge of the probation officer of the court, for the period or term fixed for probation; provided, however, that upon the payment of any fine imposed and the fulfillment of all conditions of probation, probation shall cease at the end of the term of probation, or sooner, in the event of modification. In counties and cities and counties in which there are facilities for taking fingerprints, such marks of identification of each probationer must be taken and a record thereof kept and preserved.

Any other provision of law to the contrary notwithstanding, all fines collected by a county probation officer in any of the courts of this state, as a condition of the granting of probation, or as a part of the terms of probation, shall be paid into the county treasury and placed in the general fund, for the use and benefit of the county.

If the court orders restitution to be made to the victim, the board of supervisors may add a fee to cover the actual administrative cost of collecting restitution but not to exceed 2 percent of the total

amount ordered to be paid. The fees shall be paid into the general fund of the county treasury for the use and benefit of the county.

This section shall remain in effect only until January 1, 1989, and as of that date is repealed, unless a later enacted statute which is chaptered before January 1, 1989, deletes or extends that date.

SEC. 2. Section 1203.1 is added to the Penal Code, to read:

1203.1. The court or judge thereof, in the order granting probation, may suspend the imposing, or the execution of the sentence and may direct that such suspension may continue for such period of time not exceeding the maximum possible term of such sentence, except as hereinafter set forth, and upon such terms and conditions as it shall determine. The court, or judge thereof, in the order granting probation and as a condition thereof may imprison the defendant in the county jail for a period not exceeding the maximum time fixed by law in the instant case; however, where the maximum possible term of such sentence is five years or less, then such period of suspension of imposition or execution of sentence may, in the discretion of the court, continue for not over five years; may fine the defendant in such sum not to exceed the maximum fine provided by law in such case; or may in connection with granting probation, impose either imprisonment in county jail, or fine, or both, or neither; may provide for reparation in proper cases; and may require bonds for the faithful observance and performance of any or all of the conditions of probation.

The court shall consider whether the defendant as a condition of probation shall make restitution to the victim or the Indemnity Fund if assistance has been granted to the victim pursuant to Article 1 (commencing with Section 13959) of Chapter 5 of Part 4 of Division 3 of Title 2 of the Government Code. In counties or cities and counties where road camps, farms, or other public work is available the court may place the probationer in such camp, farms, or other public work instead of in jail, and Section 25359 of the Government Code shall apply to probation and the court shall have the same power to require adult probationers to work, as prisoners confined in the county jail are required to work, at public work as therein provided; and supervisors of the several counties are hereby authorized to provide public work and to fix the scale of compensation of such adult probationers in their respective counties. In all cases of probation the court is authorized to require as a condition of probation that the probationer go to work and earn money for the support of his or her dependents or to pay any fine imposed or reparation condition, to keep an account of his or her earnings, to report the same to the probation officer and apply such earnings as directed by the court.

In all such cases if as a condition of probation a judge of the superior court sitting by authority of law elsewhere than at the county seat requires a convicted person to serve sentence at intermittent periods the sentence may be served on the order of the judge at the city jail nearest to the place at which the court is sitting,

and the cost of his or her maintenance shall be a county charge.

The court may impose and require any or all of the above-mentioned terms of imprisonment, fine and conditions and other reasonable conditions, as it may determine are fitting and proper to the end that justice may be done, that amends may be made to society for the breach of the law, for any injury done to any person resulting from such breach and generally and specifically for the reformation and rehabilitation of the probationer, that should the probationer violate any of the terms or conditions imposed by the court in the instant matter, it shall have authority to modify and change any and all such terms and conditions and to reimprison the probationer in the county jail within the limitations of the penalty of the public offense involved. Upon the defendant being released from the county jail under the terms of probation as originally granted or any modification subsequently made, and in all cases where confinement in a county jail has not been a condition of the grant of probation, the court shall place the defendant or probationer in and under the charge of the probation officer of the court, for the period or term fixed for probation; provided, however, that upon the payment of any fine imposed and the fulfillment of all conditions of probation, probation shall cease at the end of the term of probation, or sooner, in the event of modification. In counties and cities and counties in which there are facilities for taking fingerprints, such marks of identification of each probationer must be taken and a record thereof kept and preserved.

Any other provision of law to the contrary notwithstanding, all fines collected by a county probation officer in any of the courts of this state, as a condition of the granting of probation, or as a part of the terms of probation, shall be paid into the county treasury and placed in the general fund, for the use and benefit of the county.

If the court orders restitution to be made to the victim, the board of supervisors may add a fee to cover the actual administrative cost of collecting restitution but not to exceed 2 percent of the total amount ordered to be paid. The fees shall be paid into the general fund of the county treasury for the use and benefit of the county.

This section shall become operative on January 1, 1989.

SEC. 2.5. Section 1203.1 is added to the Penal Code, to read:

1203.1. The court or judge thereof, in the order granting probation, may suspend the imposing, or the execution of the sentence and may direct that such suspension may continue for such period of time not exceeding the maximum possible term of such sentence, except as hereinafter set forth, and upon such terms and conditions as it shall determine. The court, or judge thereof, in the order granting probation and as a condition thereof may imprison the defendant in the county jail for a period not exceeding the maximum time fixed by law in the instant case; however, where the maximum possible term of such sentence is five years or less, then such period of suspension of imposition or execution of sentence may, in the discretion of the court, continue for not over five years;

may fine the defendant in such sum not to exceed the maximum fine provided by law in such case; or may in connection with granting probation, impose either imprisonment in county jail, or fine, or both, or neither; shall provide for restitution in proper cases; and may require bonds for the faithful observance and performance of any or all of the conditions of probation.

The court shall consider whether the defendant as a condition of probation shall make restitution to the victim or the Indemnity Fund if assistance has been granted to the victim pursuant to Article 1 (commencing with Section 13959) of Chapter 5 of Part 4 of Division 3 of Title 2 of the Government Code. In counties or cities and counties where road camps, farms, or other public work is available the court may place the probationer in such camp, farms, or other public work instead of in jail, and Section 25359 of the Government Code shall apply to probation and the court shall have the same power to require adult probationers to work, as prisoners confined in the county jail are required to work, at public work as therein provided; and supervisors of the several counties are hereby authorized to provide public work and to fix the scale of compensation of such adult probationers in their respective counties. In all cases of probation the court is authorized to require as a condition of probation that the probationer go to work and earn money for the support of his or her dependents or to pay any fine imposed or reparation condition, to keep an account of his or her earnings, to report the same to the probation officer and apply such earnings as directed by the court.

In all such cases if as a condition of probation a judge of the superior court sitting by authority of law elsewhere than at the county seat requires a convicted person to serve sentence at intermittent periods the sentence may be served on the order of the judge at the city jail nearest to the place at which the court is sitting, and the cost of his or her maintenance shall be a county charge.

The court may impose and require any or all of the above-mentioned terms of imprisonment, fine and conditions and other reasonable conditions, as it may determine are fitting and proper to the end that justice may be done, that amends may be made to society for the breach of the law, for any injury done to any person resulting from such breach and generally and specifically for the reformation and rehabilitation of the probationer, that should the probationer violate any of the terms or conditions imposed by the court in the instant matter, it shall have authority to modify and change any and all such terms and conditions and to reimprison the probationer in the county jail within the limitations of the penalty of the public offense involved. Upon the defendant being released from the county jail under the terms of probation as originally granted or any modification subsequently made, and in all cases where confinement in a county jail has not been a condition of the grant of probation, the court shall place the defendant or probationer in and under the charge of the probation officer of the court, for the period

or term fixed for probation; provided, however, that upon the payment of any fine imposed and the fulfillment of all conditions of probation, probation shall cease at the end of the term of probation, or sooner, in the event of modification. In counties and cities and counties in which there are facilities for taking fingerprints, such marks of identification of each probationer must be taken and a record thereof kept and preserved.

Any other provision of law to the contrary notwithstanding, all fines collected by a county probation officer in any of the courts of this state, as a condition of the granting of probation, or as a part of the terms of probation, shall be paid into the county treasury and placed in the general fund, for the use and benefit of the county.

If the court orders restitution to be made to the victim, the board of supervisors may add a fee to cover the actual administrative cost of collecting restitution but not to exceed 2 percent of the total amount ordered to be paid. The fees shall be paid into the general fund of the county treasury for the use and benefit of the county.

This section shall become operative on January 1, 1989.

SEC. 3. It is the intent of the Legislature, if this bill and Senate Bill 2060 are both chaptered and become effective January 1, 1983, both bills amend Section 1203.1 of the Penal Code, and this bill is chaptered after Senate Bill 2060, that the amendments to Section 1203.1 proposed by both bills be given effect and incorporated in Section 1203.1 in the form set forth in Sections 1.5 and 2.5 of this act. Therefore, Sections 1.5 and 2.5 of this act shall become operative only if this bill and Senate Bill 2060 are both chaptered and become effective January 1, 1983, both amend Section 1203.1, and this bill is chaptered after Senate Bill 2060, in which case Sections 1 and 2 of this act shall not become operative.

SEC. 4. Notwithstanding Section 6 of Article XIII B of the California Constitution and Section 2231 or 2234 of the Revenue and Taxation Code, no appropriation is made by this act for the purpose of making reimbursement pursuant to these sections. It is recognized, however, that a local agency or school district may pursue any remedies to obtain reimbursement available to it under Chapter 3 (commencing with Section 2201) of Part 4 of Division 1 of that code.

CHAPTER 1415

An act to amend Section 5328 of, and to add Section 7325.5 to, the Welfare and Institutions Code, relating to mental health, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 24, 1982. Filed with Secretary of State September 27, 1982.]

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, or social worker with a masters degree in social work, 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, psychologist, social worker, nurse, attorney, or other professional person to reveal information which has been given to him or her in confidence by members of a patient's family.

(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, psychologist, social worker, nurse, attorney, or other professional person to reveal information which 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 such research to be first reviewed by the appropriate institutional review board or boards. Such 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 Senate Rules Committee or the Assembly Rules Committee for the purposes of legislative investigation authorized by such 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 such 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, psychologist, social worker, nurse, attorney, or other professional person to reveal information which 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 which 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 such information is relevant to the evaluation. Such 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 such 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.

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.

SEC. 2. Section 7325.5 is added to the Welfare and Institutions Code, to read:

7325.5. Notwithstanding Section 5328, information regarding a person's name, reason for commitment, age, physical description, and any other information which the medical director of the treatment facility considers essential in aiding apprehension of the escapee shall be released if the person has escaped from a state mental health facility, and the person was committed to the state mental health facility by a court after being found not guilty by reason of insanity pursuant to Section 1026 of the Penal Code, unable to stand trial due to mental condition pursuant to Section 1370 of the Penal Code, or a mentally disordered sex offender pursuant to Division 6 (commencing with Section 6000).

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 protect the public health and safety in light of recent escapes at Patton State Hospital and other state health facilities, it is necessary that this act take effect immediately.

CHAPTER 1416

An act to amend Sections 19955.5 and 19956 of, and to add Section 19955.3 to, the Health and Safety Code, relating to buildings.

[Approved by Governor September 24, 1982. Filed with Secretary of State September 27, 1982.]

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

SECTION 1. Section 19955.3 is added to the Health and Safety Code, to read;

19955.3. As used in this part:

(a) "Story" means that portion of a building included between the upper surface of any floor and the upper surface of the floor next above, except that the topmost story shall be that portion of a building included between the upper surface of the topmost floor and the ceiling or roof above. If the finished floor level directly above a basement or unused under-floor space is more than six feet above grade for more than 50 percent of the total perimeter or is more than 12 feet above grade at any point, the basement or unused under-floor space shall be considered as a story.

(b) "First story" means the lowest story in a building which qualifies as a story and which provides the basic services or functions for which the building is used. A floor level in a building having only one floor level shall be classified as a first story, if the floor level is not more than four feet below grade, for more than 50 percent of the total perimeter, or more than eight feet below grade at any point.

(c) "Mezzanine" means an intermediate floor placed in any story or room. When the total area of any "mezzanine floor" exceeds 33⅓ percent of the total floor area in that room, it shall be considered as constituting an additional "story." The clear height above and below a "mezzanine floor" construction shall be not less than seven feet.

(d) "Grade" means the lowest point of elevation of the finished surface of the ground, paving, or sidewalk within the area between the building and the property line or, when the property line is more than 5 feet from the building, between the building and a line 5 feet from the building.

SEC. 2. Section 19955.5 of the Health and Safety Code is amended to read:

19955.5. All passenger vehicle service stations, shopping centers, offices of physicians and surgeons, and office buildings constructed in this state with private funds shall adhere to the provisions of Chapter 7 (commencing with Section 4450) of Division 5 of Title 1 of the Government Code. As used in this section, "office building" means a structure wherein commercial activity or service is performed or a profession is practiced, or wherein any combination thereof is performed or practiced in all or the majority of such building or structure.

In multistoried buildings, stories or mezzanines above and below the first story are exempt from the requirements of this section if a ramp or elevator is not available to provide public access to such stories or mezzanines.

When sanitary facilities are made available for the public, clients, or employees in such stations, centers, or buildings, they shall be made available for the physically handicapped.

Any new requirements imposed by the amendments to this section by Chapter 931 of the Statutes of 1973 shall only apply to such stations, centers, or office buildings constructed on or after September 30, 1973. Any other new requirements imposed by amendments to this section by Chapter 995 of the Statutes of 1974 shall only apply to such offices or office buildings constructed on or after January 1, 1975.

SEC. 3. Section 19956 of the Health and Safety Code is amended to read:

19956. All public accommodations constructed in this state shall conform to the provisions of Chapter 7 (commencing with Section 4450) of Division 5 of Title 1 of the Government Code; and except that in multistoried buildings, stories or mezzanines above the first story are exempt from the requirements of this chapter if a reasonable portion of all facilities and accommodations normally sought and used by the public in such a building are accessible to, and usable by, the physically handicapped.

SEC. 4. It is the intent of the Legislature in amending Sections 19955.5 and 19956 of the Health and Safety Code to merely clarify existing statutory law and the Legislature does not intend that such amendments shall make portions of multistoried buildings which have not previously been subject to the requirements of Part 5.5 (commencing with Section 19955) of Division 13 of the Health and Safety Code subject thereto, nor to make portions of multistoried buildings previously subject to the requirements of Part 5.5 (commencing with Section 19955) of Division 13 of the Health and Safety Code exempt therefrom.

CHAPTER 1417

An act to add Section 18944.7 to the Health and Safety Code, relating to building standards.

[Approved by Governor September 24, 1982. Filed with Secretary of State September 27, 1982.]

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

SECTION 1. Section 18944.7 is added to the Health and Safety Code, to read:

18944.7. The alternative building regulations and building

standards authorized under the State Historical Building Code (Part 2.7 (commencing with Section 18950) of Division 13) which have been published in Part 8 of Title 24 of the California Administrative Code shall be maintained as a separate and distinct part or portion of the State Building Standards Law pursuant to that title.

CHAPTER 1418

An act to add Section 51115.1 to the Government Code, relating to timber preserves.

[Approved by Governor September 24, 1982. Filed with Secretary of State September 27, 1982]

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

SECTION 1. Section 51115.1 is added to the Government Code, to read:

51115.1. (a) The zoning of a parcel pursuant to this chapter shall give rise to a presumption that timber operations, as defined in Section 4527 of the Public Resources Code, may reasonably be expected to and will occur on that parcel.

(b) The Legislature hereby declares that the enactment of this section is intended to make clear that the zoning of a parcel pursuant to this chapter is an indication that timber operations are expected to occur on that parcel at a future date. The Legislature further declares that this section is not intended and shall not be construed as altering any substantive or procedural requirement of Chapter 8 (commencing with Section 4511) of Part 2 of Division 4 of the Public Resources Code, or of any rule or regulation adopted pursuant thereto.

CHAPTER 1419

An act to add Section 25402.4 to, and to repeal Section 25612 of, the Public Resources Code, relating to solar energy.

[Approved by Governor September 24, 1982 Filed with Secretary of State September 27, 1982.]

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

SECTION 1. Section 25402.4 is added to the Public Resources Code, to read:

25402.4. The standards for nonresidential buildings prescribed by the commission pursuant to subdivisions (a) and (b) of Section 25402 shall provide at least one option which uses passive or semipassive

thermal systems, as defined in Section 25600, for meeting the prescribed energy use requirements. These systems may include, but are not limited to, the following construction techniques:

(a) Use of skylights or other daylighting techniques.

(b) Use of openable windows or other means of using outside air for space conditioning.

(c) Use of building orientation, to complement other passive or semipassive thermal systems.

(d) Use of thermal mass, of structural or nonstructural type, for storage of heat or cold, including, but not limited to, roof ponds and water walls.

SEC. 2. Section 25612 of the Public Resources Code is repealed.

CHAPTER 1420

An act to amend Sections 50077 and 56470 of, and to add Section 50078.11 to, the Government Code, relating to public entities.

[Approved by Governor September 24, 1982. Filed with Secretary of State September 27, 1982.]

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

SECTION 1. Any special tax which has been approved by the voters pursuant to Section 53978 of the Government Code, prior to the repeal of Article 16 (commencing with Section 53970) of Chapter 4 of Part 1 of Division 2 of Title 5 of the Government Code, of which article Section 53978 is a part, the continued levy and collection of which special tax was made a term and condition by the local agency formation commission to the annexation of territory to a city, as provided by Section 56470 of the Government Code, shall continue to be levied and collected by the county within such territory, notwithstanding the repeal of that article, for the duration of the period set forth in the terms and conditions established by the local agency formation commission.

SEC. 2. Section 50077 of the Government Code is amended to read:

50077. (a) The legislative body of any city, county, or district may, following notice and public hearing, propose by ordinance or resolution the adoption of a special tax. The ordinance or resolution shall include the type of tax and rate of tax to be levied, the method of collection, and the date upon which an election shall be held to approve the levy of such tax. Such proposition shall be submitted to the voters of the city, county, or district, or a portion thereof, and, upon the approval of two-thirds of the votes cast by voters voting upon such proposition, the city, county, or district may levy such tax.

(b) The legislative body of a city, or district, may provide for the collection of the special tax in the same manner and subject to the

same penalty as, or with, other charges and taxes fixed and collected by the city, or district, or, by agreement with the county, by the county on behalf of the city, or district. If such special taxes are collected by the county on behalf of the city, or district, the county may deduct its reasonable costs incurred for such service before remittal of the balance to the city.

(c) The legislative body of a local agency which is conducting proceedings for the incorporation of a city, the formation of a district, a change of organization, a reorganization, a change of organization of a city, or a municipal reorganization, may propose by ordinance or resolution the adoption of a special tax in accordance with the provisions of subdivision (a) on behalf of an affected city or district.

(d) As used in this section "district" means an agency of the state, formed pursuant to general law or special act, for the local performance of governmental or proprietary functions within limited boundaries.

SEC. 2.5. Section 50078.11 is added to the Government Code, to read:

50078.11. Any district may specifically allocate a portion of the revenue generated pursuant to this article to pay the interest and that portion of the principal as will become due on an annual basis on indebtedness incurred pursuant to Section 13917.5 of the Health and Safety Code.

SEC. 3. Section 56470 of the Government Code is amended to read:

56470. Any change of organization or reorganization may provide for, or be made subject to one or more of, the following terms and conditions, provided that any of the following terms and conditions shall not 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 (1) special, extraordinary, or additional taxes or assessments, or (2) special, extraordinary, or additional service charges, rentals, or rates, or (3) both, for the purpose of providing for any payment required pursuant to subdivision (a) of this section.

(c) The imposition, exemption, transfer, division, or apportionment, as among any affected cities, counties, districts, and 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 therein and the levying or fixing and the collection of any (1) taxes or assessments, or (2) service charges, rentals, or rates or, (3) both in the same manner as provided in the original authorization of the

bonds and in the amount necessary to provide for such payment.

(d) If, as a result of any term or condition made pursuant to subdivision (c), the liability of any affected city, county, or district for payment of the principal of any bonded indebtedness shall be increased or decreased, the term and condition may specify the amount, if any, of such increase or decrease which shall be included in, or excluded from, the outstanding bonded indebtedness of any such agency for the purpose of the application of any statute or charter provision imposing a limitation upon the principal amount of outstanding bonded indebtedness of such agency.

(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 district, including territory being annexed to any district, or of any existing or proposed new improvement district therein. The new indebtedness may be the obligation solely of territory to be annexed provided the district 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 district.

(g) The issuance and sale of any bonds, including authorized but unissued bonds of a subject district, either by such district or by a district designated as the successor to any district which shall be 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 of any other property, real or personal.

(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 thereof, if, and to the extent that, any such matters shall be 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 district which shall be 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 district with respect to enforcement, performance or payment of any outstanding bonds, including revenue bonds, or other contracts and

obligations of said extinguished district.

(n) The designation (1) of the method for the selection of members of the legislative body of a district or (2) the number of such members, (3) or 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 such selection or for varying numbers of such members, or both.

(o) The initiation, conduct, or completion of proceedings on a proposal made under and pursuant to the Knox-Nisbet Act, Chapter 6.6 (commencing with Section 54773) of Division 2, Title 5.

(p) The fixing of the effective date of any change of organization, subject to the limitations of Section 56456.

(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 currently provided or previously authorized by official act of the district to be provided.

(s) The levying of a benefit assessment or the approval by the voters of a special tax.

(t) Any other matters necessary or incidental to any of the foregoing.

SEC. 4. Notwithstanding Section 6 of Article XIII B of the California Constitution and Section 2231 or 2234 of the Revenue and Taxation Code, no appropriation is made by this act for the purpose of making reimbursement pursuant to these sections. It is recognized, however, that a local agency or school district may pursue any remedies to obtain reimbursement available to it under Chapter 3 (commencing with Section 2201) of Part 4 of Division 1 of that code.

SEC. 5. Notwithstanding Section 2231.5 of the Revenue and Taxation Code, this act does not contain a repealer, as required by that section; therefore, the provisions of this act shall remain in effect unless and until they are amended or repealed by a later enacted act.

SEC. 6. It is the intent of the Legislature, if this bill and Assembly Bill 2753 are both chaptered and become effective January 1, 1983, that the provisions of this bill shall prevail over any provisions contained in Assembly Bill 2753 which are in conflict with any provisions contained in this bill.

CHAPTER 1421

An act to add Section 5044 to the Public Resources Code, relating to parks and recreation, making an appropriation therefor, and in this connection amending and supplementing the Budget Act of 1982 by amending Items 3790-101-721, 3790-101-742, 3790-495, and 3860-301-742 thereof, and by adding Items 3790-102-733, 3790-493, and

3790-498 thereto, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 26, 1982. Filed with Secretary of State September 27, 1982.]

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

SECTION 1. Item 3790-101-721 of the Budget Act of 1982 (Chapter 326, Statutes of 1982) is amended to read:

PARKLANDS ACQUISITION AND DEVELOPMENT PROGRAM

3790-101-721—For grants to counties, cities, and districts, as defined, in Section 5096.144, pursuant to subdivisions (a) and (e) of Section 5096.151, of the Public Resources Code, Department of Parks and Recreation, and for project review, payable from the Parklands Fund of 1980			19,052,828
Schedule:			
(a) Project review		255,000	
(b) Project grants		18,797,828	
Projects in Alameda County			
(1) Dublin San Ramon Community Services District, Valley Community Swim Center	42,000		
(2) East Bay Regional Park District, Ardenwood	242,000		
(3) East Bay Regional Park District, Hayward Shoreline Marsh	167,000		
(4) East Bay Regional Park District, San Leandro Shoreline Trail	40,000		
(5) City of Emeryville, Emeryville Recreation Facilities	20,000		
(5.1) City of Oakland, Knowland Park	100,000		
Projects in Butte County			
(6) Durham Recrea-			

tion and Park District, Durham Community Park	20,000
(7) Feather River Recreation and Park District, Neighborhood Parks	14,000
(8) Feather River Recreation and Park District, Municipal Auditorium	6,000
(9) City of Gridley, Gridley City Park	20,000
(9.1) Paradise Recreation and Park District, Paradise Park	96,806
Projects in Calaveras County	
(10) Jenny Lind Veterans Memorial District, Valley Springs Park	20,000
Projects in Contra Costa County	
(11) City of Antioch, Gentrytown Park	119,000
(12) Dublin San Ramon Community Services District, Olympic Pool	41,000
(13) East Bay Regional Park District, Contra Costa Trail	46,000
(14) East Bay Regional Park District, Briones North	222,000
(15) City of Hercules, Hercules Trail	20,000
(15.1) Kensington Community Services District, Community Park	20,000
(15.2) City of Pittsburg, Buchanan Park	91,891
(15.3) County of Con-	

tra Costa, Oakley Park	20,000
(15.4) County of Contra Costa, Orinda Recreation Facility	23,196
Projects in Del Norte County	
(16) City of Crescent City, Fred Endert Pool	20,000
(16.1) County of Del Norte, Recreation Center	30,000
Projects in El Dorado County	
(17) Cameron Park Community Services District, Cameron Park Parks	25,000
Projects in Fresno County	
(18) City of Fresno, Cedar-Sierra Park	100,000
(19) City of Fresno, Hinton Community Center Park	90,000
(20) City of Fresno, Logan Park	170,000
(21) City of Fresno, Mosqueda Community Center	53,000
(22) City of Fresno, Vineland Park	90,000
(23) Lanare Community Services District, Lanare Community Park	20,000
(24) City of Reedley, Smith Ferry Park	33,000
Projects in Humboldt County	
(25) City of Arcata, Neighborhood Parks	60,000
(26) City of Eureka, Sequoia Park and Zoo	84,000
(27) City of Fortuna, Rohnerville and Newburg Roads Park	49,000
(28) Cities of Rio Dell	

and Ferndale and Manila Community Services District, Community Recreational Facilities	25,000
(29) Willow Creek Community Services District, Flower's Park	20,000
(29.1) City of Blue Lake, Blue Lake Recreation Facilities	20,000
(29.2) County of Humboldt, County Park Improvements	60,649
(29.3) Humboldt Bay Harbor, Recreation and Conservation District, Shelter Cove	60,649
(29.4) Ruth Lake Community Services District, Community Center	2,500
Projects in Imperial County	
(30) City of Brawley, Hawthorne and Meserve Parks	51,000
(31) Cities of Imperial and Calipatria, Two Cities Parks	21,000
(32) County of Imperial, Imperial County Parks	101,000
Projects in Kern County	
(33) County of Kern, Kern County Local Parks	122,000
(34) County of Kern, County Golf Courses	49,000
(35) County of Kern, County Parks	219,000
(36) City of Ridgecrest, Kern Desert Regional Park	54,000

Projects in Kings County	
(37) County of Kings, Armona Community Center	20,000
(37.1) County of Kings, Armona Community Center.....	90,000
Projects in Los Angeles County	
(38) City of Avalon, Avalon Recreation Facility	20,000
(39) City of Arcadia, Eisenhower and Bonita Parks.....	142,000
(40) City of Burbank, Burbank Park Improvements	258,000
(41) City of Claremont, La Puerta Sports Park.....	87,000
(42) City of Covina, Royal Oaks Field	101,000
(43) City of Inglewood, Inglewood Parks	278,000
(44) City of Irwindale, Irwindale Parks	20,000
(45) City of LaVerne, LaVerne Parks	71,000
(46) City of Lynwood, City Parks.....	124,000
(47) City of Monterey Park, Garvey Ranch Park	159,000
(48) City of Pico Rivera, Pico Rivera Recreation Facilities	154,000
(49) City of Pomona, Westmont Park....	266,000
(50) City of Santa Fe Springs, Los Nietos Park	47,000
(51) City of South Gate, South Gate Recreation Facilities	187,000

(52) City of Whittier, Whittier Recreation Facilities.....	211,000
(52.1) City of Beverly Hills, Roxbury Park	101,131
(52.2) City of Cudahy, Cudahy Park	52,616
(52.3) City of El Monte, Mt. View Park	100,000
(52.4) County of Los Angeles, Reyes Adobe	170,546
(52.5) County of Los Angeles, Verdugo Hills	100,000
(52.6) County of Los Angeles, Cabrillo Beach.....	107,400
(52.7) City of Monrovia, Recreation Park/Monrovia High.....	92,614
(52.8) City of Norwalk, Shoemaker Park	54,586
(52.9) City of Pasadena, Victory Park	60,000
(52.10) City of Santa Monica, Santa Monica Parks.....	269,491
(52.11) City of Signal Hill, Signal Hill Parks	20,000
(52.12) City of Temple City, City Recreation Facilities..	91,246
(52.13) County of Los Angeles, Devils Punchbowl Park..	125,000
Projects in Marin County	
(53) Town of Corte Madera, Recreation Center	112,000
(54) County of Marin, McInnis Park and Trail	125,000

(55) City of Mill Valley, Bayfront Park	125,000
(56) City of Novato, Novato Recreation Area	125,000
(57) Town of San Anselmo, San Anselmo—Ross Parks	70,000
(58) City of San Rafael, Albert Park	148,000
(59) City of Sausalito, Marinship Park	30,000
(60) Town of Tiburon, Richardson Bay Lineal Park	44,000
(60.1) Marin City Community Services District, Recreation Center	20,000
Projects in Mariposa County	
(61) County of Mariposa, Mariposa County Park	100,000
Projects in Merced County	
(62) City of Gustine, Gustine Parks	20,000
(63) City of Los Banos, Los Banos Sports Complex	33,000
Projects in Mono County	
(64) County of Mono, Mono County Parks	100,000
Projects in Monterey County	
(65) City of Carmel-By-The-Sea, Carmel City Parks	20,000
(66) City of King, City/County Regional Park	20,000
(67) City of Salinas, Rossi-Rico Neighborhood Park	181,000
(68) City of Soledad, Soledad City Parks	20,000
Projects in Napa County	
(68.1) City of Napa,	

Napa Recreation Facilities	170,802
Projects in Nevada County	
(69) Truckee-Donner Recreation and Park District, Truckee River Regional Park	39,000
(69.1) Western Gateway Recreation and Park District, Community Park	38,722
Projects in Orange County	
(70) City of Fullerton, West Coyote Hills	377,000
(71) City of Garden Grove, Hare School Park	412,000
(72) City of Newport Beach, San Miguel Park	241,000
(73) City of San Clemente, San Clemente Beach Club	119,000
(74) City of Tustin, Tustin Recreation Facilities	125,000
(75) City of Westminster, 17th Street School	262,000
(75.3) City of Anaheim, John Marshall Park	30,000
(75.4) City of Anaheim, La Palma Park	50,000
(75.5) City of Anaheim, Olive Hills Park	24,123
Projects in Placer County	
(76) Auburn Area Recreation and Park District, Auburn Area Parks	63,000
(77) Tahoe City Public Utilities District, Star Harbor	20,000
(77.1) City of Lincoln,	

McBean Park.....	20,000
(77.2) County of Placer, Loomis Area Regional Park	70,000
Projects in Plumas County	
(78) County of Plumas, Eastern Plumas Recreation Facilities	20,000
Projects in Riverside County	
(79) City of Blythe, Miller Park.....	20,000
(80) City of Hemet, Weston Park	57,000
(81) City of Indio, North Jackson Park	52,000
(82) Lake Elsinore Recreation and Park District, Lake Elsinore Recreation Facilities	20,000
(83) City of Perris, Perris Recreation Facility	20,000
(84) City of Riverside, Fairmount Park ..	160,000
(85) City of Riverside, Hunt Park	94,000
(86) City of Riverside, La Sierra Park.....	150,000
(87) City of Riverside, Nichols Park	25,000
Projects in Sacramento County	
(87.10) Elk Grove Recreation and Park District, Elk Grove Parks.....	31,658
(87.11) City of Sacramento, Sacramento Zoo	102,142
(87.12) City of Sacramento, Southside Park	48,261
(87.13) City of Sacramento, Florin Reservoir Site	100,000

(87.14) City of Sacramento, Land Park	99,597
Projects in San Benito County	
(87.20) City of San Juan Bautista, San Juan Bautista Park	20,000
(87.21) City of Hollister, Hollister City Parks	40,000
Projects in San Bernardino County	
(88) City of San Bernardino, Al Guhin Park	30,000
(89) City of San Bernardino, Guadalupe Field	83,000
(90) City of San Bernardino, La Plaza Park	35,000
(91) City of San Bernardino, Nicholson Park	30,000
(92) City of San Bernardino, Shandin Hills Park	120,000
(92.1) County of San Bernardino, Calico Ghost Town	200,452
(92.2) County of San Bernardino, Cucamonga-Guasti	143,371
(92.3) County of San Bernardino, St. Moritz Regional Park	20,286
(92.4) County of San Bernardino, Yucaipa Regional Park	891
Projects in San Diego County	
(93) City of Chula Vista, General Rocca Park	49,000
(94) City of Chula Vista, Loma Verde Center	81,000
(95) City of Chula Vista, Rienstra Sports Complex	81,000
(96) City of Chula	

Vista, Park Way Pool	73,000
(97) City of Coronado, Coronado Parks and Golf Course	120,000
(98) Lake Cuyamaca Recreation and Park District, Lake Cuyamaca	75,000
(99) City of National City, Kimball Park	194,000
(99.1) City of San Diego, Mission Beach (Belmont) Park	196,602
(99.2) City of San Diego, Highland-Landis Community Park	100,000
Projects in City and County of San Francisco	
(100) City and County of San Francisco, Golden State Park Carousel	300,000
(101) City and County of San Francisco, Stow Lake and Strawberry Hill	500,000
(102) City and County of San Francisco, West Sunset Playground	223,000
(103) City and County of San Francisco, West Sunset Soccer Field	750,000
Projects in San Joaquin County	
(104) City of Escalon, Escalon Community Park	25,000
(105) City of Lodi, Salas Park	117,000
(106) City of Tracy,	

Community Pool	61,000
Projects in San Luis Obispo County	
(107) City of Atascadero, Alvord Field	61,000
Projects in San Mateo County	
(108) Town of Atherton, Reading Park	25,000
(109) City of Daly City, Bayshore Heights Park	239,000
(110) City of Foster City, Catamaran Park	75,000
(111) Ladera Recreation District, Ladera Pool	20,000
(112) City of Redwood City, Hoover School Park	181,000
(113) City of San Bruno, City Park	91,000
(114) City of San Bruno, Monte Verde Park	30,000
(115) City of San Carlos, Arguello Park	87,000
(115.1) City of Brisbane, Brisbane Recreation Area	20,000
(115.2) City of Daly City and Town of Coloma, Hillside Park	20,000
(115.3) City of Half Moon Bay, Recreation Facilities	22,843
(115.4) Town of Portola Valley, Corte Madera School	20,000
(115.5) Ravenswood Recreation and Park District, Ravenswood Park	57,448
Projects in Santa Barbara County	
(116) City of Carpenteria, Santa Monica Creek Trail	40,000
(117) City of Santa	

Barbara, East Beach	80,000
(118) City of Santa Barbara, Oak Park	115,000
Projects in Santa Clara County	
(119) City of Campbell, Campbell Historical Museum	59,000
(120) City of Gilroy, Wheeler Auditorium	50,000
(121) City of Saratoga, El Quito Park	70,000
(121.1) County of Santa Clara, Coyote Creek Parkway	1,077,169
(121.2) City of Mountain View, Sylvan Avenue Park	135,140
Projects in Santa Cruz County	
(122) City of Capitola, Noble Gulch Park	32,000
(123) County of Santa Cruz, District Recreation Facilities	37,000
(124) County of Santa Cruz, Felton Covered Bridge	40,000
(125) County of Santa Cruz, Prather Lane Community Park	117,000
(126) County of Santa Cruz, Valencia Hall	20,000
(127) County of Santa Cruz, Veteran's Memorial Building	40,000
Projects in Shasta County	
(128) City of Redding, Caldwell Park	110,000
(129) Shasta Community Services District, Shasta	

Community Park	25,000
Projects in Solano County	
(130) City of Benicia, Overlood Park.....	53,000
(131) Greater Vallejo Recreation District, Blue Rock Springs	207,000
(132) City of Rio Vista, Drouin Park	27,000
Projects in Sonoma County	
(133) City of Cloverdale, Cloverdale City Parks.....	20,000
(134) City of Healdsburg, Healdsburg Recreation Facilities	20,000
(135) Russian River Recreation and Park District, District Recreation Facilities	20,000
(136) City of Santa Rosa, Daniel Galvin Community Park	232,000
(137) City of Sonoma, Olsen Park	20,000
(137.1) Monte Rio Recreation and Park District, Monte Rio Park ..	20,000
(137.2) Camp Meeker Recreation and Park District	20,000
Projects in Stanislaus County	
(138) City of Turlock, Tegner Recreation Site.....	78,000
(138.1) City of Newman, City Parks ..	20,000
(138.2) City of Waterford, Beard Community Park.....	20,000
Projects in Tehama County	
(139) City of Corning, Corning Parks	20,000

(140) City of Red Bluff, John R. Trainor Memorial Park	34,000
(141) County of Tehama, Noland Park	20,000
(142) County of Tehama, Tehama County Parks	42,000
Projects in Trinity County	
(142.1) County of Trinity, Junction City/Burnt Ranch	20,000
Projects in Tulare County	
(143) City of Porterville, Murry Park	78,000
Projects in Ventura County	
(144) Casitas Municipal Water District, Lake Casitas	45,000
Projects in Yolo County	
(145) City of Woodland, Existing Park Improvements	92,000
Projects in Yuba County	
(146) City of Wheatland, Wheatland City Park	35,000
(147) County of Yuba, North Yuba Recreation Project	35,000

Provisions:

1. Funds appropriated in category (b) of this item shall be available for acquistion, development, rehabilitation, or any combination thereof.

SEC. 1.5. Item 3790-102-733 is added to the Budget Act of 1982 (Chapter 326, Statutes of 1982), to read:

STATE BEACH, PARK, RECREATIONAL, AND HISTORICAL FACILITIES BOND ACT OF 1974

3790-102-733—For local assistance, Department of Parks and Recreation, payable from the State Beach, Park, Recreational, and Historical Facilities Fund of 1974 589,671

Schedule:

(a) Project grants 589,671
Projects in Amador County
(1) County of Amador, Pine Grove Park 6,000
(2) County of Amador, Pioneer Park 28,000
(3) City of Amador, Amador City Park 5,000
(4) River Pine Public Utility District, Pine Lodge Park 10,000
Projects in Los Angeles County
(5) County of Los Angeles, Baldwin Hills 386,418
Projects in Napa County
(6) City of Napa, Napa Recreation Facilities 154,253

SEC. 2. Item 3790-101-742 of the Budget Act of 1982 (Chapter 326, Statutes of 1982) is amended to read:

NEJEDLY-HART STATE, URBAN AND COASTAL PARK BOND ACT PROGRAM

3790-101-742—For local assistance, Department of Parks and Recreation, payable from the State, Urban and Coastal Park Fund 3,088,427
Schedule:
(a) Project review 238,000
(b) Project grants 2,850,427
Projects in Alameda County
(1) City of Alameda, Alameda City Hall and Historical Museum 11,000
(2) City of Emeryville, Emeryville Recreation Facilities 13,000
Projects in Calaveras County
(3) Jenny Lind Veterans Memorial District, Valley Springs Park 15,000
Projects in Contra Costa County
(4) County of Contra

Costa, El Sobrante Community Center	35,000
Projects in Del Norte County	
(5) County of Del Norte, Pyke Field	25,000
Projects in Fresno County	
(6) City of Fresno, Logan Park	20,000
(6.1) County of Fresno, County Parks Improvements	203,498
Projects in Humboldt County	
(7) City of Trinidad, Community Recreation Facilities	15,000
Projects in Imperial County	
(8) County of Imperial, Palo Verde County Park	20,000
Projects in Los Angeles County	
(9) City of Los Angeles, Santa Barbara/Western Park	750,000
(10) County of Los Angeles, Venice Beach	352,000
(11) City of Lynwood, John D. Ham Park	120,000
(11.1) County of Los Angeles, Nicholas Canyon	217,500
(11.2) County of Los Angeles, Malibu Beaches	107,400
Projects in Orange County	
(11.10) City of Santa Ana, Memorial Park	8,947
(11.11) City of Seal Beach, North Seal Beach Community Center	76,941
Projects in Placer County	
(12) County of Placer, Bear River Park	15,000
(12.1) City of Rose-	

ville, Diamond Oaks Park 54,208
Projects in Plumas County
(13) County of Plumas, Crescent Mills Community Park 13,000
(13.1) City of Portola, Swim Pool Rehabilitation 16,000
Projects in Riverside County
(13.10) City of Norco, Parameter Park.... 59,475
(13.11) County of Riverside, Hurkey Creek Park..... 20,000
(13.12) City of Palm Desert, Palm Desert Parks 34,161
Projects in Sacramento County
(14) Elk Grove Recreation and Park District, Mendoza Park 16,000
Projects in San Bernardino County
(14.10) Hesperia Recreation and Park District, Live Oak Park 32,995
(14.11) City of San Bernardino, Perris Hill Park 80,626
Projects in San Diego County
(14.20) City of La Mesa, MacArthur Park and Community Center 20,000
Projects in San Francisco County
(14.30) City and County of San Francisco, Kimbell and Lang Playgrounds 90,000
Projects in Santa Cruz County
(15) County of Santa Cruz, Recreation Facilities 14,000
Projects in Shasta County
(16) City of Redding,

Sacramento River Trail	60,000
(16.1) Little Valley Community Services District, Fall River Community Park	10,000
(16.2) County of Shasta, French Gulch Park	3,676
Projects in Sonoma County	
(17) County of Sonoma, Ragle Ranch	226,000
Projects in Trinity County	
(18) Weaverville-Douglas City Recreation District, Lowden Park	20,000
Projects in Tulare County	
(19) County of Tulare, Bartlett Park	11,000
(20) County of Tulare, Cutler Park	21,000
(21) County of Tulare, Mooney Grove	43,000

Provisions:

1. The project review funds payable from the State, Urban, and Coastal Park Fund appropriated in category (a) of this item are for purposes set forth in subdivision (a) of Section 5096.124 of the Public Resources Code and are available for expenditure during the 1982–83 fiscal year.
2. The grants payable from the State, Urban and Coastal Park Fund, appropriated in category (b) of this item, are for grants to counties, cities, and districts, as defined in Section 5096.123, pursuant to subdivision (a) of Section 5096.124, of the Public Resources Code and unless otherwise provided herein, funds appropriated for each of the local grant projects in this item are for acquisition, development, or restoration, or any combination thereof.

SEC. 3. Item 3790-493 is added to the Budget Act of 1982 (Chapter 326, Statutes of 1982), to read:

3790-493—Reappropriation, Department of Parks and Recreation. Notwithstanding any other provisions

of law, the undisbursed balances, on the effective date of this act, of the appropriations provided in the following citations, are reappropriated for the purposes (and subject to the limitations unless otherwise specified) provided for in such appropriations, and shall be available for expenditures until June 30, 1983:

742—State, Urban, and Coastal Park Fund

(1) Item 443.8(54), Budget Act of 1977, Tahoe City Public Utility District, Bicycle Trail Phase 5.
(2) Item 443.8(58), Budget Act of 1977, City of Firebaugh, Andrew Firebaugh Historical Park
(3) Item 443.8(366), Budget Act of 1977, County of Sonoma, Ragle Ranch Regional Park.
(4) Item 443.8(367), Budget Act of 1977, County of Sonoma, Sonoma Valley Regional Park.
(5) Item 518(87), Budget Act of 1978, County of Merced, Hagaman Park.
(6) Item 518(88), Budget Act of 1978, County of Merced, Henderson Park.
(7) Item 518(89), Budget Act of 1978, County of Merced, Merced County Old Courthouse.
(8) Item 518(101), Budget Act of 1978, Greenfield Recreation District, Greenfield Parkland.
(9) Item 518(102), Budget Act of 1978, City of Greenfield, Greenfield Parkland.
(10) Item 518(233.3), Budget Act of 1978, County of Shasta, French Gulch Park.
(11) Item 518(236), Budget Act of 1978, Happy Camp Community Services District, Happy Camp Park.
(12) Item 518(247), Budget Act of 1978, City of Riverbank, Rio Altra Park.
(13) Item 513(21), Budget Act of 1979, Caruthers Community Services District, Caruthers Community Park.
(14) 513(32), Budget Act of 1979, County of Kern, Frankland Field.
(15) Item 513(36.3), Budget Act of 1979, City of Shafter, Shafter High Recreation Facilities.
(16) Item 513(107.1), Budget Act of 1979, City of Petaluma, West Petaluma Regional Park.

SEC. 4. Item 3790-495 of the Budget Act of 1982 (Chapter 326, Statutes of 1982) is amended to read:

3790-495—Reversion, Department of Parks and Recreation. As of June 30, 1982, the unencumbered balance of the appropriations provided in the

following citations shall revert to the unappropriated surplus of the fund from which the appropriation was made.

001—General Fund

(1) Chapter 1166, Statutes of 1979, Roberti-Z'berg open space grants, an amount not to exceed $8,000,000.

036—Special Account for Capital Outlay

(1) Item 379-301-036(a), Budget Act of 1981. Climate control study (Hearst Castle).

(2) Item 379-301-036(b), Budget Act of 1981. Artifact restoration (Hearst Castle).

(3) Item 379-301-036(c), Budget Act of 1981. Artifact appraisal (Hearst Castle).

188—Energy and Resources Fund

(1) Item 532(g), Budget Act of 1980. South Monterey Bay Dunes—land acquisition.

189—Energy Account, Energy and Resources Fund

(1) Item 379-301-189(a), Budget Act of 1981. Project planning and design.

190—Resources Account, Energy and Resources Fund

(1) Item 379-301-190(a), Budget Act of 1981. Anderson Marsh—acquisition.

(2) Item 379-301-190(b), Budget Act of 1981. Durham Ferry SRA—working drawings and construction.

(3) Item 379-301-190(c), Budget Act of 1981. Seacliff SB—construction.

263—Off-Highway Vehicle Fund

(1) Item 532.5(a), Budget Act of 1980. Relocation assistance.

(2) Item 379-301-263(d), Budget Act of 1981. Ocotillo Wells SVRA—acquisition.

(3) Item 466(a), Budget Act of 1979, Pismo Dunes SVRA—acquisition; provided that this reversion shall be limited to $200,000.

392—State Parks and Recreation Fund

(1) Item 530(f), Budget Act of 1980. Torrey Pines—working drawings.

(2) Item 379-301-392(*l*), Budget Act of 1981. Old Sacramento SHP—working drawings for '49er scene.

(3) Item 379-301-392(m), Budget Act of 1981. Bale Grist Mill—construction of access road and parking lot.

(4) Item 379-301-392(o), Budget Act of 1981. Chino Hills—acquisition.

(7) Item 379-301-392(t), Budget Act of 1981. Angel Island SP—working drawings and partial construction of pier.
(8) Item 379-301-392(u), Budget Act of 1981. Preliminary planning.
(10) Item 379-301-392(a), Budget Act of 1981. Big Basin SP—working drawings and construction for sewer.
(11) Item 379-301-392(x), Budget Act of 1981. Millerton Lake SRA—working drawings and construction of water treatment plant.
(12) Item 379-301-392(bb), Budget Act of 1981. Old Town San Diego—acquisition of Bazaar del Mundo concession contract.
(13) Item 530(b), Budget Act of 1980. Opportunity purchases.
(14) Item 530(c), Budget Act of 1980. In-holding purchases.

721—Parklands Fund of 1980
(1) Item 379-101-721(c)(184), Budget Act of 1981, City of Lynwood, Lindberg Park.
(2) Item 379-101-721(c)(259), Budget Act of 1981, City of Garden Grove, Garden Grove Park.
(3) Item 379-101-721(c)(260), Budget Act of 1981, City of Garden Grove, Garden Grove Park.
(4) Item 379-101-721(c)(261), Budget Act of 1981, City of Garden Grove, Lake School Park.
(5) Item 379-101-721(c)(262), Budget Act of 1981, City of Garden Grove, Magnolia-Fayland Park.
(6) Item 379-101-721(c)(263), Budget Act of 1981, City of Garden Grove, Pioneer Park.
(7) Item 379-101-721(c)(264), Budget Act of 1981, City of Garden Grove, Twin Lakes Park.

742—State, Urban, and Coastal Park Fund
(1) Item 443.8(65), Budget Act of 1977, Highway City Community Services District, Highway City Park.
(2) Item 443.8(75), Budget Act of 1977, County of Imperial, Forrester Park.
(3) Item 443.8(172), Budget Act of 1977, County of Los Angeles, White Point Beach.
(4) Item 518(74.2), Budget Act of 1978, City

of Los Angeles, Pepperdine University Park.

(5) Item 518(74.4), Budget Act of 1978, County of Los Angeles, Dockweiler State Beach.

(6) Item 518(154), Budget Act of 1978, County of Placer, Granite Bay Neighborhood Park.

(7) Item 590(25.5), Budget Act of 1980, City of Lynwood, Lindberg Park.

(8) Item 379-101-742(1.4), Budget Act of 1981, County of Del Norte, Ocean View Park.

(9) Item 379-101-742(22), Budget Act of 1981, County of Sonoma, Maxwell Farms Regional Park.

(10) Item 379-101-742(23), Budget Act of 1981, County of Sonoma, Roseland Community Park.

SEC. 5. Item 3790-498 is added to the Budget Act of 1982, to read:

3790-498—Reversion, Department of Parks and Recreation. As of the effective date of this act, the unencumbered balance of the appropriations provided in the following citations shall revert to the unappropriated surplus of the fund from which the appropriation was made.

721—Parklands Fund of 1980

(1) Item 379-101-721(61), Budget Act of 1981, County of Contra Costa, Gehringer Community Park.

(2) Item 379-101-721(c)(119), Budget Act of 1981, County of Kings, Kettleman City Park.

(3) Item 379-101-721(c)(178), Budget Act of 1981, County of Los Angeles, Malibu Beaches.

(3.1) Item 379-101-721(c)(183), Budget Act of 1981, County of Los Angeles, Vasquez Rocks Park.

(4) Item 379-101-721(c)(190), Budget Act of 1981, City of Norwalk, Norwalk Park.

(5) Item 379-101-721(c)(196), Budget Act of 1981, City of Pasadena, Hamilton Park.

(5.1) Item 379-101-721(c)(241), Budget Act of 1981, County of Napa, Alston Park.

(6) Item 379-101-721(c)(248), Budget Act of 1981, Western Gateway Regional Recreation and Park District, Western Gateway Park.

(7) Item 379-101-721(c)(249), Budget Act of 1981, City of Anaheim, Boysen Park.

(8) Item 379-101-721(c)(250), Budget Act of 1981,

City of Anaheim, Eucalyptus Park.
(9) Item 379-101-721(c) (251), Budget Act of 1981, City of Anaheim, Hillside #1 Park.
(10) Item 379-101-721(c) (317), Budget Act of 1981, Elk Grove Recreation and Park District, Elk Grove High and Youth Center Recreation Areas.
(11) Item 379-101-721(c) (324), Budget Act of 1981, City of Sacramento, Natomas Oaks Park.
(12) Item 379-101-721(c) (354), Budget Act of 1981, County of San Bernardino, Cucamonga-Guasti Regional Park.
(13) Item 379-101-721(c) (360.11), Budget Act of 1981, County of San Bernardino, Yucaipa Regional Park.
(14) Item 379-101-721(c) (374), Budget Act of 1981, City of San Diego, Balboa Park.
(15) Item 379-101-721(c) (381), Budget Act of 1981, City of San Diego, Talmadge Canyon.
(16) Item 379-101-721(c) (481), Budget Act of 1981, County of Trinity, Junction City Park.

733—State Beach, Park, Recreational, and Historical Facilities Fund of 1974
(1) Item 412A (98), Budget Act of 1974, County of Los Angeles, Westmont County Park.
(2) Item 508J (1), Budget Act of 1978, City of Napa, Alston Park.
(3) Item 504 (23.1), Budget Act of 1979, City of Napa, Alston Park.

742—State, Urban, and Coastal Park Fund
(1) Item 443.8(91), Budget Act of 1977, Little Valley Community Services District, Little Valley Park.
(2) Item 443.8(160), Budget Act of 1977, County of Los Angeles, Cabrillo Beach.
(3) Item 443.8(382), Budget Act of 1977, Weaverville-Douglas City Recreation District, Douglas City Community Park.
(4) Item 443.8(394), Budget Act of 1977, County of Tulare, Elk Bayou Park.
(5) Item 513(111), Budget Act of 1979, County of Tulare, Kings River Park.
(6) Item 518(74.3), Budget Act of 1978, County of Los Angeles, White Point/Royal Palms State Beach.
(7) Item 518(157), Budget Act of 1978, City of Portola, Ski Hill Restoration.
(8) Item 518(167.5), Budget Act of 1978, City of Norco, Wayne Makin Park.

(9) Item 518(170), Budget Act of 1978, Hesperia Recreation and Park District, Lime Street Park.
(10) Item 518(194), Budget Act of 1977, City and County of San Francisco, Neighborhood Parks.
(11) Item 518(233.5), Budget Act of 1978, County of Shasta, Hat Creek Park.
(12) Item 518H(24), Chapter 114, Statutes of 1979, City of Santa Ana, El Salvador Park.
(13) Item 590(46), Budget Act of 1980, City of San Bernardino, North East Park (Serrano).
(14) Item 379-101-742(2.1), Budget Act of 1981, County of Fresno, Skaggs Bridge Park.
(15) Item 379-101-742(11.2), Budget Act of 1981, County of Los Angeles, White Point/Royal Palms State Beach.
(15.5) Item 379-101-742(13), Budget Act of 1981, City of Palm Desert, San Pascual Park.
(16) Item 379-101-742(14.2), Budget Act of 1981, City of La Mesa, Padre Bay Arm Park.
(17) Item 379-101-742(14.3), Budget Act of 1981, County of San Diego, Lake Murray/Cowles Fortuna Mountain (Mission Trails) Regional Park.

SEC. 6. Item 3860-301-742 of the Budget Act of 1982 (Chapter 326, Statutes of 1982) is amended to read:

NEJEDLY-HART STATE, URBAN, AND COASTAL PARK BOND ACT PROGRAM

3860-301-742—For capital outlay, Department of Water Resources, Implementation of the State Water Resources Development System, Program 20, payable from the State Urban and Coastal Park Fund..... 3,765,000
(a) Pyramid Lake Recreational Facilities—Construction..... 3,190,000
(b) Oroville Wildlife Area—Land Acquisition..... 75,000
(c) Feather River Hatchery—Construction..... 500,000

SEC. 7. Section 5044 is added to the Public Resources Code, to read:

5044. Notwithstanding any other provision of this chapter or any other provision of law, the term of any concession contract within Columbia Historic State Park in effect on the effective date of this section which expires before January 1, 1984, shall, at the request of the concessionaire, be extended by the department until January 1,

1984.

SEC. 8. The sum of sixty thousand dollars ($60,000) of the unencumbered balance of the appropriation made by category (*l*) of Item 530 of the Budget Act of 1980 is hereby reverted to the State Parks and Recreation Fund and is appropriated to the Department of Parks and Recreation for development, including, but not limited to, installation of a water line, on lands purchased for the Malibu Bluffs project.

SEC. 9. Realizing the importance of preserving and protecting the state's ever-decreasing deer summer range habitat and migration corridors thereto, and also realizing the importance of maintaining open-space and other public resources for recreational purposes, notwithstanding any other provision of law, and in furtherance of the policy established in Section 1301 of the Fish and Game Code, the Legislature hereby authorizes the Director of Transportation to transfer approximately 459 acres of surplus lands on the Conway Grade near Mono Lake to the Department of Fish and Game for the protection and preservation of fish and wildlife habitat, or to the Wildlife Conservation Board for purposes of the Wildlife Conservation Law of 1947 for a consideration at least equal to the acquisition costs paid by the state to acquire that property plus reasonable interest on that amount for the period of tir e the land was held by the Department of Transportation.

SEC. 10. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order that urgently needed park and recreation and wildlife protection projects may proceed as soon as possible after the commencement of the 1982–83 fiscal year, and in order that the operation of Columbia Historic State Park not be disrupted, it is necessary that this act take effect immediately.

CHAPTER 1422

An act to amend Sections 1002, 1006, and 1009 of, and to add Chapter 7 (commencing with Section 1450) of Division 2 of, the Elections Code, relating to elections.

[Approved by Governor September 26, 1982. Filed with Secretary of State September 27, 1982.]

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

SECTION 1. Section 1002 of the Elections Code is amended to read:

1002. Except as provided in Chapter 7 (commencing with Section 1450), 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 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. 2. Section 1006 of the Elections Code is amended to read:

1006. Any printed application, which is to be distributed to voters for requesting absent voter ballots, shall contain spaces for the following:

(a) The printed name and residence address of the voter as it appears on the affidavit of registration.

(b) The address to which the ballot is to be mailed.

(c) The voter's signature.

(d) The name and date of the election for which the request is to be made.

(e) The date the application must be received by the clerk.

In addition, the application shall provide the voters with information concerning the procedure for establishing permanent absentee voter status, and the basis upon which permanent absentee voter status is claimed.

SEC. 3. Section 1009 of the Elections Code is amended to read:

1009. The identification envelope shall contain the following:

(a) A declaration, under penalty of perjury, stating that the voter resides within the precinct in which he or she is voting and is the person whose name appears on the envelope.

(b) The signature of the voter.

(c) The residence address of the voter as shown on the affidavit of registration.

(d) The date of signing.

(e) A notice that the envelope contains an official ballot and is to be opened only by the canvassing board.

(f) A warning plainly stamped or printed on it that voting twice constitutes a crime.

(g) A statement that the voter has neither applied, nor intends to apply, for an absent voter's ballot from any other jurisdiction for the same election.

SEC. 4. Chapter 7 (commencing with Section 1450) is added to Division 2 of the Elections Code, to read:

CHAPTER 7. PERMANENT ABSENT VOTER

1450. A voter, who qualifies under the provisions of this chapter, shall be entitled to become a permanent absent voter.

1451. Any voter who has lost, or has lost the use of, one or more limbs; has lost, or has lost the use of, both hands; is unable to move about without the aid of an assistant device (e.g., canes, crutches, walker, wheelchair); is suffering from lung disease, blindness, or cardiovascular disease; has a significant limitation in the use of the

lower extremities; or is suffering from a diagnosed disease or disorder which substantially impairs or interferes with the person's mobility may apply for permanent absent voter status. Application for permanent absent voter status shall be made in accordance with Section 1002. The voter shall complete an application, which shall be available from the county clerk, and which shall contain:

(1) Voter's name at length.

(2) Voter's residence address.

(3) Address where ballot is to be mailed, if different from the place of residence.

(4) Information which establishes the voter's right to permanent absent voter status.

(5) The signature of the applicant.

1452. In lieu of executing the application set forth in Section 1451, any voter may execute a request for permanent absent voter status by making a written request to the county clerk requesting the status. If a written request is received by the county clerk and it contains the information set forth in Section 1451, the clerk shall process that application in the manner provided in Section 1453.

1453. Upon receipt of an application for permanent absent voter status the county clerk shall process the application in the same manner as an application for regular absent voters' ballots. In addition to processing applications in accordance with Chapter 1 (commencing with Section 1000), if it is determined that the applicant is a registered voter, the county clerk shall place the voter's name upon a list of those to whom an absentee ballot is sent each time there is an election within their precinct. The clerk shall keep a copy of the list on file open to the public inspection for election and governmental purposes.

1454. The county clerk shall send a copy of the list of all voters who qualify as permanent absent voters to each city clerk or district elections official charged with the duty of conducting an election within the county. The list shall be sent by the sixth day before an election.

1455. Absent voter ballots mailed to, and received from, voters on the permanent absent voter list are subject to the same deadlines and shall be processed and counted in the same manner as all other absent voter ballots.

1456. A voter whose name appears on the permanent absent voter list shall remain on the list and shall be mailed an absentee ballot for each election conducted within his precinct. If the voter fails to return an executed absent voter ballot for any statewide direct primary or general election in accordance with Section 1013 the voter's name shall be deleted from the list.

SEC. 5. It is the intent of the Legislature in its enactment of Chapter 7 (commencing with Section 1450) to Division 2 of the Elections Code that the Legislature reaffirms its commitment that all reasonable efforts should continue to be made by election officials to assure access to polling places by persons with physical handicaps

and that provisions of this act shall not supersede any existing statutory requirements.

SEC. 6. No appropriation is made and no reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution or Section 2231 or 2234 of the Revenue and Taxation Code because the Legislature finds and declares that there are savings as well as costs in this act which, in the aggregate, do not result in additional net costs.

CHAPTER 1423

An act to add and repeal Section 6369.5 of the Revenue and Taxation Code, relating to taxation, to take effect immediately, tax levy.

[Approved by Governor September 26, 1982. Filed with Secretary of State September 27, 1982.]

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

SECTION 1. Section 6369.5 is added to the Revenue and Taxation Code, to read:

6369.5. (a) There are exempted from the taxes imposed by this part the gross receipts from the sale, and the storage, use, or other consumption, in this state of any medical oxygen delivery system, including, but not limited to, liquid oxygen containers, high pressure cylinders, and regulators, when sold, leased, or rented to an individual for the personal use of that individual as directed by a physician.

(b) This section shall remain in effect until December 31, 1984, and on that date is repealed, unless a later enacted statute which is chaptered before that date, deletes or extends that date.

SEC. 2. 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. 3. 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 1424

An act to amend Section 1812 of the Welfare and Institutions Code, relating to county justice system subventions.

[Approved by Governor September 26, 1982. Filed with Secretary of State September 27, 1982.]

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

SECTION 1. Section 1812 of the Welfare and Institutions Code is amended to read:

1812. (a) The receipt of funds under this article shall be contingent upon the county maintaining its funding year commitment rate of juvenile and criminal offenders to the Department of the Youth Authority and the Department of Corrections within a base commitment rate of such commitments, except that no county shall be excluded from funds under this article which does not commit more than three people to the Department of the Youth Authority and the Department of Corrections during the funding year. For purposes of this article, "funding year" is the fiscal year for which the subvention is made.

(b) The Youth Authority shall calculate the base commitment rate for each county by computing the ratio of new commitments by county population, expressed in a commitment rate per 100,000 population for each of the fiscal years 1973–74, 1974–75, 1975–76, and 1976–77. The average of these four rates shall be the base commitment rate for the county. The number of new commitments for each of the above fiscal years shall be the total of the new commitments to the Department of the Youth Authority and to the Department of Corrections, as certified by the respective departments, on the basis provided in Article 7 (commencing with Section 1820) of Chapter 1 of Division 2.5, in effect during such fiscal years, excluding persons within any of the categories listed below:

(1) Persons committed to the Department of the Youth Authority or the Department of Corrections who are subsequently recalled or discharged pursuant to Section 1737 of this code or Section 1168 of the Penal Code.

(2) Persons committed to the Department of the Youth Authority or the Department of Corrections for diagnostic study pursuant to Section 704, 707.2, 1731.6, or 1752.1 of this code or Section 1203.03 of the Penal Code.

(c) The Youth Authority shall calculate the funding year commitment rate for each participating county by computing the ratio of new commitments to county population, expressed in a commitment rate per 100,000 population, for the funding year, excluding persons placed in or committed to state institutions for the offenses specified below:

(1) Persons committed to the Department of the Youth Authority

who are subsequently recalled pursuant to Section 1737, or subsequently recalled within 120 days of the date of such commitment, pursuant to Section 779, and persons committed to the Department of Corrections who are subsequently recalled pursuant to subdivision (d) or (f) of Section 1170 of the Penal Code.

(2) Persons committed to the Department of the Youth Authority or the Department of Corrections for diagnostic study pursuant to Section 704, 707.2, 1731.6, or 1752.1 of this code or Section 1203.03 of the Penal Code.

(3) Persons committed to the Department of the Youth Authority or the Department of Corrections as a result of having been found to have committed any of the following specified violent offenses:

(A) Murder in the first and second degree, as defined in Sections 187 and 189 of the Penal Code.

(B) Attempted murder, as defined in Sections 187, 189, and 664 of the Penal Code.

(C) Arson, as defined in Section 447a of the Penal Code.

(D) Robbery, as defined in Section 211 of the Penal Code, where one or more enhancements have been imposed pursuant to Section 12022, 12022.5, or 12022.7 of the Penal Code.

(E) Rape, as defined in subdivision 1, 2, or 3 of Section 261 of the Penal Code, or attempted rape.

(F) Kidnapping, as defined in Section 209 of the Penal Code.

(G) Assault with intent to commit murder, as defined in Section 217 of the Penal Code.

(H) Assault with a deadly weapon or instrument or by force, as defined in Section 245 of the Penal Code.

(I) Assault with chemicals, as defined in Section 244 of the Penal Code.

(J) Trainwrecking, as defined in Section 219 of the Penal Code.

(K) Any offense listed in Section 1203.06 or 1203.07 of the Penal Code, or Section 1203.08 of the Penal Code as added thereto by Chapter 735 of the Statutes of 1977.

(L) Any offense for which probation or suspension of sentence is prohibited by law.

(4) Persons committed to the Department of the Youth Authority or the Department of Corrections who have been prosecuted as career criminals pursuant to Chapter 2.3 (commencing with Section 999b) of Title 6 of Part 2 of the Penal Code.

(d) The county population for purposes of calculating the base commitment rate and the funding year commitment rate shall be that certified by the Department of Finance to the State Controller on July 1 of each fiscal year.

(e) The Department of the Youth Authority will annually compute the statewide average commitment rate for informational purposes.

(f) The use of commitment rates for fiscal years 1973–74, 1974–75, 1975–76, and 1976–77 for the calculation of the base commitment rate pursuant to subdivision (b) reflects the judgment of the Legislature

that the present capacity of the state correctional system is insufficient to accommodate significant increase in the numbers of people committed to the Department of Corrections and the Department of the Youth Authority. It is the intent of the Legislature to reconsider the method of calculation of the base commitment rate at such time as the Department of Corrections or the Department of the Youth Authority develop the capacity to accommodate a significant increase in the number of people who may be committed to such departments.

(g) The Youth Authority shall, for any county which has a base commitment rate computed pursuant to subdivision (b) of 30 or less per 100,000 population, compute a modified base commitment rate by computing the ratio of new commitments by county population, expressed in a commitment rate per 100,000 population, for each of the fiscal years 1978–79 and 1979–80. The average rate for the two years shall be the modified base commitment rate for the county, except that each county for which a modified base commitment rate has been computed may elect to instead retain the rate computed pursuant to subdivision (b) as its base commitment rate.

CHAPTER 1425

An act to add Sections 20017.85, 20017.86, 20750.84, 20803.4, and 21022.2 to the Government Code, relating to retirement, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 26, 1982. Filed with Secretary of State September 27, 1982.]

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

SECTION 1. The Legislature finds and declares that the inclusion of the classes in this bill in the state safety member category of membership in the Public Employees' Retirement System would not result in additional net costs because there are savings as well as costs in such inclusion. Furthermore, that studies done by the State Personnel Board or the Department of Personnel Administration concluded that the duties and responsibilities of these classes meet criteria for inclusion in the category of state safety member.

SEC. 2. Section 20017.85 is added to the Government Code, to read:

20017.85. "State Safety Member" shall also include officers and employees of the following Departments with the following class title of:

Schematic Code	*Class Code*	*Classification*	*Department*
VC 95.....	8358	State Security Officer	General Services
VC 80.....	1986	Chief Museum Security Officer	Museum of Science Industry
VC 85.....	1988	Supervising Museum Security Officer	Museum of Science Industry
VC 90.....	1992	Museum Security Officer	Museum of Science Industry
BS 57	0891	Park Safety & Enforcement Supervisor	Park and Recreation
BS 53	0890	Park Safety & Enforcement Specialist	Park and Recreation
VC 40.....	1935	Hospital Peace Officer III	Developmental Services, Mental Health
VC 45.....	1936	Hospital Peace Officer II	Developmental Services, Mental Health, Consumer Affairs
VC 48.....	1937	Hospital Peace Officer I	Developmental Services, Mental Health, Consumer Affairs
VZ 35.....	8990	Firefighter/Security Guard	Forestry, Vets Affairs
VZ 25.....	8989	Supervising Firefighter/Security Guard	Vets Affairs
VZ 10.....	8988	Chief Fire /Security Guard	Vets Affairs
VY 85.....	8997	Arson & Bomb Investigator	Fire Marshal
VY 65.....	8999	Supervising Arson & Bomb Investigator	Fire Marshal
VY 60.....	8966	Fire Prevention Engineer	Fire Marshal
VY 70.....	8969	Deputy State Fire Marshal III	Fire Marshal
VY 80.....	8972	Deputy State Fire Marshal II	Fire Marshal

VY 90.....	8975	Deputy State Fire Marshal I	Fire Marshal
VZ 70.....	9090	Fire Service Training Specialist III	Fire Marshal
VZ 80.....	9089	Fire Service Training Specialist II	Fire Marshal
VZ 90.....	9088	Fire Service Training Specialist I	Fire Marshal
VZ 60.....	9091	Fire Service Training Supervisor	Fire Marshal
VW 40	9030	Chief, Food and Drug Section	Health Services
VW 45	9027	Assistant Chief, Food & Drug Section	Health Services
VW 60	9028	Food & Drug Program Coordinator	Health Services
VW 65	9029	Food & Drug Regional Administrator	Health Services
VW 70	9036	Food & Drug Specialist IV	Health Services
VW 80	9039	Food & Drug Specialist III	Health Services
VW 90	9042	Food & Drug Specialist II	Health Services
VX 10.....	9043	Food & Drug Trainee	Health Services
VX 30.....	9007	Food Technology Specialist	Health Services
VI 40	8613	Chief, Investigation Bureau, DHS	Health Services
VI 62	8609	Chief, Bureau of Fraudulent Claims, Dept. Ins.	Insurance
VJ 20	8567	Investigator Trainee	Food & Agriculture
VP 80.....	8678	Supervising Special Investigator, ABC	ABC
VP 70.....	8677	District Administrator, ABC	ABC

VP 50.....	8673	Deputy Division Chief, ABC	ABC
VI 30	8610	Chief, Division of Investigations, Dept. of Consumer Affairs	Consumer Affairs

Any person employed in the above classifications in the department indicated may elect, within 90 days of the operative date of this section, to remain subject to the miscellaneous service retirement benefit by filing an irrevocable notice of election with the board. A member who so elects shall be subject to the reduced benefit factors specified in Section 21251.13 of the Government Code only for service also included in the federal system.

This section shall not become applicable to any member included in a classification until such time as a ruling or regulation authorizing the inclusion of persons employed in that classification within the definition of "policeman" and/or "fireman" is issued by the federal agency for purposes of Section 218 (d) (5) (A) of the Social Security Act.

SEC. 3. Section 20017.86 is added to the Government Code, to read:

20017.86. "State safety member" also includes all persons in the Department of Alcoholic Beverage Control, the Board of Prison Terms, the Department of Consumer Affairs, the Department of Developmental Services, the Department of Health Services, the Horse Racing Board, the Department of Industrial Relations, the Department of Insurance, the Department of Mental Health, the Department of Motor Vehicles and the Department of Social Services employed with the class title of Special Investigator (Class Code 8553), Senior Special Investigator (Class Code 8550), Investigator Trainee (Class Code 8555) and Investigator Assistant (Class Code 8554), Supervising Special Investigator I (Class Code 8548), Supervising Special Investigator II (Class Code 8547), and persons in the class of State Park Ranger (Intermittent) (Class Code 0984) in the Department of Parks and Recreation, which have been designated as Peace Officers as defined in Sections 830.2 and 830.3 of the Penal Code.

Any person employed in the above classifications in the department indicated may elect, within 90 days of the operative date of this section to remain subject to the miscellaneous service retirement benefit by filing an irrevocable notice of election with the board. A member who so elects shall be subject to the reduced benefit factors specified in Section 21251.13 of the Government Code only for service also included in the federal system.

This section shall not become applicable to any member included in a classification until such time as a ruling or regulation authorizing the inclusion of persons employed in that classification within the definition of "policeman" is issued by the federal agency for purposes

of Section 218 (d) (5) (A) of the Social Security Act.

SEC. 4. Section 20750.84 is added to the Government Code, to read:

20750.84. The state shall make the increased contribution required on the account of liability for benefits provided by Sections 20017.85, 20017.86 and 21022.2 from social security contributions which would have been payable by the employer had Sections 20017.85 and 20017.86 not been enacted, up to an amount necessary to fully fund the cost of such benefits.

SEC. 5. Section 20803.4 is added to the Government Code, to read:

20803.4. "State safety service" with respect to a member who becomes a state safety member pursuant to Sections 20017.85 and 20017.86 shall also include service in a class specified in these sections or service pursuant to Government Code Section 20803.7, prior to the operative date of these sections.

SEC. 6. Section 21022.2 is added to the Government Code, to read:

21022.2. "Member" for purposes of Section 21022 also includes state miscellaneous members employed by the Department of Justice who perform the duties now performed in positions with the class title of Criminalist I (Class Code 8468), Criminalist II (Class Code 8476), or Criminalist III (Class Code 8478), and state miscellaneous members employed by the Department of California Highway Patrol who perform the duties now performed in positions with the class title of Communications Operator I (Class Code 1663), Communications Operator II (Class Code 1664), or Communications Supervisor (Class Code 1662).

This section shall not become applicable to any member included in a classification until such time as the Director of the Department of Finance certifies to the Chairperson of the Joint Legislative Budget Committee that the cost of this benefit is in accordance with the Memorandum of Understanding dated June 29, 1982, entered into by the State of California and the Coalition of Associations and Unions of State Employees pursuant to Section 3517.6 of the Government Code.

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:

In order that the addition to the "Safety Member" category of the Public Employees' Retirement System, effected by this act, may take place as soon as possible, it is essential that this act take effect immediately.

CHAPTER 1426

An act to amend Sections 65907 and 66412 of, and to add Section 66452.10 to, the Government Code, relating to land use.

[Approved by Governor September 26, 1982. Filed with Secretary of State September 27, 1982.]

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

SECTION 1. Section 65907 of the Government Code is amended to read:

65907. Except as otherwise provided by ordinance, any action or proceeding to attack, review, set aside, void, or annul any decision of matters listed in Sections 65901 and 65903, or concerning any of the proceedings, acts, or determinations taken, done, or made prior to such decision, or to determine the reasonableness, legality, or validity of any condition attached thereto, shall not be maintained by any person unless the action or proceeding is commenced within 180 days after the date of the decision. Thereafter, all persons are barred from any such action or proceeding or any defense of invalidity or unreasonableness of that decision or of these proceedings, acts, or determinations. Any such proceeding shall take precedence over all matters of the calendar of the court, criminal, probate, eminent domain, and forcible entry and unlawful detainer proceedings excepted.

Notwithstanding Section 65803, this section shall apply to charter cities.

SEC. 2. Section 66412 of the Government Code is amended to read:

66412. This division shall be inapplicable to:

(a) The financing or leasing of apartments, offices, stores or similar space within apartment buildings, industrial buildings, commercial buildings, mobilehome parks or trailer parks;

(b) Mineral, oil or gas leases;

(c) Land dedicated for cemetery purposes under the Health and Safety Code of the State of California.

(d) A lot line adjustment between two or more existing adjacent parcels, where the land taken from one parcel is added to an adjacent parcel, and where a greater number of parcels than originally existed is not thereby created, provided the lot line adjustment is approved by the local agency, or advisory agency.

(e) Boundary line or exchange agreements to which the State Lands Commission or a local agency holding a trust grant of tide and submerged lands is a party.

(f) Any separate assessment under Section 2188.7 of the Revenue and Taxation Code.

(g) Unless a parcel or final map was approved by the legislative body of a local agency, the conversion of a community apartment project, as defined in Section 11004 of the Business and Professions Code, to a condominium, as defined in Section 783 of the Civil Code, but only if all of the following requirements are met:

(1) At least 75 percent of the units in the project were occupied by record owners of the project on March 31, 1982.

(2) A final or parcel map of the project was properly recorded, if the property was subdivided, as defined in Section 66424, after January 1, 1964, with all of the conditions of that map remaining in effect after the conversion.

(3) The local agency certifies that the above requirements were satisfied if the local agency, by ordinance, provides for such certification.

(h) Unless a parcel or final map was approved by the legislative body of a local agency, the conversion of a stock cooperative, as defined in Section 11003.2 of the Business and Professions Code, to a condominium, as defined in Section 783 of the Civil Code, but only if all of the following requirements are met:

(1) At least 51 percent of the units in the cooperative were occupied by stockholders of the cooperative on January 1, 1980, or individually owned by stockholders of the cooperative on January 1, 1980. As used in this paragraph a cooperative unit is "individually owned" if and only if the stockholder of such unit owns or partially owns an interest in no more than one unit in the cooperative.

(2) No more than 25 percent of the shares of the cooperative were owned by any one person, as defined in Section 17, including an incorporator or director of the cooperative, on January 1, 1980.

(3) A person renting a unit in a cooperative shall be entitled at the time of conversion to all tenant rights in state or local law, including, but not limited to, rights respecting first refusal, notice, and displacement and relocation benefits.

(4) The local agency certifies that the above requirements were satisfied if the local agency, by ordinance, provides for such certification.

SEC. 3. Section 66452.10 is added to the Government Code, to read:

66452.10. A stock cooperative, as defined in Section 11003.2 of the Business and Professions Code, or a community apartment project, as defined in Section 11004 of the Business and Professions Code, shall not be converted to a condominium, as defined in Section 783 of the Civil Code, unless the required number of owners in the cooperative or project, as specified in the bylaws, or other organizational documents, have voted in favor of such conversion. If the bylaws or other organizational documents do not expressly specify the number of votes required to approve such a conversion, a majority vote of the owners in the cooperative or project shall be required. The provisions of Section 66499.31 shall not apply to a violation of this section.

CHAPTER 1427

An act to repeal Section 7047 of, and to amend Section 7053 of, the Business and Professions Code, and to add Section 621.5 to the Unemployment Insurance Code, relating to contractors.

[Approved by Governor September 26, 1982. Filed with Secretary of State September 27, 1982.]

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

SECTION 1. Section 7047 of the Business and Professions Code is repealed.

SEC. 2. Section 7053 of the Business and Professions Code is amended to read:

7053. Except as provided in Article 10 (commencing with Section 7150), this chapter does not apply to any person who engages in the activities herein regulated as an employee who receives wages as his or her sole compensation, does not customarily engage in an independently established business, and does not have the right to control or discretion as to the manner of performance so as to determine the final results of the work performed.

SEC. 3. Section 621.5 is added to the Unemployment Insurance Code, to read:

621.5. "Employee" also means any individual who is an employee, pursuant to Section 2750.5 of the Labor Code, of a person who holds a valid state contractor's license pursuant to Chapter 9 (commencing with Section 7000) of Division 3 of the Business and Professions Code.

CHAPTER 1428

An act to amend Sections 1294, 22724, and 44922 of, and to add Sections 24612, 24612.1, 24612.2, 24612.5, and 24613 to, the Education Code, relating to the State Teachers' Retirement System, and making an appropriation therefor.

[Approved by Governor September 26, 1982. Filed with Secretary of State September 27, 1982.]

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

SECTION 1. Section 1294 of the Education Code is amended to read:

1294. Each person employed by a county superintendent of schools in a position requiring certification qualifications, except employees included in the civil service system or in any merit system, or any person who holds an office by virtue of an election conducted under the provisions of the Elections Code or the Education Code, and whose salary is paid from the county school service fund, has the same right with respect to leaves of absence, sick leave, and bereavement leave as a person employed by a school district or a community college district in a position requiring certification qualifications.

The provisions of Sections 22724, 44844, 44845, 44922, 44949, 44955,

44962 to 44976, inclusive, 44977, 44978, 44979, 44983, 44984, 44985, 44987, 87413, 87414, 87740, 87743, 87763 to 87779, inclusive, 87780, 87781, 87782, 87786, 87787, and 87788 apply to persons so employed by a county superintendent of schools and so paid from the county school service fund. Whenever, in those provisions, a duty or power is imposed upon or granted to the governing board of a school district or community college district or an employee thereof, the power or duty shall, for the purposes of this section, be deemed to be granted to or imposed on the county superintendent of schools or his or her employee, respectively. When "district" is used in those provisions, it shall, for the purposes of this section, be deemed to mean "county superintendent of schools." Compensation paid to employees during those leaves shall be paid from the county school service fund.

The granting of leaves of absence to employees pursuant to Section 44966 or Section 87767 shall be by the county superintendent of schools, upon approval by the county board of education.

SEC. 1.4. Section 22724 of the Education Code is amended to read:

22724. Notwithstanding any other provision of this chapter, the governing board of a school district or a community college district or a county superintendent of schools may establish regulations which allow an employee who is a member of this system to reduce his or her workload from full-time to part-time duties, and receive the service credit the member would receive if the member was employed on a full-time basis and have his or her retirement allowance, as well as any other benefits that the member is entitled to under this part, based upon the salary that the member would have received if employed on a full-time basis.

The regulations shall include, but shall not be limited to, the following:

(a) The option of part-time employment shall be exercised at the request of the member and can be revoked only with the mutual consent of the employer and the member.

(b) The member shall have been employed full time in a position requiring membership in this system for at least 10 years of which the immediately preceding five years were full-time employment.

(c) During the period immediately preceding a request for a reduction in workload, the employee shall have been employed full time in a position requiring membership in this system for a total of at least five years without a break in service. For purposes of this subdivision, sabbaticals and other approved leaves of absence shall not constitute a break in service. Time spent on a sabbatical or other approved leave of absence shall not be used in computing the five-year full-time service requirement prescribed by this subdivision.

(d) The member shall have reached the age of 55 prior to reduction in workload.

(e) The period of such part-time employment shall not extend beyond the end of the school year during which the member reaches

his or her 70th birthday.

(f) The period of such part-time employment shall not exceed five years.

(g) The minimum part-time employment shall be the equivalent of one-half of the number of days of service required by the member's contract of employment during his or her final year of service in a full-time position.

(h) The member shall be paid a salary which is the pro rata share of the salary the member would be earning had he or she not elected to exercise the option of part-time employment.

Prior to the reduction of an employee's workload under this section, the district personnel responsible for the administration of this program, in conjunction with the administrative staff of the State Teachers' Retirement System and the Public Employees' Retirement System, shall verify the eligibility of the applicant for the reduced workload program.

The member shall contribute to the Teachers' Retirement Fund the amount that would have been contributed had the member been employed full time.

The employer shall contribute to the Teachers' Retirement Fund an amount based upon the salary that would have been paid to the member had the member been employed full time and at the rate specified by the board.

The employer shall maintain the necessary records to separately identify each member receiving credit pursuant to this section.

SEC. 1.8. Section 24612 is added to the Education Code, to read:

24612. The first retirement check shall be paid to retirants within 45 days of the effective date of retirement, or from the date of receipt of the retirement application, whichever is later. Monthly checks shall continue thereafter. Initial checks may be based on a good faith estimated amount pending receipt by the system of all the necessary employment and dependent information.

The retirant will be placed on the final roll and paid a retroactive check, if one is due, within 45 days of receipt by the system of all the necessary information.

SEC. 2. Section 24612.1 is added to the Education Code, to read:

24612.1. The first check to a disabilitant shall be paid within 45 days following the date the disability is approved. Monthly checks shall continue thereafter. Initial checks may be based on a good faith estimated amount pending receipt by the system of all the necessary employment, dependent information, and other public benefit information.

The disabilitant shall be placed on the final roll and paid a retroactive check, if one is due, within 45 days of receipt by the system of all the necessary information.

SEC. 3. Section 24612.2 is added to the Education Code, to read:

24612.2. The death benefit provided by Sections 23800 and 23803 shall be paid to the beneficiary or estate within 45 days of receipt by the system of all the necessary information.

All other lump-sum payments provided for by Sections 23800, 23804, and 23807 will be paid to the beneficiary within 45 days of receipt by the system of all the necessary information.

Monthly family allowance checks provided by Section 23804 shall commence within 45 days of receipt by the system of all the necessary information.

SEC. 4. Section 24612.5 is added to the Education Code, to read:

24612.5. The system shall pay the retirant, disabilitant, beneficiary, or estate a penalty for delays in excess of the allowable days listed in Sections 24612 to 24612.2, inclusive. The penalty for late payments shall be the same rate that the system charges school districts for late remittances, and shall be a monthly accumulative percentage. The penalties that are paid are deemed to be interest earned in the year in which they are paid. All penalties shall be in addition to the credited interest that is paid.

SEC. 5. Section 24613 is added to the Education Code, to read:

24613. The system shall make a report to the board of all late payments at each regularly scheduled meeting.

SEC. 6. Section 44922 of the Education Code is amended to read:

44922. Notwithstanding any other provision, the governing board of a school district or a county superintendent of schools may establish regulations which allow their certificated employees to reduce their workload from full-time to part-time duties.

The regulations shall include, but shall not be limited to, the following, if the employees wish to reduce their workload and maintain retirement benefits pursuant to Section 22724 of this code or Section 20815 of the Government Code:

(a) The employee shall have reached the age of 55 prior to reduction in workload.

(b) The employee shall have been employed full time in a position requiring certification for at least 10 years of which the immediately preceding five years were full-time employment.

(c) During the period immediately preceding a request for a reduction in workload, the employee shall have been employed full time in a position requiring certification for a total of at least five years without a break in service. For purposes of this subdivision, sabbaticals and other approved leaves of absence shall not constitute a break in service. Time spent on a sabbatical or other approved leave of absence shall not be used in computing the five-year full-time service requirement prescribed by this subdivision.

(d) The option of part-time employment shall be exercised at the request of the employee and can be revoked only with the mutual consent of the employer and the employee.

(e) The employee shall be paid a salary which is the pro rata share of the salary he or she would be earning had he or she not elected to exercise the option of part-time employment but shall retain all other rights and benefits for which he or she makes the payments that would be required if he or she remained in full-time employment.

The employee shall receive health benefits as provided in Section 53201 of the Government Code in the same manner as a full-time employee.

(f) The minimum part-time employment shall be the equivalent of one-half of the number of days of service required by the employee's contract of employment during his or her final year of service in a full-time position.

(g) This option is limited in prekindergarten through grade 12 to certificated employees who do not hold positions with salaries above that of a school principal.

(h) The period of such part-time employment shall not exceed five years.

(i) The period of such part-time employment shall not extend beyond the end of the school year during which the employee reaches his or her 70th birthday.

CHAPTER 1429

An act to add Chapter 4.5 (commencing with Section 22320) to Part 13 of Division 1 of Title 1 of the Education Code, and to amend Section 15853 of the Government Code, relating to the State Teachers' Retirement System, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 26, 1982. Filed with Secretary of State September 27, 1982.]

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

SECTION 1. Chapter 4.5 (commencing with Section 22320) is added to Part 13 of Division 1 of Title 1 of the Education Code, to read:

CHAPTER 4.5. SYSTEM HEADQUARTERS

22320. Notwithstanding Section 20205.9 or Part 11 (commencing with Section 15850) of Division 3 of Title 2 of the Government Code, the board is authorized to select, purchase, or acquire in the name of the State Teachers' Retirement System, the fee or any lesser interest in real property, improved or unimproved, and may remodel and equip, or construct an office building in the County of Sacramento for the purposes of establishing a permanent headquarters facility for the system.

22321. All buildings acquired or improvements constructed by the board under the provisions of this chapter may contain space in excess of immediate requirements. The board may contract with the Department of General Services to handle the rentals of any excess space over and above that required by the board and to furnish

general supervision and maintenance of buildings and improvements constructed under the provisions of this chapter.

22322. The board may contract with the Department of General Services or any other state agency for assistance in the acquisition of real property and any construction thereon of buildings or improvements authorized by this chapter.

22323. In the event that condemnation of the property selected is necessary, the board may elect to deposit funds deemed necessary with the treasurer, which funds are appropriated for purchase of the selected property subject to provisions of the Property Acquisition Law.

22324. Work on all projects shall be done under contract awarded to the lowest responsible bidder pursuant to bidding procedures set forth in the State Contract Act.

22325. The board shall establish a building account for the transfer of money appropriated for such purpose from the Teachers' Retirement Fund for the construction or remodeling of buildings and improvements thereon, maintenance, repair, and improvement thereof. For accounting purposes, the board shall pay rental to the building account in an amount sufficient to repay all costs of acquisition, construction, and maintenance of space used by the board plus interest to the Teachers' Retirement Fund.

The board may contract with the Department of General Services for the purchase of insurance against loss of, or damage to, the property or the loss of use or occupancy of the building, liability insurance, and other insurance which is customarily carried on state office buildings. Premiums for this insurance shall be paid from the building account.

The land, building, equipment, and improvements thereon, shall constitute an investment, in lieu of facilities operations cost, in the Teachers' Retirement Fund and shall be carried on the books thereof as such in accordance with generally accepted accounting practices.

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

15853. (a) The board is authorized to 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) Where 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 the provisions of the Property Acquisition Law or (2) for any state agency for whom property is acquired by the board, the moneys and acquisitions shall be subject to the provisions of this part and the moneys shall be expended in accordance with the provisions of 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, and the State Lands Commission, except for property to be acquired for the State Lands Commission pursuant to an appropriation from the General Fund, shall be acquired by the State Public Works Board in accordance with the provisions of the Property Acquisition Law.

(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, land or other real property or interests in real property, including options to purchase, which have been appraised and selected by the Department of Parks and Recreation pursuant to subdivisions (b) and (c) 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 the acquisition of any land or other real property for the state park system pursuant to subdivision (f) of Section 5006 of the Public Resources Code shall be initiated within six months of the effective date of the act which appropriates funds for the acquisition. Purchase negotiations on all projects not proposed pursuant to subdivision (f) 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 one year of the initiation of purchase negotiations unless the Department of Parks and Recreation formally abandons the acquisition prior to the conclusion of the one-year 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 may, at any time during the periods specified in paragraph (2), commence condemnation proceedings if it finds it to be appropriate. However, if, within six months of the initiation of purchase negotiations, title is not conveyed or a written agreement to transfer title is not executed, the acquisition has not been formally abandoned, or condemnation proceedings have not been commenced, the board shall immediately notify the chairman of the committee in each house of the Legislature which considers appropriations, the chairman of the committee in each house of the Legislature which considers park and recreation policy, the Chairman 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 those facts. For the purposes of this paragraph, condemnation proceedings shall be deemed "commenced" as of the date the board authorizes acquisition by condemnation.

(4) Six months from the date of the notification required by paragraph (3), the board shall notify those persons specified in paragraph (3) of the status of the acquisition project.

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

(e) The board may acquire furnishings which the owner thereof agrees to sell and which 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. The sum of fifty thousand dollars ($50,000) is hereby appropriated from the Teachers' Retirement Fund to the Teachers' Retirement Board in augmentation of Item 192-001-835 of the Budget Act of 1982 to pay the administrative costs of implementing this act.

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 that the funds in the building account proposed by this act may become available at the commencement of the 1982–83 fiscal year, this act must take effect immediately.

CHAPTER 1430

An act to amend Sections 20131 and 21235 of the Government Code, relating to public retirement systems.

[Approved by Governor September 26, 1982. Filed with Secretary of State September 27, 1982.]

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

SECTION 1. Section 20131 of the Government Code is amended to read:

20131. The board shall credit all contributions of members and retired members in the retirement fund with interest at the current annual interest rate, compounded at each June 30th. For the purposes of this section, the current annual interest rate shall be the same as the current actuarial interest rate. In crediting interest for any fiscal year to contributions of members made during that year, the board may apply one interest rate to the total of such contributions made through the month next preceding the date through which interest is credited, under the assumption that such contributions were made in equal monthly amounts from the July 1st next preceding, to said month, both inclusive.

This section shall become operative on July 1, 1983.

SEC. 2. Section 21235 of the Government Code is amended to

read:

21235. (a) The board shall establish an Investment Dividend Disbursement Account, or such subaccounts as may be established by the board, in the retirement fund consisting of that amount of the earnings of the retirement fund which remains after the sequential application of Sections 20202.5, 20203, 20131.1, and 20131. The transfer to the account made each year shall be adjusted to reflect any difference between assumptions respecting salary increases and the actual salary experience, as determined by the board.

This subdivision shall become operative on July 1, 1982, and shall remain operative only until July 1, 1987, when it shall cease to have any force or effect.

(b) The Investment Dividend Disbursement Account shall be utilized, as specified in subdivision (e), to increase all monthly allowances paid by the system to an amount equal to a maximum of 75 percent of the purchasing power, as determined by the board, of the initial monthly allowances that were received by every retired person or survivor or beneficiary of a state, school or local member or retired person who was eligible to receive any allowance at the end of each fiscal year. If sufficient funds are not available to adjust allowances to a maximum of 75 percent of purchasing power, the board shall adjust allowances to eligible recipients by a lesser amount. The board may, for reasons of insufficient funds, determine that no increase under this section shall be made.

This subdivision shall become operative on January 1, 1984, and shall remain operative only until January 1, 1989, when it shall cease to have any force or effect.

(c) The amount specified in subdivision (a) is hereby appropriated from the Investment Dividend Disbursement Account to the board without regard to fiscal years. Whenever the board determines that there are sufficient funds the board shall apply those funds to the increases authorized by this section. If the funds are more than sufficient to pay the increases prescribed in subdivision (b), the board shall retain the funds for three fiscal years. If, at the end of the third fiscal year, a balance remains, the funds allocated in the first fiscal year shall revert to the member accounts in the Public Employees' Retirement Fund. It is the intent of the Legislature that this method of reversion of remaining balances be continued under those circumstances.

(d) The board shall inform each recipient of benefits under subdivision (b) that the increases are not cumulative, not part of the base retirement allowance, and may be available for only a limited period of time and that the board may discontinue the increases.

(e) The board, on January 1, 1984, and, upon the commencement of each quarter thereafter, shall pay the benefit provided by this section for the succeeding quarter.

SEC. 3. Section 1 of this act, amending Section 20131 of the Government Code, shall become operative on July 1, 1983.

CHAPTER 1431

An act to add Sections 20216 and 20216.5 to the Government Code, relating to public employees' retirement systems, and making an appropriation therefor.

[Approved by Governor September 26, 1982. Filed with Secretary of State September 27, 1982.]

I am deleting the $400,000 appropriation contained in Section 3 of Assembly Bill No. 3162.
The same appropriation is contained in Senate Bill No. 1582 (Chapter 1231).
With this deletion, I approve Assembly Bill No. 3162.

EDMUND G. BROWN, JR., Governor

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

SECTION 1. Section 20216 is added to the Government Code, to read:

20216. It is the intent of the Legislature that the board secure investment advisers with the composite expertise necessary for the investment of the retirement fund portfolio.

SEC. 2. Section 20216.5 is added to the Government Code, to read:

20216.5. Notwithstanding any other provision of law, the board shall, by contract, retain not less than two separate individual investment advisers. There is hereby appropriated, without regard to fiscal year, from the fund, an amount sufficient to pay all costs arising from this section.

No costs arising from this section shall be paid from the General Fund.

SEC. 3. The sum of four hundred thousand dollars ($400,000) is hereby appropriated from the Public Employees' Retirement Fund to the Board of Administration of the Public Employees' Retirement System for expenditures for expenses and costs incurred during the 1981–82 fiscal year.

CHAPTER 1432

An act to add Sections 22312 and 22312.5 to the Education Code, relating to the State Teachers' Retirement System, and making an appropriation therefor.

[Approved by Governor September 26, 1982. Filed with Secretary of State September 27, 1982.]

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

SECTION 1. Section 22312 is added to the Education Code, to read:

22312. It is the intent of the Legislature that the board secure investment advisers with the composite expertise necessary for the investment of the retirement fund portfolio.

SEC. 2. Section 22312.5 is added to the Education Code, to read:

22312.5. Notwithstanding any other provision of law, the board shall by contract retain not less than two separate individual investment advisers.

There is hereby continuously appropriated without regard to fiscal year, from the fund, an amount sufficient to pay all costs arising from this section.

No costs arising from this section shall be paid from the General Fund.

CHAPTER 1433

An act to add and repeal Sections 22205.1 and 22205.2 of the Education Code, and to add and repeal Sections 20206.1 and 20206.2 of the Government Code, relating to public employees' retirement systems.

[Approved by Governor September 26, 1982. Filed with Secretary of State September 27, 1982.]

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

SECTION 1. Section 22205.1 is added to the Education Code, to read:

22205.1. The Legislature finds and declares that changing economic conditions and increasing complexity in the investment market make it necessary and desirable that the system obtain the best possible investment expertise.

This section shall remain in effect only until January 1, 1989, and as of that date is repealed, unless a later enacted statute, which is chaptered before January 1, 1989, deletes or extends that date.

SEC. 2. Section 22205.2 is added to the Education Code, to read:

22205.2. Upon a finding by the board that necessary investment expertise is not available within existing civil service classifications, and with the approval of the State Personnel Board, the board may contract with qualified investment personnel having demonstrated expertise in the management of large and diverse investment portfolios to render service in connection with the investment program of the board.

This section shall remain in effect only until January 1, 1989, and as of that date is repealed, unless a later enacted statute, which is chaptered before January 1, 1989, deletes or extends that date.

SEC. 3. Section 20206.1 is added to the Government Code, to read:

20206.1. The Legislature finds and declares that changing

economic conditions and increasing complexity in the investment market make it necessary and desirable that the system obtain the best possible investment expertise.

This section shall remain in effect only until January 1, 1989, and as of that date is repealed, unless a later enacted statute, which is chaptered before January 1, 1989, deletes or extends that date.

SEC. 4. Section 20206.2 is added to the Government Code, to read:

20206.2. Upon a finding by the board that necessary investment expertise is not available within existing civil service classifications, and with the approval of the State Personnel Board, the board may contract with qualified investment personnel having demonstrated expertise in the management of large and diverse investment portfolios to render service in connection with the investment program of the board.

This section shall remain in effect only until January 1, 1989, and as of that date is repealed, unless a later enacted statute, which is chaptered before January 1, 1989, deletes or extends that date.

CHAPTER 1434

An act to add Section 22205.5 to, and to repeal Section 22307 of, the Education Code, relating to retirement, and making an appropriation therefor.

[Approved by Governor September 26, 1982. Filed with Secretary of State September 27, 1982.]

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

SECTION 1. Section 22205.5 is added to the Education Code, to read:

22205.5. In no event shall the board, on or after July 1, 1983, employ through interagency agreement any investment personnel who would also serve during the term of the agreement as investment staff to the Board of Administration of the Public Employees' Retirement System.

SEC. 2. Section 22307 of the Education Code is repealed.

SEC. 3. The sum of three hundred sixty thousand dollars ($360,000) is hereby appropriated from the State Teachers' Retirement Fund to Item 192-001-835 of the Budget Act of 1982 for the implementation of this act, during the period January 1, 1983, through June 30, 1983.

CHAPTER 1435

An act to amend Sections 3041.5 and 3042 of the Penal Code, relating to prisoners.

[Approved by Governor September 26, 1982. Filed with Secretary of State September 27, 1982.]

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

SECTION 1. Section 3041.5 of the Penal Code is amended to read:

3041.5. (a) At all hearings for the purpose of reviewing a prisoner's parole suitability, or the setting, postponing or rescinding of parole dates:

(1) At least 10 days prior to any hearing by the Board of Prison Terms, the prisoner shall be permitted to review his or her file which will be examined by the board and shall have the opportunity to enter a written response to any material contained in such file.

(2) The prisoner shall be permitted to be present, to ask and answer questions, and to speak on his own behalf.

(3) Unless legal counsel is required by some other provision of law, a person designated by the Department of Corrections shall be present to insure that all facts relevant to the decision be presented, including, if necessary, contradictory assertions as to matters of fact that have not been resolved by departmental or other procedures.

(4) The prisoner shall be permitted to request and receive a stenographic record of all proceedings.

(5) If the hearing is for the purpose of postponing or rescinding of parole dates, the prisoner will have rights set forth in paragraphs (3) and (5) of subdivision (a) of Section 2932.

(b) (1) Within 10 days following any meeting where a parole date has been set, the board shall send the prisoner a written statement setting forth his parole date, the conditions he must meet in order to be released on the date set, and the consequences of failure to meet such conditions.

(2) Within 20 days following any meeting where a parole date has not been set for the reasons stated in subdivision (b) of Section 3041, the board shall send the prisoner a written statement setting forth the reason or reasons for refusal to set a parole date; and suggest activities in which he might participate that will benefit him while he is incarcerated.

The board shall hear each case annually thereafter, except the board may schedule the next hearing no later than (A) two years after any hearing at which parole is denied if the board finds that it is not reasonable to expect that parole would be granted at a hearing during the following year and states the bases for the finding or, (B) three years after any hearing at which parole is denied if the prisoner has been convicted, in the same or different proceedings, of more than one offense which involves the taking of a life, and the board finds that it is not reasonable to expect that parole would be granted at a hearing during the following years and states the bases for the finding.

(3) Within 10 days of any board action resulting in the postponement of a previously set parole date, the board shall send the prisoner a written statement setting forth a new date and the reason or reasons for such action and shall offer the prisoner an

opportunity for review of such action.

(4) Within 10 days of any board action resulting in the rescinding of a previously set parole date, the board shall send the prisoner a written statement setting forth the reason or reasons for such action and shall, within six months, set the prisoner's parole release date in accord with the provisions of Section 3041 and this section.

SEC. 2. Section 3042 of the Penal Code is amended to read:

3042. (a) At least 30 days before the Board of Prison Terms shall meet to review or consider the parole suitability or the setting of a parole date for any prisoner sentenced to a life sentence, the board shall send written notice thereof to each of the following persons: the judge of the superior court before whom the prisoner was tried and convicted, the attorney who represented the defendant at trial, the district attorney of the county in which the offense was committed, the law enforcement agency that investigated the case, and where the prisoner was convicted of the murder of a peace officer, the law enforcement agency which had employed that peace officer at the time of the murder. In the case of a prisoner sentenced to a life sentence for first-degree murder, the board shall also send written notice to the next of kin of the person murdered where a request for such notice has been filed with the Board of Prison Terms by the next of kin. The burden shall be on the requesting party to keep the board apprised of the party's current mailing address.

(b) The Board of Prison Terms shall record all such hearings and transcribe such recordings within 30 days of any such hearing. All such transcripts, including the transcripts of all such prior hearings, shall be filed and maintained in the office of the Board of Prison Terms and shall be made available to the public no later than 30 days from the date of the hearing. No such prisoner shall actually be released on parole prior to 60 days from the date of the hearing.

(c) At any such hearing the presiding hearing officer must state findings and supporting reasons on the record.

(d) Any statements, recommendations, or other materials considered shall be incorporated into the transcript of any such hearing, unless such material is confidential in order to preserve institutional security and the security of others who might be endangered by disclosure.

(e) This section shall not apply to any hearing held to consider advancing a prisoner's parole date due to his or her conduct since his or her last hearing.

CHAPTER 1436

An act to amend Section 6140 of the Business and Professions Code, relating to the State Bar of California.

[Approved by Governor September 26, 1982. Filed with Secretary of State September 27, 1982.]

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

SECTION 1. Section 6140 of the Business and Professions Code is amended to read:

6140. (a) The board shall fix the annual membership fee as follows:

(1) For active members who have been admitted to the practice of law in this state for three years or longer at a sum not exceeding one hundred sixty-five dollars ($165).

(2) For active members who have been admitted to the practice of law in this state for less than three years preceding the first day of February of the year for which the fee is payable, at a sum not exceeding ninety-five dollars ($95).

(b) For the years commencing January 1, 1973, and ending December 31, 1983, the board may increase the annual membership fee fixed pursuant to subdivision (a) by an additional amount not exceeding ten dollars ($10) in any or all of such years, the additional amount in any year to be applied only to the cost of land and buildings to be used to conduct the operations of the State Bar, including furniture, furnishings, equipment, architects' fees, construction and financing costs, landscaping and other expenditures incident to the acquisition, construction, furnishing and equipping of such land and buildings, the payment of interest on and the repayment of moneys borrowed for such purposes, and the reimbursement of the State Bar's treasury expended for such purposes.

(c) The annual membership fee for active members is payable on or before the first day of February of each year.

This section shall remain in effect only until January 1, 1984, and as of that date is repealed, unless a later enacted statute, which is chaptered before January 1, 1984, deletes or extends that date.

CHAPTER 1437

An act to amend Sections 6025 and 6028.2 of, amend, add, and repeal Section 1464 of, the Penal Code, relating to corrections, and making an appropriation therefor.

[Approved by Governor September 26, 1982. Filed with Secretary of State September 27, 1982.]

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

SECTION 1. Section 1464 of the Penal Code, as amended by Section 11 of Chapter 1171 of the Statutes of 1981, is amended to read:

1464. Subject to the provisions of Section 1206.8, there shall be

levied an assessment in an amount equal to four dollars ($4) for every ten dollars ($10) or fraction thereof, upon every fine, penalty, or forfeiture imposed and collected by the courts for criminal offenses, including all offenses involving a violation of a section of the Vehicle Code or any local ordinance adopted pursuant to the Vehicle Code, except offenses relating to parking or registration or offenses by pedestrians or bicyclists, or where an order is made to pay a sum to the general fund of the county pursuant to subparagraph (iii) of paragraph (3) of subdivision (a) of Section 258 of the Welfare and Institutions Code. Any bail schedule adopted pursuant to Section 1269b may include the necessary amount to pay the assessments established by this section and Section 1206.8 for all matters where a personal appearance is not mandatory and the bail is posted primarily to guarantee payment of the fine.

Where multiple offenses are involved, the assessment shall be based upon the total fine or bail for each case. When a fine is suspended, in whole or in part, the assessment shall be reduced in proportion to the suspension.

When any deposited bail is made for an offense to which this section applies, and for which a court appearance is not mandatory, the person making such deposit shall also deposit a sufficient amount to include the assessment prescribed by this section for forfeited bail. If bail is returned, the assessment made thereon pursuant to this section, shall also be returned.

In any case where a person convicted of any offense, to which this section applies, is in prison until the fine is satisfied, the judge may waive all or any part of the assessment, the payment of which would work a hardship on the person convicted or his immediate family.

After a determination by the court of the amount due, the clerk of the court shall collect the same and transmit it to the county treasury. The portion thereof attributable to Section 1206.8 shall be deposited in the appropriate county fund and the balance shall then be transmitted to the State Treasury to be deposited in the Assessment Fund, which is hereby created. The transmission to the State Treasury shall be carried out in the same manner as fines collected for the state by a county.

The moneys so deposited shall be distributed as follows:

(a) Once a month there shall be transferred into the Fish and Game Preservation Fund an amount equal to 0.42 percent of the funds deposited in the Assessment Fund during the preceding month, but in no event shall the amount be less than the assessment levied on fines or forfeitures for violation of state laws relating to the protection or propagation of fish and game. Such moneys are to be used for the education or training of department employees which fulfills a need consistent with the objectives of the Department of Fish and Game.

(b) Once a month there shall be transferred into the Indemnity Fund an amount equal to 24.58 percent of the funds deposited in the Assessment Fund during the preceding month. Such funds shall be

available for appropriation by the Legislature in accordance with the provisions of subdivision (b) of Section 13967 of the Government Code.

(c) Once a month there shall be transferred into the Peace Officers' Training Fund an amount equal to 24.17 percent of the funds deposited in the Assessment Fund during the preceding month.

(d) Once a month there shall be transferred into the Driver Training Penalty Assessment Fund an amount equal to 50.83 percent of the funds deposited in the Assessment Fund during the preceding month.

This section shall become operative on July 1, 1987.

SEC. 2. Section 1464 of the Penal Code, as amended by Section 14 of Chapter 1171 of the Statutes of 1981, is amended to read:

1464. (a) Subject to the provisions of Section 1206.8, there shall be levied an assessment in an amount equal to four dollars ($4) for every ten dollars ($10) or fraction thereof, upon every fine, penalty, or forfeiture imposed and collected by the courts for criminal offenses, including all offenses involving a violation of a section of the Vehicle Code or any local ordinance adopted pursuant to the Vehicle Code, except offenses relating to parking or registration or offenses by pedestrians or bicyclists, or where an order is made to pay a sum to the general fund of the county pursuant to subparagraph (iii) of paragraph (3) of subdivision (a) of Section 258 of the Welfare and Institutions Code. Any bail schedule adopted pursuant to Section 1269b may include the necessary amount to pay the assessments established by this section and Section 1206.8 for all matters where a personal appearance is not mandatory and the bail is posted primarily to guarantee payment of the fine.

(b) Where multiple offenses are involved, the assessment shall be based upon the total fine or bail for each case. When a fine is suspended, in whole or in part, the assessment shall be reduced in proportion to the suspension.

(c) When any deposited bail is made for an offense to which this section applies, and for which a court appearance is not mandatory, the person making such deposit shall also deposit a sufficient amount to include the assessment prescribed by this section for forfeited bail. If bail is returned, the assessment made thereon pursuant to this section, shall also be returned.

(d) In any case where a person convicted of any offense, to which this section applies, is in prison until the fine is satisfied, the judge may waive all or any part of the assessment, the payment of which would work a hardship on the person convicted or his immediate family.

(e) After a determination by the court of the amount due, the clerk of the court shall collect the same and transmit it to the county treasury. The portion thereof attributable to Section 1206.8 shall be deposited in the appropriate county fund and the balance shall then be transmitted to the State Treasury to be deposited in the

Assessment Fund, which is hereby created. The transmission to the State Treasury shall be carried out in the same manner as fines collected for the state by a county.

(f) The moneys so deposited shall be distributed as follows:

(1) Once a month there shall be transferred into the Fish and Game Preservation Fund an amount equal to 0.42 percent of the funds deposited in the Assessment Fund during the preceding month, but in no event shall the amount be less than the assessment levied on fines or forfeitures for violation of state laws relating to the protection or propagation of fish and game. Such moneys are to be used for the education or training of department employees which fulfills a need consistent with the objectives of the Department of Fish and Game.

(2) Once a month there shall be transferred into the Indemnity Fund an amount equal to 24.58 percent of the funds deposited in the Assessment Fund during the preceding month. Such funds shall be available for appropriation by the Legislature in accordance with the provisions of subdivision (b) of Section 13967 of the Government Code.

(3) Once a month there shall be transferred into the Peace Officers' Training Fund an amount equal to 30.83 percent of the funds deposited in the Assessment Fund during the preceding month.

(4) Once a month there shall be transferred into the Driver Training Penalty Assessment Fund an amount equal to 34.03 percent of the funds deposited in the Assessment Fund during the preceding month.

(5) Once a month there shall be transferred into the Corrections Training Fund an amount equal to 10.14 percent of the funds deposited in the Assessment Fund during the preceding month. Money in the Corrections Training Fund is not continuously appropriated and shall be appropriated in the Budget Act.

(g) This section shall become operative on July 1, 1983, shall remain in effect only until January 1, 1986, and as of that date is repealed.

SEC. 2.5. Section 1464 is added to the Penal Code, to read:

1464. (a) Subject to the provisions of Section 1206.8, there shall be levied an assessment in an amount equal to four dollars ($4) for every ten dollars ($10) or fraction thereof, upon every fine, penalty, or forfeiture imposed and collected by the courts for criminal offenses, including all offenses involving a violation of a section of the Vehicle Code or any local ordinance adopted pursuant to the Vehicle Code, except offenses relating to parking or registration or offenses by pedestrians or bicyclists, or where an order is made to pay a sum to the general fund of the county pursuant to subparagraph (iii) of paragraph (3) of subdivision (a) of Section 258 of the Welfare and Institutions Code. Any bail schedule adopted pursuant to Section 1269b may include the necessary amount to pay the assessments established by this section and Section 1206.8 for all matters where

a personal appearance is not mandatory and the bail is posted primarily to guarantee payment of the fine.

(b) Where multiple offenses are involved, the assessment shall be based upon the total fine or bail for each case. When a fine is suspended, in whole or in part, the assessment shall be reduced in proportion to the suspension.

(c) When any deposited bail is made for an offense to which this section applies, and for which a court appearance is not mandatory, the person making such deposit shall also deposit a sufficient amount to include the assessment prescribed by this section for forfeited bail. If bail is returned, the assessment made thereon pursuant to this section, shall also be returned.

(d) In any case where a person convicted of any offense, to which this section applies, is in prison until the fine is satisfied, the judge may waive all or any part of the assessment, the payment of which would work a hardship on the person convicted or his immediate family.

(e) After a determination by the court of the amount due, the clerk of the court shall collect the same and transmit it to the county treasury. The portion thereof attributable to Section 1206.8 shall be deposited in the appropriate county fund and the balance shall then be transmitted to the State Treasury to be deposited in the Assessment Fund, which is hereby created. The transmission to the State Treasury shall be carried out in the same manner as fines collected for the state by a county.

(f) The moneys so deposited shall be distributed as follows:

(1) Once a month there shall be transferred into the Fish and Game Preservation Fund an amount equal to 0.42 percent of the funds deposited in the Assessment Fund during the preceding month, but in no event shall the amount be less than the assessment levied on fines or forfeitures for violation of state laws relating to the protection or propagation of fish and game. Such moneys are to be used for the education or training of department employees which fulfills a need consistent with the objectives of the Department of Fish and Game.

(2) Once a month there shall be transferred into the Indemnity Fund an amount equal to 24.58 percent of the funds deposited in the Assessment Fund during the preceding month. Such funds shall be available for appropriation by the Legislature in accordance with the provisions of subdivision (b) of Section 13967 of the Government Code.

(3) Once a month there shall be transferred into the Peace Officers' Training Fund an amount equal to 30.83 percent of the funds deposited in the Assessment Fund during the preceding month.

(4) Once a month there shall be transferred into the Driver Training Penalty Assessment Fund an amount equal to 44.17 percent of the funds deposited in the Assessment Fund during the preceding month.

(g) This section shall become operative on January 1, 1983, shall remain in effect only until July 1, 1983, and as of that date is repealed.

SEC. 3. Section 1464 of the Penal Code, as amended by Section 15 of Chapter 1171 of the Statutes of 1981, is repealed.

SEC. 3.5. Section 1464 is added to the Penal Code, to read:

1464. (a) Subject to the provisions of Section 1206.8, there shall be levied an assessment in an amount equal to four dollars ($4) for every ten dollars ($10) or fraction thereof, upon every fine, penalty, or forfeiture imposed and collected by the courts for criminal offenses, including all offenses involving a violation of a section of the Vehicle Code or any local ordinance adopted pursuant to the Vehicle Code, except offenses relating to parking or registration or offenses by pedestrians or bicyclists, or where an order is made to pay a sum to the general fund of the county pursuant to subparagraph (iii) of paragraph (3) of sudivision (a) of Section 258 of the Welfare and Institutions Code. Any bail schedule adopted pursuant to Section 1269b may include the necessary amount to pay the assessments established by this section and Section 1206.8 for all matters where a personal appearance is not mandatory and the bail is posted primarily to guarantee payment of the fine.

(b) Where multiple offenses are involved, the assessment shall be based upon the total fine or bail for each case. When a fine is suspended, in whole or in part, the assessment shall be reduced in proportion to the suspension.

(c) When any deposited bail is made for an offense to which this section applies, and for which a court appearance is not mandatory, the person making such deposit shall also deposit a sufficient amount to include the assessment prescribed by this section for forfeited bail. If bail is returned, the assessment made thereon pursuant to this section, shall also be returned.

(d) In any case where a person convicted of any offense, to which this section applies, is in prison until the fine is satisfied, the judge may waive all or any part of the assessment, the payment of which would work a hardship on the person convicted or his immediate family.

(e) After a determination by the court of the amount due, the clerk of the court shall collect the same and transmit it to the county treasury. The portion thereof attributable to Section 1206.8 shall be deposited in the appropriate county fund and the balance shall then be transmitted to the State Treasury to be deposited in the Assessment Fund, which is hereby created. The transmission to the State Treasury shall be carried out in the same manner as fines collected for the state by a county.

(f) The moneys so deposited shall be distributed as follows:

(1) Once a month there shall be transferred into the Fish and Game Preservation Fund an amount equal to 0.42 percent of the funds deposited in the Assessment Fund during the preceding month, but in no event shall the amount be less than the assessment levied on fines or forfeitures for violation of state laws relating to the

protection or propagation of fish and game. Such moneys are to be used for the education or training of department employees which fulfills a need consistent with the objectives of the Department of Fish and Game.

(2) Once a month there shall be transferred into the Indemnity Fund an amount equal to 24.58 percent of the funds deposited in the Assessment Fund during the preceding month. Such funds shall be available for appropriation by the Legislature in accordance with the provisions of subdivision (b) of Section 13967 of the Government Code.

(3) Once a month there shall be transferred into the Peace Officers' Training Fund an amount equal to 24.17 percent of the funds deposited in the Assessment Fund during the preceding month.

(4) Once a month there shall be transferred into the Driver Training Penalty Assessment Fund an amount equal to 40.69 percent of the funds deposited in the Assessment Fund during the preceding month.

(5) Once a month there shall be transferred into the Corrections Training Fund an amount equal to 10.14 percent of the funds deposited in the Assessment Fund during the preceding month. Money in the Corrections Training Fund is not continuously appropriated and shall be appropriated in the Budget Act.

(g) This section shall become operative on January 1, 1986, shall remain in effect only until July 1, 1987, and as of that date is repealed.

SEC. 4. Section 6025 of the Penal Code is amended to read:

6025. (a) The Board of Corrections shall be composed of 11 members, one of whom shall be the Secretary of the Youth and Adult Correctional Agency who shall be designated as the chairman, one of whom shall be the Director of Corrections, one of whom shall be the Director of the Youth Authority, and eight of whom shall be appointed by the Governor after consultation with, and with the advice of, the Secretary of the Youth and Adult Correctional Agency, and with the advice and consent of the Senate. The gubernatorial appointments shall include:

(1) A member of a statewide parole board of this state.

(2) A county sheriff.

(3) A county supervisor or county administrative officer.

(4) A chief probation officer.

(5) An employee of a state correctional facility who is involved in either custody or care and treatment.

(6) An administrator of a local community-based correctional program.

(7) Two public members.

(b) Of the members first appointed by the Governor, two shall be appointed for a term of two years, three for a term of three years, and three for a term of four years. The length of the original term to be served by each such member first appointed shall be determined by lot. Their successors shall serve for a term of three

years and until appointment and qualification of their successors, each term to commence on the expiration date of the term of the predecessor. The terms of the two persons last appointed as qualified persons, by the Governor with the advice and consent of the Senate, under the provisions of this section as it read prior to January 1, 1977, shall expire on that date.

(c) The board shall select a vice chairman from among its members. Six members of the board shall constitute a quorum.

(d) When the Board of Corrections is hearing charges against any member, the individual concerned shall not sit as a member of the board for the period of hearing of charges and the determination of recommendations to the Governor.

(e) If any appointed member is not in attendance for three consecutive meetings the board shall recommend to the Governor that the member be removed and the Governor shall make a new appointment, with the advice and consent of the Senate, for the remainder of the term.

SEC. 5. Section 6028.2 of the Penal Code is amended to read:

6028.2. The Secretary of the Youth and Adult Correctional Agency may furnish for the use of any such commission such facilities, supplies, and personnel as may be available therefor.

SEC. 6. It is the intent of the Legislature that the Board of Corrections, in order to comply with Sections 6035 and 6036 of the Penal Code, shall, for the period beginning January 1, 1983, and ending June 30, 1983, in accordance with Section 6042 of the Penal Code, allocate funds remaining in the Corrections Training Fund as of January 1, 1983, for local assistance in an amount not to exceed three million two hundred thousand dollars ($3,200,000).

CHAPTER 1438

An act to amend Section 65587 of, and to add Section 65589.5 to, the Government Code, and to add Section 21004 to the Public Resources Code, relating to land use.

[Approved by Governor September 27, 1982. Filed with Secretary of State September 27, 1982.]

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

SECTION 1. Section 65587 of the Government Code is amended to read:

65587. (a) Each city, county, or city and county shall bring its housing element, as required by subdivision (c) of Section 65302, into conformity with the requirements of this article on or before October 1, 1981. No extension of time for such purpose may be granted pursuant to Section 65302.6, notwithstanding its provisions to the contrary.

(b) Any action brought by any interested party to review the conformity with the provisions of this article of any housing element or portion thereof or revision thereto shall be brought pursuant to Section 1085 of the Code of Civil Procedure; the court's review of compliance with the provisions of this article shall extend to whether the housing element or portion thereof or revision thereto reasonably complies with the requirements of this article.

(c) If a court finds that an action of a city, county, or city and county, which is required to be consistent with its general plan, does not comply with its housing element, the city, county, or city and county shall bring its action into compliance within 60 days. However, the court shall retain jurisdiction throughout the period for compliance to enforce its decision. Upon the court's determination that the 60-day period for compliance would place an undue hardship on the city, county, or city and county, the court may extend the time period for compliance by an additional 60 days.

SEC. 2. Section 65589.5 is added to the Government Code, to read:

65589.5. When a proposed housing development project complies with the applicable general plan, zoning, and development policies in effect at the time that the housing development project's application is determined to be complete, but the local agency proposes to disapprove the project or to approve it upon the condition that the project be developed at a lower density, the local agency shall base its decision regarding the proposed housing development project upon written findings supported by substantial evidence on the record that both of the following conditions exist:

(a) The housing development project would have a specific, adverse impact upon the public health or safety unless the project is disapproved or approved upon the condition that the project be developed at a lower density.

(b) There is no feasible method to satisfactorily mitigate or avoid the adverse impact identified pursuant to subdivision (a), other than the disapproval of the housing development project or the approval of the project upon the condition that it be developed at a lower density.

SEC 3. Section 21004 is added to the Public Resources Code, to read:

21004. In mitigating or avoiding a significant effect of a project on the environment, a public agency may exercise only those express or implied powers provided by law other than this division. However, a public agency may use discretionary powers provided by such other law for the purpose of mitigating or avoiding a significant effect on the environment subject to the express or implied constraints or limitations that may be provided by law.

SEC. 4. The Legislature finds and declares as follows:

(a) The enactment of Section 21004 of the Public Resources Code by this act is intended to clarify the scope and meaning of various provisions of Division 13 (commencing with Section 21000) of the

Public Resources Code.

Such clarification is necessary because of contentions that the provisions of Division 13 (commencing with Section 21000) of the Public Resources Code, by themselves, confer on public agencies independent authority to levy fees, impose exactions, and take other actions in order to comply with the general requirement of that division that significant effects on the environment be mitigated or avoided whenever it is feasible to do so.

The provisions of Division 13 (commencing with Section 21000) of the Public Resources Code confer no such independent authority. Rather, the provisions of that division are intended to be used in conjunction with discretionary powers granted to a public agency by other law in order to achieve the objective of mitigating or avoiding significant effects on the environment when it is feasible to do so. Compliance with the requirements of that division identifies the manner in which significant effects of a project can be mitigated or avoided, and imposes an additional requirement that these mitigating or avoiding actions be taken whenever it is feasible to do so. In order to fulfill that latter requirement, a public agency is required to select from the various powers which have been conferred upon it by other law, those which it determines may be appropriately and legally exercised to avoid or mitigate the significant effects of the project as required by that division.

Thus, for example, if the California Constitution, a charter, a statute, or some other law generally confers upon a public agency the authority to levy a fee or to impose another type of exaction for public welfare purposes, that public agency may, to the extent expressly or impliedly permitted by such other law, choose to impose that fee or exaction for the pupose of mitigating or avoiding a significant effect on the environment which has been identified pursuant to Division 13 (commencing with Section 21000) of the Public Resources Code. Or, if a public agency is generally authorized to exercise the power of condemnation, it may, to the extent expressly or impliedly permitted by such other law, choose to do so in order to mitigate or avoid a significant effect on the environment which has been identified pursuant to that division.

The provisions of Section 21004 of the Public Resources Code do not modify the holdings expressed in Golden Gate Bridge etc. Dist. v. Muzzi (1978) 83 Cal. App. 3d 707; and San Diego Trust & Savings Bank v. Friends of Gill (1981) 121 Cal. App. 3d 203.

(b) There is currently in litigation the question of whether or not Division 13 (commencing with Section 21000) of the Public Resources Code, prior to its amendment by this act, does, or does not, confer on public agencies an authorization to impose fees and other exactions, which is wholly separate and independent from any authorization conferred on such agencies by other law. The Legislature, therefore, declares that, by adding Section 21004 to Division 13 (commencing with Section 21000) of the Public Resources Code, it makes no statement, either directly or by

indirection, as to whether that division, prior to its amendment by this act, did or did not confer on public agencies independent authority to impose fees or other exactions.

SEC. 5. Notwithstanding Section 6 of Article XIII B of the California Constitution and Section 2231 or 2234 of the Revenue and Taxation Code, no appropriation is made by this act for the purpose of making reimbursement pursuant to these sections. It is recognized, however, that a local agency or school district may pursue any remedies to obtain reimbursement available to it under Chapter 3 (commencing with Section 2201) of Part 4 of Division 1 of that code.

SEC. 6. Notwithstanding Section 2231.5 of the Revenue and Taxation Code, this act does not contain a repealer, as required by that section; therefore, the provisions of this act shall remain in effect unless and until they are amended or repealed by a later enacted act.

CHAPTER 1439

An act to add Chapter 2.5 (commencing with Section 53311) to Part 1 of Division 2 of Title 5 of the Government Code, relating to community facilities districts.

[Approved by Governor September 27, 1982. Filed with Secretary of State September 27, 1982.]

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

SECTION 1. Chapter 2.5 (commencing with Section 53311) is added to Part 1 of Division 2 of Title 5 of the Government Code, to read:

CHAPTER 2.5. THE MELLO-ROOS COMMUNITY FACILITIES ACT OF 1982

Article 1. General Provisions

53311. This chapter shall be known and may be cited as the "Mello-Roos Community Facilities Act of 1982."

53311.5. This chapter provides an alternative method of financing certain public capital facilities and services, especially in developing areas and areas undergoing rehabilitation. The provisions of this chapter shall not affect or limit any other provisions of law authorizing or providing for the furnishing of governmental facilities or services or the raising of revenue for these purposes. A local government may use the provision of this chapter instead of any other method of financing part or all of the cost of providing the authorized kinds of capital facilities and services.

53312. When any proceedings are commenced under this

chapter for the establishment of a community facilities district or for providing additional types of facilities and services within an established community facilities district, the provisions of this chapter shall prevail. A community facilities district is a legally constituted governmental entity established for the purpose of carrying on specific activities within definitely defined boundaries.

53313. A community facilities district may be established under this chapter to provide any one or more of the following types of additional facilities and services within an area:

(a) Police protection, including criminal justice facilities limited to jails, detention facilities, and juvenile halls.

(b) Fire protection and suppression, and provision of ambulance and paramedic facilities and services.

A community facilities district may only provide the specific facilities and levels of services authorized in this section to the extent that they are in addition to those provided in the territory of the district before the district was created, and may not supplant specific facilities of these kinds and levels of these services already available within that territory.

53313.8. To the extent that any capital facility is provided under this chapter, a duplicate levy, impact fee, or other exaction may not be required for the same purpose under Section 66477.

53314. The legislative body may from time to time transfer moneys to a community facilities district or to a zone within a community facilities district, for the benefit of the district or zone, from any funds available to the legislative body. Any moneys so transferred may be used for the payment of any currently payable expenses incurred by reason of the establishment of any facilities or provision of any authorized services within the district or zone prior to December 1 of the first fiscal year in which a special tax may be levied for the facilities or services within the district or zone. The rate of interest earned by such moneys shall be determined by the legislative body.

53314.3. In the first fiscal year in which a special tax or charge is levied for any facility or service in a community facilities district or a zone within a community facilities district, the legislative body shall include in the levy a sum sufficient to repay to the legislative body the amounts transferred to that area or zone pursuant to Section 53314. The amounts borrowed, with interest, shall be retransferred to the proper fund or funds from the first available receipts from the special levy in that area or zone.

Notwithstanding the above provisions, the legislative body may, by a resolution adopted no later than the time of the first levy, extend the repayment of the transferred funds over a period of time not to exceed three consecutive years, in which event the levy and each subsequent levy shall include a sum sufficient to repay the amount specified by the legislative body for the year of the levy.

53314.5. Pursuant to a resolution adopted by the legislative body, the legislative body may appropriate any of its available moneys to

a revolving fund to be used for the acquisition of real or personal property, engineering services, or the construction of structures or improvements needed in whole or in part to provide one or more of the services of a community facilities district. The revolving fund shall be reimbursed from tax revenues or other moneys available from the district, and no sums shall be disbursed from the fund until the legislative body has, by resolution, established the method by, and term not exceeding five years within, which the community facilities district is to reimburse the fund. The district shall reimburse the fund for any amount disbursed to the area within five years after such disbursement, together with interest at the current rate per annum received on similar types of investments by the legislative body as determined by the local agency's treasurer.

53314.8. At any time, either before or after the formation of the district, the legislative body may provide, by ordinance, that for a period specified in the ordinance, the local agency may contribute, from any source of revenue not otherwise prohibited by law, any specified amount, portion, or percentage of such revenues for the purposes set forth in such ordinance, limited to the following: the acquisition or construction of a facility, the acquisition of interest in real property, the provision of services and the payment of expenses incidental thereto. Such contribution shall not constitute an indebtedness or liability of the local agency.

53315. This chapter shall be liberally construed in order to effectuate its purposes. No error, irregularity, informality, and no neglect or omission of any officer, in any procedure taken under this chapter, which does not directly affect the jurisdiction of the legislative body to order the installation of the facility or the provision of service shall void or invalidate such proceeding or any levy for the costs of such facility or service.

53315.3. The failure of any person to receive a notice, resolution, order, or other matter shall not affect in any way whatsoever the validity of any proceedings taken under this chapter, or prevent the legislative body from proceeding with any hearing so noticed.

53316. This chapter applies to all cities, counties, or districts insofar as those entities have the power to install any of the facilities or provide any of the services authorized under this chapter. The officers of cities, counties, or districts who have similar powers and duties, as determined by the legislative body, as the municipal officers referred to in this chapter shall have the powers and duties given by this chapter to the municipal officials. Where no similar officer exists, the legislative body of the city, county, or district shall, by resolution, appoint a person or designate an officer to perform the duties under this chapter.

53317. Unless the context otherwise requires, the definitions contained in this article shall govern the construction of this chapter.

(a) "Clerk" means the clerk of the legislative body of a local agency.

(b) "Community facilities district" means the district of land in

which public facilities and authorized services are to be provided, and in which special taxes and charges may be levied pursuant to this chapter to pay for these facilities and services.

(c) "Debt" means any binding obligation to repay a sum of money, including obligations in the form of bonds, certificates of participation, long-term leases, loans from government agencies, or loans from banks, other financial institutions, private business, or individuals.

(d) "Landowner" or "owner of land" means: (1) any person shown as the owner ofland on the last equalized assessment roll; (2) if that person is no longer the owner, then any person entitled to be shown as the owner of land on the next assessment roll; (3) if land is subject to a recorded written agreement of sale, any person shown therein as purchaser; and (4) any public agency owning land.

(e) "Legislative body" means the legislative body or governing board of any local agency.

(f) "Local agency" means any city or county, whether general law or chartered, special district, or any other municipal corporation or district.

(g) "Services" means the performance by employees of functions, operations, and maintenance and repair activities in order to provide the public with police and fire protection.

Article 2. Proceedings to Create a Community Facilities District

53318. Proceedings for the establishment of a community facilities district may be instituted by the legislative body on its own initiative and shall be instituted by the legislative body when either of the following occurs:

(a) A written request therefor, signed by two members of the legislative body, describing the boundaries of the territory which is proposed for inclusion in the area and specifying the type or types of facilities and services to be provided within the area, is filed with the legislative body.

(b) A petition requesting the institution of such proceeding and signed by the requisite number of registered voters is filed with the clerk of the legislative body. The petition may consist of any number of separate instruments, each of which shall comply with all the requirements of the petition, except as to the number of signatures.

53319. A petition requesting the institution of proceedings for the establishment of a community facilities district shall:

(a) Request the legislative body to institute proceedings to establish a community facilities district pursuant to this chapter.

(b) Describe the boundaries of the territory which is proposed for inclusion in the district.

(c) State the type or types of facilities and services to be provided within the area.

(d) Be signed by not less than 10 percent of the registered voters residing within the territory proposed to be included within the

district. If the legislative body finds that the petition is signed by the requisite number of registered voters residing within the territory proposed to be included within the district, that finding shall be final and conclusive in the absence of fraud or prejudicial abuse of discretion. In any action or proceeding to review any quasi-judicial determination made by a legislative body, the sole inquiry shall be whether there was fraud or prejudicial abuse of discretion.

53320. Within 40 days after either a written request by two members of the legislative body or a petition requesting the institution of proceedings for the establishment of a community facilities district is filed with it, the legislative body shall adopt a resolution of intention to establish a community facilities district in the form specified in Section 53321.

53321. Proceedings for the establishment of a community facilities district shall be instituted by the adoption of a resolution of intention to establish the district which shall do all of the following:

(a) State that a community facilities district is proposed to be established under the terms of this chapter and describe the boundaries of the territory proposed for inclusion in the district.

(b) State the name proposed for the district in substantially the following form: "Community Facilities District No. _____."

(c) State the type or types of public facilities and services proposed to be provided within the district pursuant to this chapter.

(d) State that, except where funds are otherwise available, a special tax sufficient to pay for all such facilities and services will be annually levied within such areas. The resolution shall specify the rate and method of apportionment of the special tax in sufficient detail to allow each landowner or resident within the proposed district to estimate the annual amount that he or she will have to pay.

(e) Make a finding that the proposed facility is necessary to meet increased demands put upon the local agency as a result of new development or rehabilitation.

(f) Fix a time and place for a public hearing on the establishment of the district which shall be not less than 30 nor more than 60 days after the adoption of the resolution.

53322. The clerk of the legislative body shall publish a notice of the hearing pursuant to Section 6061 in a newspaper of general circulation published in the area of the proposed district. Publication shall be complete at least seven days prior to the date of the hearing.

The notice shall:

(a) Contain the text of the resolution.

(b) State the time and place of the hearing.

(c) State that at the hearing the testimony of all interested persons for or against the establishment of the district, the extent of the district or the furnishing of specified types of public facilities or services will be heard.

53323. At the hearing, protests against the establishment of the district, or the furnishing of specified types of public facilities or services within the district may be made orally or in writing by any

interested persons. Any protests pertaining to the regularity or sufficiency of the proceedings shall be in writing and shall clearly set forth the irregularities and defects to which objection is made. All written protests shall be filed with the clerk of the legislative body on or before the time fixed for the hearing. The legislative body may waive any irregularities in the form or content of any written protest and at the hearing may correct minor defects in the proceedings. Written protests may be withdrawn in writing at any time before the conclusion of the hearing.

53324. If 50 percent or more of the registered voters residing within the territory proposed to be included in the district, or the owners of one-half or more of the area of the land in the territory proposed to be included in the district, file written protests against the establishment of the district, the legislative body shall abandon the proposed establishment of the community facilities district.

If such majority protests of the registered voters or of the landowners are only against the furnishing of a specified type or types of facilities or services within the district, or against levying a specified special tax, those types of facilities or services or the specified special tax shall be eliminated from the resolution finally establishing the district.

53325. The hearing may be continued from time to time, but shall be completed within 30 days. At the conclusion of the hearing the legislative body may abandon the proposed establishment of the community facilities district or may, after passing upon all protests, determine to proceed with establishing the district.

53325.1. If the legislative body determines to proceed with establishing the district, it shall by resolution so declare and may modify its resolution of intention to establish the district as needed.

53325.3. The legislative body shall then submit the levy of any special tax to the qualified electors of the proposed community facilities district in the next General Election or in a special election to be held within 90 days following the close of the protest hearing, whichever date occurs first. If 12 or more registered voters reside within the territory of the proposed community facilities district at the time of the close of the protest hearing, and for at least the preceding 90 days, the vote shall be by the registered voters of the proposed district, with each voter having one vote. If fewer than 12 registered voters reside within the proposed community facilities district at the time of the close of the protest hearing and for at least the preceding 90 days, the vote shall be by the landowners of the proposed district, each landowner having one vote for each acre or portion thereof of land that he or she owns within the proposed community facilities district. Ballots for a special election for this purpose may be distributed to qualified electors by mail with return postage prepaid.

53325.4. Except as otherwise provided in this article, the provisions of the Elections Code relating to the qualifications of electors, the manner of voting, the duties of election officers, the

canvassing of returns, and all other particulars in respect to the management of elections insofar as they may be applicable shall govern all elections pursuant to this article.

53325.5. In establishing the boundaries of the district, the legislative body may alter the exterior boundaries of the district to include less territory than that described in the notice of the hearing but it may not include any territory not described in the notice of the hearing.

53325.6. Land devoted primarily to agricultural, timber or livestock uses and being used for the commercial production of agricultural, timber, or livestock products shall be included in a community facilities district only if such land is contiguous to other land which is included within the described exterior boundaries of the public services district, and only if the legislative body finds that the land will be benefited by the types of public facilities and services proposed to be provided within the district. The land may, however, be included in the community facilities district if the owner requests its inclusion.

53325.8. In designating the types of facilities and services to be provided in the community facilities district the legislative body may eliminate one or more of the types of facilities and services specified in the resolution of intention to establish the area but may not include any types of facilities or services not specified in the resolution of intention.

53326. If prior to the adoption of the resolution pursuant to Section 53325.1, the legislative body finds that the proceedings prior thereto were valid and in conformity with the requirements of this chapter, its determination shall be final and conclusive upon all persons in the absence of fraud or prejudicial abuse of discretion. In any action or proceeding to review any quasi-judicial determinaton made by a legislative body the sole inquiry shall be whether there was fraud or prejudicial abuse of discretion.

53327. At the time of the adoption of the resolution of intention to establish a community facilities district, the legislative body may direct each of its officers who is or will be responsible for providing one or more of the proposed types of public facilities or services within the district, if it is established, to study the proposed district, and, at or before the time of the hearing, file a report with the legislative body containing a brief description of these public facilities and services by type which will in his or her opinion be required to adequately meet the needs of the district and his or her estimate of the cost of providing these public facilities and services. All these reports shall be made a part of the record of the hearing on the resolution of intention to establish the district.

53328. After the canvass of returns of any election pursuant to Section 53325.3, the legislative body shall determine that the community facilities district is created with full legal effect, and the legislative body may levy any special tax as specified in the resolution adopted pursuant to Section 53325.1 within the territory of the

district if two-thirds of the votes cast upon the question of levying the tax are in favor.

53329. After the canvass of returns of any election pursuant to Section 53325.3, the legislative body shall take no further action on creating the community facilities district for one year from the date of the election if no proposal to levy a special tax within the district receives approval by two-thirds of the votes cast on the question of levying the tax. The legislative body shall take no further action with respect to levying any specified special tax within the proposed community facilities district for one year from the date of the election if the question of levying that specified special tax fails to receive approval by two-thirds of the votes cast upon the question.

Article 3. Extension of Authorized Facilities and Services and Changes in Special Taxes

53330. Upon the establishment of a community facilities district, only the types of public facilities and services specified in the resolution proposing establishing the district may be authorized or provided therein under the authority of this chapter, except as provided in this article.

53330.5. Upon approval of a special tax pursuant to Article 2 (commencing with Section 53318), the special tax may be levied only at the rate and may be apportioned only in the manner specified in the resolution proposing establishment of the district, except as provided in this article, and except that the legislative body may levy the special tax at a rate lower than that specified in the resolution. In addition, the special tax may be levied only so long as it is needed to pay the principal and interest on debt incurred in order to construct facilities under authority of this chapter, or so long as it is needed to pay for services authorized by this chapter.

53331. If the legislative body is of the opinion that public convenience and necessity require that any additional types of authorized public facilities or services be provided within an established community facilities district, or that the rate or method of apportionment of a special tax should be changed, or that a new special tax should be proposed, it may adopt a resolution of intention to provide such other types of public facilities and services within the district or to levy a new special tax or special taxes or to alter the rate or method of apportionment of the special tax. Such proceedings may be commenced at any time. Section 53325.6 shall apply to the other types of facilities proposed to be provided.

53332. If a petition signed by 25 percent or more of the registered voters residing in the district is filed with the legislative body requesting that proceedings be commenced for the furnishing of specified additional types of public facilities or services or that provision of specified public service be reduced or terminated or that new special taxes be levied, or that any existing special tax be reduced or terminated, the legislative body shall within 40 days

thereafter adopt a resolution of intention in the form specified in Section 53334 to make such changes within the community facilities district except that an existing special tax being used to pay off any debt incurred in order to build or acquire capital facilities under this chapter shall not be reduced or terminated if doing so would interfere with the timely retirement of that debt.

53333. The petition shall request the legislative body to commence proceedings to make specified changes within a named community facilities district. The petition may consist of any number of separate instruments each of which shall comply with all of the requirements of a petition except as to the number of signatures.

53334. The resolution of intention to provide additional types of public facilities and services within an established community facilities district or to levy a new special tax or special taxes or to alter the rate or method of apportionment of an existing special tax shall do all of the following:

(a) State the name of the area.

(b) Generally describe the territory included in the area.

(c) Specify the additional types of public facilities and services which it is proposed to provide within the district.

(d) Specify any new special taxes which would be levied to pay for new or existing facilities and services and any proposed alteration to the rate or method of apportionment of an existing special tax.

(e) Fix a time and place for a hearing upon the resolution which shall not be less than 30 nor more than 60 days after the adoption of the resolution of intention.

53335. The clerk of the legislative body shall give notice of the hearing in the same manner and within the same time as provided for the giving of notice of a hearing on a resolution of intention to establish a community facilities district.

The notice shall do all of the following:

(a) Contain the text of the resolution.

(b) State the time and place for hearing.

(c) State that at the hearing the testimony of all interested persons or taxpayers for or against the furnishing of existing or additional types of public facilities and services and the levying of additional special taxes or of changing existing special taxes will be heard.

53336. At the hearing, protests against the proposals described in the resolution may be made orally, or in writing by any interested persons. Any protests pertaining to the regularity or sufficiency of the proceedings shall be in writing and shall clearly set forth the irregularities or defects to which objection is made. All written protests shall be filed with the clerk of the legislative body on or before the time fixed for the hearing. The legislative body may waive any irregularities in the form or content of any written protest and at the hearing may correct minor defects in the proceedings. Written protests may be withdrawn in writing at any time before the conclusion of the hearing.

53337. If 50 percent or more of the registered voters residing within the district, or the owners of one-half or more of the area of the land in the territory included in the district, file written protests against the furnishing of any specified type or types of public facilities or services within the district, those types of facilities or services shall be eliminated from the resolution ordering changes in the types of public facilities or services to be provided within the district.

If 50 percent or more of the registered voters residing within the district, or owners of one-half or more of the area of the land in the territory included in the district, file written protests against the levying of any additional special taxes within the district or against a proposed alteration to an existing special tax within the district, those changes shall be eliminated from the resolution ordering the additional taxes.

53338. The hearing may be continued from time to time, but shall be completed within 30 days. At the conclusion of the hearing the legislative body may abandon the proceedings or may, after passing upon all protests, submit the question of levying a new special tax or of changing the rate or method of apportionment of an existing special tax to the qualified electors of the district as specified in Article 2 (commencing with Section 53318).

Article 4. Procedure for Levying

53340. After a community facilities district has been created and authorized to levy specified special taxes pursuant to Article 2 (commencing with Section 53318) and Article 3 (commencing with Section 53330), the legislative body may, by ordinance, levy the special taxes at the rate and apportion them in the manner specified in the resolution adopted pursuant to Article 2 (commencing with Section 53318) or Article 3 (commencing with Section 53330), except that the legislative body may levy the special tax at a lower rate. Properties or entities of the state, federal, or other local governments shall be exempt from any such tax. The proceeds of any special tax may only be used to pay, in whole or part, the cost of providing public facilities and services pursuant to this chapter. The special tax may be collected in the same manner as ordinary ad valorem property taxes are collected and may be subject to the same penalties and the same procedure and sale in case of delinquency as provided for the taxes, or another procedure may be adopted if the legislative body prefers. The tax collector may deduct the reasonable administrative costs incurred in collecting the special tax.

Article 5. Bonds

53345. Whenever the legislative body deems it necessary for a community facilities district to incur a bonded indebtedness, it shall, by resolution, set forth all of the following:

(a) A declaration of the necessity for the indebtedness.

(b) The purpose for which the proposed debt is to be incurred.

(c) The amount of the proposed debt.

(d) The time and place for a hearing by the legislative body on the proposed debt issue.

53346. The clerk of the legislative body shall publish a notice of the hearing in a newspaper of general circulation circulated within the district.

53347. The copy of the resolution published shall be accompanied by a notice subscribed by the clerk that:

(a) The hearing referred to in the resolution will be at the time and place specified in the resolution.

(b) At that time and place any person interested, including all persons owning property in the area, will be heard upon the proposed debt issue.

53348. At the time and place fixed for the hearing on the resolution declaring the necessity for incurring the bonded indebtedness or at any time and place to which the hearing is adjourned, the legislative body shall proceed with the hearing.

53349. At the hearing any person interested, including persons owning property within the area, may appear and present any matters material to the questions set forth in the resolution declaring the necessity for incurring the bonded indebtedness.

53350. For purposes of financing specified public facilities, the legislative body may, by resolution, designate a portion of the district as an improvement area. The area shall be known as "Improvement Area No. _____" of "Community Facilities District _____." After the formation of such an improvement area, all proceedings for purposes of a bond election and for the purpose of levying special taxes for payment of such bonds shall apply only to the improvement area for those specified facilities.

53351. After the legislative body has made its determination pursuant to Section 53350, if it deems it necessary to incur the bonded indebtedness, it shall by resolution state all of the following:

(a) That it deems it necessary to incur the bonded indebtedness.

(b) The purpose for which the bonded indebtedness will be incurred.

(c) Either of the following in accordance with its previous determination:

(1) That the whole of the district will pay for the bonded indebtedness.

(2) That a portion of the district will pay for the bonded indebtedness, which portion shall be described in the resolution of the legislative body adopted pursuant to Section 53350.

(d) The amount of debt to be incurred.

(e) The maximum term the bonds to be issued shall run before maturity, which term shall not exceed 40 years.

(f) The maximum annual rate of interest to be paid, payable annually or semiannually, or in part annually and in part

semiannually.

(g) That the proposition will be submitted to the voters.

(h) The date of the special community facilities district election (which may be consolidated with a general or special district election including an election to levy a special tax) at which time such proposition shall be submitted to the voters; the hours between which the polls shall be open; the boundaries of voting precincts within the district or portion thereof benefited by incurring the bonded indebtedness; the location of polling places; and the names of the officers selected to conduct such election in each precinct, who shall consist of one judge, one inspector, and two clerks.

53352. The resolution provided for in Section 53351 shall constitute the notice of such special bond election and such resolution shall be published in a newspaper of general circulation within the area.

53353. Except as otherwise provided in this article, the provisions of the Elections Code relating to the qualifications of electors, the manner of voting, the duties of election officers, the canvassing of returns, and all other particulars in respect to the management of elections insofar as they may be applicable shall govern all elections pursuant to this article except that voting shall be conducted in the manner specified in Section 53325.3.

53353.5. Propositions relating to the levy of a special tax and the incurring of bonded debt under this chapter may be combined into one ballot proposition whenever convenient, at the direction of the legislative body.

53354. If the area designated in the resolution adopted pursuant to Section 53351 does not include the entire community facilities district, a separate ballot shall be prepared for the vote upon the proposition to authorize bonds and to levy a special tax for payment of such bonds and only the voters entitled thereto shall be given such ballots.

53355. A two-thirds vote shall be required for the issuance of bonds under authority of this chapter.

53356. If more than two-thirds of the votes cast at the election are in favor of incurring the indebtedness, the legislative body may, by resolution, at the time or times it deems proper, provide for any of the following:

(a) The form of the bonds.

(b) The execution of the bonds.

(c) The issuance of any part of the bonds.

53357. The bonds shall be signed by the chairperson of the legislative body and countersigned by the clerk of the legislative body or his or her deputy and the coupons shall be signed by the clerk of the legislative body or his or her deputy. All signatures except that of the clerk on the bonds may be printed, lithographed, or engraved. If any officer whose signature appears on the bonds or coupons ceases to be such officer before the delivery of the bonds, his or her signature is as effective as if he or she had remained in

office. All bonds shall be payable at the office of the treasurer of the local agency.

53358. The legislative body may specify that payment of principal and interest on any bonded indebtedness incurred pursuant to this article shall have first claim on special tax revenue collected within a community facilities district or an improvement area therein as appropriate. In no event, shall a special tax authorized pursuant to this chapter be reduced or eliminated if doing so would interfere with repayment of any debt incurred to finance construction of capital facilities under this chapter.

53359. An action to determine the validity of bonds may be brought pursuant to Chapter 9 (commencing with Section 860) of Title 10 of Part 2 of the Code of Civil Procedure.

53359.5. The legislative body shall, no later than 10 days prior to the sale of any debt pursuant to this article, give written notice of the proposed sale to the California Debt Advisory Commission by mail, postage prepaid, as required by Chapter 12 (commencing with Section 8855) of Division 1 of Title 2.

53360. The community facilities district may sell the bonds so issued at the times or in the manner the legislative body deems to be in the public interest, provided, that all bonds shall be sold on sealed proposals to the highest bidder, after advertising for bids by publication of notice of sale, not less than 10 days prior to the date of sale in a newspaper of general circulation in the area. If no bids are received or if the legislative body determines that the bids received are not satisfactory as to price or responsibility of the bidders, the legislative body may reject all bids received, if any, and either readvertise or sell the bonds at private sale.

53361. Any bonds issued by a district organized under the provisions of this chapter are hereby given the same force, value, and use as bonds issued by any municipality and shall be exempt from all taxation within the state.

53361.1. All bonds issued by any district payable from taxes or charges are legal investments for all trust funds, for the trust funds of all insurance companies, the state school funds, and any funds, other than funds of savings banks, which may be invested in bonds of cities, counties, cities and counties, school districts, or municipalities in the state.

53361.4. Whenever the legislative body declares by resolution that it deems it desirable that any bonds issued or to be issued by the community facilities district or an improvement area therein should be certified by the Treasurer as provided in this section, or whenever the legislative body of a special district is required to seek certification of its bonds by the Treasurer pursuant to the District Securities Investigation Law or other provisions of law the legislative body shall file a certified copy of the resolution with the Treasurer and the bonds described in the resolution shall then be subject to investigation and certification by the Treasurer. If in the opinion of the Treasurer the bonds are adequately secured and the revenues

and other funds applicable to the payment of the bonds are, or upon the acquisition, construction, or improvement of the facility for which such bonds were or are to be issued, will be sufficient to pay the principal of and interest on such bonds, the Treasurer shall certify that such bonds are legal investments for all trust funds, for the funds of all insurance companies, the state school funds, and any funds, other than funds of savings banks, which may be invested in bonds of cities, counties, cities and counties, school districts, or municipalities in the state.

53362. The legislative body may, by resolution, do either of the following:

(a) Submit to voters a measure to issue new bonds to refund any or all of the district bonds outstanding.

(b) Submit to the voters of any improvement area a measure to issue new bonds to refund any improvement area bonds outstanding.

The measure may be voted on at any district election or an election may be called for the purpose.

53363. The procedure upon the election shall be in accordance, so far as applicable, with the procedure upon an original issue of bonds, except that no hearing need be held.

53363.5. The refunding bonds may, if the holders of the bonds of an original issue and the legislative body so agree, be exchanged for original bonds. The face value of refunding bonds exchanged for original bonds shall not exceed the face value of the original bonds.

53364. The legislative body may use revenue to pay principal and interest of the refunding bonds in the same manner as prescribed for payment of bonds of an original issue.

53364.5. Any bonds issued by the district may be made callable by resolution of the legislative body adopted at or prior to the time of issuing the bonds. When bonds are made callable a statement to that effect shall be set forth on the face of the bond. Callable bonds may be redeemed on any interest payment date prior to their fixed maturity in such amounts and manner and at such prices as the legislative body may prescribe in the resolution provided for in Section 53351.

53365. Notice designating the bonds called for redemption shall be published in a newspaper of general circulation circulated in the area. The first publication of the redemption notice shall not be less than 30 nor more than 90 days prior to the date fixed for redemption.

53365.5. If on the date fixed for redemption, the area has provided funds available for payment of the principal and interest of the bonds called, interest on the bonds shall cease.

SEC. 2. Notwithstanding Section 6 of Article XIII B of the California Constitution and Section 2231 or 2234 of the Revenue and Taxation Code, no appropriation is made by this act for the purpose of making reimbursement pursuant to these sections. It is recognized, however, that a local agency or school district may pursue any remedies to obtain reimbursement available to it under Chapter 3 (commencing with Section 2201) of Part 4 of Division 1

of that code.

SEC. 3. Notwithstanding Section 2231.5 of the Revenue and Taxation Code, this act does not contain a repealer, as required by that section; therefore, the provisions of this act shall remain in effect unless and until they are amended or repealed by a later enacted act.

CHAPTER 1440

An act to amend Section 65852.1 of, and to add Section 65852.2 to, the Government Code, and to amend Section 21080 of the Public Resources Code, relating to housing.

[Approved by Governor September 27, 1982. Filed with Secretary of State September 27, 1982.]

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

SECTION 1. (a) The Legislature finds and declares that there is an tremendous unmet need for new housing to shelter California's population. The unmet housing needs will be further aggravated by the severe cutbacks in federal housing programs.

(b) The Legislature finds and declares that California's existing housing resources are vastly underutilized due in large part to the changes in social patterns. The improved utilization of this state's existing housing resources offers an innovative and cost-effective solution to California's housing crisis.

(c) The Legislature finds and declares that the state has a role in increasing the utilization of California's housing resources and in reducing the barriers to the provision of affordable housing.

(d) The Legislature finds and declares that there are many benefits associated with the creation of second-family residential units on existing single-family lots, which include:

(1) Providing a cost-effective means of serving development through the use of existing infrastructures, as contrasted to requiring the construction of new costly infrastructures to serve development in undeveloped areas.

(2) Providing relatively affordable housing for low- and moderate-income households without public subsidy.

(3) Providing a means for purchasers of new or existing homes, or both, to meet payments on high interest loans.

(4) Providing security for homeowners who fear both criminal intrusion and personal accidents while alone.

SEC. 2. Section 65852.2 is added to the Government Code, to read:

65852.2. (a) Any city, including a chartered city, county, or city and county, may by ordinance provide for the creation of second units in single-family and multifamily residential zones consistent with the following provisions:

(1) Areas may be designated in the jurisdiction where second units are permitted.

(2) The designation of areas may be based on criteria, which may include, but are not limited to, the adequacy of water and sewer services and the impact of second units on traffic flow.

(3) Standards may be imposed on second units which include, but are not limited to, parking, height, setback, lot coverage, architectural review, and maximum size of the unit.

(4) A city including a chartered city, county or city and county may, in its discretion, find that second units provided for do not exceed the allowable density for the lot upon which it is located, and find that second units are a residential use which is consistent with the existing general plan and zoning designation for the lot.

(5) The second units created shall not be considered in the application of any local ordinance, policy, or program to limit residential growth.

(6) A city, including a chartered city, county, or city and county may establish a process for the issuance of a conditional use permit for second units.

(b) When a city, including a chartered city, county, or city and county, which has not adopted an ordinance governing second units in accordance with subdivision (a) or (c), receives its first application on or after July 1, 1983, for a conditional use permit pursuant to this subdivision, the jurisdiction shall accept the application and approve or disapprove it pursuant to this subdivision unless it adopts an ordinance in accordance with subdivision (a) or (c) within 120 days after receiving the application. Notwithstanding the provisions of Section 65901, each city, including a charter city, county, or city and county shall grant a special use or a conditional use permit for the creation of a second residential unit if it complies with the following:

(1) The unit is not intended for sale and may be rented.

(2) The lot is zoned for single family or multifamily use.

(3) The lot contains an existing single-family detached unit.

(4) The second unit is attached to the existing residence and is located within the living area of the existing dwelling.

(5) Whenever an increase in floor area is involved, it shall not exceed 10 percent of the existing living area.

(6) Any construction shall conform to height, setback, lot coverage, architectural review, site plan review, fees, charges, and other zoning requirements generally applicable to residential construction in the zone in which the property is located.

(7) Local building code requirements which apply to additions to existing single-family dwellings, as appropriate.

(8) Approval by the local health officer where a private sewage disposal system is being used, if required.

As used in this subdivision, "living area" means the interior inhabitable area of a dwelling unit including basements and attics and shall not include a garage or any accessory structure.

No other local ordinance, policy, or regulation shall be the basis for the denial of a building permit or a use permit under this subdivision.

This subdivision establishes the maximum standards that cities, including charter cities, counties, and cities and counties shall use to evaluate proposed second residential units on lots zoned for residential use which contain an existing single-family detached unit. No additional standards, other than those provided in this section, shall be utilized or imposed, unless there is a requirement that an applicant for a permit issued pursuant to this subdivision shall be an owner-occupant.

This section shall not be construed to limit the authority of cities, counties, and cities and counties which adopt less restrictive requirements for the creation of second residential units.

No changes in zoning ordinances or other ordinances or any changes in the general plan shall be required to implement the provisions of this subdivision. Any city, county, or city and county may amend its zoning ordinance or general plan to incorporate the policies, procedures, or other provisions applicable to the creation of second residential units if these provisions are consistent with the limitations of this subdivision.

A second residential unit which conforms to the requirements of this subdivision shall not be considered to exceed the allowable density for the lot upon which it is located, and shall be deemed to be a residential use which is consistent with the existing general plan and zoning designations for the lot. The second units shall not be considered in the application of any local ordinance, policy, or program to limit residential growth.

(c) No city, including a charter city, county, or city and county shall adopt an ordinance which totally precludes second units within single-family and multifamily zoned areas unless the ordinance contains findings acknowledging that such action may limit housing opportunities of the region and further contains findings that specific adverse impacts on the public health, safety, and welfare that would result from allowing second units within single-family and multifamily zoned areas justify adopting such an ordinance.

(d) As used in the section, a "second unit" is either a detached or attached dwelling unit which provides complete, independent living facilities for one or more persons. It shall include permanent provisions for living, sleeping, eating, cooking, and sanitation on the same parcel or parcels as the primary unit is situated.

(e) This section shall become operative on July 1, 1983.

(f) Jurisdictions which adopt ordinances pursuant to subdivision (a) or (c) shall submit a copy of such ordinances to the Department of Housing and Community Development within 60 days. The department shall submit a report to the Legislature, which shall transmit the report to the appropriate committees of the Legislature by January 1, 1984. The report shall evaluate the implementation of this section by local governments and suggest any appropriate legislative changes.

SEC. 4. Section 21080 of the Public Resources Code is amended to read:

21080. (a) Except as otherwise provided in this division, this division shall apply to discretionary projects proposed to be carried out or approved by public agencies, including, but not limited to, the enactment and amendment of zoning ordinances, the issuance of zoning variances, the issuance of conditional use permits, and the approval of tentative subdivision maps (except where the project is exempt from the preparation of an environmental impact report pursuant to Section 21166).

(b) This division shall not apply to the following:

(1) Ministerial projects proposed to be carried out or approved by public agencies.

(2) Emergency repairs to public service facilities necessary to maintain service.

(3) Projects undertaken, carried out, or approved by a public agency to maintain, repair, restore, demolish, or replace property or facilities damaged or destroyed as a result of a disaster in a disaster-stricken area in which a state of emergency has been proclaimed by the Governor pursuant to Chapter 7 (commencing with Section 8550) of Division 1 of Title 2 of the Government Code.

(4) Specific actions necessary to prevent or mitigate an emergency.

(5) Projects which a public agency rejects or disapproves.

(6) Actions undertaken by a public agency relating to any thermal powerplant site or facility, including the expenditure, obligation, or encumbrance of funds by a public agency for planning, engineering, or design purposes, or for the conditional sale or purchase of equipment, fuel, water (except groundwater), steam, or power for a thermal powerplant, if the powerplant site and related facility will be the subject of an environmental impact report or negative declaration or other document, or documents, prepared pursuant to a regulatory program certified pursuant to Section 21080.5, which will be prepared by the State Energy Resources Conservation and Development Commission, by the Public Utilities Commission, or by the city or county in which the powerplant and related facility would be located; provided that the environmental impact report, negative declaration or other document, or documents, shall include the environmental impact, if any, of the action described in this paragraph.

(7) Activities or approvals necessary to the bidding for, hosting or staging of, and funding or carrying out of, an Olympic games under the authority of the International Olympic Committee, except for the construction of facilities necessary for the Olympic games.

(8) The establishment, modification, structuring, restructuring, or approval of rates, tolls, fares or other charges by public agencies which the public agency finds are for the purpose of (1) meeting operating expenses, including employee wage rates and fringe benefits, (2) purchasing or leasing supplies, equipment or materials,

(3) meeting financial reserve needs and requirements, (4) obtaining funds for capital projects, necessary to maintain service within existing service areas, or (5) obtaining funds necessary to maintain those intracity transfers as are authorized by city charter. The public agency shall incorporate written findings in the record of any proceeding in which an exemption under this paragraph is claimed setting forth with specificity the basis for the claim of exemption.

(9) Actions taken prior to January 1, 1987, by a public agency (1) to implement the transition from the property taxation system in effect prior to June 1, 1978, to the system provided for by Article XIII A of the California Constitution or (2) to respond to a reduction in federal funds. Those actions shall be limited to projects defined in subdivision (a) or (b) of Section 21065 which initiate or increase fees, rates, or charges charged for any existing public service, program, or activity; reduce or eliminate the availability of an existing public service, program, or activity; close publicly owned or operated facilities; or reduce or eliminate the availability of an existing publicly owned transit service, program, or activity.

(10) All classes of projects designated pursuant to Section 21084.

(11) A project for the institution or increase of passenger or commuter service on rail lines already in use, including the modernization of existing stations and parking facilities.

(12) A project for the institution or increase of passenger or commuter service on high-occupancy vehicle lanes already in use, including the modernization of existing stations and parking facilities.

(13) Facility extensions not to exceed four miles in length which are required for transfer of passengers from or to exclusive public mass transit guideway or busway public transit services.

(14) A project for the development of a regional transportation improvement program or the state transportation improvement program.

(15) Any project or portion thereof located in another state which will be subject to environmental impact review pursuant to the National Environmental Policy Act of 1969 or similar state laws of that state. Any emissions or discharges that would have a significant effect on the environment in the State of California are subject to this division.

(16) Projects undertaken by a local agency to implement a rule or regulation imposed by a state agency, board, or commission under a certified regulatory program pursuant to Section 21080.5. Any site-specific effect of the project which was not analyzed as a significant effect in the plan or other written documentation required by Section 21080.5 is subject to this division.

(17) The creation of a second residential unit pursuant to Section 65852.2 of the Government Code.

(c) If a lead agency determines that a proposed project, not otherwise exempt from the provisions of this division, does not have a significant effect on the environment, the lead agency shall adopt

a negative declaration to that effect.

SEC. 5. No appropriation is made and no reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution or Section 2231 or 2234 of the Revenue and Taxation Code because the local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the program or level of service mandated by this act.

CHAPTER 1441

An act to amend Section 51350 of the Health and Safety Code, relating to housing, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 27, 1982. Filed with Secretary of State September 27, 1982.]

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

SECTION 1. Section 51350 of the Health and Safety Code is amended to read:

51350. (a) The agency may from time to time, after action of the Housing Bond Credit Committee as provided in Section 51360, issue its bonds in such principal amount as the agency shall determine to be necessary to provide sufficient funds for financing housing developments and other residential structures and for the payment of interest on bonds of the agency, establishment of reserves to secure such bonds, and other expenditures of the agency incident to, and necessary or convenient to, issuance of such bonds.

(b) Sale of the bonds of the agency shall be coordinated by the State Treasurer. To obtain a date for the sale of bonds, the agency shall inform the State Treasurer of the amount of the proposed issue. Upon such notification, the State Treasurer shall provide three 10-day periods, within the 90 days next following, when the bonds can be sold. The agency may choose any date during the suggested periods or any other date to which the agency and the State Treasurer have mutually agreed. The State Treasurer shall sell the bonds on the date chosen according to terms approved by the agency.

The Housing Bond Credit Committee shall exercise its powers with due regard for the right of the holders of bonds of the agency at any time outstanding, and nothing in, or done pursuant to, this section shall in any way limit, restrict, or alter the obligation or powers of the agency or any member, officer, or representative of the agency or the State Treasurer to carry out and perform in every detail each and every convenant, agreement, or contract at any time made or entered into on behalf of the agency with respect to its bonds or its benefits, or the security of the holders thereof.

(c) Except as provided in subdivisions (d) and (e), the aggregate principal amount of bonds which may be outstanding at any time pursuant to this part shall not exceed seven hundred fifty million dollars ($750,000,000), exclusive of the principal indebtedness of bonds issued to refund or renew previously issued bonds of the agency, to the extent of the outstanding principal indebtedness of the previously issued bonds and any redemption premium thereon and any interest accrued or to accrue to the date of redemption of such bonds, during the period in which both the previously issued bonds and the refunding or renewal bonds are outstanding.

(d) Effective January 1, 1980, the aggregate principal amount of bonds which may be outstanding at any time pursuant to this part shall be increased by seven hundred fifty million dollars ($750,000,000), exclusive of (1) bonds previously authorized pursuant to subdivision (c), and (2) the principal indebtedness of bonds issued to refund or renew bonds of the agency previously issued under the authority of this subdivision, but only to the extent of the outstanding principal indebtedness of the previously issued bonds and any redemption premium thereon and any interest accrued or to accrue to the date of redemption of such bonds, during the period in which both the previously issued bonds and such refunding or renewal bonds are outstanding.

(e) Effective January 1, 1983, the aggregate principal amount of bonds which may be outstanding at any time pursuant to this part shall be additionally increased by three hundred fifty million dollars ($350,000,000) exclusive of (1) bonds previously authorized pursuant to subdivision (c) or (d), and (2) the principal indebtedness of bonds issued to refund or renew bonds of the agency previously issued under the authority of this subdivision, but only to the extent of the outstanding principal indebtedness of the previously issued bonds and any redemption premium thereon and any interest accrued or to accrue to the date of the redemption of such bonds, during the period in which both the previously issued bonds and such refunding or renewal bonds are outstanding.

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

The additional bond authorization contained in this act is necessary to help alleviate the critical shortage of housing affordable to Californians of low and moderate income and, thus, it is essential that this act take effect immediately.

CHAPTER 1442

An act to amend Sections 54220, 54221, 54222, 54223, and 54227 of, to amend the heading of Article 8 (commencing with Section 54220) of Chapter 5 of Part 1 of Division 2 of Title 5 of, to repeal and add Sections 54224 and 54226 of, the Government Code, relating to surplus government land.

[Approved by Governor September 27, 1982. Filed with Secretary of State September 27, 1982.]

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

SECTION 1. The heading of Article 8 (commencing with Section 54220) of Chapter 5 of Part 1 of Division 2 of Title 5 of the Government Code is amended to read:

Article 8. Surplus Land

SEC. 1.5. Section 54220 of the Government Code is amended to read:

54220. The Legislature reaffirms its declaration that housing is of vital statewide importance to the health, safety, and welfare of the residents of this state and that provision of a decent home and a suitable living environment for every Californian is a priority of the highest order. The Legislature further declares that there is a shortage of sites available for housing for persons and families of low and moderate income and that surplus government land, prior to disposition, should be made available for that purpose.

The Legislature reaffirms its belief that there is an identifiable deficiency in the amount of land available for recreational purposes and that surplus land, prior to disposition, should be made available for park and recreation purposes or for open-space purposes. This article shall not apply to surplus residential property as defined in Section 54236.

SEC. 2. Section 54221 of the Government Code is amended to read:

54221. (a) As used in this article, the term "local agency" means every city, whether organized under general law or by charter, county, city and county, and district, including school districts of any kind or class, empowered to acquire and hold real property.

(b) As used in this article, the term "surplus land" means land owned by any agency of the state, or any local agency, that is determined to be no longer necessary for such agency's use, except property being held by the agency for the purpose of exchange.

(c) As used in this article, the term "open-space purposes" means the use of land for public recreation, enjoyment of scenic beauty, or conservation or use of natural resources.

(d) As used in this article, the term "persons and families of low

or moderate income" means the same as provided under Section 50093 of the Health and Safety Code.

SEC. 3. Section 54222 of the Government Code is amended to read:

54222. Any agency of the state and any local agency disposing of surplus land shall, prior to disposing of that property, send a written offer to sell or lease the property as follows:

(a) A written offer to sell or lease for the purpose of developing low- and moderate-income housing shall be sent to any local agencies including, but not limited to, housing authorities or redevelopment agencies within whose jurisdiction the surplus land is located.

(b) A written offer to sell or lease for park and recreational purposes or open-space purposes shall be sent:

(1) To any park or recreation department of any city within which the land may be situated.

(2) To any park or recreation department of the county within which the land is situated.

(3) To any regional park authority having jurisdiction within the area in which the land is situated.

(4) To the State Resources Agency or any agency which may succeed to its powers.

(c) The entity desiring to purchase or lease the surplus land for low- and moderate-income housing purposes or for park or recreation purposes or for open-space purposes, shall notify in writing the disposing agency of its intent to purchase or lease the land within 60 days after receipt of the agency's notification of intent to sell the land.

SEC. 4. Section 54223 of the Government Code is amended to read:

54223. After the disposing agency has received notice from the entity desiring to purchase or lease the land, the disposing agency and the entity shall enter into good faith negotiations to determine a mutually satisfactory sales price or lease terms. If the price or terms cannot be agreed upon after a good faith negotiation period of not less than 60 days, the land may be disposed of without further regard to this article.

SEC. 5. Section 54224 of the Government Code is repealed.

SEC. 6. Section 54224 is added to the Government Code, to read:

54224. Nothing in this article shall preclude a local agency, housing authority, or redevelopment agency which purchases land from a disposing agency pursuant to this article from reconveying the land to a nonprofit or for-profit housing developer for development of low- and moderate-income housing as authorized under other provisions of law.

SEC. 7. Section 54226 of the Government Code is repealed.

SEC. 8. Section 54226 is added to the Government Code, to read:

54226. Nothing in this article shall be interpreted to limit the power of any agency of the state or any local agency to sell or lease surplus land at fair market value or at less than fair market value, and

nothing in this article shall be interpreted to empower any agency of the state or any local agency to sell or lease surplus land at less than fair market value. No provision of this article shall be applied when it conflicts with any other provision of statutory law.

SEC. 9. Section 54227 of the Government Code is amended to read:

54227. In the event that the state or any local agency disposing of surplus land receives offers for the purchase or lease of such land from more than one of the entities to which notice and an opportunity to purchase or lease shall be given pursuant to this article, the state or local agency shall give first priority to the entity which agrees to use the site for housing for persons and families of low or moderate income, except that first priority shall be given to an entity which agrees to use the site for park or recreational purposes if the land being offered is already being used and will continue to be used for park or recreational purposes, or if the land is designated for park and recreational use in the local general plan and will be developed for that purpose.

SEC. 11. Notwithstanding Section 6 of Article XIII B of the California Constitution and Section 2231 or 2234 of the Revenue and Taxation Code, no appropriation is made by this act for the purpose of making reimbursement pursuant to these sections. It is recognized, however, that a local agency or school district may pursue any remedies to obtain reimbursement available to it under Chapter 3 (commencing with Section 2201) of Part 4 of Division 1 of that code.

SEC. 12. Notwithstanding Section 2231.5 of the Revenue and Taxation Code, this act does not contain a repealer, as required by that section; therefore, the provisions of this act shall remain in effect unless and until they are amended or repealed by a later enacted act.

CHAPTER 1443

An act to amend Sections 6500, 6501, 6502, and 6571 of, and to add Sections 6508.2 and 6556 to, the Streets and Highways Code, relating to the Improvement Act of 1911, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 27, 1982. Filed with Secretary of State September 27, 1982.]

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

SECTION 1. Section 6500 of the Streets and Highways Code is amended to read:

6500. (a) Whenever payment upon either the principal or the interest of any bond is not made to the bondholder when the coupon therefor is due, the holder of the bond, after sending the notice

required by subdivision (b), may demand, in writing, that the treasurer proceed to advertise and sell the lot or parcel of land described in the bond as being that upon which the assessment represented by the bond was levied. If the holder of the bond has complied with subdivision (b) and deposits the required amounts, the treasurer shall proceed to advertise and sell the lot or parcel of land as provided in this chapter.

The treasurer may require the holder of the bond to deposit with him an amount of money estimated by the treasurer to be sufficient to reimburse the city for costs incurred in obtaining an abstract of title or title search of the real property to be sold, if the treasurer deems it necessary to determine ownership of the property. Amounts deposited which remain after these expenses have been paid shall be returned to the depositor or his representative.

(b) At least 30 days prior to demanding a sale by the treasurer for nonpayment of either principal or interest upon any delinquent bond on owner-occupied residential property, a bondholder shall send a notice by first-class mail, postage prepaid, of the delinquent amount along with the following notice to the owner of the property. The notice shall be substantially in the following form and be printed in red ink in at least 14-point boldface type:

IMPORTANT NOTICE

Dear Property Owner:

Your property located at _____
(address)

may be sold by the city (or county) because you have not paid what you owe for _____ improvements made in your area.

To be sure to save your property, pay to the city (or county) treasurer the delinquent amount which is overdue or call _____ by _____.
(telephone number of city or county treasurer's improvement bond unit) (date)

SEC. 2. Section 6501 of the Streets and Highways Code is amended to read:

6501. The treasurer shall mail a notice of sale to the owner of any property to be sold for nonpayment of either principal or interest upon any delinquent bond. The notice shall be sent by certified mail to the owner of the property as shown on the last equalized assessment roll and to any person whose name appears as an owner on the records of the county assessor's office which the county assessor will use to prepare the next assessor's roll. The notice shall be substantially in the following form and the first paragraph shall be printed in at least 14-point boldface type:

IMPORTANT NOTICE

Your property located at _____
(address)
will soon be sold by the city (or county) unless you pay what you owe for _____ improvement made in your area. To obtain information on how to prevent the sale of your property, immediately call the foreclosure clerk at the city (or county) treasurer's office. The telephone number is _____ to arrange for payment. For more detailed information regarding this matter, read the following:

"Notice of Sale of Property Delinquent for Nonpayment of _____ Improvement Bond

"You are hereby notified that Bond _____, Series _____, representing a lien against Parcel Number _____ (or the legal description of the property in said bond) located at _____, for an improvement in the City (or County) of _____, is delinquent. Unless the amount of the unpaid principal on the bond, together with interest, penalties, and recordation fee for filing notice of pendancy, is paid to the city (or county) treasurer on or before six months after the mailing of this notice, the date of which being this _____ day of _____, 19____, or unless the bond is reinstated as provided by Section 6631, the undersigned will proceed to advertise and sell the lot or parcel of land in the manner prescribed by law to satisfy the amount of the bond, interest, penalties, and costs."

SEC. 3. Section 6502 of the Streets and Highways Code is amended to read:

6502. No sale of property shall be made pursuant to this chapter unless the notices are sent pursuant to Sections 6500, 6501, and 6505. The failure of the property owner to receive or accept the notices shall not affect the validity of the sale or invalidate any subsequent act or proceeding.

SEC. 4. Section 6508.2 is added to the Streets and Highways Code, to read:

6508.2. Prior to the sale of any owner-occupied residential property, the treasurer or his or her designee shall, in person, make every reasonable effort to meet with the owner-occupant in the office of the treasurer or his or her designee or otherwise speak with the owner-occupant. During this contact, the treasurer or his or her designee shall, in language understandable to the owner-occupant, explain that the property will be sold unless the delinquency is paid. The explanation shall also include a full explanation of the right of redemption.

Failure to comply with this section shall not invalidate any sale pursuant to this act.

SEC. 5. Section 6556 is added to the Streets and Highways Code, to read:

6556. Notwithstanding any other provision of law, if the purchaser of owner-occupied residential property at a sale under Section 6509, or an assignee or transferee of the purchaser, has not applied for the deed to the property and recorded the deed in the office of the county recorder in which the property lies, within 16 months of the date of issuance of the certificate of sale, the certificate of sale and the deed are void and neither the certificate of sale nor the deed shall have any legal effect.

This section shall apply to sales held after the effective date of this section.

SEC. 6. Section 6571 of the Streets and Highways Code is amended to read:

6571. Any action, suit, or proceeding attacking or contesting the validity of any deed issued under the provisions of this division, or the validity of the proceedings subsequent to the issuance of the certificate of sale, shall be brought within 12 months after the issuance of the deed, and if the validity of the deed or of the proceedings is not contested within that 12 months' period, it shall not be thereafter contested or questioned in any action, suit, or proceeding, except that an action, suit, or proceeding with respect to any deed of owner-occupied residential property may be brought within 12 months after discovery of the issuance of the deed or, for owner-occupied residential property sold between January 1, 1969, and January 1, 1979, within 12 months after the enactment of the amendments to this section made during the 1981–82 Regular Session of the Legislature.

A defense to a proceeding pursuant to this section shall be that the current owner of record is a bona fide purchaser for value.

The Legislature finds and declares that the court of appeal in Atkins v. Kessler, 97 Cal. App. 3d 784, held that under the former provisions of this division the statute of limitations in this section could not be raised against an owner in possession of residential real property during the entire period of delinquency and sale because due process was violated. It is therefore the intent of the Legislature that the amendments to this section made during the 1981–82 Regular Session of the Legislature shall be applied retrospectively with respect to any owners in possession of residential real property during the entire period of delinquency and at the time of the sale whose homes were sold pursuant to this act between January 1, 1969, and January 1, 1979.

SEC. 7. Notwithstanding Section 6 of Article XIII B of the California Constitution and Section 2231 or 2234 of the Revenue and Taxation Code, no appropriation is made by this act for the purpose of making reimbursement pursuant to these sections. It is recognized, however, that a local agency or school district may pursue any remedies to obtain reimbursement available to it under Chapter 3 (commencing with Section 2201) of Part 4 of Division 1 of that code.

SEC. 8. Sections 1, 2, 3, and 4 of this act shall become operative

on January 1, 1983.

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 reform the procedures for delinquencies under the Improvement Act of 1911 at the earliest opportunity, it is necessary that this act take effect immediately.

CHAPTER 1444

An act to add and repeal Division 4 (commencing with Section 13000) to the Financial Code, relating to pension and retirement funds.

[Approved by Governor September 27, 1982. Filed with Secretary of State September 27, 1982.]

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

SECTION 1. Division 4 (commencing with Section 13000) is added to the Financial Code, to read:

DIVISION 4. PENSION AND RETIREMENT FUNDS

CHAPTER 1. HOUSING INVESTMENT GUIDELINE

13000. Notwithstanding any other provision of law, the administering body of any public pension or retirement fund shall give first priority to investing not less than 25 percent of all funds which become available in a fiscal year for new investments, in obligations secured by a lien or charge solely on residential realty, including rental housing, located in the state and on the security of which, commercial banks are permitted to make loans pursuant to Article 2 (commencing with Section 1220) of Chapter 10 of Division 1 and in securities specified in Section 1360.2 which are backed by obligations secured by a lien or charge solely on residential realty located in the state. Funds subject to investment pursuant to this section include all moneys received as employer and member contributions, investment income, and the proceeds of redemption of debt securities and instruments with a maturity in excess of one year, reduced by the amount of benefit payments and withdrawals occurring during the fiscal year. In computing the amount of investment pursuant to this section, a dollar for dollar credit shall be given for residential realty investments described in this section which are contractually agreed to be made by a financial institution from which a public pension or retirement fund (in consideration thereof) purchases other such investments. In computing the

amount of investment pursuant to this section, a public pension or retirement fund may elect to include the dollar amount of commitments to purchase mortgages from public revenue bond programs in the year the commitment is given; provided that such election may not exceed one-fifth of the total guideline amount.

Nothing in this division shall be construed to require the acquisition of any instrument or security at less than the market rate.

If the administering body of a fund subject to this section determines during any fiscal year that compliance with this section will result in lower overall earnings for the fund than obtainable from alternative investment opportunities that would provide equal or superior security, including guarantee of yield, the administering authority may substitute such higher yielding investments, to the extent actually available for acquisition, for the investments otherwise specified by this section. Additionally, if (and to the extent that) adherence to the diversification guideline specified in this section would conflict with its fiduciary obligations in violation of Section 9 of Article I of the California Constitution or Section 10 of Article I of the United States Constitution, or would conflict with any standard for prudent investment of the fund as may be set forth in the California Constitution, the administering body may substitute alternative investments. In such case, the administering authority shall submit its resolution of findings and determinations, together with a description of the type, quantity, and yield of the investments substituted, to the Governor and to the Joint Legislative Audit Committee within 10 days following the conclusion of the fiscal year. Within 30 days thereafter, the Joint Legislative Audit Committee shall transmit the Auditor General's report to the Speaker of the Assembly and to the Senate Rules Committee for transmittal to affected policy committees.

13001. As used in this division, a "public pension or retirement fund" means an employee pension or retirement plan established or maintained by the state, a county, a city, a city and county, a special district, a school district, a community college district, the Trustees of the California State University, a political subdivision of the state, a public employee organization, and any other public entity.

However, for purposes of this division, "public pension and retirement fund" does not include any of the following:

(a) Any public pension or retirement fund with an annual growth of assets of less than fifteen million dollars ($15,000,000), provided that the administering body of the fund determines that compliance with this division would create an undue burden because of the limited investment capabilities of the fund. Any such determination shall be conclusive, and shall be transmitted to the Governor and to the Joint Legislative Audit Committee.

(b) Any deferred compensation plan established for individual employees at their request, and with respect to which federal income taxes on contributions and earnings are deferred.

(c) Any pension or retirement plan for which investment

decisions are made and benefits determined or guaranteed by a private entity pursuant to a contract with the employer or administering body of the plan.

13002. This division shall remain in effect only until five years from its effective date, and as of such date is repealed, unless a later enacted statute, which is chaptered before five years from the effective date of this division, deletes or extends such date.

SEC. 2. No appropriation is made and no reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution or Section 2231 or 2234 of the Revenue and Taxation Code because the local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the program or level of service mandated by this act.

CHAPTER 1445

An act to add Section 12332 to the Government Code, and to add Article 5.5 (commencing with Section 51210) to Chapter 5 of Part 3 of Division 31 of the Health and Safety Code, relating to bonds, notes, and other indebtedness.

[Approved by Governor September 27, 1982. Filed with Secretary of State September 27, 1983.]

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

SECTION 1. The Legislature reaffirms its finding that there exists a shortage of decent, safe and sanitary housing affordable to Californians. The Legislature recognizes that local governments have approved development of thousands of housing units which are not being built primarily as a result of the prevailing extraordinarily high interest rates for construction and mortgage loans. The Legislature finds that the low level of housing construction makes more elusive achievement of the state's housing goals, exacerbates the already severe unemployment among California workers, and adversely affects the economic well-being of the state.

SEC. 2. Article 5.5 (commencing with Section 51210) is added to Chapter 5 of Part 3 of Division 31 of the Health and Safety Code, to read:

Article 5.5. Homeownership Assistance

51210. Unless otherwise indicated by the context, the definitions contained in this section shall govern constructin of this article.

(a) "Eligible borrower" means a person or family of low or moderate income as defined in Section 50093 who will be the first occupant of a new home.

(b) "New home" means real property and improvements thereon

consisting of a single dwelling unit which will be owned by an eligible borrower who will occupy such unit. "New home" includes a manufactured home as defined in Section 18551, an owner-occupied condominium unit or a unit in a stock cooperative where the occupantis a shareholder.

51211. It is the intent of the Legislature in enacting this article to direct the agency to issue not less than half of three hundred million dollars ($300,000,000) in bonds authorized pursuant to Section 51350 prior toJanuary 31, 1983, and the remainder by April 1, 1983, to finance new homes, if such issuance or issuances is consistent with maintaining the financial integrity of the agency, protecting the rights of the agency's bondholders, and if the agency obtains approval of the committee prior to the issuance of any such bonds. The agency shall also consider whether factors, including, but not limited to, the interest rates and terms or conditions then available in the financial markets would make the financing of mortgages to be provided by the issuance of the bonds feasible for the new homes to be financed.

51212. Mortgage loans made by the agency pursuant to this article shall be for new homes for which a building permit has not been issued prior to April 15, 1982, and for which all local approvals, including a building permit or permits, are obtained by April 1, 1983.

51213. Nothing in this article shall preclude the agency from otherwise financing single-family housing developments pursuant to this division prior to January 31, 1983.

51214. The agency shall report before May 1, 1983, to the Legislature and the Joint Legislative Audit and Budget Committees on the number of loans made and on the actual amount of bonds sold pursuant to this article. If less than three hundred million dollars ($300,000,000) in bonds are sold by April 1, 1983, the agency shall specify in the report the factors affecting the agency's decision.

SEC. 2. Section 12332 is added to the Government Code, to read:

12332. The Treasurer is designated as an elected representative of the state to approve the issuance of bonds, notes, or other evidences of indebtedness, issued by or on behalf of the state, to the extent this approval is required by federal tax law.

CHAPTER 1446

An act to amend Section 31595.6 and 31680.4 of, and to add Section 26202.5 to, the Government Code, relating to county government.

[Approved by Governor September 27, 1982. Filed with Secretary of State September 27, 1982]

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

SECTION 1. Section 26202.5 is added to the Government Code, to read:

26202.5. The board may authorize the destruction of any record, paper or document, by a four-fifths vote, if the documents have been inadvertently exposed to asbestos fiber in a quantity which presents a risk to the health and safety of persons who handle the record, paper or document, and if the board determines that the risk to these persons is greater than the benefit to be derived from the retention of the record or, alternatively, that the cost of sterilizing the records far exceeds their value. The decision of the board shall be final.

SEC. 2. Section 31595.6 of the Government Code is amended to read:

31595.6. In addition to such other investments as are authorized by this article, the board may invest in real estate and leases thereof and improvements thereon for business or residential purposes as an investment for the production of income. The phrase "business or residential purposes" shall not include real estate or leases primarily intended for use or valued as agricultural, horticultural, farm, ranch, or mineral property. Real estate and leases acquired and improvements made thereon for business and residential purposes under this section shall not in the aggregate exceed an amount equal to 25 percent of the assets of the system and real estate and leases acquired and improvements made thereon for residential purposes under this section shall not in the aggregate exceed an amount equal to 10 percent of the assets of the system.

SEC. 3. Section 31680.4 of the Government Code is amended to read:

31680.4. Any person who has retired may be employed in a court employee position requiring special skills or knowledge, as determined by the county or district employing him, for not to exceed 180 working days in any one fiscal year and may be paid for such employment. Such employment shall not operate to reinstate the person as a member of this system or to terminate or suspend his retirement allowance, and no deductions shall be made from his salary as contributions to this system.

This section shall apply only in a county of the 18th class as defined in Section 28039.

This section shall remain in effect only until December 31, 1986, and as of such date is repealed, unless a later enacted statute, which is chaptered before December 31, 1986, deletes or extends such date.

CHAPTER 1447

An act to add Article 2.5 (commencing with Section 66452.50) to Chapter 3 of Division 2 of Title 7 of the Government Code, and to amend Sections 50202, 50952, 51226, 51600, 51601, 51602, 51850, 51852, 51853, and 51858 of, and to add Section 51852.5 to, the Health and Safety Code, relating to housing, and making an appropriation therefor.

[Approved by Governor September 27, 1982. Filed with Secretary of State September 27, 1982.]

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

SECTION 1. Article 2.5 (commencing with Section 66452.50) is added to Chapter 3 of Division 2 of Title 7 of the Government Code, to read:

Article 2.5. New Rental Housing: Conversion

66452.50. Notwithstanding any other provision of this division, a local agency may, upon application by a subdivider, in connection with the approval of a tentative or final map for the proposed construction of a condominium development, which requires the obtaining of a tentative or final map under provisions of this division or local ordinances enacted pursuant thereto, enter into a binding agreement with the subdivider mandating that the units be first made available for rental housing for a period of not less than 10 years from the date a certificate of occupancy has been issued for the units within the development; provided that (1) at the expiration of the 10-year period the units within the development may be sold to individual purchasers, in accordance with the approved final map authorizing the development without further proceedings under the provisions of this division or local ordinances enacted pursuant thereto, and (2) during the period the units are required to be made available for rental purposes, the units are insured or are to be insured or co-insured pursuant to the provisions of Chapter 4 (commencing with Section 51850) of Part 4 of Division 31 of the Health and Safety Code, and (3) each tenant of a unit within the development shall be given 180 days' written notice prior to actual conversion. Such notice shall include an offer of an exclusive right to contract for his or her respective unit upon the same terms and conditions that such unit will be initially offered to the general public or on terms more favorable to the tenant. The right shall run for a period of not less than 90 days from the date written notice of actual conversion was sent to the tenant.

Any such agreement shall be in writing, particularly describe the real property and set forth the name or names of the record title owner of the real property affected thereby, and be executed by the

person authorized to act on behalf of the local agency and by the subdivider. From the date of execution of the agreement, it shall be binding upon the local agency, the subdivider, and their successors. The fact that a condominium development is subject to such an agreement shall be set forth on the face of any tentative or final map approved by the local agency and the agreement shall be recorded in the office of the county recorder in the county in which the real property is located on or before the date of recordation of the final map.

66452.51. Prior to the acceptance of any rent or deposit from a prospective tenant, the following notice shall be provided:

To the prospective occupant(s) of

_____ :

(address)

The owner(s) of this building at (address), have received a tentative map with (city, county, or city and county) to convert this building to a (condominium, community apartment, or stock cooperative), no sooner than (date). You will be notified at least 180 days prior to the actual conversion. Further, if you still reside in your unit, you will be given an exclusive right to purchase your unit.

_____

(signature of owner or owner's agent)

_____

(dated)

I have received this notice on _____ .

(dated)

_____

(prospective tenant's signature)

SEC. 2. Section 50202 of the Health and Safety Code is amended to read:

50202. Nothing in this division shall authorize the imposition of rent regulations or controls except by a regulatory contract between the agency or the department, as the case may be, and its housing sponsor or developer, for housing units financed, insured, coinsured or otherwise assisted by the agency or by the department, as the case may be. Except for the federal government, the right to control rent on such units shall reside exclusively in the agency or the department, as the case may be, and the housing sponsor or developer so regulated shall not otherwise be subject to controls on rent imposed by any state or local agency or other local public entity.

SEC. 3. Section 50952 of the Health and Safety Code is amended to read:

50952. The agency shall also seek to attain the following objectives:

(a) Acquisition of the maximum amount of funds available for subsidies for the benefit of persons and families of low or moderate

income occupying units financed pursuant to this part.

(b) Housing developments providing a socially harmonious environment by meeting the housing needs of both very low income households and other persons and families of low or moderate income and by avoidance of concentration of very low income households that may lead to deterioration of a development.

(c) Emphasis on housing developments of superior design, appropriate scale and amenities, and on sites convenient to areas of employment, shopping, and public facilities.

(d) Increasing the range of housing choice for minorities in lower income households and other lower income households, rather than maintaining or increasing the impaction of low-income areas, and cooperation in implementation of local and areawide housing allocation plans adopted by cities, counties, and joint powers entities made up of counties and cities.

(e) Reducing the cost of mortgage financing for rental and cooperative housing to provide lower rent for persons and families of low or moderate income.

(f) Reducing the cost of mortgage financing for home purchase, in order to make homeownership feasible for persons and families of low or moderate income.

(g) Identification of areas of low-vacancy rates where construction is needed, of areas of substandard housing where rehabilitation is needed, and of areas of credit shortage where financing is needed for transfer of existing housing, so as to maximize the impact of financing activities on employment, reduction of housing costs, and maintenance of local economic activity.

(h) A balance between urban metropolitan, nonmetropolitan, and rural metropolitan housing developments, and between family housing and housing for the elderly and handicapped, in general proportion to the needs identified in the California statewide housing plan.

(i) Minimization of fees and profit allowances of housing sponsors so far as consistent with acceptable performance, in order to maximize the benefit to persons and families of low or moderate income occupying units financed by the agency.

(j) Full utilization of federal subsidy assistance for the benefit of persons and families of low or moderate income.

(k) Full cooperation and coordination with the local public entities of the state in meeting the housing needs of cities, counties, cities and counties, and Indian reservations and rancherias on a level of government that is as close as possible to the people it serves.

(*l*) Promoting the recovery and growth of economically depressed business located in areas of minority concentration and in mortgage-deficient areas.

(m) Revitalization of deteriorating and deteriorated urban areas by attracting a full range of income groups to central-city areas to provide economic integration with persons and families of low or moderate income in such areas.

(n) Implementation of the goals, policie and objectives of the California Statewide Housing Plan.

(o) Location of housing in public transit corridors with high levels of service.

(p) Reducing the cost of mortgage financing for rental housing development in order to attract private and pension fund investment in such developments.

SEC. 4. Section 51226 of the Health and Safety Code is amended to read:

51226. (a) Subject to the availability of adequate subsidies, not less than 30 percent of the combined total units financed by mortgage loans and property improvement loans pursuant to this part during each fiscal year shall be made available on a priority basis to very low income households. Subject to the availability of adequate subsidies, not less than 20 percent of the units in each housing development shall be made available on a priority basis to very low income households, except that such requirement shall not apply to housing developments of less than 12 units where the agency finds it is not necessary to make units available in the development for very low income households to meet the requirement of making 30 percent of total units available to very low income households. In housing developments for which the agency provides a construction loan but not a mortgage loan, not less than 20 percent of the units shall be made available on a priority basis to lower income households. Units required to be made available on a priority basis pursuant to this section, shall be offered exclusively to those within the priority group unless or until the agency permits the unit to be offered to other potential occupant groups.

(b) In rental housing developments for which the agency provides insurance but not construction or mortgage loans, not less than 10 percent of the units shall be made available on a priority basis to lower-income households at affordable rents. These units shall be of comparable size and provide comparable amenities as those units which are available for other tenants.

(c) The agency shall actively and aggressively pursue all available federal housing programs and utilize fully all available subsidies in order to achieve the purposes of this section.

SEC. 5. Section 51600 of the Health and Safety Code is amended to read:

51600. The Legislature finds and declares as follows:

(a) For reasons of prudent investment policy, private lending institutions are not making mortgage financing available for residential structures located in many older residential neighborhoods, or for certain housing developments occupied or intended to be occupied by substantial numbers of persons and families of low and moderate income because of the perceived risks such loans entail. The lack of such financing has caused and contributed to deterioration of residential neighborhoods, inhibited local governments in their attempts to arrest and reverse

deterioration through local code enforcement programs, and generally reduced or limited the supply of safe, decent, and sanitary housing available to persons and families of low and moderate income.

(b) The state has authorized local agencies, redevelopment agencies, and housing authorities to provide financing for preservation and construction of residential structures to enhance housing opportunities for persons and families of low or moderate income. However, some of such local public entities will be unable to sell revenue bonds pursuant to such act on terms sufficiently favorable to enable them to make loans at less than the market-rate interest because of a lack of adequate bond security.

(c) The agency, although it is empowered to sell revenue bonds in order to raise funds for housing assistance, may be unable to market such bonds on terms and at interest rates adequate to enable the agency to accomplish its purposes.

(d) For reasons of prudent investment policy, private lending institutions are not making mortgage financing available for rental housing developments in California because of the perceived risks such loans entail. The lack of such financing has resulted in a severe shortage of rental housing units in many areas of the state. This shortage of rental housing units particularly impacts persons and families of low income.

SEC. 6. Section 51601 of the Health and Safety Code is amended to read:

51601. It is the intent of the Legislature in enacting this part to establish a program of bond and loan insurance to encourage and facilitate the preservation of existing housing and improve housing opportunities for persons and families of low or moderate income by reducing the risk factor (1) for loans for housing in older deteriorating areas and neighborhood preservation areas, (2) for revenue bonds issued by local agencies for the purpose of providing housing for persons and families of low or moderate income, (3) for loans to provide housing for persons and families of low or moderate income, and (4) for privately financed loans for rental housing developments and structures which benefit lower income households.

SEC. 7. Section 51602 of the Health and Safety Code is amended to read:

51602. The agency shall require that occupancy of housing for which a loan is insured pursuant to this part shall be open to all regardless of race, sex, color, religion, national origin, or ancestry, and that contractors and subcontractors engaged in the construction or rehabilitation of housing funded by a loan insured pursuant to this part shall provide an equal opportunity for employment without discrimination as to race, sex, marital status, color, religion, national origin, or ancestry.

A qualified developer shall certify compliance with this section and Section 50955 according to requirements specified by the

pertinent criteria of the agency.

SEC. 8. Section 51850 of the Health and Safety Code is amended to read:

51850. (a) To be qualified for loan insurance a borrower shall be, or by reason of a loan insured pursuant to this part shall become, the owner of the rental housing development or residential structure for which an insured loan is authorized, and shall be able to bear the usual expenses of maintaining such housing development, development, or structure and repay the loan. The agency may by regulation establish such additional requirements as it shall deem necessary to accomplish the purposes of this part.

(b) For the purpose of increasing the efficiency and minimizing the cost of the loan insurance program, the agency may insure or issue commitments to insure loans upon the certification of an officer of an approved lending institution that the borrower is qualified for loan insurance according to eligibility requirements specified by the regulations of the agency.

SEC. 9. Section 51852 of the Health and Safety Code is amended to read:

51852. Loans insured under this part shall meet the following requirements:

(a) The loans shall be made for a period acceptable to the agency not to exceed 40 years or four-fifths of the remaining life of the structure, as determined by the agency in accordance with its regulations, whichever is less.

(b) The loans shall be subject to maximum loan amounts for each category of loan authorized to be insured under this part.

(c) The loans shall be secured by mortgages, or the loan shall be wholly or partially insured or guaranteed by an agency or instrumentality of the United States, except for property improvement loans under limits established by the agency.

(d) The agency may establish loan-to-value limitations for each category of loan and may set forth limitations on the further encumbrance of structures and other real property securing loans, but only to the extent necessary to prevent unreasonable impairment of the agency's security. In no case involving refinancing, shall the loan have a principal obligation in an amount exceeding the sum of the estimated cost of rehabilitation, if any, and the amount required to refinance existing indebtedness secured by the property and settlement and closing costs incurred in connection therewith.

(e) Loans for the rehabilitation of residential structures shall have a principal obligation not exceeding an amount which, when added to any outstanding indebtedness constituting a lien upon the property securing the loan, creates a total outstanding indebtedness which would be reasonably secured by a mortgage of first priority on the property pursuant to subdivision (d), and as set forth in regulations of the agency.

(f) Loans for refinancing may be insured only if refinancing is

necessary to permit a borrower to afford the cost of rehabilitation or to minimize rent increases for occupants of the residential structure, where the rents would otherwise exceed affordable rents due to the expense of rehabilitation, or to achieve another purpose specified in this division.

(g) With respect to any loan for the rehabilitation of a residential structure, the agency shall determine that such rehabilitation is economically feasible. For purposes of this subdivision, the economic feasibility of commercial space in a mixed residential and commercial structure shall be determined independently for any structure to be rehabilitated for mixed residential and commercial uses.

(h) No borrower shall be eligible for insurance of a loan or loans for acquisition or rehabilitation of more than one residential structure, unless the borrower is a qualified developer.

(i) For the purpose of increasing the efficiency and minimizing the cost of the loan insurance program, the agency may insure or issue commitments to insure loans, upon the certification of an officer of an approved lending institution that the proposed rehabilitation conforms to requirements specified by regulations of the agency regarding economic feasibility and commercial demand.

(j) With respect to any loan for rehabilitation or rehabilitation in combination with refinancing or purchase, the loan agreement shall provide that all funds loaned for repairs and improvements shall be paid after completion or according to a progress payment schedule to the owner and contractor or other provider of goods or services jointly at such times as payment becomes due, and provided the work or portion of the work for which payment is tendered is certified, as provided by regulation of the agency, to be in compliance with contract specifications and applicable state or local housing or building standards.

(k) The agency shall contract with the borrower during the term of the insurance to maintain residential rentals available to lower income households at affordable rents.

(*l*) Relocation payments shall be made to persons and families displaced in making a site or residential structure available for rehabilitation or construction financed by loans insured under this part, and relocation advisory assistance provided to such persons, as specified by Section 51063. Relocation payments shall also be made to owners involuntarily displaced because of inability to afford costs of compliance required pursuant to this part, but any payment pursuant to Section 4623 of Title 42 of the United States Code or Section 7263 of the Government Code shall be limited to the reasonable costs of a replacement dwelling adequate to accommodate the displaced person or family without regard to whether the dwelling is otherwise comparable to the dwelling formerly occupied, less the amount received from sale of the dwelling. Relocation payments may be made from the proceeds of insured loans as authorized by the agency.

(m) The residential structure for which a loan is insured pursuant to this part shall be insured against loss due to fire and other causes, as provided by the regulations of the agency.

(n) Such other terms and conditions as the agency, by regulation, determines are necessary to further the purposes of this part.

SEC. 10. Section 51852.5 is added to the Health and Safety Code, to read:

51852.5. Notwithstanding any other provision of law:

(a) Any rental housing development which is financed from mortgages insured pursuant to this chapter shall be exempt from all of the following:

(1) Any local government prohibitions against condominium conversion any time after 10 years from the date a certificate of occupancy is issued. Any such condominium conversion shall be made in accordance with the requirements of Article 2.5 (commencing with Section 66452.50) of Chapter 3 of Division 2 of Title 7 of the Government Code.

(2) Any rent control except for units made available to lower income households as provided pursuant to subdivision (a) of Section 51226 and subdivision (k) of Section 51852.

(b) Any rental housing development which is financed from mortgages insured or coinsured pursuant to this chapter shall be exempt from any architectural or design review by the agency.

SEC. 11. Section 51853 of the Health and Safety Code is amended to read:

51853. The agency may provide insurance pursuant to this part for loans for housing developments and residential structures which will be occupied primarily by persons and families of low or moderate income and for loans for privately financed rental housing developments which will benefit lower income households.

SEC. 12. Section 51858 of the Health and Safety Code is amended to read:

51858. The agency may initiate programs of coinsurance or reinsurance with, and may procure reinsurance from, any local agency or agency of the United States or private mortgage insurer in order to accomplish more effectively the purpose of this part. The agency may coinsure or reinsure loans made or originated by approved lending institutions which are otherwise insurable under the provisions of this part.

SEC. 13. Sections 1 to 12, inclusive, of this act shall not be operative unless Senate Bill 1862 of the 1981–82 Regular Session is enacted and becomes operative.

CHAPTER 1448

An act to amend Section 50740 of, and to add Article 4.5 (commencing with Section 51180) to Chapter 5 of Part 3 of Division 31 of, the Health and Safety Code, relating to housing finance, and making an appropriation therefor.

[Approved by Governor September 27, 1982. Filed with Secretary of State September 27, 1982.]

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

SECTION 1. Article 4.5 (commencing with Section 51180) is added to Chapter 5 of Part 3 of Division 31 of the Health and Safety Code, to read:

Article 4.5. Subordinated Mortgage Loans

51180. As used in this article:

(a) "Subordinated loan" means a deferred payment mortgage loan, which is a second trust deed used in connection with other financing from the agency for the purpose of making the development of housing feasible where it would not be feasible without such loan. No loan shall be made pursuant to this article unless it is secured by a second trust deed.

(b) "Local agency" means a city, county, city and county, redevelopment agency, or housing authority.

51181. The agency shall accept applications from housing sponsors for subordinated loans for rental housing developments upon which construction commences on or after January 1, 1983. Not less than 20 percent of the units in the rental housing development shall be made available on a priority basis to lower income households, as defined in Section 50079.5.

51182. The agency shall determine the manner in which subordinated loans are to be repaid. Potential methods of repayment may include, but not be limited to:

(a) An interest payment of 3 percent to be made from the positive cash flows of the project before payment to any other equity investor or mortgage loan holder is made.

(b) Repayment upon conversion or the term of the bond, whichever is less, to the state, including an interest payment of 3 percent.

SEC. 2. Section 50740 of the Health and Safety Code is amended to read:

50740. (a) The Rental Housing Construction Incentive Fund established in the State Treasury is hereby renamed the Rental Housing Construction Fund. Notwithstanding Section 13340 of the Government Code, money in the fund is hereby continuously appropriated to the Department of Housing and Community

Development, and, except as provided in subdivision (b), shall be utilized for purposes of this chapter, including Section 50745.1, and for the purposes of Section 50775.5. All interest or other increment resulting from investment or deposit of moneys in the fund shall be deposited in the fund, notwithstanding Section 16305.7 of the Government Code. Moneys in the fund shall not be subject to transfer to any other fund pursuant to any provision of Part 2 (commencing with Section 16300) of Division 4 of Title 2 of the Government Code, excepting the Surplus Money Investment Fund.

(b) Money from the fund utilized by the agency for development costs which becomes available for encumbrance between June 30, 1982, and December 31, 1982, shall be utilized as follows:

(1) The agency shall reimburse the Public Employees' Retirement System and the State Teachers' Retirement System for actual administrative expenses, as incurred, in an amount not to exceed two hundred fifty-nine thousand three hundred forty-four dollars ($259,344) for implementation, between January 1, 1983, and June 30, 1983, of Chapter 6.8 (commencing with Section 51341) of Part 3 of Division 31 of the Health and Safety Code, as added by Senate Bill 1862 of the 1981–82 Regular Session of the Legislature, and Division 4 (commencing with Section 13000) of the Financial Code, as added by Assembly Bill 3593 of the 1981–82 Regular Session of the Legislature. To the extent that any funds specified pursuant to this paragraph remain unencumbered as of July 1, 1983, those funds shall be included in the remainder and utilized as provided in paragraph (2).

(2) Of the remainder, one-half of the moneys shall be utilized as they become available by the agency for activities authorized by this chapter or by Article 4.5 (commencing with Section 51180) of Chapter 5 of Part 3.

SEC. 3. *Section 50740 of the Health and Safety Code is amended to read:*

50740. (a) The Rental Housing Construction Incentive Fund established in the State Treasury is hereby renamed the Rental Housing Construction Fund. Notwithstanding Section 13340 of the Government Code, money in the fund is hereby continuously appropriated to the Department of Housing and Community Development, and, except as provided in subdivision (b), shall be utilized for purposes of this chapter, including Section 50745.1, and for the purposes of Section 50775.5. All interest or other increment resulting from investment or deposit of moneys in the fund shall be deposited in the fund, notwithstanding Section 16305.7 of the Government Code. Moneys in the fund shall not be subject to transfer to any other fund pursuant to any provision of Part 2 (commencing with Section 16300) of Division 4 of Title 2 of the Government Code, excepting the Surplus Money Investment Fund.

(b) Money from the fund utilized by the agency for development costs which become available for encumbrance between June 30, 1982, and December 31, 1982, shall be utilized as follows:

(1) The agency shall reimburse the Public Employees' Retirement System and the State Teachers' Retirement System for actual administrative expenses, as incurred, in an amount not to exceed two hundred fifty-nine thousand three hundred forty-four dollars ($259,344) for implementation, between January 1, 1983, and June 30, 1983, of Chapter 6.8 (commencing with Section 51341) of Part 3 of Division 31 of the Health and Safety Code, as added by Senate Bill 1862 of the 1981–82 Regular Session of the Legislature, and Division 4 (commencing with Section 13000) of the Financial Code, as added by Assembly Bill 3593 of the 1981–82 Regular Session of the Legislature. To the extent that any funds specified pursuant to this paragraph remain unencumbered, as of July 1, 1983, those funds shall be included in the remainder and utilized as provided in paragraph (2).

(2) Of the remainder, one-half of the moneys shall be transferred from the agency to the department as they become available and utilized by the department for activities authorized by this chapter or by Section 50661 for residential hotels. The other one-half of the remainder of these moneys shall be utilized by the agency for activities authorized by this chapter or by Article 4.5 (commencing with Section 51180) of Chapter 5 of Part 3.

SEC. 4. It is the intent of the Legislature, if this bill and Senate Bill 1829 are both chaptered and become effective January 1, 1983, both bills amend Section 50740 of the Health and Safety Code, and this bill is chaptered after Senate Bill 1829, that the amendments to Section 50740 proposed by both bills be given effect and incorporated in Section 50740 in the form set forth in Section 3 of this act. Therefore, Section 3 of this act shall become operative only if this bill and Senate Bill 1829 are both chaptered and become effective January 1, 1983, both amend Section 50740, and this bill is chaptered after Senate Bill 1829, in which case Section 2 of this act shall not become operative.

CHAPTER 1449

An act to add and repeal Sections 65961 and 66474.2 of the Government Code, relating to subdivisions.

[Approved by Governor September 27, 1982. Filed with Secretary of State September 27, 1982.]

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

SECTION 1. Section 65961 is added to the Government Code, to read:

65961. Notwithstanding any other provision of law, upon approval or conditional approval of a tentative map for a subdivision of single- or multiple-family residential units, or upon recordation of

a parcel map for such a subdivision for which no tentative map was required, during the five year period following recordation of the final map or parcel map for the subdivision, a city, county, or city and county shall not require as a condition to the issuance of any building permit or equivalent permit for such single- or multiple-family residential units, conformance with or the performance of any conditions that the city or county could have lawfully imposed as a condition to the previously approved tentative or parcel map. Nor shall a city, county, or city and county withhold or refuse to issue a building permit or equivalent permit for failure to conform with or perform any conditions that the city, county, or city and county could have lawfully imposed as a condition to the previously approved tentative or parcel map. However, the provisions of this section shall not prohibit a city, county, or city and county from doing any of the following:

(a) Imposing conditions or requirements upon the issuance of a building permit or equivalent permit which could have been lawfully imposed as a condition to the approval of a tentative or parcel map if the local agency finds it necessary to impose the condition or requirement for any of the following reasons:

(1) A failure to do so would place the residents of the subdivision or of the immediate community, or both, in a condition perilous to their health or safety, or both.

(2) The condition is required in order to comply with state or federal law.

(b) Withholding or refusing to issue a building permit or equivalent permit if the local agency finds it is required to do so in order to comply with state or federal law.

(c) Assuring compliance with the applicable zoning ordinance.

This section shall remain in effect only until January 1, 1989, and as of that date is repealed, unless a later enacted statute, which is chaptered before January 1, 1989, deletes or extends that date.

SEC. 2. Section 66474.2 is added to the Government Code, to read:

66474.2. In determining whether to approve or disapprove an application for a tentative map, the local agency shall apply only those ordinances, policies, and standards in effect at the date the local agency has determined that the application is complete pursuant to Section 65943 of the Government Code. However, if the local agency has formally initiated proceedings by way of ordinance or resolution and published notice of such ordinance or resolution, in accord with the procedures used by the local agency for publication of ordinances, to amend applicable general or specific plans, or zoning or subdivision ordinances before it has received the complete application, the local agency may apply any ordinances, policies, or standards enacted or instituted as a result of those proceedings which are in effect on the date the local agency approves or disapproves the tentative map. If the subdivision applicant requests changes in applicable ordinances, policies or standards in connection with the

same development project, any ordinances, policies or standards adopted pursuant to the applicant's request shall apply.

This section shall remain in effect only until January 1, 1989, and as of that date is repealed, unless a later enacted statute, which is chaptered before January 1, 1989, deletes or extends that date.

SEC. 3. Notwithstanding Section 6 of Article XIII B of the California Constitution and Section 2231 or 2234 of the Revenue and Taxation Code, no appropriation is made by this act for the purpose of making reimbursement pursuant to these sections. It is recognized, however, that a local agency or school district may pursue any remedies to obtain reimbursement available to it under Chapter 3 (commencing with Section 2201) of Part 4 of Division 1 of that code.

SEC. 4. With the exception of those provisions of this act which may be declarative of existing law, the provisions of this act shall operate only prospectively and shall not apply to tentative maps or parcel maps for which no tentative map was required, which were approved, conditionally approved, or disapproved prior to July 1, 1983.

CHAPTER 1450

An act to add Sections 12021.3 and 13887.3 to the Government Code, and to add Chapter 6.8 (commencing with Section 51341) to Part 3 of Division 31 of the Health and Safety Code, relating to housing, and making an appropriation therefor.

[Approved by Governor September 27, 1982. Filed with Secretary of State September 27, 1982.]

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

SECTION 1. Section 12021.3 is added to the Government Code, to read:

12021.3. The budget for the 1983–84 and 1984–85 fiscal years submitted by the Governor to the Legislature within the first 10 days of each regular session shall contain the most recent estimate of the amount of the increase in General Fund revenue which is directly or indirectly attributable to the construction activity resulting from the enactment of the chapter of the Statutes of 1982 which enacted this section and which is available for transfer to the Housing Assistance Trust Fund established pursuant to Section 51342 of the Health and Safety Code for reimbursement of builder advances for interest reduction assistance pursuant to subdivision (c) of Section 51343 of the Health and Safety Code. The estimate shall be prepared by the Commission on State Finance pursuant to Section 13887.3 of this code.

SEC. 2. Section 13887.3 is added to the Government Code, to

read:

13887.3. The commission shall prepare and include in its forecasts for the 1982–83, 1983–84, and 1984–85 fiscal years, an estimate of the amount of the increase in General Fund revenue which is directly or indirectly attributable to construction activity resulting from the enactment of the chapter of the Statutes of 1982 which enacted this section.

SEC. 3. Chapter 6.8 (commencing with Section 51341) is added to Part 3 of Division 31 of the Health and Safety Code, to read:

CHAPTER 6.8. HOMEOWNERSHIP INTEREST-REDUCTION ASSISTANCE PROGRAM

51341. The Legislature finds and declares that:

(a) There is a continuing, urgent need to provide affordable mortgage financing to meet the increasingly unfulfilled housing needs of citizens of this state.

(b) A severe crisis exists in the home construction industry characterized by a downturn in housing production, by home purchase prices beyond the reach of most Californians, and by rents which are imposing an economic burden on California's tenant population.

(c) The drop in housing production, which has worsened in the last two years, is having a severe detrimental effect on consumers of housing and the economy as a whole, on those persons whose economic livelihood depends on the health of the housing industry, on business expansion within the state, and on the fiscal stability of state and local governments.

(d) The decline in California's housing production has been caused to a large extent by federal monetary, credit and fiscal policies over the past several years, which have had the effect of driving up interest rates. Interest rates are likely to remain at a relatively high level during the near term, since the federal government's borrowing needs with respect to the budget deficit will limit the availability of private capital.

(e) Although there are several factors which have contributed to the rise in housing costs, the cost and availability of mortgage financing remain critical factors affecting housing production and housing costs.

(f) Continuance of current governmental policies affecting mortgage credit, particularly those of the Federal Reserve Board, will result in less and less mortgage capital at more and more expensive rates for Californians seeking shelter.

51341.5. The Legislature further finds and declares that:

(a) There is a need to develop financing mechanisms to make homes affordable to first-time home buyers.

(b) The high cost of housing also impedes the ability of California employers to compete in the national marketplace for employees.

(c) Given the economic implications of the housing crisis, the

social implications of high housing prices and high rents, and the effects of federal housing policies, the State of California must play an increasing leadership role in meeting the state's housing needs by embarking upon a counter-cyclical housing finance policy designed to stimulate housing production, through the provision of mortgage capital at reasonable rates, especially during downswings brought on by federal fiscal and monetary policies.

(d) It is critical that existing public resources be directed to bolster housing production and, thus, the health of the state's economy.

51341.7. For purposes of this chapter, "institutional investor" means an entity authorized to invest funds in mortgage instruments or mortgage-backed securities and includes public and private pension funds and any public agency administering a housing revenue bond program.

51342. (a) There is hereby created in the State Treasury a Housing Assistance Trust Fund, hereafter referred to as the fund. Notwithstanding the provisions of Section 13340 of the Government Code, moneys in the fund are continuously appropriated, without regard to fiscal years, for expenditure by the agency for the exclusive trust purposes of reimbursing builder advances pursuant to this chapter, remitting commitment fees and interest pursuant to subdivision (b) of this section and subdivison (b) of Section 51344, and defraying the actual administrative costs of the agency. Notwithstanding the provisions of Section 16305.7 of the Government Code, any interest earned or other increment derived from investments made from moneys in the fund shall be deposited in the Housing Assistance Trust Fund.

(b) Any interest earned on, or other increment derived from, the investment of commitment fees, shall be quarterly transferred to the participating institutional investors on a pro rata basis.

51343. (a) The agency shall administer a homeownership interest reduction assistance program in accordance with the provisions of this chapter. Public or private pension funds or other institutional investors may contract with the agency to participate in the program in accordance with underwriting criteria and loan terms not inconsistent with this chapter. Loans made pursuant to this chapter shall be originated and serviced by lenders certified to do business with the United States Department of Housing and Urban Development or seller- and servicer- certified to do business with the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation. Mortgage investments financed under the homeownership interest-reduction assistance program may be in any form acceptable to the institutional investor making the investment, including participation certificates or other mortgage-backed securities issued by any public or private entity with respect to a pool of mortgages assisted pursuant to this chapter or mortgages exchanged therefor. Additionally, institutional investors may require mortgage insurance or guarantees.

Mortgage investment pursuant to this chapter shall be counted and included for purposes of investment guidelines specified in Division 4 (commencing with Section 13000) of the Financial Code, as added by Assembly Bill 3593 of the 1981–82 Regular Session of the Legislature.

(b) The agency may allocate not more than 25 percent of the interest-reduction assistance available under this chapter for public revenue bond programs, including its own.

(c) The amount of interest-reduction assistance available under this chapter shall be determined by the agency but shall not exceed 9 percent of the original principal amount of a mortgage loan so assisted. Such amount shall be payable from the fund as reimbursement for builder advances made during the prior fiscal year. The Legislature shall annually include an item of appropriation in the Budget Act transferring sufficient moneys to the fund to enable the agency to make such reimbursement.

51344. In accordance with the requirements of institutional investors participating in the homeownership interest-reduction assistance program, the agency shall enter into agreements with participating lenders providing for the following:

(a) Any homebuilder making application for a mortgage loan commitment under this chapter shall pay an application fee, which shall be established by the agency in such amount as will in the aggregate defray the agency's costs of administering this chapter. These application fees shall be transmitted to the agency for deposit in the fund. Any homebuilder obtaining a mortgage loan commitment from a lender under the program shall, at the time of obtaining the commitment, pay a commitment fee in an amount not exceeding 1 percent of the loan amount for the initial commitment period not exceeding six months and ½ percent of the loan amount for each additional commitment period not exceeding six months. Commitment fees shall be transmitted by lenders to the agency for deposit in the fund.

(b) At the time the mortgage loan is made, and as a condition thereto, the homebuilder shall pay the lender a sum equal to the interest reduction assistance determined pursuant to subdivision (c) of Section 51343, less the commitment fee already paid with respect to such loan. The commitment fee at that time shall be transmitted to the lender by the agency. Moneys received by the lender pursuant to this subdivision shall be applied to reduce the initial interest rate paid by the borrower, in accordance with subdivision (c). All such amounts are and shall be deemed advances by the homebuilder. The agency shall contract with participating homebuilders to repay these advances in the next fiscal year from moneys available therefor in the fund. If a homebuilder fails to utilize a loan commitment within the time contracted or extended as provided in subdivision (a) for reasons other than force majeure, or other causes, as defined by the agreement with the institutional investors, the commitment fee shall be forfeit to the institutional investor, and the agency shall make

prompt remittance from the fund.

Notwithstanding other provisions of this subdivision, moneys which would be held and applied by the lender pursuant to this subdivision may instead be directly transferred to the institutional investor, or held by the agency, and applied pursuant to subdivision (c), if mutually agreed by the agency and the institutional investor.

(c) Amounts advanced as provided in subdivision (b) shall be applied to effectively reduce the interest rate paid by the borrower during the first three to seven years of the loan term. This buydown of interest shall be structured, as determined by the agency, to provide for fixed or graduated payments during its effectiveness.

51345. Loans assisted pursuant to this chapter may be made for the financing of single family dwellings, condominiums, units in residential planned unit developments, or a share in a stock cooperative, and including manufactured homes, as defined in Section 18007, when installed upon a permanent foundation. The loans shall meet the following criteria:

(a) Dwelling units financed shall not exceed the average area purchase price, determined as provided in Subtitle A of Title XI of federal Public Law 96-449.

(b) The loans shall be for not less than 80 percent of the purchase price, provided that any loans in excess of 80 percent of the purchase price shall be insured as provided by regulations of the agency.

(c) Members of any retirement system financing housing units under this section and members of their immediate families shall have first priority with respect to initial purchase of the housing units financed by that retirement system. Priority shall be also given (1) to purchasers who have not previously owned a dwelling in this state and (2) to purchasers who are relocating from one geographic area in this state to another for employment reasons and the purchaser's new principal place of employment is 35 or more miles further from his or her former residence than was his or her former principal place of employment. The agency shall adopt criteria for the implementation of this paragraph.

(d) Loan commitments under this section shall be given only for new construction commenced after receipt of the commitment.

(e) The loan shall be for a term of 30 years and fully amortized. However, if the loan does not contain an enforceable provision authorizing acceleration of principal at the time of sale, consistent with the provisions of Sections 2924c, 2924.5, and 2924.6 of the Civil Code, the loan may contain a call provision giving the lender an option to accelerate the principal loan balance making it, together with accrued interest, payable in full at a date which shall be no earlier than 10 years following the date of loan origination, or such date as may be required by the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation for mortgages pooled by those organizations.

(f) Loan origination and servicing fees shall not exceed customary and usual amounts.

(g) The loan may provide for prepayment penalties consistent with Section 2954.9 of the Civil Code.

(h) The contract rate of return on loans made or securities purchased by the institutional investor pursuant to this chapter shall be established to reflect the market rate by mutual consent of the agency and institutional investor. However, the rate of return shall not exceed the current yield on Government National Mortgage Association securities with respect to loans of the same term plus 100 basis points. Public revenue bond programs shall not be subject to this paragraph.

(i) The amount of interest reduction achieved with the buydown pursuant to subdivision (c) of Section 51344 shall be computed utilizing standard present value factors in accordance with the practice of the Federal National Mortgage Association or an alternative methodology established by the mutual consent of the agency and the institutional investor. The buydown reimbursed pursuant to this chapter may be supplemented by additional interest rate reductions to the purchaser financed by the builder or seller.

51346. (a) Priority in granting commitments pursuant to this chapter shall be awarded to units for which construction will be commenced in three months.

(b) To the extent feasible, financing committed in the event of competing applications shall be geographically balanced to reflect the needs of all parts of the state, with 20 percent of the units financed in rural areas.

51347. (a) Loan commitments under the program authorized by this chapter shall be limited to an annual aggregate amount of one billion dollars ($1,000,000,000). No new loan commitments shall be provided after December 31, 1984.

(b) New commitments under this chapter shall be suspended if and when the prevailing mortgage rate drops below 12 percent. As used in this subdivision "prevailing mortgage rate" means the weighted average yield accepted by the Federal National Mortgage Association in its most recent free market auction for four-month, conventional mortgage commitments.

51348. Any public or private pension fund participating as an institutional investor shall endeavor to provide notice to its members of the interest reduction assistance made available pursuant to this chapter.

51349. The agency shall provide an annual report on the implementation and effectiveness of this chapter to the Governor, and to the Speaker of the Assembly and the Senate Rules Committee, for transmittal to affected policy committees.

51349.5. (a) The Public Employees' Retirement System and the State Teachers' Retirement System may, notwithstanding any statutory limitation on investment, participate as an institutional investor under this chapter. For the 1983 and 1984 calendar years, the Public Employees' Retirement System and the State Teachers' Retirement System shall, except as provided in this subdivision and

subdivision (b), and to the extent that commitments under this chapter have been applied for, give first priority to committing jointly an aggregate investment of not less than two billion dollars ($2,000,000,000) from moneys becoming available for investment to each fund. Each retirement system's share of investment under this section shall be in proportion to the dollar amount newly invested and reinvested by each fund during the fiscal year.

The annual investment of the Public Employees' Retirement System or State Teachers' Retirement System under this subdivision shall be reduced by the amount invested in the program during the 1983 and 1984 calendar years by other institutional investors.

(b) If the administering authority of the Public Employees' Retirement System or State Teachers' Retirement System determines for any fiscal quarter that providing loan commitments pursuant to this section will result in lower overall earnings for the fund than obtainable from alternative investment opportunities that would provide equal or superior security, including guarantee of yield, the administering authority may substitute such higher yielding investments, to the extent actually available for acquisition, for the investments otherwise specified by this section. Additionally, if and to the extent that, adherence to the diversification guideline specified in this section would conflict with its fiduciary obligations in violation of Section 9 of Article I of the California Constitution or Section 10 of Article I of the United States Constitution, or would conflict with any standard for prudent investment of the fund as may be set forth in the California Constitution, the administering body may substitute alternative investments. In either case, the administering authority shall submit its resolution of findings and determinations on a quarterly basis to the Governor, to the Speaker of the Assembly, and to the Senate Rules Committee for transmittal to affected policy committees, within 10 days following adoption of the resolution.

SEC. 4. Sections 1 to 3, inclusive, of this act shall be operative only if Assembly Bill 3701 of the 1981–82 Regular Session of the Legislature is enacted and becomes operative.

CHAPTER 1451

An act to add Chapter 2.5 (commencing with Section 53311) to Part 1 of Division 2 of Title 5 of the Government Code, relating to community facilities.

[Approved by Governor September 27, 1982. Filed with Secretary of State September 27, 1982.]

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

SECTION 1. Chapter 2.5 (commencing with Section 53311) is added to Part 1 of Division 2 of Title 5 of the Government Code, to read:

CHAPTER 2.5. THE MELLO-ROOS COMMUNITY FACILITIES ACT OF 1982

Article 1. General Provisions

53311. This chapter shall be known and may be cited as the "Mello-Roos Community Facilities Act of 1982".

53311.5. This chapter provides an alternative method of financing certain public capital facilities and services, especially in developing areas and areas undergoing rehabilitation. The provisions of this chapter shall not affect or limit any other provisions of law authorizing or providing for the furnishing of governmental facilities or services or the raising of revenue for these purposes. A local government may use the provisions of this chapter instead of any other method of financing part or all of the cost of providing the authorized kinds of capital facilities and services.

53312. When any proceedings are commenced under this chapter for the establishment of a community facilities district or for providing additional types of facilities and services within an established community facilities district, the provisions of this chapter shall prevail. A community facilities district is a legally constituted governmental entity established for the purpose of carrying on specific activities within definitely defined boundaries.

53313.5. A community facilities district may also provide for the purchase, construction, expansion, or rehabilitation of any real or other tangible property with an estimated useful life of five years or longer which is necessary to meet increased demands placed upon local agencies as the result of development or rehabilitation occurring within the district. For example, a community facilities district may provide facilities, including, but not limited to, the following:

(a) Local park, recreation, or parkway facilities.

(b) Elementary and secondary school sites and structures provided that the facilities meet the building area and cost standards established by the State Allocation Board.

(c) Libraries.

(d) Any other governmental facilities which the legislative body creating the community facilities district is authorized by law to construct, own, or operate.

53313.8. To the extent that any capital facility is provided under this chapter, a duplicate levy, impact fee, or other exaction may not be required for the same purpose under Section 66477.

53314. The legislative body may from time to time transfer

moneys to a community facilities district or to a zone within a community facilities district, for the benefit of the district or zone, from any funds available to the legislative body. Any moneys so transferred may be used for the payment of any currently payable expenses incurred by reason of the establishment of any facilities or provision of any authorized services within the district or zone prior to December 1 of the first fiscal year in which a special tax may be levied for the facilities or services within the district or zone. The rate of interest earned by such moneys shall be determined by the legislative body.

53314.3. In the first fiscal year in which a special tax or charge is levied for any facility or services in a community facilities district or a zone within a community facilities district, the legislative body shall include in the levy a sum sufficient to repay to the legislative body the amounts transferred to that area or zone pursuant to Section 53314. The amounts borrowed, with interest, shall be retransferred to the proper fund or funds from the first available receipts from the special levy in that area or zone.

Notwithstanding the above provisions, the legislative body may, by a resolution no later than the time of the first levy, extend the repayment of the transferred funds over a period of time not to exceed three consecutive years, in which event the levy and each subsequent levy shall include a sum sufficient to repay the amount specified by the legislative body for the year of the levy.

53314.5. Pursuant to a resolution adopted by the legislative body, the legislative body may appropriate any of its available moneys to a revolving fund to be used for the acquisition of real or personal property, engineering services, or the construction of structures or improvements needed in whole or in part to provide one or more of the facilities of a community facilities district. The revolving fund shall be reimbursed from tax revenues or other moneys available from the facilities district, and no sums shall be disbursed from the fund until the legislative body has, by resolution, established the method by, and term not exceeding five years within, which the community facilities district is to reimburse the fund. The district shall reimburse the fund for any amount disbursed to the area within five years after such disbursement, together with interest at the current rate per annum received on similar types of investments by the legislative body as determined by the local agency's treasurer.

53314.8. At any time either before or after the formation of the district, the legislative body may provide, by ordinance, that for a period specified in the ordinance, the local agency may contribute, from any source of revenue not otherwise prohibited by law, any specified amount, portion, or percentage of such revenues for the purposes set forth in such ordinance, limited to the following: the acquisition or construction of a facility, the acquisition of interest in real property, the provision of authorized services, and the payment of expenses incidental thereto. Such contribution shall not constitute an indebtedness or liability of the local agency.

53315. This chapter shall be liberally construed in order to effectuate its purposes. No error, irregularity, informality, and no neglect or omission of any officer, in any procedure taken under this chapter, which does not directly affect the jurisdiction of the legislative body to order the installation of the facility or the provision of service, shall void or invalidate such proceeding or any levy for the costs of such facility or service.

53315.3. The failure of any person to receive a notice, resolution, order, or other matter shall not affect in any way whatsoever the validity of any proceedings taken under this chapter, or prevent the legislative body from proceeding with any hearing so noticed.

53316. This chapter applies to all cities, counties, or districts insofar as those entities have the power to install any of the facilities or provide any of the services authorized under this chapter. The officers of cities, counties, or districts who have similar powers and duties as the municipal officers referred to in this chapter shall have the powers and duties given by this chapter to the municipal officials. Where no similar officer exists, the legislative body of the city, county, or district shall, by resolution, appoint a person or designate an officer to perform the duties under this chapter.

53317. Unless the context otherwise requires, the definitions contained in this article shall govern the construction of this chapter.

(a) "Clerk" means the clerk of the legislative body of a local agency.

(b) "Community facilities district" means the district of land in which public facilities and authorized services are to be provided, and in which special taxes and charges may be levied pursuant to this chapter to pay for those facilities and services.

(c) "Debt" means any binding obligation to repay a sum of money, including obligations in the form of bonds, certificates of participation, long-term leases, loans from government agencies, or loans from banks, other financial institutions, private businesses, or individuals.

(d) "Landowner" or "owner of land" means: (1) any person shown as the owner of land on the last equalized assessment roll; (2) if such person is no longer the owner, then any person entitled to be shown as the owner of land on the next assessment roll; (3) if land is subject to a recorded written agreement of sale, any person shown therein as purchaser; and (4) any public agency owning land.

(e) "Legislative body" means the legislative body or governing board of any local agency.

(f) "Local agency" means any city or county, whether general law or chartered, special district, school district, or any other municipal corporation or district.

(g) "Services" means the performance by employees of functions, operations, and maintenance and repair activities in order to provide the public with police and fire protection.

Article 2. Proceedings to Create a Community Facilities District

53318. Proceedings for the establishment of a community facilities district may be instituted by the legislative body on its own initiative and shall be instituted by the legislative body when either of the following occurs:

(a) A written request therefor, signed by two members of the legislative body, describing the boundaries of the territory which is proposed for inclusion in the area and specifying the type or types of facilities and services to be provided within the area, is filed with the legislative body.

(b) A petition requesting the institution of such proceeding and signed by the requisite number of registered voters is filed with the clerk of the legislative body. The petition may consist of any number of separate instruments, each of which shall comply with all the requirements of the petition, except as to the number of signatures.

53319. A petition requesting the institution of proceedings for the establishment of a community facilities district shall:

(a) Request the legislative body to institute proceedings to establish a community facilities district pursuant to this chapter.

(b) Describe the boundaries of the territory which is proposed for inclusion in the district.

(c) State the type or types of facilities and services to be provided within the area.

(d) Be signed by not less than 10 percent of the registered voters residing within the territory proposed to be included within the district. If the legislative body finds that the petition is signed by the requisite number of registered voters residing within the territory proposed to be included within the district, that finding shall be final and conclusive.

53320. Within 40 days after either a written request by two members of the legislative body or a petition requesting the institution of proceedings for the establishment of a community facilities district is filed with it, the legislative body shall adopt a resolution of intention to establish a community facilities district in the form hereinafter specified.

53321. Proceedings for the establishment of a community facilities district shall be instituted by the adoption of a resolution of intention to establish the district which shall:

(a) State that a community facilities district is proposed to be established under the terms of this chapter and describe the boundaries of the territory proposed for inclusion in the district.

(b) State the name proposed for the district in substantially the following form: "Community Facilities District No. _____."

(c) State the type or types of public facilities and services proposed to be provided within the district pursuant to this chapter.

(d) State that, except where funds are otherwise available, a special tax sufficient to pay for all such facilities and services will be annually levied within such area. The resolution shall specify the rate

and method of apportionment of the special tax in sufficient detail to allow each landowner or resident within the proposed district to estimate the annual amount that he or she will have to pay.

(e) Make a finding that the proposed facility is necessary to meet increased demands put upon the local agency as a result of the new development or rehabilitation.

(f) Fix a time and place for a public hearing on the establishment of the district which shall be not less than 30 nor more than 60 days after the adoption of the resolution.

53322. The clerk of the legislative body shall publish a notice of the hearing pursuant to Section 6061 in a newspaper of general circulation published in the area of the proposed district. Publication shall be complete at least seven days prior to the date of the hearing.

The notice shall:

(a) Contain the text of the resolution.

(b) State the time and place of the hearing.

(c) State that at the hearing the testimony of all interested persons or taxpayers for or against the establishment of the district, the extent of the district or the furnishing of specified types of public facilities or services will be heard.

53323. At the hearing, protests against the establishment of the district, the extent of the district, or the furnishing of specified types of public facilities or services within the district may be made orally or in writing by any interested persons or taxpayer. Any protests pertaining to the regularity or sufficiency of the proceedings shall be in writing and shall clearly set forth the irregularities and defects to which objection is made. All written protests shall be filed with the clerk of the legislative body on or before the time fixed for the hearing. The legislative body may waive any irregularities in the form or content of any written protest and at the hearing may correct minor defects in the proceedings. Written protests may be withdrawn in writing at any time before the conclusion of the hearing.

53324. If 50 percent or more of the registered voters residing within the territory proposed to be included in the district, or the owners of one-half or more of the area of the land in the territory proposed to be included in the district, file written protests against the establishment of the district, the legislative body shall abandon the proposed establishment of the community facilities district.

If such majority protests of the registered voters or of the landowners are only against the furnishing of a specified type or types of facilities or services within the district, or against levying a specified special tax, those types of facilities or the specified special tax shall be eliminated from the resolution finally establishing the district.

53325. The hearing may be continued from time to time, but must be completed within 30 days. At the conclusion of the hearing the legislative body may abandon the proposed establishment of the community facilities district or may, after passing upon all protests,

determine to proceed with establishing the district.

53325.1. If the legislative body determines to proceed with establishing the district it shall by resolution so declare and may modify its resolution of intention to establish the district, as needed.

53325.3. The legislative body shall then submit the levy of any special taxes to the qualified electors of the proposed community facilities district in the next general election or in a special election to be held within 90 days following the close of the protest hearing, whichever date occurs first. If 12 or more registered voters reside within the territory of the proposed community facilities district at the time of the close of the protest hearing, and for at least the preceding 90 days, the vote shall be by the registered voters of the proposed district, with each voter having one vote. If fewer than 12 registered voters reside within the proposed community facilities district at the time of the close of the protest hearing and for at least the preceding 90 days, the vote shall be by the landowners of the proposed district, each landowner having one vote for each acre or portion thereof of land that he or she owns within the proposed community facilities district. Ballots for a special election for this purpose may be distributed to qualified electors by mail with return postage prepaid.

53325.4. Except as otherwise provided in this article, the provisions of the Elections Code relating to the qualifications of electors, the manner of voting, the duties of election officers, the canvassing of returns, and all other particulars in respect to the management of elections insofar as they may be applicable shall govern all elections pursuant to this article.

53325.5. In establishing the boundaries of the district, the legislative body may alter the exterior boundaries of the district to include less territory than that described in the notice of the hearing but it may not include any territory not described in the notice of the hearing.

53325.6. Land devoted primarily to agricultural, timber, or livestock uses and being used for the commercial production of agricultural, timber, or livestock products may be included in a community facilities district only if such land is contiguous to other land which is included within the described exterior boundaries of the community facilities district, and only if the legislative body finds that the land will be benefited by any of the types of public facilities and services proposed to be provided within the district. The land may, however, be included in the community facilities district, if the owner requests its inclusion.

53325.8. In designating the types of facilities and services to be provided in the community facilities district the legislative body may eliminate one or more of the types of facilities and services specified in the resolution of intention to establish the area but may not include any types of facilities and services not specified in the resolution of intention.

53326. If prior to the adoption of the resolution pursuant to

Section 53325.1, the legislative body finds that the proceedings prior thereto were valid and in conformity with the requirements of this chapter, its determination shall be final and conclusive upon all persons.

53327. At the time of the adoption of the resolution of intention to establish a community facilities district, the legislative body may direct each of its officers who is or will be responsible for providing one or more of the proposed types of public facilities or services within the district, if it is established, to study the proposed district and at or before the time of the hearing file a report with the legislative body containing a brief description of these public facilities and services by type which will in his or her opinion be required to adequately meet the needs of the district and his or her estimate of the cost of providing these public facilities and services. All these reports shall be made a part of the record of the hearing on the resolution of intention to establish the district.

53328. After the canvass of returns of any election pursuant to Section 53325.3, the legislative body shall determine that the community facilities district is created with full legal effect, and the legislative body may levy any special tax as specified in the resolution adopted pursuant to Section 53325.1 within the territory of the district if two-thirds of the votes cast upon the question of levying the tax are in favor.

53329. After the canvass of returns of any election pursuant to Section 53325.3. the legislative body shall take no further action on creating the community facilities district for one year from the date of the election if no proposal to levy a special tax within the district receives approval by two-thirds of the votes cast on the question of levying the tax. The legislative body shall take no further action with respect to levying any specified special tax within the proposed community facilities district for one year from the date of the election if the question of levying that specified special tax fails to receive approval by two-thirds of the votes cast upon the question.

Article 3. Extension of Authorized Facilities and Services and Charges in Special Taxes

53330. Upon the establishment of a community facilities district only the types of public facilities and services specified in the resolution proposing establishing the district may be authorized or provided therein under the authority of this chapter, except as provided in this article.

53330.5. Upon approval of a special tax pursuant to Article 2 (commencing with Section 53318), the special tax may be levied only at the rate and may be apportioned only in the manner specified in the resolution proposing establishment of the district, except as provided in this article, and except that the legislative body may levy the special tax at a rate lower than that specified in the resolution. In addition, the special tax may be levied only so long as it is needed

to pay the principal and interest on debt incurred in order to construct facilities under authority of this chapter, or so long as it is needed to pay for services authorized by this chapter.

53331. If the legislative body is of the opinion that public convenience and necessity require that any additional types of authorized public facilities or services be provided within an established community facilities district, or that the rate or method of apportionment of a special tax should be changed, or that a new special tax should be proposed, it may adopt a resolution of intention to provide such other types of public facilities and services within the district or to levy a new special tax or special taxes or to alter the tax rate or method of apportionment of the special tax. Such proceedings may be commenced at any time. Section 53325.6 applies to the other types of facilities proposed to be provided.

53332. If a petition signed by 25 percent or more of the registered voters residing in the district is filed with the legislative body requesting that proceedings be commenced for the furnishing of specified additional types of public facilities or services or that provision of specified public service be reduced or terminated or that new special taxes be levied, or that any existing special tax be reduced or terminated, the legislative body shall within 40 days thereafter adopt a resolution of intention in the form specified in Section 53334 to make such changes within the community facilities district except that an existing special tax being used to pay off any debt incurred in order to build or acquire capital facilities under this chapter shall not be reduced or terminated if doing so would interfere with the timely retirement of that debt.

53333. The petition shall request the legislative body to commence proceedings to make specified changes to types of public facilities within a named community facilities district. The petition may consist of any number of separate instruments each of which shall comply with all the requirements of a petition except as to the number of signatures.

53334. The resolution of intention to provide additional types of public facilities and services within an established community facilities district, or to levy a new special tax or special taxes, or to alter the rate or method of apportionment of an existing special tax, shall do all of the following:

(a) State the name of the area.

(b) Generally describe the territory included in the area.

(c) Specify the additional types of public facilities and services which it is proposed to provide within the district.

(d) Specify any new special taxes which would be levied to pay for new or existing facilities and services and any proposed alteration to the rate or method of apportionment of an existing special tax.

(e) Fix a time and place for a hearing upon the resolution which shall not be less than 30 nor more than 60 days after the adoption of the resolution of intention.

53335. The clerk of the legislative body shall give notice of the

hearing in the same manner and within the same time as provided for the giving of notice of a hearing on a resolution of intention to establish a community facilities district.

The notice shall do all of the following:

(a) Contain the text of the resolution.

(b) State the time and place for hearing.

(c) State that at the hearing the testimony of all interested persons or taxpayers for or against the furnishing of existing or additional types of public facilities and services and the levying of additional special taxes or of changing existing special taxes will be heard.

53336. At the hearing, protests against the proposals described in the resolution may be made orally, or in writing by any interested persons. Any protests pertaining to the regularity or sufficiency of the proceedings shall be in writing and shall clearly set forth the irregularities or defects to which objection is made. All written protests shall be filed with the clerk of the legislative body on or before the time fixed for the hearing. The legislative body may waive any irregularities in the form or content of any written protest and at the hearing may correct minor defects in the proceedings. Written protests may be withdrawn in writing at any time before the conclusion of the hearing.

53337. If 50 percent or more of the registered voters residing within the district, or the owners of one-half or more of the area of the land in the territory included in the district file written protests against the furnishing of any specified type or types of public facilities or services within the district, those types of facilities or services shall be eliminated from the resolution ordering changes in the types of public facilities or services to be provided within the district.

If 50 percent or more of the registered voters residing within the district, or owners of one-half or more of the area of the land in the territory included in the district file written protests against the levying of any additional special taxes within the district, or against a proposed alteration to an existing special tax within the district, those changes shall be eliminated from the resolution ordering the additional charges or taxes.

53338. The hearing may be continued from time to time, but shall be completed within 30 days. At the conclusion of the hearing the legislative body may abandon the proceedings or may, after passing upon all protests, submit the question of levying a new special tax or of changing the rate or method of apportionment of an existing special tax to the qualified electors of the district as specified in Article 2 (commencing with Section 53318).

Article 4. Procedures for Levying

53340. After a community facilities district has been created and authorized to levy specified special taxes pursuant to Article 2

(commencing with Section 53318) and Article 3 (commencing with Section 53330), the legislative body may, by ordinance, levy the special taxes at the rate and apportion them in the manner specified in the resolution adopted pursuant to Article 2 (commencing with Section 53318) or Article 3 (commencing with Section 53330), except that the legislative body may levy the special tax at a lower rate. Properties or entities of the state, federal, or other local government shall be exempt from any such special tax. The proceeds of any special tax may only be used to pay, in whole or part, the cost of providing public facilities and services pursuant to this chapter. The special tax may be collected in the same manner as ordinary ad valorem property taxes are collected and may be subject to the same penalties and the same procedure and sale in case of delinquency as provided for the taxes, or another procedure may be adopted if the legislative body prefers. The tax collector may deduct the reasonable administrative costs incurred in collecting the special tax.

53342. For any community facilities district or zone thereof, a legislative body may fix and collect charges in the same manner as for miscellaneous extended services in county service areas.

53343. Any charges collected pursuant to this chapter may only be used for facilities and services authorized by this chapter.

Article 5. Bonds

53345. Whenever the legislative body deems it necessary for the community facilities district to incur a bonded indebtedness, it shall, by resolution, set forth all of the following:

(a) A declaration of the necessity for the indebtedness.

(b) The purpose for which the proposed debt is to be incurred.

(c) The amount of the proposed debt.

(d) The time and place for a hearing by the legislative body on the proposed debt issue.

53346. The clerk of the legislative body shall publish a notice of the hearing in a newspaper of general circulation circulated within the district.

53347. The copy of the resolution published or posted shall be accompanied by a notice subscribed by the clerk that:

(a) The hearing referred to in the resolution will be at the time and place specified in the resolution.

(b) At that time and place any person interested, including all persons owning property in the area, will be heard upon the proposed debt issue.

53348. At the time and place fixed for the hearing on the resolution declaring the necessity for incurring the bonded indebtedness or at any time and place to which the hearing is adjourned, the legislative body shall proceed with the hearing.

53349. At the hearing any person interested, including persons owning property within the area, may appear and present any matters material to the questions set forth in the resolution declaring

the necessity for incurring the bonded indebtedness.

53350. For purposes of financing specified public facilities, the legislative body may by resolution designate a portion of the district as an improvement area. The area shall be known as "Improvement Area No. _____" of " Community Facilities District _____." After the formation of such an improvement area, all proceedings for purposes of a bond election and for the purpose of levying special taxes for payment of such bonds shall apply only to the improvement area for those specified facilities.

53351. After the legislative body has made its determination pursuant to Section 53350, if it deems it necessary to incur the bonded indebtedness, it shall by resolution state all of the following:

(a) That it deems it necessary to incur the bonded indebtedness.

(b) The purpose for which the bonded indebtedness will be incurred.

(c) Either of the following in accordance with its previous determination:

(1) That the whole of the district will pay for the bonded indebtedness.

(2) That a portion of the district will pay for the bonded indebtedness, which portion shall be described in the resolution of the board made pursuant to Section 53350.

(d) The amount of debt to be incurred.

(e) The maximum term the bonds to be issued shall run before maturity, which term shall not exceed 40 years.

(f) The maximum annual rate of interest to be paid, payable annually or semiannually, or in part annually and in part semiannually.

(g) That the proposition will be submitted to the voters.

(h) The date of the special community facilities district election (which may be consolidated with a general or special district election including an election to levy a special tax) at which time such proposition shall be submitted to the voters; the hours between which the polls shall be open; the boundaries of voting precincts within the district or portion thereof benefited by incurring the bonded indebtedness; the location of polling places; and the names of the officers selected to conduct such election in each precinct, who shall consist of one judge, one inspector, and two clerks.

53352. The resolution provided for in Section 53351 shall constitute the notice of such special bond election and such resolution shall be published in a newspaper of general circulation circulating within the area.

53353. Except as otherwise provided in this article, the provisions of the Elections Code relating to the qualifications of electors, the manner of voting, the duties of election officers, the canvassing of returns, and all other particulars in respect to the management of elections insofar as they may be applicable shall govern all elections pursuant to this article except that voting shall be conducted in the manner specified in Section 53325.3 of this chapter.

53353.5. Propositions relating to the levy of a special tax and the incurring of bonded indebtedness under this chapter may be combined into one ballot proposition whenever convenient, at the direction of the legislative body.

53354. If the area designated in the resolution adopted pursuant to Section 53351 does not include the entire community facilities district, a separate ballot shall be prepared for the vote upon the proposition to authorize bonds and to levy a specail tax for payment of such bonds and only the voters entitled thereto shall be given such ballots.

53355. A two-thirds vote shall be required for the issuance of revenue anticipation bonds under authority of this chapter.

53356. If more than two-thirds of the votes cast at the election are in favor of incurring the indebtedness, the legislative body may, by resolution, at the time or times it deems proper, provide for the following:

(a) The form of the bonds.

(b) The execution of the bonds.

(c) The issuance of any part of the bonds.

53357. The bonds shall be signed by the chairperson of the legislative body and countersigned by the clerk of the legislative body or his or her deputy and the coupons shall be signed by the clerk of the legislative body or his or her deputy. All signatures except that of the clerk on the bonds may be printed, lithographed or engraved. If any officer whose signature appears on the bonds or coupons ceases to be such officer before the delivery of the bonds, his or her signature is as effective as if he had remained in office. All bonds shall be payable at the office of the treasurer of the local agency.

53358. Each year at the time the legislative body fixes and levies special taxes and charges for the community facilities district it shall also fix and levy that amount of special taxes and charges within the community facilities district which is required for the payment of the principal of and interest on any outstanding bonded debt of the community facilities district becoming due and payable during the ensuing year. Such special tax or charge shall be levied and collected by the same officers and at the same time and in the same manner that all other special taxes and charges are levied and collected for the community facilities district, providing that such special taxes and charges do not exceed the authority granted by Article 2 (commencing with Section 53318) and Article 3 (commencing with Section 53330). All such collections shall be paid into the community facilities district bond fund for such particular community facilities district and shall be used solely for the payment of the principal of and interest on the outstanding bonds of such community facilities district.

53359. An action to determine the validity of bonds may be brought pursuant to Chapter 9 (commencing with Section 860) of Title 10 of Part 2 of the Code of Civil Procedure.

53359.5. The legislative body shall, no later than 10 days prior to the sale of any debt pursuant to this article, give written notice of the proposed sale to the California Debt Advisory Commission by mail, postage prepaid, as required by Chapter 12 (commencing with Section 8855) of Division 1 of Title 2.

53360. The community facilities district may sell the bonds so issued at the times or in the manner the legislative body deems to be to the public interest, provided, that all bonds shall be sold on sealed proposals to the highest bidder, after advertising for bids by publication of notice of sale pursuant to Section 53322, not less than 10 days prior to the date of sale in a newspaper of general circulation circulating in the area. If no bids are received or if the legislative body determines that the bids received are not satisfactory as to price or responsibility of the bidders, the legislative body may reject all bids received, if any, and either readvertise or sell the bonds at private sale.

53361. Any bonds issued by a district organized under the provisions of this chapter are hereby given the same force, value and use as bonds issued by any municipality and shall be exempt from all taxation within the state.

53361.1. All bonds issued by any district payable from taxes or charges are legal investments for all trust funds, for the trust funds of all insurance companies, the state school funds, and any funds which may be invested in bonds of cities, counties, cities and counties, school districts, or municipalities in the state.

53361.4. Whenever the legislative body declares by resolution that it deems it desirable that any bonds issued or to be issued by the community facilities district or an improvement area therein should be certified by the Treasurer as provided in this section, or whenever the legislative body of a special district is required to seek certification of its bonds by the Treasurer pursuant to the District Securities Investigation Law or other provisions of law, the legislative body shall file a certified copy of the resolution with the Treasurer and the bonds described in the resolution shall then be subject to investigation and certification by the Treasurer. If in the opinion of the Treasurer the bonds are adequately secured and the revenues and other funds applicable to the payment of the bonds are, or upon the acquisition, construction, or improvement of the enterprise for which such bonds were or are to be issued, will be sufficient to pay the principal of and interest on such bonds, the Treasurer shall certify that such bonds are legal investments for all trust funds, for the funds of all insurance companies, the state school funds, and any funds, other than funds of savings banks, which may be invested in bonds of cities, counties, cities and counties, school districts, or municipalities in the state.

53362. The legislative body may, by resolution, do the following:

(a) Submit to voters a measure to issue new bonds to refund any or all of the district bonds outstanding.

(b) Submit to the voters of any improvement area a measure to

issue new bonds to refund any improvement area bonds outstanding.

The measure may be voted on at any district election or an election may be called for the purpose.

53363. The procedure upon the election shall be in accordance, so far as applicable, with the procedure upon an original issue of bonds, except that no hearing need be held.

53363.5. The refunding bonds may, if the holders of the bonds of an original issue and the legislative body so agree, be exchanged for original bonds. The face value of refunding bonds exchanged for original bonds shall not exceed the face value of the original bonds.

53364. The legislative body may use revenue to pay principal and interest of the refunding bonds in the same manner as prescribed for payment of bonds of an original issue.

53364.5. Any bonds issued by the district may be made callable by resolution of the legislative body adopted at or prior to the time of issuing the bonds. When bonds are made callable a statement to that effect shall be set forth on the face of the bond. Callable bonds may be redeemed on any interest payment date prior to their fixed maturity in such amounts and manner and at such prices as the legislative body may prescribe in the resolution provided for in Section 53351.

53365. Notice designating the bonds called for redemption shall be published pursuant to Section 53322 in a newspaper of general circulation circulated in the area. The first publication of the redemption notice shall not be less than 30 nor more than 90 days prior to the date fixed for redemption.

53365.5. If on the date fixed for redemption, the area has provided funds available for payment of the principal and interest of the bonds called, interest on the bonds shall cease.

SEC. 2. Notwithstanding Section 6 of Article XIII B of the California Constitution and Section 2231 or 2234 of the Revenue and Taxation Code, no appropriation is made by this act for the purpose of making reimbursement pursuant to these sections. It is recognized, however, that a local agency or school district may pursue any remedies to obtain reimbursement available to it under Chapter 3 (commencing with Section 2201) of Part 4 of Division 1 of that code.

SEC. 3. Notwithstanding Section 2231.5 of the Revenue and Taxation Code, this act does not contain a repealer, as required by that section; therefore, the provisions of this act shall remain in effect unless and until they are amended or repealed by a later enacted act.

CHAPTER 1452

An act to amend Sections 50185, 50189, 50190, 50191, 50193.5, 51064, 51068, 51152, 51177, and 52020 of, to amend, repeal, and add Section 50193 of, to add and repeal Section 50191.1 of, and to repeal Section 50191.5 of, the Health and Safety Code, relating to housing finance, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 27, 1982. Filed with Secretary of State September 27, 1982.]

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

SECTION 1. Section 50185 of the Health and Safety Code is amended to read:

50185. There is hereby created the Mortgage Bond Allocation Committee composed of the Governor, or in the Governor's absence, the Director of Finance, the Controller, and the State Treasurer. The Director of Housing and Community Development ; the Executive Director of the California Housing Finance Agency; and two representatives of local government, one representative of the counties appointed by the Senate Rules Committee, and one representative of the cities appointed by the Speaker of the Assembly shall serve as ex officio, nonvoting members. The State Treasurer shall be the chairperson of the committee. The members of the committee shall serve without compensation. A majority shall be empowered to act for such committee. The committee may employ an executive secretary to carry out its duties under this chapter.

SEC. 2. Section 50189 of the Health and Safety Code is amended to read:

50189. One-third of the annual state ceiling shall be reserved for the entire calendar year for entitlement allocations to local agencies pursuant to subdivision (a). An additional one-third of the annual state ceiling shall be reserved until April 1 of each calendar year for supplementary allocations to local agencies pursuant to paragraphs (1) and (2) of subdivision (b). The maximum allocation of qualified mortgage bonds to any single local agency in a calendar year shall be the sum of the amounts determined pursuant to subdivisions (a) and (b), but not to exceed two hundred fifty million dollars ($250,000,000). In no case, may a local agency be granted an approval of an entitlement or supplementary allocation which exceeds one hundred fifty million ($150,000,000) at any one time. However, nothing shall preclude the local agency from requesting, after expiration of any previously granted allocation, a new allocation which together with previously sold allocations shall not exceed two hundred fifty million dollars ($250,000,000) in a calendar year.

In no case, may a local agency file a request for an allocation for a particular issue if a previous request for an allocation for such issue

is then pending before the committee or if a previously approved allocation for such issue is not yet sold or expired.

(a) The entitlement allocation for a local agency in any calendar year shall be the greatest of one of the following:

(1) The local bond limit times the ratio of the population of the territory of such local agency for the prior calendar year to the population of the state for the prior calendar year, but not to exceed sixty million dollars ($60,000,000).

(2) The local bond limit times the ratio of the amount of growth in population of the territory of the local agency from the year 1975 to the year 1980 to the amount of growth in population of the state over the same period, but not to exceed sixty million dollars ($60,000,000).

(3) The local bond limit times the housing need of the local agency, not to exceed sixty million dollars ($60,000,000).

(4) Twenty million dollars ($20,000,000).

For purposes of this subdivision only, the population of the territory of a local agency for any given calendar year shall be deemed to be the Department of Finance's population estimate for that territory and year as of the effective date of this chapter and as subsequently revised.

The housing need of the local agency shall be the ratio of the number of households within the territory of the local agency paying more than 35 percent of their income for rent to the number of households in the state paying more than 35 percent of their income for rent, according to the most recent available census.

(b) In addition to an entitlement allocation under subdivision (a), a local agency shall be eligible for a supplementary allocation of qualified mortgage bonds by filing a notice of intent pursuant to subdivision (b) of Section 50191 prior to April 1 of the calendar year, if the supplementary allocation of qualified mortgage bonds is restricted, by reason of provisions in the resolution or indenture authorizing the issuance of such qualified mortgage bonds or by reason of the statute under which such qualified mortgage bonds are issued, for use exclusively to provide mortgages to persons and families whose incomes do not exceed:

(1) One hundred twenty percent of the median household income in the case of financing for improving a residence or for residences where the purchaser will be the first occupant. Upon the resale of a home for which financing was originally provided under this paragraph, the maximum income of persons and families shall also be 120 percent of the median household income.

(2) The median household income where the purchaser will not be the first occupant. However, the issuer shall assure that no less than half the funds allocated for financing where the purchaser will not be the first occupant shall be for households whose income does not exceed 80 percent of such median household income; provided, that the legislative body of the issuer may, by resolution, increase this income limitation to 90 percent of the median household income if

the legislative body finds that there are insufficient numbers of creditworthy persons whose income does not exceed 80 percent of the median household income. Such a resolution shall be final and conclusive as to the findings required by this paragraph.

Supplementary allocations requested after April 1, may be for any purpose lawful under the federal act and state law. However, the committee shall not provide a supplementary allocation not restricted for use pursuant to paragraphs (1) and (2) of this subdivision until the committee has acted upon any pending requests for supplementary allocations filed prior to April 1 of each calendar year which are so restricted.

SEC. 3. Section 50190 of the Health and Safety Code is amended to read:

50190. (a) One-third of the state ceiling shall be reserved for qualified mortgage bonds of state agencies and shall be allocated as follows: 3 percent shall be allocated for programs under the California National Guard Members Revenue Bond Act of 1978, (Chapter 10 (commencing with Section 480) of Part 1 of Division 2 of the Military and Veterans Code), 6 percent shall be allocated to the Regents of the University of California Faculty Home Loan Program, 19 percent shall be allocated for programs under the Veterans Farm and Home Purchase Act of 1974 (Article 3.1 (commencing with Section 987.50) of Chapter 6 of Division 4 of the Military and Veterans Code), and 72 percent shall be allocated to the California Housing Finance Agency, for programs conducted pursuant to Part 3 (commencing with Section 50900) and Part 6 (commencing with Section 52500) of this division.

(b) Each state agency shall submit to the committee by March 1 of each calendar year, a plan for utilizing its allocation of bonds. The plan shall specify the approximate date or dates on which the agency will issue bonds and the approximate amount of each issuance. On June 1 and September 1 each agency shall submit a report to the committee on its progress in utilizing its allocation of bonds. After June 1 of each year, the committee may reallocate such portion of a state agency's allocation as the committee finds the agency will be unable to utilize during the calendar year first to another state agency, and if the committee determines there is no other state agency able to use this bonding allocation, then to local agencies in the manner provided in subdivision (b) of Section 50189.

(c) If in any year a state agency conducting a program or programs specified in this section determines it will be unable to utilize the full amount of the authority specified, it shall promptly notify the committee, which shall provide for reallocation to one or more of the state agencies for other programs specified in this section. If there is no other state agency able to use this bonding allocation, then it shall be allocated to local agencies in the manner provided in subdivision (b) of Section 50189.

(d) The committee may reduce the amount of the allocation specified in subdivision (a) for any state agency which did not use

all or a substantial portion of its previous year's allocation, and may reallocate such sums as provided in subdivision (b).

SEC. 4. Section 50191 of the Health and Safety Code is amended to read:

50191. (a) To apply for an allocation of qualified mortgage bonds, at least 30 days prior to issuing qualified mortgage bonds, a local agency shall file with the committee a notice specifying the amount of qualified mortgage bonds proposed to be issued, the approximate date on which the qualified mortgage bonds are to be issued, the amount of the proposed issuance attributable to the local agency's entitlement allocation under subdivision (a) of Section 50189, the portion of the proposed issuance, if any, which is to be a supplementary allocation under subdivision (b) of Section 50189, the portion of the proposed issuance, if any, which is an allocation assigned to the local agency pursuant to Section 50193 and what portion, if any, will be assigned to its housing authority or redevelopment agency. The committee may require the local agency to submit verification of amounts assigned to it pursuant to Section 50192.

The notice to the committee shall include a copy of a resolution adopted by the local agency's legislative body authorizing application for an allocation of bonds. In addition, the notice shall contain certification from the local agency to the committee that the local agency has on deposit in an interest-bearing trust account an amount, or contain certification that there is a letter of credit in an amount, equal to ½ of 1 percent of the dollar amount of qualified mortgage bonds being requested for allocation. When it finds special circumstances exist, the committee may reduce the amount of the deposit required. Such circumstances may include, but are not limited to, the participation of nonprofit developers in the local agency's proposed issuance. Except to the extent needed to pay costs incurred in connection with the proposed issue of qualified mortgage bonds, the deposit shall be forfeited to be used by the local agency to assist housing for persons of low and moderate income, in an amount equal to ½ of 1 percent of the dollar amount of bonds allocated to the local agency but not sold within the time period specified in this section. The committee may require the local agency to justify what constitutes costs and may disallow those costs which, in the committee's determination are unjustified. When the committee finds that a local agency has sold substantially all of its allocation of bonds, or, for reasons beyond the control of the local agency has not sold all or substantially all of its allocation of bonds, the committee may waive or reduce the requirement for the forfeiture of such amount.

Prior to April 1, a local agency may not file, and the committee may not accept, a notice of intent to issue qualified mortgage bonds in excess of its entitlement allocation plus amounts assigned pursuant to Section 50192, unless all proceeds of qualified mortgage bonds in excess of such amounts are restricted for use exclusively to provide

mortgages to persons and families whose incomes do not exceed the applicable maximum incomes specified in paragraphs (1) and (2) of subdivision (b) of Section 50189.

The committee may continue any list from the previous year of notices filed by local agencies for the allocation of qualified mortgage bonds. If the committee elects to continue an existing list of notices, it shall require the local agency whose notice was received in the previous year to designate whether it wishes to remain on the list and whether it wishes it to be deemed accepted as of January 1 or April 1. If the committee elects to continue an existing list, notices received on or after January 1 shall be added to the existing list in the order received by the committee.

Upon receipt of a notice pursuant to this subdivision, the committee shall advise the local agency of the aggregate amount of qualified mortgage bonds in each allocation category previously approved pursuant to this chapter in that calendar year. Within five days of selling qualified mortgage bonds, the local agency shall notify the committee of the amount of qualified mortgage bonds sold.

(b) Except as provided in Section 50186, the committee shall approve an allocation for qualified mortgage bonds specified in a notice filed by a local agency pursuant to subdivision (a) and which conforms to the requirements and limitations of this chapter, provided the allocation, when combined with previously approved allocations, would not exceed the respective portions of the state ceiling reserved for entitlement allocations and supplementary allocations during that calendar year. If the committee has not acted within 30 days after the date that the local agency files a notice with the committee pursuant to subdivision (a), the proposed allocation shall be deemed approved by the committee.

(c) Within 30 days of receiving a notice from the first local agency filing pursuant to subdivision (a), and every 30 days thereafter if requests for allocation are pending before the committee, the committee shall determine whether the combined and cumulative requests for allocations as of that date would, if approved, exceed the respective portions of the state ceiling reserved for entitlement and supplementary allocations to local agencies pursuant to Section 50189, or if after April 1, would exceed the local bond limit. If the sum of the requests would exceed the respective portions of the state ceiling reserved for entitlement and supplementary allocations on that date, or if after April 1, would exceed the local bond limit, the committee shall reduce each request pro rata based on the amount of each request so as not to exceed either the local bond limit or the respective portions of the state ceiling reserved for entitlement and supplementary allocations during the calendar year, except that no request for an entitlement allocation shall be reduced below twenty million dollars ($20,000,000).

(d) Unless sold, an allocation of qualified mortgage bonds to a local agency shall expire 90 days after the allocation was granted by the committee. However, the committee may, upon application of

the local agency in advance of the expiration date, extend the expiration date on the allocation for an additional period not to exceed 30 days, except as provided in subdivision (f), if the committee determines that the issuer demonstrates prior to the expiration date:

(1) The issuer had prepared the text of, and was prepared to market the bonds by distribution of, an official statement or other marketing materials.

(2) Interest rates or other terms when available in the financial markets were unacceptable to the issuer because, in the judgement of the issuer, such rates or terms made the financing of the mortgages to be provided by the issuance of the bonds infeasible for the homes to be financed.

Any allocation which has expired shall be available for reallocation to local agencies pursuant to Section 50189. If the amount of qualified mortgage bonds reported sold by a local agency pursuant to subdivision (a) of this section is less than the amount allocated to the local agency, the amount allocated but not sold shall be available as of the date of the local agency's report pursuant to subdivision (a) for reallocation to local agencies pursuant to Section 50189.

(e) The committee may disapprove or reduce the amount of an allocation requested by a local agency which did not use all or a substantial portion of an allocation granted after March 1, 1982.

(f) The committee may, in its discretion, grant further extentions of the expiration date of an allocation if, in its judgment, the issuer has been delayed in issuing bonds for reasons beyond its control. Such reasons may include, but are not limited to, the pendency of litigation which precludes the issuance of bonds, and the pendency of designations of areas of chronic economic distress as defined in the federal act.

(g) The committee may designate an appropriate individual who shall receive entitlement or supplementary allocation notices on behalf of the committee.

Any allocation which has expired shall be available for reallocation to local agencies pursuant to Section 50189. If the amount of qualified mortgage bonds reported sold by a local agency pursuant to subdivision (a) of this section is less than the amount allocated to the local agency, the amount allocated but not sold shall be available as of the date of the local agency's report pursuant to subdivision (a) for reallocation to local agencies pursuant to Section 50189.

SEC. 5. Section 50191.1 is added to the Health and Safety Code, to read:

50191.1. Each state agency shall, by October 1, submit to the committee a plan of action for the use of its allocation for the remainder of the year. The committee may transfer all or any portion of an allocation from a state agency first to other state agencies and then to a local agency, if, in its judgment, it finds that a state agency will not use all or a portion of the allocation specified in Section 50190.

This section shall remain in effect only until January 1, 1983, and

as of that date is repealed, unless a later enacted statute, which is chaptered before January 1, 1983, deletes or extends that date.

SEC. 6. Section 50191.5 of the Health and Safety Code is repealed.

SEC. 7. Section 50193 of the Health and Safety Code is amended to read:

50193. A local agency may assign all or any portion of its allocation of qualified mortgage bonds under this chapter to its redevelopment agency, its housing authority, or a joint powers agency created by an agreement to which it is a party or to the California Housing Finance Agency pursuant to Chapter 6 (commencing with Section 52060) of Part 5, permitting the California Housing Finance Agency to issue qualified mortgage bonds on behalf of the local agency or agencies.

A local agency that assigns a portion of its allocation to its redevelopment agency or housing authority shall have the portion assigned and the portion remaining treated as separate allocations for the purposes of use and expiration.

An allocation may not be assigned to a joint powers agency for a particular issue for use in the territory of a local agency that is not also assigning an allocation to the joint powers agency for the same issue. However, an allocation may be assigned to a joint powers agency by a local agency if the committee was notified prior to the granting that the allocation would be assigned. The notification shall include the amount that each local agency will receive of entitlement and supplementary allocation.

An allocation may be assigned to a joint powers agency that is created among local agencies that have already been granted an allocation. The joint powers agency shall notify the committee of the formation of the agency and of the members of the joint powers agency, within 15 days of the formation of the agency.

No local agency may assign to a joint powers agency any portion of its entitlement allocation unless such portion will be utilized to provide financing for properties located within the territory of the assigning local agency (including a proportionate share of costs of issuance, underwriters discount, capitalized interest, reserve funds and similar expenses associated with the financing), provided that such assignment shall not be deemed ineffective if, after issuance of the qualified mortgage bonds and for reasons beyond the control of the issuer, the issuer is unable to use any portion of the proceeds of such qualified mortgage bonds to provide financing for properties located within the territory of the assigning local agency, as required by such assigned allocation, and such proceeds are instead used to redeem the qualified mortgage bonds or to provide financing for properties authorized to be financed under the state law under which the bonds were issued and located within the joint powers agency in which the assigning local agency is a member.

This section shall remain in effect only until January 1, 1983, and as of that date is repealed, unless a later enacted statute, which is chaptered before January 1, 1983, deletes or extends that date.

SEC. 8. Section 50193 is added to the Health and Safety Code, to

read:

50193. A local agency may assign all or any portion of its allocation of qualified mortgage bonds under this chapter to its redevelopment agency, its housing authority, or a joint powers agency created by an agreement to which it is a party or to the California Housing Finance Agency pursuant to Chapter 6 (commencing with Section 52060) of Part 5, permitting the California Housing Finance Agency to issue qualified mortgage bonds on behalf of the local agency or agencies.

A local agency that assigns a portion of its allocation to its redevelopment agency or housing authority shall have the portion assigned and the portion remaining treated as separate allocations for the purposes of expiration and use, including, but not limited to, deposits and extensions pursuant to Section 50191.

An allocation may not be assigned to a joint powers agency for a particular issue for use in the territory of a local agency that is not also assigning an allocation to the joint powers agency for the same issue. However, an allocation may be assigned to a joint powers agency by a local agency if the committee was notified prior to the granting that the allocation would be assigned. The notification shall include the amount that each local agency will receive of entitlement and supplementary allocation.

An allocation may be assigned to a joint powers agency that is created among local agencies that have already been granted an allocation. The joint powers agency shall notify the committee of the formation of the agency and of the members of the joint powers agency, within 15 days of the formation of the agency.

No local agency may assign to a joint powers agency any portion of its entitlement allocation unless such portion will be utilized to provide financing for properties located within the territory of the assigning local agency (including a proportionate share of costs of issuance, underwriters discount, capitalized interest, reserve funds and similar expenses associated with the financing), provided that such assignment shall not be deemed ineffective if, after issuance of the qualified mortgage bonds and for reasons beyond the control of the issuer, the issuer is unable to use any portion of the proceeds of such qualified mortgage bonds to provide financing for properties located within the territory of the assigning local agency, as required by such assigned allocation, and such proceeds are instead used to redeem the qualified mortgage bonds or to provide financing for properties authorized to be financed under the state law under which the bonds were issued and located within the joint powers agency in which the assigning local agency is a member.

This section shall become operative January 1, 1983.

SEC. 9. Section 50193.5 of the Health and Safety Code is amended to read:

50193.5. For purposes of this chapter, any allocation of qualified mortgage bonds to a local agency which has been assigned to a redevelopment agency may be apportioned among two issues of qualified mortgage bonds by such redevelopment agency without

subjecting such assigned allocation to the expiration or reallocation provisions of this chapter, but only if one such issue is authorized by Chapter 6 (commencing with Section 33600) of Part 1 of Division 24, and the other such issue is authorized by Chapter 8 (commencing with Section 33750) of Part 1 of Division 24; and only if each such issue is sold before the date on which the original allocation to the local agency expires.

SEC. 10. Section 51064 of the Health and Safety Code is amended to read:

51064. The agency shall establish maximum sale prices for the initial sale of residential structures, the acquisition, construction, or rehabilitation of which is financed by the agency in anticipation of sale to persons and families of low or moderate income. The agency shall also establish a price for any residential structure whenever the buyer of such residential structure receives a mortgage loan from the agency. The maximum sale prices established by the agency pursuant to this section may provide a reasonable profit to the seller while serving the purposes of this division.

SEC. 11. Section 51068 of the Health and Safety Code is amended to read:

51068. Prior to authorizing a mortgage loan under Chapter 5 (commencing with Section 51100) of this part or a mortgage loan under Chapter 6 (commencing with Section 51300) of this part, if the loan under either such chapter is for the purchase of a residential structure, the agency shall:

(a) Require an appraisal of the residential structure be done by a competent and experienced appraiser.

(b) Establish a maximum sale price for the residential structure pursuant to Section 51064, not in excess of appraised value.

(c) Require that the residential structure be either newly constructed, recently rehabilitated, subject to an agreement where the borrower has agreed to conform to rehabilitation standards within a time and in a manner specified by the agency, or certified by the local code enforcement agency or the department to be in good condition.

(d) Require that the purchaser intend to occupy the residential structure.

(e) Require that the loan bear below-market interest, except as otherwise provided in Chapter 6 (commencing with Section 51300) of this part.

SEC. 12. Section 51152 of the Health and Safety Code is amended to read:

51152. Loans shall not be made by the agency to a qualified mortgage lender under the provisions of this article, except pursuant to an agreement between the agency and the qualified mortgage lender. Such agreements shall include the following:

(a) A maximum interest rate that can be charged for construction loans or mortgage loans.

(b) A recital of the requirements of loans for residential structures

authorized by this part.

(c) Standards for mortgage servicing and foreclosure practices, including programs of forbearance and recasting for mortgages in default.

SEC. 13. Section 51177 of the Health and Safety Code is amended to read:

51177. The agency may make and undertake commitments to make construction loans and mortgage loans to finance residential structures without the participation of a qualified mortgage lender where the income of the owner-occupant is no greater than 65 percent of the median income for the area in which the residential structure is located as determined by the United States Department of Housing and Urban Development or by the agency's reference to current data of the U.S. Census Bureau. The income at 65 percent of median shall be based on a family of four with adjustments above and below such maximum to compensate for family size.

SEC. 14. Section 52020 of the Health and Safety Code, as amended by Section 3 of Chapter 155 of the Statutes of 1982, is amended to read:

52020. For purposes of a home financing program authorized by this part, a city or county shall have the following powers and duties:

(a) To acquire, contract, and enter into advance commitments to acquire, home mortgages made or owned by lending institutions at such purchase prices and upon such other terms and conditions as shall be determined by the city or county or such other person as it may designate as its agent, to make and execute contracts with lending institutions for the origination and servicing of home mortgages and to pay the reasonable value of services rendered under those contracts. Prior to executing any such contract with a lending institution, a city or county shall adopt regulations establishing criteria for qualification of lending institutions eligible to originate and service home mortgages under home financing programs authorized by this part and shall with respect to each home financing progam, permit each qualified lending institution which transacts business in the city or county the opportunity to participate in such program on an equitable basis with other participating lending institutions. Two or more cities in the same county, or a county and one or more cities within such county, or two or more adjacent counties and any number of cities within those counties may enter into an agreement to join or cooperate with one another in the exercise jointly, or otherwise, of any or all of their powers for the purpose of financing home mortgages pursuant to this part with respect to property within the boundaries of any one or more of such entities.

(b) To make loans to lending institutions under terms and conditions which, in addition to other provisions as determined by the city or county, shall require the lending institutions to use all of the net proceeds thereof, directly or indirectly, for the making of home mortgages in an aggregate principal amount equal to the

amount of such net proceeds.

(c) To establish, by rules or regulations, in resolutions relating to any issuance of bonds or in any documents relating to such issuance, such standards and requirements applicable to the purchase of home mortgages or the making of loans to lending institutions as the city or county deems necessary or desirable to effectuate the purposes of this part, which may include without limitation the following:

(1) The time within which lending institutions are required to make commitments and disbursements for home mortgages.

(2) The location and other characteristics of homes to be financed by home mortgages.

(3) The terms and conditions of home mortgages to be acquired.

(4) The amounts and types of any insurance coverage required on homes, home mortgages and bonds.

(5) The representations and warranties of lending institutions confirming compliance with such standards and requirements.

(6) Restrictions as to interest rate and other terms of home mortgages or the return realized therefrom by lending institutions.

(7) The type and amount of collateral security to be provided to assure repayment of any loans from the city or county and to assure repayment of bonds.

(8) Any other matters related to the purchase of home mortgages or the making of loans to lending institutions as shall be deemed relevant by the city or county.

(d) To require from each lending institution from which home mortgages are purchased or to which loans are made the submission of evidence satisfactory to the city or county of the ability and intention of the lending institution to make home mortgages, and the submission, within the time specified by the city or county for making disbursements for home mortgages, of evidence satisfactory to the city or county of the making of home mortgages and of compliance with any standards and requirements established by it.

(e) Each city or county which finances housing pursuant to this part shall designate a person or entity to administer the program.

(f) Each city or county which finances housing pursuant to this part shall adopt regulations establishing criteria for qualification of such persons and families, which may differ among different cities or counties to reflect varying economic and housing conditions. In developing such criteria, factors such as the following shall be taken into consideration:

(1) The amount of the income of such person or family that is available for housing needs.

(2) The size of the household.

(3) The costs and condition of available housing.

(4) The eligibility of such persons or families for federal housing assistance of any type.

Criteria for qualification of persons and families pursuant to this section shall include a maximum household income, which maximum shall not exceed the following:

(A) One hundred fifty percent of the median household income is to be for mortgages made for improving a home or for homes where the purchaser will be the first occupant. Upon the resale of a home for which financing was originally provided under this paragraph, the maximum income of persons and families shall also be 150 percent of the median household income. For purposes of this paragraph, a mortgage made for improving a home includes a home improvement loan as defined in Section 103A of the federal Internal Revenue Code of 1954, as amended.

(B) One hundred twenty percent of the median household income where the purchaser will not be the first occupant. However, the city or county shall assure that no less than 20 percent of the funds allocated for home mortgages where the purchaser will not be the first occupant shall be for households whose income does not exceed 110 percent of the median household income; provided, that the legislative body of the city or county may, by resolution, increase this income limitation to 120 percent of median household income if the legislative body finds that there are insufficient numbers of creditworthy persons whose income does not exceed the median household income. Such a resolution shall be final and conclusive as to the findings required by this subparagraph. However, such finding shall not be made by the legislative body before six months from the date mortgages were first made under the program and only if participating lenders have entered into an agreement with the city, county, or city and county that lenders will advertise at least monthly the availability of funds and will forfeit one-quarter of their origination fees if they are unable to use 20 percent of the funds to make mortgages to households whose income does not exceed 110 percent of the median income.

(C) One hundred fifty percent of the median household income is to be for mortgages made for improving a home or for homes where the purchaser will be the first occupant in any city, the entire area of which, or in any county in which a portion thereof, is designated by the United States Department of Commerce, Economic Development Administration as a special impact area within a Title IV redevelopment area, pursuant to Section 401 of the federal Public Works and Economic Development Act of 1965, as amended, and which is eligible for Urban Development Action Grant funds under the current distress standards established for cities and counties by the Secretary of the United States Department of Housing and Urban Development pursuant to Section 119, of the Housing and Community Development Act of 1974, provided that the homes purchased or improved are situated within the boundaries of a special impact area as defined by the Economic Development Administration, and that the designation is in effect on the date of sale of revenue bonds issued under this part.

As used in this subdivision, "median household income" means the highest of (i) statewide median household income, (ii) countywide median household income, or (iii) median family income for area as

determined by the United States Department of Housing and Urban Development (with respect to either a standard metropolitan statistical area or an area outside of a standard metropolitan statistical area).

Any city or county which issued bonds pursuant to this chapter after August 1, 1981, may elect to apply the provisions of this subdivision to mortgagors obtaining mortgages from the proceeds of such bonds.

(g) Each city or county which finances housing pursuant to this part shall allocate no less than 60 percent of the dollar amount of its financing from bond proceeds to fund loans for the purchase of homes where the purchaser will be the first occupant, or for substantial rehabilitation. As used in this chapter, "substantial rehabilitation" means rehabilitation in which the costs of rehabilitation equal or exceed 20 percent of the value of the structure after rehabilitation.

(h) Each city or county which finances housing pursuant to this part shall require each mortgagor under the program to certify his or her intention to occupy the home for a minimum of two years after receiving a home mortgage, with appropriate exceptions in hardship cases determined by such city or county.

(i) To do any and all things necessary to carry out the purposes and exercise the powers expressly granted by this part.

This section shall remain in effect only until July 1, 1983, and as of that date is repealed, unless a later enacted statute, which is chaptered before July 1, 1983, deletes or extends that date. However, the provisions of this section shall remain applicable to loans made on or after July 1, 1983, with the proceeds of bonds issued prior to that date.

SEC. 16. Sections 1, 2, 3, 4, 6, 9, 10, 11, 12, and 13 shall become operative January 1, 1983.

SEC. 17. 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 more efficiently and equitably allocate mortgage revenue bonds between state and local agencies and to make housing affordable to the citizens of this state, it is necessary that this act take effect immediately.

CHAPTER 1453

An act to add Article 1.8 (commencing with Section 16369) to Chapter 2 of Part 2 of Division 4 of Title 2 of the Government Code, and to amend Sections 9101, 9102, 9103, 9200, 9201, 9204, 9330, 9333, 9413, and 14132 of, and to amend the heading of Chapter 4 (commencing with Section 9300) of Part 1 of Division 8.5 of, and to add Sections 9104, 9110, 9117, 9118, 9119, 9120, 9121, 9123, 9124, 9125, 9126, 9128, 9129, 9300, 9301, 9302, 9303, 9305, 9306.2, 9306.5, and 9330.1 to, and to add a new part heading immediately preceding Section 9000 of, and to add Part 2 (commencing with Section 9800) to Division 8.5 of, and to repeal Sections 9104, 9110, 9300, 9301, 9302, 9303, 9305, 9306.2, 9321, and 9329 of, and to repeal Chapter 4.2 (commencing with Section 9340) of Part 1 of Division 8.5 of, the Welfare and Institutions Code, relating to public social services, and making an appropriation therefor.

[Approved by Governor September 27, 1982. Filed with Secretary of State September 28, 1982.]

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

SECTION 1. This act shall be known as the Torres-Felando Long-Term Care Reform Act.

SEC. 2. The purpose of this act is to create the State Department of Aging and Long-Term Care, consisting of two divisions. The existing aging network set out in the Older Californians' Act presently administered by the Department of Aging, and a new division within long-term care which consolidates, under a single administrative unit, selected programs and funding currently providing long-term care services.

This act establishes and delineates the responsibilities of the new division of long-term care within the State Department of Aging and Long-Term Care. This act reflects the directives of the Older Americans Act of 1965, as amended. It reflects the number one priority of the California Senior Legislature convened in 1981, and the recommendations of the State and White House Conferences on Aging. It is the intent of the Legislature to continue its 10-year commitment to improving programs and developing a long-term care delivery system that provides both social and health support systems.

SEC. 3. The Legislature finds and declares, that in this state, at least four state agencies and 19 state governmental units at the department level administer approximately 29 different categorical service programs for the elderly. Each categorical program has its own eligibility, needs assessment criteria, and service coverage limitations. This nonsystem of long-term care has led to the ineffective use of resources and unnecessary premature institutionalization.

The Legislature further finds and declares that long-term care financing has focused primarily on care provided in medical institutions. In many instances, funds have been spent on expensive and inappropriate services because funding was available for such services even though less expensive and more humane service approaches could have been utilized.

The Legislature further finds and declares that in the past few years, several steps have been taken by the Legislature in order to lay the groundwork for the development of a continuum of care. These steps include the passage and funding of preventive health care programs, the Older Californians' Act, the establishment of Adult Day Health Care programs and the Multipurpose Senior Services projects located throughout the state. These programs have provided alternatives and choices for persons requiring long-term care services.

It is the intent of the Legislature to provide a structure whereby at the community level a continuum of social and health support services, inclusive of both institutional and noninstitutional care programs may develop.

The purpose of this act is to foster independence and self-reliance, maintain individual dignity, and allow persons requiring long-term care services to be an integral part of family and community life to the fullest extent possible. To this end, it is the intent of this act to encourage the development of noninstitutional, nontraditional approaches in the delivery of long-term care services. The goals of this act are to avoid inappropriate placement in skilled nursing facilities and to reduce the utilization of acute care hospitals while fostering independent living in the community.

SEC. 4. Article 1.8 (commencing with Section 16369) is added to Chapter 2 of Part 2 of Division 4 of Title 2 of the Government Code, to read:

Article 1.8. Office of Long-Term Care

16369. The Long-Term Consolidated Fund established pursuant to Part 2 (commencing with Section 9800) of Division 8.5 of the Welfare and Institutions Code shall become active subsequent to approval by the Legislature of an administrative action plan illustrating the implementation phases, cost analyses of reorganization, and a timetable for the transfer of specific administrative and program funds as provided for in this article. The action plan shall be submitted to the Legislature no later than December 1, 1983. The Legislature shall hold a public hearing on the proposed administrative plan. The Legislature shall approve the organizational, administrative action plan prior to the transfer of the funds and programs as specified in Part 2 (commencing with Section 9800) of Division 8.5 of the Welfare and Institutions Code. No transfer of funds or programs shall occur prior to necessary waivers being approved by the federal government so as not to preclude the

state from receiving the maximum federal-state matching funds.

16369.1. An interim Office of Long-Term Care shall be established in the Governor's office to draw up the transitional and organizational action plan to be followed by the department pending approval by the Legislature as provided for in Section 16369.1. The action plan shall provide for an orderly phasing in of existing programs and administration on both the state and local level. To assist the interim office in the development of the transitional and organizational action plan, the Governor shall appoint a state-level advisory task force composed of technical experts in the provision of health and social services to the populations to be served. Representation shall include, but not be limited to, elderly and functionally impaired consumers, state and county government, area agencies on aging, and private nonprofit organizations serving the populations under the act adding this section to the code. The Office of Long-Term Care shall utilize available data and long-term care expertise available as a result of long-term care demonstration projects in operation throughout the state in determining the cost associated with the proposed state-local structure.

Based on the findings of the office, the Governor shall submit an action plan to the Legislature which shall include, but not be limited to, the following:

(a) Costs and benefits to programs funded fully or in part with state or county funds, including programs for which there is a county match, as well as costs and benefits associated with local agency startup and the provision of client services.

(b) A multiyear phase in plan for implementing provisions of this act.

(c) The impact to the General Fund that would result from the implementation in accordance with the phase in timetable recommended by the task force and other relevant factors resulting from such implementation.

(d) A fiscal proposal recommending appropriations for the 1984–85 fiscal year for the Department of Aging and Long-Term Care, from the budget of the State Department of Health Services, and the State Department of Social Services.

SEC. 4.5. The following part heading is added to the Welfare and Institutions Code, immediately to precede Section 9000, to read:

PART 1. OLDER CALIFORNIANS

SEC. 5. Section 9101 of the Welfare and Institutions Code is amended to read:

9101. "Department" means the State Department of Aging and Long-Term Care.

SEC. 6. Section 9102 of the Welfare and Institutions Code is amended to read:

9102. "Director" means the Director of the State Department of Aging and Long-Term Care.

SEC. 7. Section 9103 of the Welfare and Institutions Code is amended to read:

9103. "Older person" or "elderly" means a person 60 years of age or older.

SEC. 8. Section 9104 of the Welfare and Institutions Code is repealed.

SEC. 9. Section 9104 is added to the Welfare and Institutions Code, to read:

9104. "Functionally impaired client" means a person who is 18 years or older and has restricted self-care capabilities. The person shall be limited in his or her functional ability, and shall be unable to independently perform personal and instrumental activities of daily living and associated tasks, or is unable to establish and maintain an independent living arrangement in the absence of long-term care services.

SEC. 10. Section 9110 of the Welfare and Institutions Code is repealed.

SEC. 11. Section 9110 is added to the Welfare and Institutions Code, to read:

9110. "Long-term care" means a coordinated continuum of preventive, diagnostic, therapeutic, rehabilitative, supportive and maintenance services that address the health, social, and personal needs of individuals who have restricted self-care capabilities. Services shall be designed to recognize the positive capabilities of the individual and maximize the potential for the optimum level of physical, social, and psychological independence in the least restrictive environment and emphasis shall be placed on seeking alternative services other than institutionalization. Services may be provided by formal or informal support systems and may be continuous or intermittent.

SEC 12. Section 9117 is added to the Welfare and Institutions Code, to read:

9117. "Community long-term care delivery system" means those formal and informal programs and services which meet long-term care client's needs on the community level.

SEC. 13. Section 9118 is added to the Welfare and Institutions Code, to read:

9118. "The community long-term care agency" means the designated agency with which the department has contracted to administer the long-term care services at the local level contained in this part within a specified area of this state.

SEC. 14. Section 9119 is added to the Welfare and Institutions Code, to read:

9119. (a) "Consolidated fund" means the California Long-Term Care Consolidated Fund consisting of funds which, prior to the creation of the consolidated fund, were funding components of services provided by Part 2 (commencing with Section 9800).

(b) "Capitation" means a system of payment based on the number of participants in a long-term care agency with a previously

set rate of payment per person. In this method of reimbursement, the amount paid is based on a formula and a finite budget with a specific rate per individual rather than an entitlement system based on a fee for service.

(c) "Risk sharing" means the assumption of some percentage of financial responsibility between the local long-term care agency and the state should costs exceed the prospectively capitated budget.

(d) "At risk" means the community long-term care agency is exposed to potential economic loss or benefits.

SEC. 15. Section 9120 is added to the Welfare and Institutions Code, to read:

9120. (a) "Screening" means a short set of questions used to determine overall eligibility for long-term care services, and the need for a comprehensive assessment.

(b) "Comprehensive assessment" means an evaluation of a person's physical, psychological, and social needs, financial resources, and the strengths and weaknesses of the informal support system and the immediate environment as a basis for determining the current functional ability and potential improvement in order to develop the appropriate services needed to maximize functional independence.

(c) "Reassessment" means a short set of questions used to evaluate whether a client's condition or needs have changed, thus warranting an adjustment in the services being delivered.

SEC. 16. Section 9121 is added to the Welfare and Institutions Code, to read:

9121. "Participant" means the functionally impaired person who is receiving services under the provisions of Part 2 (commencing with Section 9800).

SEC. 18. Section 9123 is added to the Welfare and Institutions Code, to read:

9123. "Least restrictive environment" means that care arrangement or service environment which affords a participant the maximum independence permitted by his or her functional ability.

SEC. 19. Section 9124 is added to the Welfare and Institutions Code, to read:

9124. "Case management" means:

(1) Client assessment in conjunction with the development of a service plan with the participant and appropriate others to provide for needs identified by the assessment.

(2) Authorization and arrangement for the purchase of services, or referral to volunteer, informal or third-party payer services with followup.

(3) Service and participant monitoring to determine that services were obtained appropriate to need, adequate to meet the need, of acceptable quality, and provided in a timely manner.

(4) Followup with clients, including periodic contact and initiation of an interim assessment, if deemed necessary prior to scheduled reassessment.

SEC. 20. Section 9125 is added to the Welfare and Institutions

Code, to read:

9125. (a) "Personal activities of daily living" means dressing, feeding, toileting, bathing, breathing, transferring, and mobility and associated tasks.

(b) "Instrumental activities of daily living" means shopping, housework, meal preparation and cleanup, laundry, taking of medication, money management, transportation, correspondence, telephoning, and related tasks.

SEC. 21. Section 9126 is added to the Welfare and Institutions Code, to read:

9126. "Authorization" means a signed document stating that the service is appropriate for the participant and is considered a prerequisite to payment.

SEC. 23. Section 9128 is added to the Welfare and Institutions Code, to read:

9128. "Community Long-Term Care Task Force" means a designated representative body of consumers, lay persons and professional representatives of service organizations and agencies. There shall be appropriate representation of functionally impaired adults of all age groups.

SEC. 24. Section 9129 is added to the Welfare and Institutions Code, to read:

9129. The definitions contained in Sections 9104, 9117, 9118, and 9120 to 9128, inclusive, shall be applicable only to Part 2 (commencing with Section 9800).

SEC. 24.5. Section 9200 of the Welfare and Institutions Code is amended to read:

9200. There is in the state government the California Commission on Aging and Long-Term Care. The commission shall be:

(a) Composed of 25 persons.

(1) Nineteen persons appointed by the Governor. Nine of the 19 persons shall be appointed by the Governor from lists of nominees submitted by the area agency on aging advisory councils. Five of the 19 persons shall be appointed by the Governor from lists of nominees submitted by area boards on developmental disabilities and the California Coalition of the Independent Living Centers. At least five names shall be submitted as nominees for each vacancy.

(2) Three persons appointed by the Speaker of the Assembly.

(3) Three persons appointed by the Senate Rules Committee.

(b) Comprised of a majority of members who have these functional impairment or who are elderly, and who, by the conditions, represent the same percentage of department constituents that have these conditions.

(c) Composed of representatives of the geographic, cultural, economic and other social factors in the state.

(d) The commission composition requirements shall be complied with as vacancies occur.

SEC. 25. Section 9201 of the Welfare and Institutions Code is

amended to read:

9201. The duties and functions of the commission shall be to:

(a) Serve as the principal advocate body in the state on behalf of older persons and younger functionally impaired adults served under this division, including, but not limited to, advisory participation in the consideration of all legislation and regulations made by state and federal departments and agencies relating to programs and services that affect older or functionally impaired adults.

(b) Participate with the department in training workshops for community, regional and statewide senior advocates, to help older persons and younger functionally impaired adults served under this division understand legislative, regulatory and program implementation processes.

(c) Prepare, publish and disseminate information, findings and recommendations regarding the well-being of older or functionally impaired adults.

(d) Actively participate and advise the department in the development and preparation of the State Plan on Aging, conduct public hearings on the State Plan on Aging, review and comment on the state plan, and monitor the progress of the plan's implementation.

(e) Actively participate and advise the State Council on Developmental Disabilities in the development and preparation of the California Developmental Disabilities State Plan, review and comment on the state plan, and monitor the progress of the plan's implementation.

(f) Meet formally on a monthly basis in order to study problems of older or functionally impaired adults, present findings and make recommendations.

(g) At least six of the meetings shall be with the director and at least six of the meetings shall be held in various parts of the state.

(h) Hold hearings throughout the state, in order to gather information and advise the Governor, Legislature, department and agencies on all levels of government regarding solutions to problems confronting older persons and younger functionally impaired adults served under this division and the most effective use of existing resources and available services for older persons and younger functionally impaired adults served under this division.

(i) Hire an executive director and, within budgetary limits, such staff as may be necessary for the commission to fulfill its duties.

(j) Develop in cooperation with the department a method for the selection of delegates to the statewide legislative meeting of senior advocates.

(k) The commission shall advise the Governor, the Legislature, the department, and agencies on all levels of government regarding changes needed to improve the operation and efficiency of the long-term care system.

(*l*) Perform other duties as may be required by statute, regulation

or resolution.

(m) Meet and consult with the area agency on aging advisory councils in order to exchange information, and assist in training, planning, and development of advocacy skills.

SEC. 26. Section 9204 of the Welfare and Institutions Code is amended to read:

9204. Wherever there is a reference in any statute of this state to the Citizens Advisory Committee on Aging of the California Commission on Aging, it shall be construed to refer to the California Commission on Aging and Long-Term Care; provided that such reference concerns an advisory or advocacy function, or a function described in Section 9201. Any other such reference shall be construed to refer to the department.

SEC. 27. The heading of Chapter 4 (commencing with Section 9300) of Part 1 of Division 8.5 is amended to read:

CHAPTER 4. STATE DEPARTMENT OF AGING AND LONG-TERM CARE

SEC. 28. Section 9300 of the Welfare and Institutions Code is repealed.

SEC. 29. Section 9300 is added to the Welfare and Institutions Code, to read:

9300. (a) There is hereby created in state government in the Health and Welfare Agency, the State Department of Aging and Long-Term Care empowered to administer the provisions of this division and serve as a single state agency for supervision of all programs under the Older Americans Act of 1965, as amended, in accordance with the action plan approved by the Legislature.

The department shall be divided into two program divisions. One division shall be the aging division, which shall be responsible for administering programs provided for, and funds appropriated, under the Older Americans Act and any other program under the jurisdiction of the department for which the long-term care division shall not be given responsibility. The other division shall be the long-term care division which shall be responsible for administering the consolidated fund, all programs for which money is appropriated from the consolidated fund, and any other related program for which the long-term care division is given responsibility.

The two divisions shall establish intra-agency policies and coordinate procedures necessary to ensure that eligible long-term care clients receive the most appropriate services according to need, irrespective of departmental divisions set forth in this division.

SEC. 30. Section 9301 of the Welfare and Institutions Code is repealed.

SEC. 31. Section 9301 is added to the Welfare and Institutions Code, to read:

9301. The department consists of a director, and two chief deputy directors. One chief deputy shall coordinate the activities of the

long-term care division of the department, and the other shall coordinate the activities of the aging division of the department. The director and two chief deputy directors shall each appoint at least one deputy director and such staff as may be necessary for proper administration. Department activities shall include, but not be limited to:

(a) Comprehensive program planning, promotion, development, implementation, and monitoring.

(b) Information and dissemination activities.

(c) Administration of all programs funded under the Older Americans Act, and the Long-Term Care Consolidated Fund (as established by Part 2 (commencing with Section 9800)) and shall include training and staff supportive services.

The Department of Aging and Long-Term Care shall maintain its main office in Sacramento.

SEC. 32. Section 9302 of the Welfare and Institutions Code is repealed.

SEC. 33. Section 9302 is added to the Welfare and Institutions Code, to read:

9302. The Governor, with the consent of the Senate, shall appoint a director and two chief deputy directors of the department. The Governor shall consider but not be limited to recommendations from the California Commission on Aging and Long-Term Care, the State Council on Developmental Disabilities, and other groups who represent functionally impaired persons. The director shall have:

(a) Direct experience or extensive knowledge of medical and social programs and services related to the elderly and functionally impaired persons.

(b) Demonstrated understanding and concern for the welfare of the elderly and functionally impaired persons.

(c) Demonstrated competency and recent working experience in an administrative, supervisory, or management position. The director shall have the powers of a head of a department pursuant to Chapter 2 (commencing with Section 11150) of Part 1 of Division 3 of Title 2 of the Government Code and shall receive a salary similar to the directors of similar departments such as health services, social services and mental health.

The Chief Deputy Director for the Division on Aging shall have demonstrated experience in, and working knowledge of, the department's elderly constituents, and the issues that are of special concern to them. The chief on long-term care shall have demonstrated experience in, and working knowledge of, the department's adult constituents in whatever age group, who receive long-term care, and the issues of special concern to them.

SEC. 34. Section 9303 of the Welfare and Institutions Code is repealed.

SEC. 35. Section 9303 is added to the Welfare and Institutions Code, to read:

9303. The director and the two chief deputy directors shall each

appoint at least one deputy director. These positions shall be exempt from civil service requirements. The director shall:

(a) Be responsible for the management of the department.

(b) Implement and administer laws pertaining to this division.

(c) Advise the Secretary of the Health and Welfare Agency and the Governor on new legislation, programs, and policy initiatives, especially in the area of coordinating services for older persons and functionally impaired persons that are administered by state agencies and any area supportive of long-term care for the older persons and functionally impaired persons.

(d) Participate or designate a representative to participate with advisory boards such as the California Commission on Aging and Long-Term Care, the California Association of Area Agencies on Aging, the California Area Agency on Aging Advisory Councils, the State Council on Developmental Disabilities, the organization of area boards on developmental disabilities, the Rehabilitation Advisory Committee, the California Coalition of Independent Living Centers, and others deemed appropriate.

(e) With the advice of the Commission on Aging, adopt, amend or repeal regulations and general policies affecting the purposes, responsibilities, and jurisdiction of the department and which are consistent with law and necessary for the administration of this division. Any regulation, policy, procedure, guideline, or waiver shall be adopted, amended, or repealed in accordance with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

All of the regulations used by the department and the community long-term care agencies shall be available for public use at each office of the department and at each community long-term care agency. The department shall provide copies of the regulations to interested individuals and community organizations, and any subscription service as may be necessary to assure to those individuals and organizations prompt receipt of all additions and amendments to the regulations. Community organizations shall receive the regulations free of cost. Individuals may receive the regulations free of cost, but in no event shall the cost exceed the actual cost of providing the regulations. Any notice of action to any applicant or recipient shall inform that applicant or recipient of the availability of regulations as provided under this subdivision and other provisions of law.

(f) Request the commission's recommendations on departmental policy and program activities, and take the commission's findings, recommendations and comments under advisement.

(g) Assist the California Commission on Aging and Long-Term Care in carrying out its mandated duties and responsibilities, and insure that the commission's positions and funding be consistent with the provisions in Section 9817 and subdivisions (b) and (c) of Section 9819, and shall remain as an independent administrative agency as prescribed by the Legislature for the 1981–82 fiscal year.

SEC. 36. Section 9305 of the Welfare and Institutions Code is

repealed.

SEC. 37. Section 9305 is added to the Welfare and Institutions Code, to read:

9305. The director, subject to civil service requirements, shall appoint all employees or remove such employees of the department as deemed necessary to carry out the purposes of this part.

SEC. 38. Section 9306.2 of the Welfare and Institutions Code is repealed.

SEC. 39. Section 9306.2 is added to the Welfare and Institutions Code, to read:

9306.2. The department shall also develop a staff exchange program to educate personnel involved in planning, implementation or evaluation of programs and services for older persons and younger functionally impaired adults. The Legislature hereby recommends the creation of special jointly funded positions between the department and other departments in the health and welfare agency in order to establish expertise in program planning, implementation and evaluation, in order to encourage sensitivity to the needs of older persons and younger functionally impaired adults.

SEC. 39.5. Section 9306.5 is added to the Welfare and Institutions Code, to read:

9306.5. Priority in services, resources and planning, funded by the Older Americans Act, as amended, shall be given to participants in the long-term care system who are 60 years old or older as long-term care participants, or are older persons with the greatest social or economic need.

SEC. 40. Section 9321 of the Welfare and Institutions Code is repealed.

SEC. 41. Section 9329 of the Welfare and Institutions Code is repealed.

SEC. 42. Section 9330 of the Welfare and Institutions Code is amended to read:

9330. The State Department of Developmental Services shall:

(a) Assure that an appropriate share of funds available to the department for services to persons with special development needs are earmarked for functionally impaired persons.

(b) Include age-related objectives in individual program plans.

(c) Encourage a working relationship between regional centers, area agencies on aging and community long-term care agencies.

(d) Initiate an agreement with the department to exchange appropriate data and information on functionally impaired persons.

(e) Share information on the case management services to older functionally impaired persons with special developmental needs to assure that future case management efforts by the department are not duplicatory or incompatible.

SEC. 42.5. Section 9330.1 is added to the Welfare and Institutions Code, to read:

9330.1. The State Council on Developmental Disabilities shall include specific references to services provided to elderly

developmentally disabled persons in the California Developmental Disabilities State Plan.

SEC. 43. Section 9333 of the Welfare and Institutions Code is amended to read:

9333. The Legislature hereby declares that all other state agencies and departments not mentioned in the legislative guidelines under this chapter shall consult with the department prior to the implementation of policies or services which impact the older population.

SEC. 44. Chapter 4.2 (commmencing with Section 9340) of Part 1 of Division 8.5 is repealed.

SEC. 45. Section 9413 of the Welfare and Institutions Code is amended to read:

9413. It is the intent of the Legislature to evaluate the reports submitted pursuant to subdivision (h) of Section 9412 to determine whether pilot projects conducted under this chapter have had sufficient positive impact to warrant their continuation.

SEC. 46. Part 2 (commencing with Section 9800) is added to Division 8.5 of the Welfare and Institutions Code, to read:

PART 2. LONG-TERM CARE

CHAPTER 1. FUNDING PROVISIONS

9800. The Long-Term Consolidated Fund is hereby created in the State Treasury. No transfer of funds or programs shall occur prior to necessary waivers being approved by the federal government so as not to preclude the state from receiving the maximum federal-state matching funds. The fund shall provide the means for the department to carry out the provisions of this part.

9801. The department shall draw from the consolidated fund such moneys as are necessary to establish and administer the department, up to a limit of 8.5 percent of program costs. In any fiscal year, neither the department nor community long-term care agencies shall expend, for administrative costs, more than 8.5 percent of the funds appropriated for programs to be administered under this part.

9802. The department shall, to the maximum extent they are available, seek to obtain other additional funding from local and federal sources, private foundations and other private interests to carry out the provisions of this part.

9803. The consolidated fund shall provide a single source of funding for the services included within this part in order to assure more efficient, equitable and appropriate use of available resources, and to provide greater flexibility in responding to the needs of consumers of service. Funds appropriated for services under the In-Home Supportive Services Program pursuant to Article 7 (commencing with Section 12300) of Chapter 3 of Part 3 of Division 9 of the Welfare and Institutions Code and transferred to the consolidated fund, shall not be used for any purpose other than to provide these services under the article.

Administration of the consolidated fund shall be the responsibility of the long-term care division within the department.

It is the intent of this part to effect changes in the Medicare program. The department shall endeavor to bring funds provided for under Title XVIII of the federal Social Security Act into the consolidated fund when permissible by federal law.

9804. Federal and state funds to be transferred to the consolidated fund shall be drawn from moneys already appropriated for administration and services for programs specified in this section. The department shall determine annually the amount and specific percentage of funds that shall be requested to be transferred.

The sources and percentage of funds to be transferred shall be based on the number of functionally impaired persons to be served and estimates of expected utilization. In no event shall the transfer of funds listed in subdivisions (a) and (b) be construed so as to jeopardize the receipt of services to current clients of these programs. These funds shall be drawn from the following programs:

(a) State Department of Health Services program and administrative funds for services and care provided by: (1) skilled nursing facilities, (2) intermediate-care facilities, (3) home health agencies, (4) adult day health care centers, (5) preventive health care for the aging, (6) occupational, physical and speech therapists, (7) durable medical equipment providers, and (8) medical transportation providers. Portions of the remaining benefits covered by the Medi-Cal program presently provided to persons residing in skilled nursing facilities and intermediate care facilities shall also be transferred on a per capita basis. The comprehensive Medi-Cal capitation shall not exceed the rate customarily paid by the state for all Medi-Cal benefits for a person in a skilled nursing facility.

(b) State Department of Social Services program, administrative, and local assistance funds for services and care provided to functionally impaired long-term care clients as provided for in this division under the In-Home Supportive Services program pursuant to Article 7 (commencing with Section 12300) of Chapter 3 of Part 3 of Division 9 and other services funded under Title XX of the federal Social Security Act and provided for pursuant to Article 6 (commencing with Section 12250), of Chapter 3 of Part 3 of Division 9 including but not limited to the following services: information and referral for health services, out-of-home care, home and money management, adult protective services, legal, and housing.

9804.5. Economies achieved through changing service utilization patterns will be used first for support of the local long-term care assessment and case management functions. Future net system savings may be used for program expansion or in part or in whole revert to the General Fund.

9805. That portion of the consolidated fund consisting of funds granted to the state by the federal government shall be identified and used in ways consistent with the purposes of this part, the provisions of federal law, and other provisions of state law which

implement such federal law. If federal laws and regulations impede the efficient and appropriate administration of this part, impede the provision of home or community-based services as an alternative to institutionalization or impede the provision of comparable services in a less restrictive setting, the department shall seek where possible to obtain waivers from such laws which will remove such impediments.

9806. Services which are provided by programs administered by other state-supported agencies shall, to the fullest extent permitted by law, serve as resources to elderly and functionally impaired persons seeking assistance through the provisions of this part. The community long-term care agency shall provide access to such services by referral, subject to a memorandum of understanding between departments.

9808. Recognizing that funds provided for the purposes of this part are limited, controls shall be used to assure that only those persons in need of services are granted access to services and only those services appropriate and responsive to the participant's needs in the least restrictive environment and cost-effective manner are provided. These controls shall include:

(a) Screening at the time of application determining those persons needing a comprehensive assessment.

(b) Assessment and plans for care which specify only those services appropriate to individual needs.

(c) Provision of only those services that are responsive to the person's identified needs, in the least restrictive environment and cost-effective manner in accordance with priorities established pursuant to Chapter 3 (commencing with Section 9860).

(d) Monitoring of the progress of participants on the basis of the individual's service plan to determine changes in needs, circumstances and resources, and the appropriateness of services being provided.

(e) Monitoring of providers of services to assure that quality and quantity of service are consistent with the needs of participants and costs.

9809. The department shall prepare an annual financial statement showing all income and expenditures for the preceding year. The department shall require each community long-term care agency and other recipients of funds either by grant or contract to maintain such records as the department determines are reasonably necessary to fully disclose the amount and the disposition by such recipient of the proceeds received, the total cost of the project or undertaking in connection with which such proceeds are given or used, and the amount and nature of that portion of the cost of the project or undertaking supplied by other sources, and such other records as shall facilitate an effective audit. The department shall prescribe forms for the compilation of the information required by this section.

CHAPTER 2. COMMUNITY LONG-TERM CARE DELIVERY SYSTEM

Article 1. State Administration

9810. The department, through its long-term care division, shall have the authority to implement the action plan and provisions of this part in accordance with the requirements and policies set forth by this part and other state and federal statutes governing long-term care services.

9811. There shall be established community long-term care task forces in each county. In counties where Adult Day Health Care Planning Councils exist, the Adult Day Health Care Planning Council shall serve as the community long-term care task force, with the addition of the following:

(a) A representative of the Multipurpose Senior Services projects, or other long-term care demonstration projects.

(b) A representative of a home health agency.

(c) A representative from the area boards on developmental disabilities.

(d) A representative of the local independent living centers.

In counties which do not have an Adult Day Health Care Planning Council, the board of supervisors shall convene the long-term care task force. Two or more counties may enter into joint powers agreements for the purposes of the act adding this section to the code. The board of supervisors shall designate the composition of the task forces which shall include, but not be limited to:

(a) Grassroots elderly and functionally impaired consumers of programs provided by this part.

(b) Representatives of organizations dedicated primarily to serving the needs of older or functionally impaired persons including those of low income and racial and ethnic minorities.

(c) A representative of the appropriate area agencies on aging, and area boards on developmental disabilities.

(d) A representative of the county agency responsible for administration of health programs for senior citizens or functionally impaired persons.

(e) A representative of the county agency responsible for administration of social service programs for elderly or functionally impaired persons.

(f) A representative of an area health planning agency designated pursuant to Section 437.7 of the Health and Safety Code.

(g) A representative of the county medical society.

(h) A representative of a publicly funded senior citizen transportation program.

(i) A representative of a health facility providing acute care with experience in discharge planning.

(j) A representative of a skilled nursing facility providing long-term care to the elderly.

(k) A representative of the Multipurpose Senior Services projects,

or other long-term care demonstration projects.

(*l*) A representative of a home health agency.

(m) A representative of the local independent living program.

Two-thirds of the community long-term care task force shall consist of grassroots local consumers, potential consumers, or advocates residing in the area, of which one-half of the elderly representatives shall be functionally impaired consumers at least 60 years of age served by this act.

9811.5. The community long-term care task forces or the Adult Day Health Care Planning Councils shall be responsible for recommending the designation of a community long-term care agency to the board of supervisors and the department. The board of supervisors and the department shall approve the designation. The community long-term care task force has the following responsibilities:

(a) To determine how many community long-term care agencies are needed with approval by the board of supervisors and the department. In making this determination the community long-term care task force shall consider the criteria developed by the department. The department's criteria shall include such factors as:

(1) Geographic barriers and distances.

(2) Density and location of target populations.

(3) Political boundaries.

(4) Fiscal feasibility.

(b) To consider a variety of approaches in the designation process, such as centralized administration with branch sites, a consortium agency with a mix of county, city, and nonprofit community corporations or multicounty agreements.

(c) To recommend a community long-term care agency within the time frame set forth in the action plan approved by the Legislature.

Upon approval of the recommended community long-term care agency or agencies, the community long-term care task force shall be dissolved. The task force shall be reactivated if the state contract with a designated agency is canceled or not renewed by either party.

9812. (a) The department shall establish procedures for application by the designated agency and provide technical assistance to the agency in the application procedures.

(b) The department shall, provided requested information is submitted, notify the applicant within 60 days of its decision.

The department may deny the application if the applicant does not meet the criteria. Reapplication may be made by the applicant or another agency may be designated by the local community long-term care task force.

(c) Upon approval of the application, the department shall have authority to enter into contracts with the applicant. Review of proposed contracts by state control agencies shall take place concurrently and shall be completed within 30 days of submission by the department.

9813. The department shall have entered into contracts with community long-term care agencies in each county in accordance with the action plan and implementation timetable, as set forth pursuant to Article 1.8 (commencing with Section 16369) of Chapter 2 of Part 2 of Division 4 of Title 2 of the Government Code.

9814. Contracts with all community long-term care agencies shall be in effect in accordance with the action plan and implementation timetable, as set forth pursuant to Article 1.8 (commencing with Section 16369) of Chapter 2 of Part 2 of Division 4 of Title 2 of the Government Code.

9815. The department shall establish all necessary rules, policies, and procedures governing the administration of services and use of funds by community long-term care agencies to assure statewide implementation of the purpose, intent, and requirements of this part.

The department shall establish a uniform set of assessment instruments to be used by all community long-term care agencies for screening, comprehensive assessment, and reassessment.

The department shall establish a standard fiscal accounting and reporting system to ensure timely, accurate, comparable fiscal data.

The department shall establish performance standards for the community long-term care agencies. A major objective of the standards shall be a reduction in utilization of institutional services by stimulating innovative and cost-effective alternatives.

The department shall establish Medi-Cal rates to be paid to institutional providers of services such as skilled nursing and intermediate care facilities which reimburse costs of efficient and economically operated facilities to meet all applicable federal and state regulations so as to ensure continued maximum federal financial assistance to the state. Community long-term care agencies may apply to the department for a waiver to implement a local ratesetting system. Prior to granting any such waiver, the department shall receive federal approval to ensure no reduction or disruption of federal funds.

9816. The department shall establish criteria and methods for allocating moneys from the consolidated fund to community long-term care agencies. The reimbursement method shall be a prospective payment based on a capitation rate. In developing the criteria and methods, the department shall consider the type of model chosen by the community long-term care agency. The department shall develop risk sharing methods which work towards equitable distribution of risk between state and community long-term care agencies. This risk sharing shall be implemented on an incremental basis.

The department shall audit, or arrange for the auditing, of community long-term care agencies expenditures of their allocated funds to assure that their use is in compliance with the terms of their contract.

The Controller's office shall issue all checks to community

long-term care agencies within five days of receipt of requests from the department.

The department shall develop fiscal and other sanctions to use for noncompliance and incentives to reward exceeding standards.

9816.5. The department shall develop certification standards subject to federal law and as required as a condition for the acquisition of any necessary federal waivers. Compliance with these standards shall be a requirement for providers of administrative, program or management services to the state and the community long-term care agency.

The department shall conduct periodic random sample reviews of the community long-term care agency's programs to ensure providers are in compliance with the standards.

These standards shall be designed to assure that the care and service provided to the participants: (1) are of sufficiently high quality and quantity to meet their needs and circumstances; (2) conform to standards of health, decency, and safety, (3) protect the participants from hazards and dangers that without such assurance might otherwise prevail, and (4) protect the rights of participants. The department shall establish a procedure whereby the community long-term care agency can monitor compliance with the quality assurance standards, criteria, and policies established by the department.

9817. Nothing in this section shall be construed to repeal Section 12302 or 12304 of the Welfare and Institutions Code, and, for purposes of this part, any reference in these sections to a county welfare department shall be deemed to be a reference to a community long-term care agency. No certification shall be required for service providers who provide the services specified in Article 7 (commencing with Section 12300) of Chapter 3 of Part 3 of Division 9, or comparable services, except as required by that article and the provisions of federal law, and except as required in order to obtain federal waivers under the federal Omnibus Budget Reconciliation Act of 1981. Recipients of the services provided under Article 7 (commencing with Section 12300) of Chapter 3 of Part 3 of Division 9, or comparable services, shall have the right to recruit their own service providers. Severely impaired individuals, as defined in Section 12304, shall have the right to hire and pay their own providers.

9818. The department shall determine, by actuarial methods, prospective per capita rates of payment for services provided under this chapter for participants receiving long-term care services authorized by the community long-term care agency. The rates of payment shall be determined annually, shall be effective no later than the first day of July of each year, and shall not exceed the total per capita amount, including cost of administration, which the department estimates, with appropriate adjustments to provide actuarial equivalence, would be payable for all services and requirements covered under the contract if all such services and

requirements were to be furnished to Medi-Cal beneficiaries under the fee-for-service Medi-Cal program provided for in Part 3 (commencing with Section 11000) of Division 9, who are in a skilled nursing facility. Capitation rates shall also be calculated by taking into account variables including but not limited to age, ethnicity, geographic location, and functional level of clients to be served.

In the event that there is any delay in the payment of the new annual rates determined pursuant to this subdivision, continued payment to the community long-term care agency of the rate in effect at the time the delay occurred, shall be interim payment only, and shall be subject to increase or decrease, as the case may be to the level of the new annual rates effective as of July 1 of each year.

Notwithstanding the provisions of this section in the event that a contract amendment providing for the new annual rates has been executed by the department and a community long-term care agency, and has not yet received the approval of all required control agencies and departments by September 1 of any fiscal year, payment of the new annual rates shall commence no later than September 1 of that fiscal year. Contract amendments providing for the new annual rates shall provide that the community long-term care agency contractor agrees that by accepting payment of the new annual rates prior to final approval, the contractor stipulates to a confession of judgment for any amounts received in excess of the final approved rate. If the final approved rates differ from the rates set forth in the amendments, any underpayment by the state shall be paid by the department to the community long-term care agency within 30 days after final approval of the rates.

The contract shall provide the specific per capita rates, to be determined by sound actuarial methods on the basis of age, sex and aid categories, which the state shall pay the community long-term care agency each month for each participant in the long-term care program; a detailed description of the specific actuarial method or methods and assumptions used in determining per capita rates, and a summary of the data base including costs and inflation assumptions and utilization rates, which are used to determine per capita rates. In addition, the director shall engage and rely upon the services of an actuary or consulting actuary in determining prospective per capita rates.

9820. The department shall provide technical assistance to community long-term care agencies which may be necessary to improve and enhance the administration and delivery of services. A fundamental purpose of the planning, evaluation and monitoring activities carried out by the department is to determine the nature and type of technical assistance required and where such assistance is appropriately needed.

9821. The department shall establish reporting requirements whereby community long-term care agencies report to the department such information, detail and description as may be required regarding use of expenditures, persons served, services

delivered, providers of service, and local administration. Community long-term care agencies shall, as a condition for receiving funds from the consolidated fund, comply with these reporting requirements.

The department is hereby authorized to establish an automated data system within community long-term care agencies which: (1) accumulates data provided by the case assessment process, (2) facilitates equity in the awarding of services to participants, (3) provides information for effective management of staff effort, (4) facilitates the efficient allocation and control of funds, and (5) provides information to local administrators and the department for program management. In order to reduce reporting requirements otherwise required by this section, the department is authorized to establish a statewide automated retrieval and report system linked to local systems.

The department shall draw and build upon the experience and management information systems presently operating throughout the state.

9822. The department shall carry out such planning and evaluation activities as are necessary to: (a) assure the continued development of long-term care services throughout the state, (b) to improve the efficiency and effectiveness of such services, and (c) fulfill, to the maximum extent, the purposes and intent of this part.

The department shall periodically survey a random sample of participants to obtain an evaluation of the services they are receiving.

The department shall provide any other reports, information or statements as requested by the Governor and Members of the Legislature.

9823. The department shall, pursuant to Section 204 of the Intergovernmental Corporation Act of 1968, request such waivers of single state agency requirements as are necessary in order to utilize available federal funds for the purposes of this part.

Until such waivers are granted by the federal government, the single state agency authorized by federal law to provide one or more of the services specified in Section 9804 shall enter into a purchase of service agreement with the department and shall by means of that agreement, provide to the consolidated fund those federal funds authorized by the Legislature pursuant to Article 1.8 (commencing with Section 16369) of Chapter 2 of Part 2 of Division 4 of Title 2 of the Government Code.

The department shall provide the necessary documents and reports required by any other single state agency to support the state's claim to the federal government for federal reimbursement and shall certify that community long-term care agencies have available the accounting records and other supporting documents to justify the claim for reimbursement and that such records are available for audit by the Controller, the Auditor General and by any authorized federal agency.

9824. The State Department of Health Services shall continue to

maintain an on-line Medi-Cal eligibility system for all participants in the long-term care program, and such information shall be conveyed in a timely manner to meet the needs of the department. Participants who are not eligible for Medi-Cal shall pay for services.

9825. Services shall be provided pursuant to the requirements of this part and the requirements of other state and federal laws and regulations governing the programs specified in Section 9804. Any regulation, policy or procedure governing the programs specified in Section 9804 may be waived by the department, if necessary to provide cost-effective home-based or community-based services as an alternative to institutionalization, or if necessary, to provide comparable services in a less restrictive setting, provided that the waiver does not subject the state to loss of maximum federal financial assistance in any of the programs specified in Section 9804.

9826. The Governor shall, in accordance with applicable federal law and regulations and to the extent permitted by such law and regulations, designate the department as the single state agency responsible for administering federal funds received by California for the long-term care services specified by the provisions of this part, and shall so notify the Secretary of the United States Department of Health and Human Services.

9827. Any waiver to provide services comparable to the services provided under Article 7 (commencing with Section 12300) of Chapter 3 of Part 3 of Division 9 of the Welfare and Institutions Code shall require provision for services in accordance with the requirements of that article to the extent that the requirement does not subject the state to loss of maximum federal financial assistance.

Article 2. Contracts

9830. Notwithstanding any other provision of state law, the department may enter into contracts which may be necessary for the purposes of this part.

All contracts shall be awarded based on criteria established by the department, and shall, except for those with community long-term care agencies, be awarded pursuant to competitive bidding procedures.

9831. In order to carry out the purposes of this part, the department is hereby authorized to contract on a bid or negotiation basis with a community agency which meets the following requirements:

(a) Has been designated by the appropriate community long-term care task force as the community long-term care agency for that county or counties.

(b) Is a nonprofit community-based agency or corporation or city or county government, with proven experience and knowledge in the needs of the long-term care client and the ability to plan and develop a full range of services in the community. In areas where the community long-term care agency provides direct services, the

designated agency shall meet specific criteria and guidelines set forth by the department in order to ensure that no conflict of interest exists. The department shall approve all such arrangements.

(c) Submits an application to the department, which is approved.

(d) Meets the criteria established by the department.

(e) Provides assessment, case management authorization and payment for services described in Section 9804. Provisional status may be granted for no more than three years by the department, in order to allow for the incremental development of a full range of services in local areas.

9132. In order to build upon long-term care expertise and experience, the department shall establish guidelines and criteria whereby long-term care demonstration projects and model programs which provide medical and social services operating in local areas immediately prior to the enactment of this part may contract directly with the state, so long as no conflict exists with the action plan as approved by the Legislature, as specified in Article 1.8 (commencing with Section 16369) of Chapter 2 of Part 2 of Division 4 of Title 2 of the Government Code.

9833. The community long-term care task force shall make its selection and recommend to the department the designated community long-term care agency in accordance with the timetable set forth in Article 1.8 (commencing with Section 16369) of Chapter 2 of Part 2 of Division 4 of Title 2 of the Government Code.

In selecting the community long-term care agency, consideration shall be given to those agencies with proven experience and knowledge in the needs of the long-term care participant, and the ability to plan and develop a full range of services in the community.

9834. The department shall terminate the contract with a community long-term care agency at any time if the community long-term care agency is not in compliance with set standards. The department shall give 60 days notice to terminate the contract to the community long-term care agency and providers and participants in the program. The notice shall state the effective date of and the reason for the termination. The department shall assist in the relocation of participants to other programs where possible.

If necessary, to avoid disruption of service programs, the department may directly operate a long-term care agency during the interim period between the termination of its contract with one governing board and the assumption of operation responsibility by a long-term care agency contract with another governing board. In no event shall the department directly operate a long-term care agency program for longer than 120 days before contracting with a new governing board. The department may, if requested by the new governing board, continue to provide additional assistance to avoid disruption of the service program, until such time as the governing board has assumed full responsibility for the operation of the program.

9835. The department shall submit to the Legislature's Joint

Audit Committee, no later than October 1 of each year, a report of all contracts entered into by the department during the preceding fiscal year ending June 30. The report shall include the name and title of the contractor, the purpose of the contract, the service performed, an assessment of the degree to which requirements of the contract were fulfilled, and the amount of the contract.

9836. All contracts awarded by community long-term care agencies in which funds from the consolidated fund are involved shall be in accordance with procedures, standards and criteria which the department shall establish pursuant to subdivision (e) of Section 9303 to assure the adequate protection of public funds, and the protection of the rights of participants under this part and under the programs specified in Section 9804.

Article 3. Community Long-Term Care Agency Responsibilities

9840. The community long-term care agency shall have the following duties and responsibilities:

(a) Possessing the organizational and administrative capacity to meet the provisions of this part.

(b) The capability to respond or provide for response to participant needs on a 24-hour, seven-day-a-week basis.

(c) Have on staff or available on a consultant basis, the services of health and social service personnel who are needed to conduct comprehensive assessments as mandated in Chapter 3 (commencing with Section 9860).

(d) Maintenance of a timely uniform fiscal accounting and reporting system that meets the requirements of the department.

(e) Communicating in languages other than English if there are a substantial number of participants in the service area whose primary language is other than English, and accommodation to cultural, and ethnic preferences in service provision and the needs of individuals with disabilities, and compliance with the requirements of state and federal civil rights laws and regulations.

(f) Maintenance of a data system that meets the department's requirements.

(g) Meeting all reporting requirements required by the department.

(h) Institution of a grievance procedure.

(i) To provide for contractural arrangements for the provision of sufficient services to provide optional ways of meeting the primary needs of the participant to increase or maintain functional independence in the home, community and 24-hour setting with linkages in and out of acute hospitals.

(j) To determine eligibility for long-term care services based on the assessment information and state guidelines.

(k) To authorize and pay for services agreed upon in the terms of the contract with the department.

(*l*) The ability to negotiate equitable rates with contract

providers within parameters established by the department.

(m) To have the flexibility in use of capitated funds and the ability to utilize such funds in nontraditional ways if the needs of a specific participant indicate its appropriateness.

(n) The ability to award funds to other agencies to develop needed services, or to undertake this development themselves.

(o) To control utilization of services authorized by the plan of care.

(p) To monitor all services provided to participants under their authorization especially regarding quality care.

(q) To establish order of priorities in resource development and participants in accordance with state guidelines.

(r) Development of interagency agreements for planning purposes and work toward consolidation of planning of services for long-term care within the area.

(s) To develop and utilize incentives and sanctions in contracts with providers.

(t) To conduct outreach activities and provide public information.

(u) Development of interagency agreements with other programs serving long-term care clients not included in this long-term care system.

(v) Develop optional methods of risk sharing in contracts with providers in conjunction with department guidelines.

Community long-term care agency duties and responsibilities shall be carried out in accordance with uniform, statewide regulations to be promulgated by the department.

9840.5. It is the intent of the Legislature that nonfunctionally impaired elderly persons, regardless of Medi-Cal eligibility, and functionally impaired persons who are not eligible for Medi-Cal, be considered for eligibility in expanded community long-term care programs as soon as is feasible.

The department shall study fiscal and program implications and the cost effectiveness of such expansion of eligibility and program and submit a report of findings and recommendations to the Legislature not later than January 1, 1987.

The intent of this section is that the expanded program will offer comprehensive health and social services which emphasize prevention of impairment and maintenance of active functioning.

9841. The community long-term care agency may increase the state standards in its contracts with providers. The community long-term care agency shall not contract on terms less than the state standards. The department and community long-term care agencies shall not adopt any standard which requires certification or a higher level of skill than is currently required for those providers of service under Article 7 (commencing with Section 12300) of Chapter 3 of Part 3 of Division 9 for the provision of services under that article, or comparable services, except as required by federal law, or except as required in order to obtain federal waivers under the federal

Omnibus Budget Reconciliation Act of 1981.

9842. Each community long-term care agency shall have available ways to help participants meet the primary needs of the participant which are nutrition, mobility, psychosocial, financial, shelter, security and safety, and health.

The objective of this part is that a comprehensive health, social, and supportive service delivery system be available at the local level which includes services specified in Section 9804.

Local community long-term care agencies shall conduct assessment, case management, service authorization and payment to providers or recipients of long-term care services for services purchased as set forth in this part.

9843. If the community long-term care agency meets standards set by the department for performance, the community long-term care agency may purchase additional services that may be needed.

In instances where specific services do not exist and there is no interest in the community to develop them, in accordance with the department's specified criteria and guidelines, the community long-term care agency may provide direct services if it can be demonstrated to be cost effective. The department shall have final approval in such cases.

9844. A community long-term care agency utilizing a comprehensive model inclusive of assessment, case management, service authorization and payment for all services provided for under this part with the addition of all other Medi-Cal benefits, such as physician services, hospital, dentist, podiatrist, psychiatrist, psychologist, hearing aids, eyeglasses, and appliances, prostheses, orthotics, laboratory, X-ray and drugs, shall be allowed to contract with the state if certain criteria and guidelines set by the department are met. The department shall have final approval of such an arrangement.

A community long-term care agency administering provision of long-term care services under this subdivision may be a health care services plan licensed under the Knox-Keene Health Plan Act of 1975 (Chapter 2.2 (commencing with Section 340) of Division 2 of the Health and Safety Code) or a prepaid group health plan as defined in Section 14251. In this case, a supplemental long-term care capitation rate shall be developed in addition to the standard capitation rate for Medi-Cal benefits.

Each community long-term care agency shall establish an advisory group whose qualifications shall be established by the department. The local advisory group shall draw its membership from the adult day health care planning councils, where they exist, and the area agency on aging advisory councils and other organizations that represent functionally impaired persons, such as the local independent living program and the local area board on developmental disabilities. Each advisory group shall also include representatives of younger functionally impaired adults proportionate to their numbers, who would be served by this act, in

the area served by the community long-term care agency. The local advisory group shall also include representatives of provider groups affected by this part.

Two-thirds of the members of each advisory group shall be grassroots elderly or functionally impaired consumers of services provided by the community long-term care agency. One-half of the representatives shall be functionally impaired consumers served by this chapter.

Duties of the community advisory group shall include, but are not limited to, providing advice and recommendations to the community long-term care agency and the department regarding policies, contracts, expenditure of funds and priorities and quality of care provided.

Article 4. Hearings

9850. Any applicant for or recipient of services provided by this part who is dissatisfied with any action of the community long-term care agency or the department relating to his or her application for or receipt of services shall be afforded an opportunity for a fair hearing.

9851. The department shall contract with the State Department of Social Services to conduct the fair hearings in accordance with the provisions of Chapter 7 (commencing with Section 10950) of Part 2 of Division 9. Any reference in that chapter to the Director of the Department of Social Services or to the Department of Social Services shall be deemed to be a reference to the Director of the State Department of Aging and Long-Term Care or the State Department of Aging and Long-Term Care, respectively. For purposes of this part, the Director of the State Department of Aging and Long-Term Care shall have those powers and duties conferred on the Director of the Department of Social Services by that chapter.

9852. The department shall establish policies and procedures necessary for receiving and responding to complaints or grievances. Such policies and procedures shall allow for resolution of the issue by the community care agency or by the department or its delegate. If the issue cannot be resolved to the applicant's or participant's satisfaction, he or she may request a fair hearing by the department. Services shall be provided promptly and humanely with due regard for the dignity and privacy of individuals and families without discrimination on account of race, color, national origin, ancestry, religion, sex, marital status, political affiliation, handicap or any arbitrary basis. Individuals shall receive services in the most integrated setting appropriate to the individual's needs and in the least restrictive environment. Applicants for, and recipients of, services shall not be required to accept services, including case management services, from any particular individual.

9853. To the extent appropriate to the individual's needs, services shall be provided to an individual in his or her own home or a home

of his or her own preference to placing the individual in an institution.

CHAPTER 3. ELIGIBILITY, PRIORITY FOR SERVICES AND COPAYMENT

9860. (a) Any elderly or functionally impaired person shall be eligible to receive screening to determine overall eligibility. Excluded from eligibility for long-term care services under this part are those functionally impaired elderly persons whose service needs are met through the vocational rehabilitation program provided for under Division 10 (commencing with Section 19000) and administered by the State Department of Rehabilitation, developmental services programs provided for under Division 4.1 (commencing with Section 4400) administered by the State Department of Developmental Services, and the Short-Doyle mental health program provided for under Part 2 (commencing with Section 5600) of Division 5 and administered by the State Department of Mental Health. In the event such persons are eligible for one of these three publicly supported programs named above, but their long-term care service needs are not met under those programs, contractual arrangements between the department responsible for administering the program and the department may be established to ensure equitable provision of long-term care services provided under this part. Such contracts shall be in accordance with the interagency agreements described in Sections 9870 and 9871. The information or screening may be performed by any community service agency and referrals made to the community long-term care agency if appropriate.

The long-term care agency shall be responsible for advocating for the provision of services by the other agency if the other agency is mandated to provide the services.

Services shall be provided with reasonable promptness to all elderly or functionally impaired individuals in accordance with the requirements of this part and the requirements of federal and state laws governing the programs specified in Section 9804. Services shall be provided on the basis of individual need in the least restrictive environment.

(b) Persons who are screened shall be referred to other community services if the apparent need indicates that this action would be appropriate, and if these services are not under the authority of the community long-term care agency. Followup shall be provided to elderly or functionally impaired individuals who have been referred to other community services, in order to ensure that such individuals receive appropriate long-term care services.

(c) If a need for service is indicated in two or more of the primary needs set forth in Section 9842, a screening shall be conducted by the community long-term care agency to determine if a full comprehensive assessment is warranted.

(d) Except as provided in subdivision (e), first priority for a comprehensive assessment shall be given to functionally impaired elderly persons who on the basis of the screening are found to have needs that would make them eligible for placement in a skilled nursing facility or intermediate care facility and are receiving public funds.

(e) A comprehensive assessment shall be mandated prior to placement in an intermediate care facility and a skilled nursing facility for the functionally impaired persons who are eligible for services under Title XIX of the federal Social Security Act and receiving public funds.

(f) A comprehensive assessment may be provided to all other elderly or functionally impaired persons who are not now eligible for the Medi-Cal program at the individual's own expense pending approval by the community agency based upon ability to meet service demand.

(g) Timely and adequate notice of any community long-term care agency action shall be provided to applicants or recipients in accordance with state and federal laws governing the confidentiality of medical records and patient's rights. Notice shall include a copy of the comprehensive assessment, reassessment, or amendment to the assessment or service plan.

9861. (a) A service plan shall be developed, in consultation with the participant, by a multidisciplinary team consisting of persons with medical, health, social and therapeutic skills, including at least the individual's personal physician or a staff physician and others, such as a public health nurse and a social worker. The appropriate member of the team shall be the lead assessor, as indicated by the referral source and screening information. The lead assessor shall involve other team members in the service plan, as well as other health and social services professionals and other persons that may be indicated, including the private physician of the applicant.

(b) Comprehensive assessment and authorizations for services by the community long-term care agency are mandatory for new, eligible participants for services, consolidated in this part. The priority target population for receiving comprehensive assessments shall be those individuals eligible for placement in an intermediate care facility or skilled nursing facility. The community long-term care agency shall give verbal approval and be held responsible for payment of services rendered in instances where the community long-term agency cannot complete a comprehensive assessment prior to placement. Assessment is permissible for any other person seeking placement in any of the above-mentioned facilities at the individual's own expense pending approval by the community agency based upon ability to meet service demand.

9862. The objective of the comprehensive assessment shall be to develop a realistic, appropriate action plan to meet the service needs identified by the case management team and participant. The plan shall:

(a) Build upon the strengths of the individual and the informal support system.

(b) Provide for appropriate services in the least restrictive environment.

(c) Determine whether case management can be done by the client, member of the informal support system, or community long-term care agency.

(d) Determine the expected time period when reassessment should occur.

Based upon the needs of the participant, reassessment may occur at three-month, six-month, or one-year intervals, subject to change if indicated by the case manager or the participant. In cases where conditions are stable and unlikely to change within a year's time, the department may approve longer periods of time between reassessments, in agreement with the participant and community long-term care agency.

9863. The department shall develop uniform statewide guidelines for priorities for services to be utilized or developed and for costs. Each community long-term care agency shall determine the specific order of priorities based on the unique circumstances of the local area, including service needs and service resources available and the order of priority shall be in accordance with the state guidelines. Service priorities set by community long-term care agencies shall assure that:

(1) Only those persons who, based upon findings of the comprehensive assessment, actually require services are granted access to services.

(2) Only appropriate services which are responsive to participant's needs in a cost-effective manner and in the least restrictive environment are provided.

9864. Case management by the community long-term care agency, including authorization for, or payment for, intermediate care facility and skilled nursing facility services and other services shall continue during the period of placement.

9865. Functionally impaired persons receiving public funds and discharged from acute care hospitals or extended care facilities shall receive a preadmission screening before placement in an intermediate care facility and skilled nursing facility. Authorization by the community long-term care agency is mandatory prior to payment for these placements. The community long-term care agency shall give verbal approval and be held responsible for payment of services rendered in instances where the community long-term care agency cannot complete a comprehensive assessment prior to placement.

9866. All contracts for the purchase of administrative or program services shall be in writing. Each contract shall be available to the department upon request. Each contract shall contain the amount of compensation and the method or other consideration used to determine compensation. Specifications of the amount and type of

services provided shall also be contained in each contract. Each contractor shall make all its books and records pertaining to the goods and services furnished under the terms of the contract available for inspection, examination or copying by the department during normal working hours at the contractor's principal place of business or at such other place in the state as the department shall designate. Contracts shall be public records and available upon request.

9867. (a) In their initial application, community long-term care agencies shall indicate how they shall help participants meet the primary needs set forth in Sections 9842. Community long-term care agencies shall also provide yearly updates.

(b) Community long-term care agencies shall contract for those available services funded by this part, which are appropriate to meet the primary needs. Services which are not available shall be planned and developed.

(c) Each community long-term care agency shall look to and encourage involvement of the informal support system and establish policies and procedures indicating how this shall be done.

(d) Medicare and other third-party payers shall be billed as appropriate. These funds will be used to supplement the capitation paid.

(e) Each community long-term care agency may use capitation funds to meet special needs and utilize the most direct and cost-effective way of purchasing these services or items without a contract or memos of understanding in accordance with department guidelines.

Insofar as permitted by federal law, for purposes of determining the reasonable costs of any service reimbursable under the provisions of this part, or determining prospective per capita rates of payment, any gifts, grants or endowments received by the community long-term care agency and any income earned by the investment or deposit thereof, shall not be deducted from the operating costs of the community long-term care agency.

CHAPTER 4. INTERAGENCY AGREEMENTS

9870. The local long-term care agency shall have ultimate responsibility for ensuring provision of long-term care services for all clients meeting elgibility requirements as stated in Chapter 3 (commencing with Section 9860). The department shall enter into interagency agreements with the State Department of Developmental Services, the State Department of Mental Health, the State Department of Social Services, and the Department of Rehabilitation to ensure equitable provision of long-term care services provided under this part.

The interagency agreements shall delineate the following:

(a) Each agency's responsibility for serving all functionally impaired persons, including persons who are ineligible for services

from the long-term care agency.

(b) Provisions for transfer of funds in the event a department elects to utilize services of the long-term agency as provided in Section 9860.

(c) Provisions for sharing of information, training and resources.

(d) Provisions for referral of the department's clients to the other departments for services which may be needed.

(e) Provisions for coordination of planning activity for persons who are functionally impaired.

(f) Provisions for referral of functionally impaired persons to the department.

9871. The local long-term care agency shall enter into local interagency agreements with other local agencies including but not limited to county welfare departments, regional centers, and local vocational rehabilitation offices. The local interagency agreements shall include all requirements and be consistent with agreements made pursuant to Section 9870.

SEC. 47. Section 14132 of the Welfare and Institutions Code is amended to read:

14132. The following is the schedule of benefits under this chapter:

(a) Outpatient services are covered as follows:

Physician, hospital or clinic outpatient, surgical center, optometric, chiropractic, psychology, podiatric, occupational therapy, physical therapy, speech therapy, audiology, acupuncture to the extent federal matching funds are provided for acupuncture, and services of persons rendering treatment by prayer or healing by spiritual means in the practice of any church or religious denomination insofar as these can be encompassed by federal participation under an approved plan, subject to utilization controls.

(b) Inpatient hospital services, including, but not limited to, physician and podiatric services, physical therapy and occupational therapy, are covered subject to utilization controls.

(c) Skilled nursing facility services, including podiatry and physician services, and prescribed drugs, as described in subdivision (d), are covered subject to utilization controls. Physical therapy, occupational therapy, speech therapy, and audiology services for patients in skilled nursing facilities are covered subject to utilization controls.

(d) Purchase of prescribed drugs is covered subject to the Medi-Cal Drug Formulary and utilization controls.

(e) Outpatient dialysis services and home hemodialysis services, including physician services, medical supplies, drugs and equipment required for dialysis, are covered, subject to utilization controls.

(f) Anesthesiologist services when provided as part of an outpatient medical procedure, nurse anesthetists services when rendered by an inpatient or outpatient setting under conditions set forth by the director, outpatient laboratory services, and X-ray services are covered to the extent prescribed.

(g) Blood and blood derivatives are covered.

(h) Emergency and essential diagnostic and restorative dental services, except for orthodontic, fixed bridgework, and partial dentures that are not necessary for balance of a complete artificial denture, are covered, subject to utilization controls. The utilization controls shall allow emergency and essential diagnostic and restorative dental services and prostheses that are necessary to prevent a significant disability or to replace previously furnished prostheses which are lost or destroyed due to circumstances beyond the beneficiary's control. Notwithstanding the foregoing, the director may by regulation provide for certain fixed artificial dentures necessary for obtaining employment or for medical conditions which preclude the use of removable dental prostheses, and for orthodontic services in cleft palate deformities administered by the department's crippled children services program.

(i) Medical transportation is covered, subject to utilization controls.

(j) Home health care services are covered, subject to utilization controls.

(k) Prosthetic and orthotic devices and eyeglasses are covered, subject to utilization controls. Utilization controls shall allow replacement of prosthetic and orthotic devices and eyeglasses necessary because of loss or destruction due to circumstances beyond the beneficiary's control. Frame styles for eyeglasses replaced pursuant to this subdivision shall not change more than once every two years, unless the department so directs.

Orthopedic and conventional shoes are covered when provided by a prosthetic and orthotic supplier on the prescription of a physician and when at least one of the shoes will be attached to a prosthesis or brace, subject to utilization controls. Modification of stock conventional or orthopedic shoes when medically indicated, is covered subject to utilization controls. When there is a clearly established medical need that cannot be satisfied by the modification of stock conventional or orthopedic shoes, custom-made orthopedic shoes are covered, subject to utilization controls.

(*l*) Hearing aids are covered, subject to utilization controls. Utilization controls shall allow replacement of hearing aids necessary because of loss or destruction due to circumstances beyond the beneficiary's control.

(m) Durable medical equipment and medical supplies are covered, subject to utilization controls. The utilization controls shall allow the replacement of durable medical equipment and medical supplies when necessary because of loss or destruction due to circumstances beyond the beneficiary's control.

(n) Intermediate care facility services, including physician services, and prescribed drugs as described in subdivision (d) are covered, subject to utilization controls. Physical therapy, occupational therapy, speech therapy and audiology services for patients in intermediate care facilities are covered subject to

utilization controls.

(o) Family planning services are covered, subject to utilization controls.

(p) Inpatient intensive rehabilitation hospital services in a general acute care hospital are covered, subject to utilization controls, when the following criteria are met:

(1) A patient with a permanent disability or severe impairment requires an inpatient intensive rehabilitation hospital program as described in Section 14064 to develop function beyond the limited amount that would occur in the normal course of recovery; or

(2) A patient with a chronic or progressive disease requires an inpatient intensive rehabilitation hospital program as described in Section 14064 to maintain the patient's present functional level as long as possible.

(q) Adult day health care is covered in accordance with the provisions of Chapter 8.7 (commencing with Section 14520) of this part.

(r) Application of fluoride, or other appropriate fluoride treatment as defined by the department, and other prophylaxis treatment for children 17 years of age and under are covered.

(s) Paramedic services performed by a city, county, or special district, or pursuant to a contract with a city, county, or special district, and pursuant to a program established under Article 3 (commencing with Section 1480) of Chapter 2.5 of Division 2 of the Health and Safety Code by a paramedic certified pursuant to that article, and consisting of defibrillation and those services specified in subdivision (3) of Section 1482 of the article.

This subdivision shall be in effect only to the extent federal financial participation is available as set forth in Section 14106.6.

(t) In-home medical care services are covered when medically appropriate and subject to utilization controls, for beneficiaries who would otherwise require care for an extended period of time in an acute care hospital at a cost higher than in-home medical care services. The director shall have the authority under this section to contract with organizations qualified to provide in-home medical care services to such persons. Such services may be provided to patients placed in facilities such as skilled nursing or intermediate care facilities, or to persons in shared-or-congregate living arrangements, if a home setting is not medically appropriate or available to the beneficiary.

(u) Home and community based services, as set forth in Section 2176 of P.L. 97-35 shall be reimbursable as Medi-Cal covered benefits upon the approval of the federal Department of Health and Human Services. These home and community based services shall be included in the Medi-Cal scope of benefits as Medi-Cal covered and reimbursable services for the duration of the approved federal waiver and to the extent the State Department of Health Services can claim and be reimbursed by federal financial participation funds for these services.

SEC. 48. In accordance with Section 2176 of the federal Omnibus Budget Reconciliation Act of 1981, (P.L. 97-35), the Health and Welfare Agency shall develop a waiver proposal to be submitted to the United States Department of Health and Human Services in order to permit the provision of home and community based services pursuant to Chapter 5 (commencing with Section 9400) of Division 8.5 of the Welfare and Institutions Code.

The Multipurpose Senior Service project, which would have been repealed on June 30, 1983, except for the deletion of this date pursuant to Section 45 of this act, shall continue to serve clients determined to be eligible under Section 2176 of P.L. 97-35. These clients shall be certified or certifiable for placement in a skilled nursing facility. Individual Multipurpose Senior Service project sites shall be allowed to continue in modified form if the individual project site demonstrates cost-effectiveness. The transition from project to program status shall include cooperative efforts between the Health and Welfare Agency and the Department of Aging in concert with other affected departments.

SEC. 49. Except for the provisions of Sections 1, 4, 45, 47, and 48 of this act, the provisions of this act, shall not become operative until:

(a) The Governor submits the action plan and the fiscal proposal, as provided for in this act, to the Legislature.

(b) The Legislature approves these plans by statute.

(c) Funds are appropriated to implement these plans, in the State Budget for the 1984–85 fiscal year.

(d) The necessary waivers requested are approved by the federal government.

CHAPTER 1454

An act to add Section 1538.5 to the Health and Safety Code, relating to community care facilities.

[Approved by Governor September 27, 1982. Filed with Secretary of State September 28, 1982.]

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

SECTION 1. Section 1538.5 is added to the Health and Safety Code, to read:

1538.5. (a) Not less than 30 days prior to the expiration date of any residential community care facility license, except licensed foster family homes, the state department may, transmit a copy to the parents, legal guardians, conservators, client's rights advocate, or placement agency, as designated in each resident's placement agreement, of all notices sent to the facility by the state department during the term of the current license as a result of a substantiated complaint regarding a violation of any of the provisions of this

chapter relating to resident abuse and neglect, food, sanitation, incidental medical care, and residential supervision. In the case of residential care facilities for the elderly, such notification shall only be given to the state ombudsman in the Department of Aging as well as the local ombudsman, if such exists. During that one-year period the copy of the notices transmitted and the proof of the transmittal shall be open for public inspection.

(b) Except in the case of residential care facilities for the elderly where such notifications shall be given to the state ombudsman in the Department of Aging, as well as the local ombudsman if such exists, the state department shall require that the facility operator, at the expense of the facility, transmit a copy of all substantiated complaints, by certified mail, to those persons described pursuant to subdivision (a) in the following cases:

(1) In the case of any substantiated complaint relating to resident physical or sexual abuse. The facility shall have three days, from the date the facility receives the citation from the state department to comply.

(2) In any case in which a facility has received three or more substantiated complaints relating to the same violation during the term of the current license.

(c) Each residential facility shall retain a copy of the notices transmitted pursuant to subdivision (b) and proof of their transmittal by certified mail for a period of one year after their transmittal.

(d) If any residential facility to which this section applies fails to comply with the provisions of this section, as determined by the state department, the state department shall initiate civil penalty action against the facility in accordance with the provisions of Article 3 (commencing with Section 1530) and the related rules and regulations.

(e) The state department shall provide the names and addresses of the state ombudsman in the Department of Aging and, where applicable, the local ombudsman, to each residential care facility for the elderly. Further, the state department shall notify the residential community care facility of its obligation when it is required to comply with the provisions of this section.

CHAPTER 1455

An act to amend Section 1430 of the Health and Safety Code, relating to health facilities.

[Approved by Governor September 27, 1982. Filed with Secretary of State September 28, 1982.]

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

SECTION 1. Section 1430 of the Health and Safety Code is amended to read:

1430. (a) Except where the state department has taken action and the violations have been corrected to its satisfaction, any licensee who commits a class "A" or "B" violation may be enjoined from permitting the violation to continue or may be sued for civil damages within a court of competent jurisdiction. Such actions for injunction or civil damages, or both, may be prosecuted by the Attorney General in the name of the people of the State of California upon his or her own complaint or upon the complaint of any board, officer, person, corporation or association, or by any person acting for the interests of itself, its members or the general public. The amount of civil damages which may be recovered in an action brought pursuant to this section shall not exceed the maximum amount of civil penalties which could be assessed on account of the violation or violations.

(b) A resident or patient of a skilled nursing facility, as defined in subdivision (c) of Section 1250, or intermediate care facilities, as defined in subdivision (d) of Section 1250, may bring a civil action against the licensee of a facility who violates any rights of the resident or patient as set forth in the Patients Bill of Rights in Section 72527 of Title 22 of the California Administrative Code. The suit shall be brought in a court of competent jurisdiction. The licensee shall be liable for the acts of the licensee's employees. The licensee shall be liable for up to five hundred dollars ($500), and for costs and attorney fees, and may be enjoined from permitting the violation to continue. An agreement by a resident or patient of a skilled nursing facility or intermediate care facility to waive his or her rights to sue pursuant to this subdivision shall be void as contrary to public policy.

(c) The remedies specified in this section shall be in addition to any other remedy provided by law.

CHAPTER 1456

An act to amend Section 1280 of, and to add Article 8 (commencing with Section 1325) to Chapter 2 of Division 2 of, the Health and Safety Code, relating to health.

[Approved by Governor September 27, 1982. Filed with Secretary of State September 28, 1982.]

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

SECTION 1. Section 1280 of the Health and Safety Code is amended to read:

1280. The state department may provide consulting services

upon request to any health facility to assist in the identification or correction of deficiencies or the upgrading of the quality of care provided by the health facility.

The state department shall notify the health facility of all deficiencies in its compliance with the provisions of this chapter and the rules and regulations adopted hereunder, and the health facility shall agree with the state department upon a plan of corrections which shall give the health facility a reasonable time to correct such deficiencies. If at the end of the allotted time, as revealed by inspection, the health facility has failed to correct the deficiencies, the director may take action to revoke or suspend the license.

Reports on the results of each inspection of a health facility shall be prepared by the inspector or inspector team and shall be kept on file in the state department along with the plan of correction and health facility comments. The inspection report may include a recommendation for reinspection. Inspection reports of intermediate care facility/developmentally disabled habilitative shall be provided by the state department to the appropriate regional center pursuant to Chapter 5 (commencing with Section 4620) of Division 4.5 of the Welfare and Institutions Code.

All inspection reports, lists of deficiencies, and plans of correction shall be open to public inspection.

In no event shall the act of providing a plan of correction, the content of the plan of correction, or the execution of a plan of correction, be used in any legal action or administrative proceeding as an admission within the meaning of Sections 1220 to 1227, inclusive, of the Evidence Code against the health facility, its licensee, or its personnel.

SEC. 2. Article 8 (commencing with Section 1325) is added to Chapter 2 of Division 2 of the Health and Safety Code, to read:

Article 8. Management of Long-Term Health Care Facilities

1325. The Legislature finds and declares that the transfer trauma which accompanies the abrupt and involuntary transfer of frail elderly patients from one nursing home to another should be avoided when reasonable alternatives exist.

It is the intent of the Legislature in enacting this article to provide an alternative by establishing a system whereby the State Department of Health Services may apply for a court order appointing a receiver to temporarily operate a long-term health care facility. The receivership is not intended to punish a licensee or to replace attempts to secure cooperative action to protect the patients' health and security. The receivership is intended to protect the patients in the absence of other reasonably available alternatives.

The receiver may be appointed when a long-term health care facility is found to be in such condition that continued operation by the licensee, or his or her representative, presents a substantial probability or imminent danger of serious physical harm or death to

the patients.

The receiver shall assume the operation of such a facility in order to either bring it into compliance with law and return it to the original licensee in accordance with standards set forth in this article, or facilitate a transfer of ownership to a new licensee. The receiver shall assure the orderly transfer of patients should the facility ultimately close.

1326. As used in this article, "long-term health care facility" means any skilled nursing facility or intermediate care facility licensed pursuant to this chapter.

1327. Whenever circumstances exist indicating that continued management of a long-term health care facility by the current licensee would present a substantial probability or imminent danger of serious physical harm or death to the patients, the director may petition the superior court for the county in which the long-term health care facility is located for an order appointing a receiver to temporarily operate such long-term health care facility in accordance with this article. The petition shall allege the facts upon which the action is based and shall be accompanied by an affidavit of an officer or employee of the state department having personal knowledge of the facts. A copy of the petition and affidavits, together with an order to appear and show cause why temporary authority to operate the long-term health care facility should not be vested in a receiver pursuant to this article, shall be delivered to the licensee, administrator, or a responsible person at the facility to the attention of the licensee and administrator. The order shall specify a hearing date, which shall be not less than five nor more than 10 days following delivery of the petition and order upon the licensee, except that the court may shorten or lengthen the time upon a showing of just cause.

At the time of the hearing, the state department shall advise the licensee of the name of the proposed receiver. The receiver shall be a licensed nursing home administrator and shall have sufficient background and experience in management and finances to ensure compliance with orders issued by the court.

If at the conclusion of such hearing, which may include oral testimony and cross-examination at the option of any party, the court determines that adequate grounds exist for the appointment of a receiver and that there is no other reasonably available remedy to protect the patients, the court may issue an order appointing a receiver to temporarily operate the long-term health care facility and enjoining the licensee from interfering with the receiver in the conduct of his or her duties. The court shall in any such proceedings make written findings of fact and conclusions of law, and shall require an appropriate bond to be filed by the receiver and paid for by the licensee. The bond shall be in an amount necessary to protect the licensee in the event of any failure on the part of the receiver to act in a reasonable manner. The bond requirement may be waived by the licensee.

The court may permit the licensee to participate in the continued

operation of the facility during the pendency of any receivership ordered pursuant to this section and shall issue an order detailing the nature and scope of such participation.

Failure of the licensee to appear at the hearing on the petition shall constitute an admission of all factual allegations contained therein for purposes of such proceedings only.

The licensee shall receive notice and a copy of the application each time the receiver applies to the court or the state department for instructions regarding his or her duties under the provisions of this article, when an accounting pursuant to Section 1330 is submitted, and when a report pursuant to Section 1332 or other report is submitted. The licensee shall have an opportunity to present objections or otherwise participate in any such proceeding.

1328. (a) Notwithstanding any other provision of law, the receiver shall be liable only for damages resulting from gross negligence in the operation of the facility or intentional tortious acts.

(b) Notwithstanding any other provision of law, the State of California shall be liable only for damages resulting from negligence of the receiver in the operation of the facility.

(c) The licensee shall not be liable for any occurrences during the receivership except to the extent that the occurrences are the result of the licensee's conduct.

1329. (a) The receiver appointed pursuant to this article:

(1) May exercise those powers and shall perform those duties ordered by the court, in addition to other duties provided by statute.

(2) Shall operate the facility in such a manner as to assure safety and adequate health care for the residents.

(3) Shall have the same rights to possession of the building in which the facility is located, and of all goods and fixtures in the building at the time the petition for receivership is filed, as the licensee and administrator would have had if the receiver had not been appointed.

(4) May use the funds, building, fixtures, furnishings, and any accompanying consumable goods in the provision of care and services to residents and to any other persons receiving services from the facility at the time the petition for receivership was filed.

(5) Shall take title to all revenue coming to the facility in the name of the receiver who shall use it for the following purposes in descending order of priority:

(A) To pay wages to staff. The receiver shall have full power to hire, direct, manage, and discharge employees of the facility, subject to any contractual rights they may have. The receiver shall pay employees at the same rate of compensation, including benefits, that the employees would have received from the licensee.

(B) To preserve patient funds. The receiver shall be entitled to, and shall take, possession of all property or assets of residents which are in the possession of the licensee or operator of the facility. The receiver shall preserve all property, assets, and records of residents of which the receiver takes possession.

(C) To contract for such outside services as may be needed for the operation of the long-term health care facility. Any contract for outside services in excess of three thousand dollars ($3,000) shall be approved by the court.

(D) To pay commercial creditors of the long-term health care facility. The receiver shall honor all leases, mortgages, and secured transactions affecting the building in which the facility is located and all goods and fixtures in the building of which the receiver has taken possession, but only to the extent of payments which, in the case of a rental agreement, are for the use of the property during the period of receivership, or which, in the case of a purchase agreement, come due during the period of receivership.

(E) To receive a salary, as approved by the court.

(F) To do all things necessary and proper to maintain and operate the facility in accordance with sound fiscal policies. The receiver shall take such action as is reasonably necessary to protect or conserve the assets or property of which the receiver takes possession and may use such assets or property only in the performance of the powers and duties set out in this section and by order of the court.

(G) To maintain a reasonable return on the licensee's investment.

(b) A person who is served with notice of an order of the court appointing a receiver and of the receiver's name and address shall be liable to pay the receiver, rather than the licensee, for any goods or services provided by the long-term health care facility after the date of the order. The receiver shall give a receipt for each such payment and shall keep a copy of each receipt on file. The receiver shall deposit amounts received in a special account and shall use this account for all disbursements. Payment to the receiver pursuant to this subdivision shall discharge the obligation to the extent of the payment and shall not thereafter be the basis of a claim by the licensee or any other person. A resident may not be discharged nor may any contract or rights be forfeited or impaired, nor may any forfeiture be effected or liability increased, by reason of an omission to pay the licensee, operator, or other person a sum paid to the receiver pursuant to this subdivision.

(c) Nothing contained in this section shall be construed to suspend, during the temporary management by the receiver, any obligation of the licensee for payment of local, state, or federal taxes. No licensee may be held liable for acts or omissions of the receiver during the term of the temporary management.

(d) Upon petition of the receiver, the court may order immediate payment to the receiver for past services which have been rendered and billed, and the court may also order a sum not to exceed one month's advance payment to the receiver of any sums that will become payable under the Medi-Cal program.

1330. A monthly accounting shall be made by the receiver to the state department of all moneys received and expended by the receiver on or before the 15th day of the following month or as

ordered by the court, and the remainder of income over expenses for such month shall be returned to the licensee. A copy of the accounting shall be provided to the licensee. The licensee or owner of the long-term health care facility may petition the court for a determination as to the reasonableness of any expenditure made pursuant to paragraph (5) of subdivision (a) of Section 1329.

1331. (a) The receiver shall be appointed for an initial period of not more than three months. The initial three-month period may be extended for additional periods not exceeding three months, as determined by the court pursuant to this section. At the end of two months, the receiver shall report to the court on its assessment of the probability that the long-term health care facility will meet state standards for operation by the end of the initial three-month period and will continue to maintain compliance with such standards after termination of the receiver's management. If it appears that the facility cannot be brought into compliance with state standards within the initial three-month period, the court shall take appropriate action as follows:

(1) Extend the receiver's management for an additional three months if there is a substantial likelihood that the facility will meet state standards within that period and will maintain compliance with such standards after termination of the receiver's management. The receiver shall report to the court in writing upon the facility's progress at the end of six weeks of an extension ordered pursuant to this paragraph.

(2) Order the director to revoke or temporarily suspend, or both, the license pursuant to Section 1296 and extend the receiver's management for the period necessary to transfer patients in accordance with the transfer plan, but in no event for more than six months from the date of the initial appointment of a receiver or 14 days, whichever is greater.

(b) If it appears at the end of six weeks of an extension ordered pursuant to paragraph (1) of subdivision (a) that the facility cannot be brought into compliance with state standards for operation or that it will not maintain compliance with such standards after the receiver's management is terminated, the court shall take appropriate action as specified in paragraph (2) of subdivision (a).

(c) In evaluating the probability that a long-term health care facility will maintain compliance with state standards of operation after termination of receiver management ordered by the court, the court shall consider at least the following factors:

(1) The duration, frequency, and severity of past violations.

(2) Past and current violations in other long-term health care facilities operated by the licensee.

(3) Efforts by the licensee to prevent and correct past violations.

(4) The financial ability of the licensee to operate in compliance with state standards.

(5) The licensee's willingness and ability to comply with the rehabilitation plan established pursuant to subdivision (d).

(6) The recommendations and reports of the receiver.

(d) Management of a long-term health care facility operated by a receiver pursuant to this article shall not be returned to the licensee or to any agent or employee of the licensee unless a written rehabilitation plan is approved by the court and which specifies actions to be taken by the licensee to improve the management of, and the patient care provided by, the facility and to secure and maintain compliance with state standards for operation. The state department shall monitor the facility's conformity with the rehabilitation plan. Failure to follow the plan shall be grounds for license revocation or suspension pursuant to Article 5 (commencing with Section 1294).

(e) The owner of the facility may at any time sell, lease, or close the facility, subject to the following provisions:

(1) If the owner closes the facility, or the sale or lease results in the closure of the facility, the court shall determine if a transfer plan is necessary. If the court so determines, the court shall adopt and implement a transfer plan of not more than 30 days.

(2) If the licensee proposes to sell or lease the facility and the facility will continue to operate as a long-term health care facility, the court and the state department shall reevaluate any proposed transfer plan. If the court and the state department determine that the sale or lease of the facility will result in compliance with licensing standards, the transfer plan and the receivership shall, subject to such conditions that the court may impose and enforce, be terminated upon the effective date of the sale or lease.

1332. The salary of the receiver shall be set by the court commensurate with long-term health care facility industry standards, giving due consideration to the difficulty of the duties undertaken and the qualifications of the appointed receiver, and shall be paid from the revenue coming to the facility. If the revenue is insufficient to pay the salary in addition to other expenses of the operating facility, the receiver's salary shall be paid from the General Fund.

1333. To the extent state funds are advanced for the salary of the receiver or for other expenses in connection with the receivership, as limited by subdivision (d) of Section 1329, the state shall be reimbursed from the revenues accruing to the facility. If the revenues are insufficient to reimburse the state, the unreimbursed amount shall constitute a lien upon the assets of the facility or the proceeds from the sale thereof. The lien shall not attach to the interests of a lessor, unless the lessor is operating the facility.

1334. (a) Nothing in this article shall impair the right of the owner of a long-term health care facility to dispose of his or her property interests in the facility, but any facility operated by a receiver pursuant to this article shall remain subject to such administration until terminated by the court. The termination shall be promptly effectuated, provided that the interests of the patients have been safeguarded as determined by the court.

(b) Nothing in this article shall limit the power of the court to appoint a receiver under any other applicable provision of law or to order any other remedy available under law.

1335. The state department shall adopt regulations for the administration of this article. Nothing in this article shall impair the authority of the state department to temporarily suspend licenses under Section 1296 or to reach a voluntary agreement with the licensee for alternate management of a long-term health care facility. Nothing in this article shall authorize the state department to interfere in any labor dispute.

CHAPTER 1457

An act to repeal and add Chapter 9 (commencing with Section 9700) to Division 8.5 of the Welfare and Institutions Code, relating to personal care facilities.

[Approved by Governor September 27, 1982. Filed with Secretary of State September 28, 1982.]

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

SECTION 1. Chapter 9 (commencing with Section 9700) of Division 8.5 of the Welfare and Institutions Code is repealed.

SEC. 2. Chapter 9 (commencing with Section 9700) is added to Division 8.5 of the Welfare and Institutions Code, to read:

CHAPTER 9. STATE OMBUDSMAN

Article 1. Legislative Intent and Definitions

9700. The Legislature recognizes that the California Department of Aging, pursuant to a grant from the federal government, has established a Long-Term Care Ombudsman Program.

The Legislature declares that it is the public policy of this state to encourage community contact and involvement with elderly patients or residents of long-term care facilities or residential facilities through the use of volunteers and volunteer programs, and nothing in this chapter shall be construed as limiting or restricting the continuation of relationships established between ombudsmen, the elderly patients or residents of long-term care facilities or residential facilities, and the operators of these facilities.

The Legislature finds that in order to comply with the federal Older Americans Act, as amended, and to effectively assist residents, patients and clients of long-term care facilities in the assertion of their civil and human rights, the structure, powers and duties of the Long-Term Care Ombudsman Program must be specifically defined.

9701. Unless the contrary is stated or clearly appears from the

context, the following definitions shall govern the interpretation of this chapter:

(a) " Long-term care facility" means any of the following:

(1) Any long-term health care facility, as defined in subdivision (a) of Section 1418 of the Health and Safety Code.

(2) Any community care facility, as defined in paragraphs (1) and (2) of subdivision (a) of Section 1502 of the Health and Safety Code.

(3) Any swing bed in an acute care facility, or any extended care facility.

(4) Any adult day health care facility as defined in subdivision (b) of Section 1570.7 of the Health and Safety Code.

(b) "Approved organization" means any public agency or other appropriate organization which has been designated by the department to hear, investigate, and resolve complaints made by or on behalf of patients, residents, or clients of long-term care facilities relating to matters which may affect the health, safety, welfare, and rights of these patients, residents, or clients.

(c) "Office" means the Office of the State Long-Term Care Ombudsman, including approved organizations.

(d) "State Ombudsman" means the State Long-Term Care Ombudsman.

(e) "Director" means the Director of the Department of Aging.

(f) "Department" means the Department of Aging.

(g) "Medical training" or "medical records training" means the completion of training as a physician, registered nurse, nurse practitioner, licensed vocational nurse, pharmacist, medical social worker, or medical records technician.

(h) "Ombudsman coordinator" means the individual selected by the governing board of the approved organization to manage the day-to-day operation of the approved organization, including the implementation of federal and state requirements governing the office.

Article 2. General Provisions

9710. There is within the Department of Aging an Office of the State Long-Term Care Ombudsman.

9711. The office shall be under the direction of a chief executive officer who shall be known as the State Long-Term Care Ombudsman. The State Ombudsman shall be appointed by the Director of the Department of Aging and shall report directly to the director. He or she shall devote his entire time to the duties of his or her position and shall receive the salary otherwise provided by law.

Any vacancy occurring in the position of State Ombudsman shall be filled in the same manner as the original appointment. Whenever the State Ombudsman dies, resigns, becomes ineligible to serve for any reason, or is removed from office, the director shall appoint an acting State Ombudsman within 30 days who shall serve until the

appointment and qualification of the State Ombudsman's successor, but in no event longer than four months from the occurrence of the vacancy. The acting State Ombudsman shall exercise during this period all the powers and duties of the State Ombudsman pursuant to the provisions of this chapter.

9712. (a) The State Ombudsman shall have training and experience in the following areas:

(1) Gerontology, long-term care, or other relevant social services programs.

(2) The legal system.

(3) Dispute or problem resolution techniques, including investigation, mediation, and negotiation.

(b) The State Ombudsman may not have been employed by any long-term care facility within the past three years.

(c) Neither the State Ombudsman nor any member of his or her immediate family shall have, or have had within the past three years, any pecuniary interest in the provision of long-term health care facilities.

9713. (a) Upon request of the office, the Attorney General shall represent the office or the department and the state in litigation concerning affairs of the office, unless the Attorney General represents another state agency, in which case the agency or the office shall be authorized to employ other counsel.

(b) The State Ombudsman may employ technical experts and other employees which, in his or her judgment, are necessary for the conduct of the business of the office.

9714. The office may solicit and receive funds, gifts, and contributions to support the operations and programs of the office. The office shall not solicit or receive any funds, gifts, or contributions where the solicitation or receipt would jeopardize the independence and objectivity of the office.

9715. (a) No representative of the office shall be held liable for good faith performance of responsibilities under this chapter.

(b) No discriminatory, disciplinary, or retaliatory action shall be taken against any employee of a facility or agency, any patient, resident or client of a long-term care facility, or any volunteer, for any communication made, or information given or disclosed, to aid the office in carrying out its duties and responsibilities, unless the same was done maliciously or without good faith. This subdivision is not intended to infringe on the rights of the employer to supervise, discipline, or terminate an employee for other reasons.

(c) All communications by a representative of the office, if reasonably related to the requirements of that individual's responsibilities under this chapter and done in good faith, shall be privileged and that privilege shall serve as a defense to any action in libel or slander.

(d) Any representative of the office shall be exempt from being required to testify in court as to any confidential matters except as the court may deem necessary to enforce the provisions of this

chapter.

9716. The office shall prepare and submit by January 1 of each year a report on the operations of the office to the Governor, the Legislature, the California Commission on Aging, the federal Commissioner on Aging, the California Senior Legislature, the area agencies on aging, and the licensing authorities for long-term care facilities. The report shall include information on complaints and conditions in long-term care facilities and may include recommendations for policy and program changes and appropriate supporting data.

9717. (a) All advocacy programs and any programs similar in nature to the Long-Term Care Ombudsman Program which receive funding or official designation from the State of California shall cooperate with the office where appropriate. These programs include, but are not limited to, the Patients' Rights Advocacy Program within the State Department of Mental Health, Protection and Advocacy, Inc., and Department of Rehabilitation Ombudsman.

(b) The office shall maintain a close working relationship with the Legal Services Development Program for the Elderly within the department.

(c) In order to ensure the provision of counsel for patients, residents, and clients of long-term care facilities, the department shall seek to establish effective coordination between the office and programs which provide legal services for the elderly, including, but not limited to, programs which are funded by the federal Legal Services Corporation or under the federal Older Americans Act, as amended.

9718. Every long-term care facility shall post in a conspicuous location a notice of the name, address, and phone number of the office and the nearest approved organization and a brief description of the services provided by the office and the approved organization. The form of the notice shall be approved by the office.

9719. The office shall sponsor a meeting of representatives of approved organizations at least twice each year. The office shall provide training to these representatives as appropriate. Prior to acceptance by the office as designated ombudsmen, individuals shall receive a minimum of 30 hours of training and be approved by the office. Upon acceptance, designated ombudsmen shall receive a card issued by the department identifying the bearer as an official ombudsman. Each ombudsman shall receive a minimum of six hours of additional training annually.

Article 3. Investigation and Resolution of Complaints

9720. (a) The office shall investigate and seek to resolve complaints and concerns communicated by or on behalf of patients, residents, or clients of any long-term care facility. Complaint investigation shall be done in an objective manner to ascertain the pertinent facts.

At the conclusion of any investigation of a complaint, the findings shall be reported to the complainant. If the office does not investigate a complaint, the complainant shall be notified in writing of the decision not to investigate and the reasons for the decision.

9721. (a) The office may refer any complaint to any appropriate state or local government agency. The following state licensing authorities shall give priority to any complaint referred to them by the office, except that any complaint alleging an immediate threat to resident health and safety may be given first priority:

(1) Licensing and Certification Division of the State Department of Health Services.

(2) Community Care Licensing Division of the State Department of Social Services.

(3) Board of Examiners for Nursing Home Administrators.

(4) Board of Registered Nurses.

(5) Board of Medical Quality Assurance.

(6) Board of Pharmacy.

(7) Board of Vocational Nurse and Psychiatric Technician Examiners.

(b) Any licensing authority which responds to a complaint against a long-term care facility which was referred to the authority by the office shall forward to the office copies of related inspection reports and plans of correction and notify the office of any citations and civil penalties levied against the long-term care facility.

9722. (a) Representatives of the office shall have the right of entry to long-term care facilities for the purpose of hearing, investigating, and resolving complaints of, and rendering advice to, elderly individuals who are patients or residents of the facilities at any time deemed necessary and reasonable by the State Ombudsman to effectively carry out the provisions of this chapter.

(b) Nothing in this chapter shall be construed to restrict, limit, or increase any existing right of any organizations or individuals not described in subdivision (a) to enter, or provide assistance to patients or residents of, long-term care facilities.

Nothing in this chapter restricts any right or privilege of any patient or resident of a long-term care facility to receive visitors of his or her choice.

9723. The State Ombudsman shall have access to any record of a state or local government agency which is necessary to carry out his or her responsibilities under this chapter, including any record rendered confidential under the provisions of Section 1094 of the Unemployment Insurance Code or Section 10850.

9724. Notwithstanding the provisions of Section 56 of the Civil Code, in order for the office to carry out its responsibilities under this chapter, the office shall have access to the medical or personal records of a patient or resident of a long-term care facility which are retained by the facility, under the following conditions:

(a) If the patient or resident has the ability to write, access may only be obtained by the written consent of the patient or resident.

(b) If the patient or resident is unable to write, oral consent may be given in the presence of a third party as witness.

(c) If the patient or resident is under a California guardianship or conservatorship of the person, which provides the guardian or conservator with the authority to approve review of records, the office shall obtain the permission of the guardian or conservator for review of the records, unless any of the following apply:

(1) The existence of the guardianship or conservatorship is unknown to the office or the facility.

(2) The guardian or conservator cannot be reached within three working days.

(3) The office has reason to believe the guardian or conservator is not acting in the best interests of the ward or the conservatee.

(d) If the patient or resident is unable to express written or oral consent and there is no guardian or conservator, or the notification of the guardian or conservator is not applicable for reasons set forth in subdivision (c), inspection of records may be made by ombudsmen qualified by medical training and with the approval of the ombudsman coordinator or the State Ombudsman, when there is sufficient cause for the inspection. Copies may be reproduced by the office. The licensee and facility personnel who disclose records pursuant to this subdivision shall not be liable for the disclosure. If investigation of records is sought pursuant to this subdivision, the ombudsman shall, upon request, produce a statement signed by the ombudsman coordinator authorizing the ombudsman to review the records.

Facilities providing copies of records pursuant to this section may charge the actual copying cost for each page copied.

Upon request by the office, a long-term care facility shall provide to the office the name of the conservator, legal representative, or next-of-kin of any patient or resident.

9725. All records and files of the office relating to any complaint or investigation made pursuant to this chapter and the identities of complainants, witnesses, patients or residents shall remain confidential unless disclosure is authorized by the patient or resident or his or her conservator of the person or legal representative. No disclosures shall be made outside the office without the consent of any named witnesses, resident, patient, client, or complainant unless the disclosure is made without the identity of any of these individuals being disclosed.

Article 4. Enforcement

9730. Anyone who willfully interferes with any lawful action of the office shall be immediately referred to the appropriate licensing authority which shall respond within the legally prescribed time period.

9731. Notwithstanding the availability of statutory damages, this chapter should not be construed to limit the ability of a court to issue

equitable relief where the legal remedies provided would not be an adequate method of preventing or curing the particular injury in question.

Article 5. Advisory Council

9740. The department shall establish an 11-member advisory council for the office. Members of the council shall be appointed by the director and shall consist of representatives of community organizations, area agencies on aging, two long-term care providers, Older Americans Act funded direct services, the State Commission on Aging, the California Long-Term Care Ombudsman Association, county government, and other appropriate governmental agencies. The director shall make the appointments from lists of no less than five names submitted by each of the designated entities.

The advisory council shall provide advice and consultation to the State Long-Term Care Ombudsman Program on issues affecting the provision of ombudsman services and recommendations as appropriate. The advisory council shall meet at least three times annually. The first meeting of the advisory council shall be not later than April 1, 1983. Representatives on the advisory council shall be responsible for their expenses incurred in participation on the advisory council.

9741. At least 30 days prior to the designation of a new organization or agency as an approved organization, the department shall notify the advisory council for the purpose of soliciting comments regarding the designation.

SEC. 3. Notwithstanding Section 6 of Article XIII B of the California Constitution and Section 2231 or 2234 of the Revenue and Taxation Code, no appropriation is made by this act for the purpose of making reimbursement pursuant to these sections. It is recognized, however, that a local agency or school district may pursue any remedies to obtain reimbursement available to it under Chapter 3 (commencing with Section 2201) of Part 4 of Division 1 of that code.

SEC. 4. Notwithstanding Section 2231.5 of the Revenue and Taxation Code, this act does not contain a repealer, as required by that section; therefore, the provisions of this act shall remain in effect unless and until they are amended or repealed by a later enacted act.

CHAPTER 1458

An act to amend Section 9527 of the Welfare and Institutions Code, relating to the Senior Companion Program.

[Approved by Governor September 27, 1982. Filed with Secretary of State September 28, 1982.]

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

SECTION 1. Section 9527 of the Welfare and Institutions Code is amended to read:

9527. This chapter shall remain in effect only until January 1, 1988, and as of such date is repealed, unless a later enacted statute, which is chaptered before January 1, 1988, deletes or extends such date.

SEC. 2. The Department of Aging shall submit a report to the Legislature by January 1, 1987, concerning an evaluation of the Senior Companion Program. That report shall include information regarding the program's cost effectiveness and shall, additionally, include a recommendation on whether or not the program should be continued beyond January 1, 1988.

CHAPTER 1459

An act to add Section 14132.25 to the Welfare and Institutions Code, relating to health.

[Approved by Governor September 27, 1982. Filed with Secretary of State September 28, 1982.]

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

SECTION 1. Section 14132.25 is added to the Welfare and Institutions Code, to read:

14132.25. On or before July 1, 1983, the State Department of Health Services shall establish a subacute care program in health facilities in order to more effectively use the limited Medi-Cal dollars available while, at the same time, ensuring needed services for these patients. The subacute care program shall be available to patients in facilities who meet subacute care criteria. Subacute care may be provided by any facility designated by the director as meeting the subacute care criteria, and which has an approved provider participation agreement with the State Department of Health Services.

The State Department of Health Services shall develop a rate of reimbursement for this subacute care program. Reimbursement rates will be determined in accordance with methodology developed by the State Department of Health Services, specified in regulation, and may include the following:

(1) All inclusive per diem rates.

(2) Individual patient specific rates according to the needs of the individual subacute care patient.

(3) Other rates subject to negotiation with the health facility.

However, reimbursement at subacute care rates shall only be implemented when funds are available for this purpose pursuant to the annual Budget Act.

The department may negotiate and execute an agreement with any health facility which meets the standards for providing subacute care. An agreement may be negotiated or established between the health facility and the department for subacute care based on individual patient assessment. The department shall establish level of care criteria and appropriate utilization controls for patients eligible for the subacute care program.

For the purposes of this section, subacute patient care shall be defined by the state department based on the results of its study pursuant to Chapter 1211 of the Statutes of 1980.

CHAPTER 1460

An act to amend Section 1680 of the Business and Professions Code, to add Section 271 to the Health and Safety Code, and to repeal and add Section 16147 of the Welfare and Institutions Code, relating to health care.

[Approved by Governor September 27, 1982. Filed with Secretary of State September 28, 1982.]

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

SECTION 1. 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 of any free dental work, or free examination.

(*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 8 (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 failure to certify, or the false certification, to the board on or after January 1, 1972, that he or she or any person employed by the licentiate, who operates dental radiographic equipment, has passed an examination in radiation safety conducted by the board, or the equivalent of the examination as required by Section 1656; or the permitting of any person employed by him or her to operate dental radiographic equipment who has not passed an examination or the equivalent of the examination in radiation safety as required by 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 such 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 by another state or territory on grounds which would be the basis of discipline in the State of California.

(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 before the completion of a phase of treatment, as that phase of treatment is defined by the customary practice and standards of the dental profession.

(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 either: (1) the death of his or her patient during the performance of any dental procedure; or, (2) the discovery of the death of a patient whose death is causally related to a dental procedure performed by him or her.

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 the name that 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 of any free dental work, or free examination.

(*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 8 (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 failure to certify, or the false certification, to the board on or after January 1, 1972, that he or she or any person employed by the licentiate, who operates dental radiographic equipment, has passed an examination in radiation safety conducted by the board, or the equivalent of the examination as required by Section 1656; or the permitting of any person employed by him to operate dental radiographic equipment who has not passed an examination or the equivalent of the examination in radiation safety as required by 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 two hundred dollars ($200) or more than one thousand two hundred dollars ($1,200) or by imprisonment for a term of not less than 60 days or more than 180 days or by both such 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 that compliance.

(r) Suspension or revocation of a license issued by another state or territory on grounds which would be the basis of discipline in the State of California.

(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 before the completion of that phase of treatment, as such phase of treatment is defined by the customary practice and standards of the dental profession.

(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 either; (1) the death of his or her patient during the performance of any dental procedure; or, (2) the discovery of the death of a patient whose death is causally related to a dental procedure performed by him or her.

SEC. 3. Section 271 is added to the Health and Safety Code, to read:

271. (a) The state department, in consultation with selected representatives of participating neonatal intensive care units, shall establish a system to screen newborn infants at high risk for deafness and create and maintain a system of followup and assessment for infants identified by such screening in neonatal intensive care units participating in the California Children's Services Program.

This section shall not be applicable to a newborn child whose parent or guardian objects to the tests on the ground that the tests conflict with his or her religious beliefs or practices.

(b) It is the intent of the Legislature, in enacting this section, to ensure the establishment and maintenance of protocols and quality of standards.

(c) The state department shall implement this section for infants in neonatal intensive care units participating in the California Children's Services Program.

SEC. 4. Section 16147 of the Welfare and Institutions Code is repealed.

SEC. 5. Section 16147 is added to the Welfare and Institutions Code, to read:

16147. Notwithstanding any other provision of law, the parent or parents of a person under 21 years of age who is domiciled in this state shall not be held financially responsible, nor shall financial contributions be requested or required of such parent or parents, for maternity home care, social service counseling, or other services related to pregnancy of the person which are provided by a licensed maternity home pursuant to this chapter.

SEC. 6. It is the intent of the Legislature, if this bill and Assembly Bill 685 are both chaptered and become effective January 1, 1983, both bills amend Section 1680 of the Business and Professions Code, and this bill is chaptered after Assembly Bill 685, that the amendments to Section 1680 proposed by both bills be given effect and incorporated in Section 1680 in the form set forth in Section 2 of this act. Therefore, Section 2 of this act shall become operative only if this bill and Assembly Bill 685 are both chaptered and become effective January 1, 1983, both amend Section 1680, and this bill is chaptered after Assembly Bill 685, in which case Section 1 of this act

shall not become operative.

SEC. 7. No appropriation is made and no reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution or Section 2231 or 2234 of the Revenue and Taxation Code because the only costs which may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, changes the definition of a crime or infraction, changes the penalty for a crime or infraction, or eliminates a crime or infraction.

CHAPTER 1461

An act to add Article 5.6 (commencing with Section 14185) to Chapter 7 of Part 3 of Division 9 of the Welfare and Institutions Code, relating to Medi-Cal, and making an appropriation therefor.

[Approved by Governor September 27, 1982 Filed with Secretary of State September 28, 1982.]

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

SECTION 1. Article 5.6 (commencing with Section 14185) is added to Chapter 7 of Part 3 of Division 9 of the Welfare and Institutions Code, to read:

Article 5.6. Drug Utilization and Peer Review

14185. There shall be established two Drug Utilization and Peer Review Committees, one to be located in Santa Clara County, the other in San Diego County, for the purpose of insuring high standards of health care, not only for beneficiaries under the Medi-Cal program, but for all persons receiving medical care and treatment.

14186. Each committee shall consist of at least four practicing pharmacists and one physician advisor. All members shall be selected by local pharmaceutical associations in each county. Membership shall be limited to pharmacists and physicians. Geographical distribution shall be taken into consideration when selecting the members of these committees.

Committee members shall be agents of the state, and shall be exempt from liability for any act performed while serving on a committee, which is within the scope of the responsibilities of the committee.

14187. The functions of the Drug Utilization and Peer Review Committees shall include, but not be limited to, the following:

(a) Evaluating the quality and quantity of an individual Medi-Cal provider's service in order to review drug utilization patterns in each community within the committee's jurisdiction.

(b) Identifying current parameters of drug utilization practices of pharmacists and other health care professionals.

(c) Establishing and promoting adherence to local standards of drug utilization criteria for health professionals and beneficiaries. Local standards of drug utilization for prescribers shall be developed in conjunction with the local physician peer review committee.

(d) Determining variances from expected local standards of medical and pharmaceutical practice. Where the committee is unable to resolve a question of a physician's prescribing practices, the case shall be referred to a local physician peer review committee. A local physician peer review committee shall be a committee of a local medical society or foundation for medical care or a professional standards review organization, which makes available professional competence to review health care services with respect to medical necessity, quality of care, or economic justification of charges or level of care. Local physician peer review committees shall submit a report on the disposition of these referrals to the department.

(e) Providing education to health professionals to bring about better drug utilization practices.

(f) At the option of each committee, educating Medi-Cal beneficiaries in methods in order to obtain a reduction in inappropriate use of pharmaceutical and medically related services by Medi-Cal beneficiaries.

The department shall provide any reports within the scope of the department's contract for fiscal intermediary services, or as otherwise may reasonably be made available, pertaining to pharmacists, physicians, and beneficiary utilization which may be necessary to accomplish the functions of this section. Notwithstanding Section 14188, the committee shall keep meaningful minutes and records of their meetings and activities which shall be made available to the department to facilitate evaluation of the pilot project. These minutes and records need not disclose the identity of individual providers.

14188. All information discussed at meetings of drug utilization and peer review committees shall be confidential.

Each drug utilization and peer review committee shall be provided up to one thousand dollars ($1,000) per month for administrative expenses. In addition, members shall receive compensation of two hundred dollars ($200) each per month.

14188.5. Where a committee identifies services or practices which are deemed to be inappropriate, unnecessary, or that fail to conform to standards of local community practice, and the committee is unable to resolve the matter locally, the committee shall refer its findings to the department and other appropriate agencies with recommendations for action. These recommendations may include, but are not limited to: onsite audits of provider records, requiring prior authorization for all or specified services rendered by the provider, review by the local committee of all or specified claims submitted by the provider prior to payment, suspension from

participation in the Medi-Cal program, and consideration of action against the provider's license. The department or agency shall acknowledge receipt of such referrals to the committee within 30 days and shall apprise the committee of actions taken when such may legally be made public. Nothing in this article shall be construed to relieve any committee or any member of a committee of their duties, upon recognition, to report to the appropriate agency instances of noncompliances with applicable state and federal laws, rules, or regulations.

14189. The pilot program established pursuant to this article shall be of two years duration, but in no case shall extend beyond January 1, 1986, on which date the provisions of this article shall be repealed, unless a later enacted statute deletes or extends that date. The department and the Health and Welfare Agency shall cooperate and shall be consulted in the design of the pilot program. Such design shall include measurable objectives and proposed procedures and criteria against which the program may be evaluated to ascertain valid and fair conclusions concerning the results and effectiveness of the pilot. Such criteria and procedures shall include fiscal and quality of care considerations and shall provide for analysis of impacts on local area patterns and individual cases. The department shall provide written review and comment on the pilot design prior to finalization. The design phase shall be completed by July 1, 1983.

The department shall perform an evaluation of the pilot project and shall prepare a report which shall be submitted to the committees and other interested parties who so request for review and comment prior to finalization. The final report and all comments which are received shall be submitted to the Legislature on or before July 1, 1985.

It is the intent of the Legislature that the pilot program established pursuant to this article shall be implemented throughout the state if it is demonstrated to be cost effective.

SEC. 2. The sum of fourteen thousand dollars ($14,000) is hereby appropriated from the General Fund to the State Department of Health Services in order to implement the provisions of this act.

CHAPTER 1462

An act to amend Section 38010 of, and to add Chapter 5 (commencing with Section 38040) to, and to amend and renumber the heading of Chapter 5 (commencing with Section 38040) of Division 25 of, and to amend and renumber Section 38040 of, the Health and Safety Code, relating to audits of direct services contracts.

[Approved by Governor September 27, 1982. Filed with Secretary of State September 28, 1982.]

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

SECTION 1. The Legislature hereby finds and declares as follows:

(a) State agencies and nonprofit organizations incur unnecessary costs and paperwork burdens due to conflicting and redundant audit requirements for direct service contracts.

(b) The establishment of consistent audit requirements will improve the financial management of direct service contracts, promote the efficient use of audit resources, and insure public accountability for direct service contracts.

SEC. 2. Section 38010 of the Health and Safety Code is amended to read:

38010. Notwithstanding any other statutes to the contrary, this division shall prevail.

This division shall not apply to contracts entered into pursuant to Chapter 7 (commencing with Section 14000) or Chapter 8 (commencing with Section 14200) of Part 3 of Division 9 of the Welfare and Institutions Code.

SEC. 3. Chapter 5 (commencing with Section 38040) is added to Division 25 of the Health and Safety Code, to read:

CHAPTER 5. DIRECT SERVICE CONTRACT AUDIT REQUIREMENTS

38040. As used in this chapter:

(a) "Financial and compliance audit" means a systematic review or appraisal to determine each of the following:

(1) Whether the financial statements of an audited organization fairly present the financial position and the results of financial operations in accordance with generally accepted accounting principles.

(2) Whether the organization has complied with laws and regulations that may have a material effect upon the financial statements.

(b) "Public accountants" means certified public accountants, or state licensed public accountants.

(c) "Independent auditors" means public accountants who have no direct or indirect relationship with the functions or activities being audited or with the business conducted by any of the officials or contractors being audited.

(d) "Generally accepted auditing standards" means the auditing standards set forth in the financial and compliance element of the "Standards for Audit of Governmental Organizations, Programs, Activities, and Functions" issued by the Comptroller General of the United States and incorporating the audit standards of the American Institute of Certified Public Accountants.

(e) "Direct service contract" means any contract provided by a state agency pursuant to Chapter 4 (commencing with Section 38030).

(f) "Nonprofit organization" means an organization described in Section 501(c)(3) of the Internal Revenue Code of 1954 which is exempt from taxation under Section 501(a) of that code or any nonprofit, scientific or educational organization qualified under Section 23701(d) of the Revenue and Taxation Code.

38041. (a) Annually, there shall be a single independent financial and compliance audit of nonprofit organizations that contract with the state under a direct service contract. Any such audit shall include an evaluation of the accounting and control systems of the direct service contractor and of the activities by the contractor to comply with the financial requirements of direct service contracts received by the contractor from the state agency. Audits carried out pursuant to this section shall be audits of the contractor, rather than audits of individual contracts or programs. In the case of any contractor that receives less than twenty-five thousand dollars ($25,000) per year from any state agency, the audit required by this section shall be conducted biennially, unless there is evidence of fraud or other violation of state law in connection with the direct service contract. The cost of such audit may be included in direct service contracts up to the proportionate amount that the contract represents of the contractor's total revenue.

(b) A nonprofit organization shall have responsibility for financial and compliance audits of the nonprofit organization and any subcontractors. The audits shall be made by independent auditors in accordance with generally accepted auditing standards. The audit shall be completed by the 15th day of the fifth month following the end of the contractor's fiscal year.

(c) (1) Nothing in this chapter limits the authority of state agencies to make audits of direct service contracts; provided, however, that if independent audits arranged for by direct service contractors meet generally accepted auditing standards state agencies shall rely on those audits and any additional audit work shall build upon the work already done.

(2) The state is responsible for conducting, or contracting for the conduct of, contract performance audits which are not financial and compliance audits.

(3) Nothing in this chapter limits the state's responsibility or authority to enforce state law or regulations, procedures, or reporting requirements arising pursuant thereto.

SEC. 4. The heading of Chapter 5 (commencing with Section 38040) of Division 25 of the Health and Safety Code is amended and renumbered to read:

CHAPTER 6. CONTRACT REFORM PROCESS

SEC. 5. Section 38040 of the Health and Safety Code is amended and renumbered to read:

38050. The Auditor General shall review and report to the Legislature a contract reform process for human services contracts no later than January 1, 1982.

At a minimum, the following factors shall be considered: word processing requirements to expedite the contract production process, standardized contract forms, expediting payments, and the need for advance payments.

CHAPTER 1463

An act to amend Sections 6826 and 6829.2 of, to add Section 21080.11 to, to repeal and add Section 6224 to, and to repeal Section 6372 of, the Public Resources Code, relating to state lands.

[Approved by Governor September 27, 1982. Filed with Secretary of State September 28, 1982.]

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

SECTION 1. Section 6224 of the Public Resources Code is repealed.

SEC. 2. Section 6224 is added to the Public Resources Code, to read:

6224. The commission may adopt rules and regulations which provide for the payment of either a penalty or interest, or both, by any person who fails to pay the commission any sum when it is due under a lease or agreement. The rules and regulations may provide for the assessment, nonassessment, or waiver by the commission of the penalty or interest, or both. Penalties assessed by the commission shall not exceed 5 percent of the principal sum due and the rate of interest shall not exceed 1½ percent per month from the date on which the sum became due and payable until the date of payment. Penalties and interest assessed pursuant to this section shall be payable to the commission.

SEC. 3. Section 6372 of the Public Resources Code is repealed.

SEC. 4. Section 6826 of the Public Resources Code is amended to read:

6826. (a) The commission may permit geological or geophysical surveys on state lands and may grant permits therefor, but the permit shall not give the permittee any preferential right to an oil and gas lease. The taking of cores and other samples may be conducted on and under state lands; provided, that the commission shall require that a permit first be obtained covering such types of drilling operations for the purpose of obtaining geological samples as

the commission may determine by regulation, and upon such terms and conditions as the commission may specify by regulation, but the permit shall not give the permittee any preferential right to an oil and gas lease.

(b) The commission shall require, as a condition to the issuance of any permit for the conduct of geological or geophysical surveys on tide and submerged lands under this section, that the permittee make available to the commission, upon request, all factual and physical exploration results, logs, and records resulting from the operations under the permit. Any factual or physical exploration results, logs, or records which the permittee is required to make available to the commission shall be for the confidential use of the commission and shall not be open to inspection by any person or agency. The commission may, however, make the exploration results, logs, and records available to those governmental agencies which need the information in order to evaluate or regulate those tide and submerged lands and adjacent lands; provided, however, that the commission shall enter into a contractual agreement with those governmental agencies specifying the purposes for which the exploration results, logs, and records may be used and requiring the exploration results, logs, and records to be maintained in confidence. The contractual agreements shall specify the person who will examine and be responsible for the confidentiality of the information. The information shall not be open to inspection by any other person or agency without the written consent of the permittee.

(c) It is a misdemeanor for any member of the commission, any officer or employee of the commission, or any person performing any function or work assigned to him or her by the commission, or any governmental agency or employee utilizing data pursuant to an agreement of confidentiality provided for in subdivision (b), to disclose to any person who is not a member, officer, employee of the commission, or authorized person pursuant to subdivision (b), or to any person who is not performing any function or work assigned to him or her by the commission, any information obtained from the inspection of factual or physical exploration results, logs, or records, or to use the information for purposes other than those authorized by the commission or for the administration of the functions, responsibilities, and duties vested in the commission by law, except upon the written consent of the permittee making the information available to the commission.

SEC. 5. Section 6829.2 of the Public Resources Code is amended to read:

6829.2. The commission, in the interest of increasing the ultimate recovery of oil or gas, the protection of oil or gas from unreasonable waste, the possible arresting or amelioration of land subsidence, or protecting adjacent landowners, may include in any oil and gas lease executed under this chapter a provision which may require the lessee to enter into any unit or cooperative agreement with respect to the leased lands when the commission gives notice of intention to

lease those lands. For any of those purposes, the commission, on behalf of the state as lessor or prospective lessor, may negotiate and enter into unit or cooperative agreements with respect to lands owned by the state, or lands in which the oil and gas deposits are reserved to the state, for the purpose of bringing about the unitized or cooperative development and operation of all, or a part or parts, of the oil and gas field in which the lands are located. Subject to the provisions of this section and notwithstanding any competitive bidding requirements or restrictions on term contained in this code or any other statute, the commission may negotiate and execute all agreements necessary to effectuate, implement, or modify any such unit or cooperative agreement, including the power to bind and commit lands, including tide and submerged lands, or any interest in lands, to the cooperative or unit agreement for the full term thereof, irrespective of whether the term thereof is for a period extending over the life of the field or for any other indefinite period. The power of the commission to enter into unit or cooperative agreements includes the power to do other acts or things, and to incur on behalf of the state other commitments and obligations, that are customary in unit or cooperative agreements. The commission may designate a representative or representatives to attend unit meetings, vote, and otherwise represent and bind the interest of the state in accordance with the terms and conditions of any such unit or cooperative agreement.

SEC. 6. Section 21080.11 is added to the Public Resources Code, to read:

21080.11. This division shall not apply to settlements of title and boundary problems by the State Lands Commission and to exchanges or leases in connection with those settlements.

CHAPTER 1464

An act to amend Section 17922.5 of the Health and Safety Code, relating to building permits.

[Approved by Governor September 27, 1982. Filed with Secretary of State September 28, 1982.]

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

SECTION 1. Section 17922.5 of the Health and Safety Code is amended to read:

17922.5. Any state or local agency which issues building permits shall require, as a condition of issuing any building permit where the working conditions of the construction would require an employer to obtain a permit from the Division of Occupational Safety and Health pursuant to Chapter 6 (commencing with Section 6500) of Part 1 of Division 5 of the Labor Code, that proof be submitted

showing that the employer has received such a permit from the Division of Occupational Safety and Health.

An employer may apply for a building permit prior to receiving the permit from the Division of Occupational Safety and Health.

CHAPTER 1465

An act to add Section 16186.5 to the Government Code, to amend Sections 18115, 33327, 33328, and 33328.3 of, and to add Section 18119 to, the Health and Safety Code, to amend Section 600 of the Probate Code, to amend Sections 62, 64, 231, 423.7, 483, 672, 758, 830, 864, 1604, 4876.5, 5801, 5812, 5831, 10759.5, 10910, 10911, 10913, 11317, 11319, 11655, and 20645.6 of, to add Sections 68 and 11597 to, to add Chapter 2.6 (commencing with Section 172) to Part 1 of Division 1 of, and to repeal Section 3445 of, the Revenue and Taxation Code, relating to taxation, and making an appropriation therefor.

[Approved by Governor September 27, 1982 Filed with Secretary of State September 28, 1982.]

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

SECTION 1. Section 16186.5 is added to the Government Code, to read:

16186.5. In the event that a payment which is made to satisfy an obligation secured by a lien for postponed property taxes exceeds the amount owing to the state, the Controller may refund the overpayment to the party entitled thereto. The Controller shall pay those refunds out of the amount appropriated by Section 16100, or any appropriation in lieu thereof.

SEC. 2. Section 18115 of the Health and Safety Code is amended to read:

18115. Commencing July 1, 1981, the vehicle license fee levied pursuant to Section 10751 of the Revenue and Taxation Code on mobilehomes not subject to local property taxation pursuant to Part 13 (commencing with Section 5800) of Division 1 of the Revenue and Taxation Code, or commercial coaches, shall be paid to the department. The annual amount of the fee shall be a sum equal to 2 percent of the market value of the mobilehome or commercial coach. The market value shall be determined by the department upon the basis of the original sales price of the mobilehome or commercial coach when first sold to a consumer as a new mobilehome or commercial coach. The annual amount of the fee charged to the owner of a mobilehome subject to a license fee which replaces a mobilehome destroyed, on or after January 1, 1982, as the result of a disaster declared by the Governor, and which meets the requirements of Chapter 2.6 (commencing with Section 172) of Part 1 of Division 1 of the Revenue and Taxation Code, shall be

determined in accordance with Section 172.1 of the Revenue and Taxation Code. In the event any mobilehome or commercial coach subject to this article is modified or added to at a cost of two hundred dollars ($200), or more, a copy of the building permit required for these modifications shall be entered in the permanent record of the mobilehome or commercial coach and the department shall classify or reclassify the mobilehome or commercial coach in its proper class as provided in Section 18115.5. These provisions shall not apply in the event that the modifications are necessary to enable a handicapped person to enter and use the mobilehome or commercial coach.

SEC. 2.2. Section 18119 is added to the Health and Safety Code, to read:

18119. (a) If the license fee has not been paid on or before the 60th day following the date on which the fee became delinquent, the department shall mail a notice to the registered owner informing the owner of each of the following:

(1) That the license fee is delinquent.

(2) That the mobilehome or manufactured home will become subject to local property tax if the fees and penalties are not paid on or before the 120th day after the date of delinquency.

(3) That if the mobilehome or manufactured home becomes subject to local property tax, the owner may file a petition for reinstatement to the vehicle license fee in accordance with Article 4 (commencing with Section 10910) of Chapter 3 of Part 5 of Division 2 of the Revenue and Taxation Code, within 210 days of the date of delinquency.

(4) That on or after the 120th day following the date of delinquency, the department will notify the county assessor of the county in which the mobilehome or manufactured home is sited that the mobilehome or manufactured home is subject to local property taxation.

(b) On or before the last day of each calendar month, the department shall furnish a listing of all mobilehomes and manufactured homes for which the license fee has become delinquent for a period of 120 days or more, as provided for in Section 10759.5 of the Revenue and Taxation Code, since the last listing was furnished, and a listing of all voluntary transfers to local property taxation as provided for in subdivision (c), new registrations, and transfers of title to mobilehomes and manufactured homes since the last listing, to the county assessor of the county in which the mobilehome or manufactured home is sited.

(c) The department shall transfer a mobilehome which is subject to vehicle license fee to local property taxation upon a request for the transfer, as prescribed by the department, executed by the registered owner and legal owner. Transfer pursuant to this subdivision shall be final. Persons obtaining such a transfer thereby waive all entitlement to petition for reinstatement to the vehicle license fee, and are not entitled to the refund of any vehicle registration fees or vehicle license fees paid which apply to the

period between the date of voluntary transfer and the expiration of the registration period for which the fees were paid.

SEC. 2.3. Section 33327 of the Health and Safety Code is amended to read:

33327. After receipt of any preliminary redevelopment plan pursuant to Section 33325, the agency shall transmit to the auditor, assessor, and tax collector of the county in which the proposed project is located, or to the officer or officers performing the functions of the auditor or assessor for any taxing agencies which, in levying or collecting its taxes, do not use the county assessment roll or do not collect its taxes through the county, to the legislative or governing bodies of local agencies which receive a portion of the property tax levied pursuant to Part 0.5 (commencing with Section 50) of the Revenue and Taxation Code and to the State Board of Equalization:

(1) A description of the boundaries of the project area.

(2) A statement that a plan for the redevelopment of the area is being prepared.

(3) A map indicating the boundaries of the project area.

In addition, the agency may include a listing, by tax rate area, of all parcels within the boundaries of the project area and the value used for each parcel on the secured property tax roll.

Thereafter, if the boundaries of the proposed project are changed, the agency shall notify the taxing officials and the State Board of Equalization within 30 days by transmitting a description and map indicating each boundary change made. The State Board of Equalization shall prescribe the format of the description of boundaries and statements, and the form, size, contents, and number of copies of the map required to be transmitted pursuant to this section.

SEC. 2.5. Section 33328 of the Health and Safety Code, as amended by Chapter 475 of the Statutes of 1982, is amended to read:

33328. When it transmits the map of the project area to the county officials, taxing agencies, and the State Board of Equalization pursuant to Section 33327, the redevelopment agency shall also advise those officials and agencies of the last equalized assessment roll it proposes to use for the allocation of taxes that will comply with Sections 33670 and 33670.5. That roll shall be known and referred to as the base year assessment roll. The county officials charged with the responsibility of allocating taxes under Sections 33670 and 33670.5 shall prepare and deliver to the redevelopment agency and each of the taxing agencies, a report which shall include the following:

(a) The total assessed valuation of all taxable property within the project area as shown on the base year assessment roll.

(b) The identifications of each taxing agency levying taxes in the project area.

(c) The amount of tax revenue to be derived by each taxing agency from the base year assessment roll from the project area, including state subventions for homeowners, business inventory, and

similar subventions.

(d) For each taxing agency, its total ad valorem tax revenues from all property within its boundaries, whether inside or outside the project area.

(e) The estimated first year taxes available to the redevelopment agency, if any, based upon information submitted by the redevelopment agency, broken down by taxing agencies.

(f) The assessed valuation of the project area for the preceding year, or, if requested by the redevelopment agency, for the preceding five years, except for state assessed property on the board roll. However, in preparing this information, the requirements of Section 33670.5 shall be observed. The assessed value shall be reported by block if the property is divided by blocks, or by any other geographical area as may be agreed upon by the agency and county officials.

The report shall be prepared and delivered to the redevelopment agency and each of the taxing agencies within 90 days of the date of filing by the redevelopment agency with the State Board of Equalization or as otherwise agreed upon by the agency and the State Board of Equalization. If the proposed base year assessment roll has not yet been equalized at the time of the receipt of that advice, then the report shall be prepared and delivered within 90 days, or other period, otherwise agreed upon, by the agency and the State Board of Equalization, from the date set forth in Section 2052 of the Revenue and Taxation Code.

If the filing does not comply with the requirements of Section 33327, the State Board of Equalization or the official of the taxing agency entitled to receive those documents shall notify the filing agency within 10 days, stating the manner in which the filing of documents does not comply with this section. If no notice is given it shall be conclusively presumed that the agency has complied with the provisions of this section.

If the report is not received within the time prescribed by this section, the redevelopment agency may proceed with the adoption of the redevelopment plan. The county officials may transmit a partial report, and any final report or additional information, if received by the agency prior to the close of the public hearing on the redevelopment plan shall become part of the record of the public hearing.

The State Board of Equalization and officials of all taxing agencies shall provide the county officials preparing the report with all information necessary for its preparation. All data and information upon which said report is based shall be available to the agency to the extent permitted by law.

Prior to the publication of notice of the legislative body's public hearing on the plan, the agency shall consult with each taxing agency which levies taxes, or for which taxes are levied, on property in the project area with respect to the plan and to the allocation of taxes pursuant to Section 33670.

SEC. 3. Section 33328.3 of the Health and Safety Code is amended to read:

33328.3. If the boundaries of an existing project area for which the redevelopment plan contains a provision for the division of taxes as permitted by Section 33670 are changed, the redevelopment agency shall notify the county officials by transmitting to them, the legislative or governing bodies of the taxing agencies, and to the State Board of Equalization, the information required by Section 33327 indicating the areas to be added or detached. Within 90 days from the date of filing or a period as otherwise agreed to by the agency and the State Board of Equalization, the county officials shall prepare and submit to the redevelopment agency and the taxing agencies a report containing the information required under Section 33328, with respect to those areas to be added to or detached from the project area.

If a filing does not comply with the requirements of this section, the State Board of Equalization or the official of the taxing agency entitled to receive those documents shall notify the filing agency within 10 days, stating the manner in which the filing of documents does not comply with this section. If no notice is given, it shall be conclusively presumed that the agency has complied with the provisions of this section.

SEC. 3.5. Section 600 of the Probate Code is amended to read:

600. Within three months after appointment, or within such further time as the court or judge for reasonable cause may allow, the executor or administrator shall file with the clerk of the court an inventory and appraisement of the estate of the decedent which has come to the possession or knowledge of the executor or administrator and shall file the change in ownership statement required by subdivision (b) of Section 480 of the Revenue and Taxation Code. A copy of the inventory and appraisement shall be transmitted by the clerk to the county assessor if timely requested by the assessor. The inventory shall include all the estate of the decedent, real and personal, particularly specifying all debts, bonds, mortgages, deeds of trust, notes and other securities for the payment of money belonging to the decedent, with the name of each debtor, the date, the sum originally payable, the endorsements thereon, if any, with their dates, and a statement of the interest of the decedent in any partnership of which the decedent was a member, to be appraised as a single item. It shall include an account of all moneys belonging to the decedent. The inventory and appraisement shall be prepared in such form as to set down each item separately with the fair market value thereof at the time of the decedent's death in dollars and cents in figures opposite the respective items.

SEC. 4. Section 62 of the Revenue and Taxation Code is amended to read:

62. Change in ownership shall not include:

(a) (1) Any transfer between coowners which results in a change in the method of holding title to the real property transferred

without changing the proportional interests of the coowners in that real property, such as a partition of a tenancy in common.

(2) Any transfer between an individual or individuals and a legal entity or between legal entities, such as a cotenancy to a partnership, a partnership to a corporation, or a trust to a cotenancy, which results solely in a change in the method of holding title to the real property and in which proportional ownership interests of the transferors and transferees, whether represented by stock, partnership interest, or otherwise, in each and every piece of real property transferred, remain the same after the transfer. The provisions of this paragraph shall not apply to transfers also excluded from change in ownership under the provisions of subdivision (b) or Section 64.

(b) Any transfer for the purpose of perfecting title to the property.

(c) (1) The creation, assignment, termination, or reconveyance of a security interest; or (2) the substitution of a trustee under a security instrument.

(d) Any transfer by the trustor, or by the trustor's spouse, or by both, into a trust for so long as (1) the transferor is the present beneficiary of the trust, or (2) the trust is revocable; or any transfer by a trustee of such a trust described in either clause (1) or (2) back to the trustor; or, any creation or termination of a trust in which the trustor retains the reversion and in which the interest of others does not exceed 12 years duration.

(e) Any transfer by an instrument whose terms reserve to the transferor an estate for years or an estate for life; however, the termination of such an estate for years or estate for life shall constitute a change in ownership, except as provided in subdivision (d) of Section 62 and in Section 63.

(f) The creation or transfer of a joint tenancy interest if the transferor, after the creation or transfer, is one of the joint tenants as provided in subdivision (b) of Section 65.

(g) Any transfer of a lessor's interest in taxable real property subject to a lease with a remaining term (including renewal options) of 35 years or more. For the purpose of this subdivision, for 1979–80 and each year thereafter, it shall be conclusively presumed that all homes eligible for the homeowners' exemption, other than mobilehomes located on rented or leased land and subject to taxation pursuant to Part 13 (commencing with Section 5800), which are on leased land and have a renewal option of at least 35 years on the lease of that land, whether or not in fact that renewal option exists in any contract or agreement.

(h) Any purchase, redemption, or other transfer of the shares or units of participation of a group trust, pooled fund, common trust fund, or other collective investment fund established by a financial institution.

(i) Any transfer of stock or membership certificate in a housing cooperative which was financed under one mortgage, provided that mortgage was insured under Section 213, 221(d)(3), 221(d)(4), or

236 of the National Housing Act, as amended, or that housing cooperative was financed or assisted pursuant to Section 514, 515, or 516 of the Housing Act of 1949 or Section 202 of the Housing Act of 1959, or the housing cooperative was financed by a direct loan from the California Housing Finance Agency, and provided that the regulatory and occupancy agreements were approved by the governmental lender or insurer, and provided that the transfer is to the housing cooperative or to a person or family qualifying for purchase by reason of limited income. Any subsequent transfer from the housing cooperative to a person or family not eligible for state or federal assistance in reduction of monthly carrying charges or interest reduction assistance by reason of the income level of that person or family shall constitute a change of ownership.

(j) Any transfer during the period March 1, 1975 to March 1, 1981, between coowners in any property which was held by them as coowners for all or part of that period, and which was eligible for a homeowner's exemption during the period of the coownership, notwithstanding any other provision of this chapter. Any transferee whose interest was revalued in contravention of the provisions of this subdivision shall obtain a reversal of that revaluation with respect to the 1980–81 assessment year and thereafter, upon application to the county assessor of the county in which the property is located filed on or before March 26, 1982. No refunds shall be made under this subdivision for any assessment year prior to the 1980–81 fiscal year.

(k) Any transfer of property or an interest therein between a corporation sole, a religious corporation, a public benefit corporation, and a holding corporation as defined in Section 23701h holding title for the benefit of any of the aforementioned corporations, or any combination thereof (including any transfer from one such entity to the same type of entity), provided that both the transferee and transferor are regulated by laws, rules, regulations, or canons of the same religious denomination.

SEC. 4.5. Section 62 of the Revenue and Taxation Code is amended to read:

62. Change in ownership shall not include:

(a) (1) Any transfer between coowners which results in a change in the method of holding title to the real property transferred without changing the proportional interests of the coowners in that real property, such as a partition of a tenancy in common.

(2) Any transfer between an individual or individuals and a legal entity or between legal entities, such as a cotenancy to a partnership, a partnership to a corporation, or a trust to a cotenancy, which results solely in a change in the method of holding title to the real property and in which proportional ownership interests of the transferors and transferees, whether represented by stock, partnership interest, or otherwise, in each and every piece of real property transferred, remain the same after the transfer. The provisions of this paragraph shall not apply to transfers also excluded from change in ownership under the provisions of subdivision (b) or Section 64.

(b) Any transfer for the purpose of perfecting title to the property.

(c) (1) The creation, assignment, termination, or reconveyance of a security interest; or (2) the substitution of a trustee under a security instrument.

(d) Any transfer by the trustor, or by the trustor's spouse, or by both, into a trust for so long as (1) the transferor is the present beneficiary of the trust, or (2) the trust is revocable; or any transfer by a trustee of such a trust described in either clause (1) or (2) back to the trustor; or, any creation or termination of a trust in which the trustor retains the reversion and in which the interest of others does not exceed 12 years duration.

(e) Any transfer by an instrument whose terms reserve to the transferor an estate for years or an estate for life; however, the termination of such an estate for years or estate for life shall constitute a change in ownership, except as provided in subdivision (d) of Section 62 and in Section 63.

(f) The creation or transfer of a joint tenancy interest if the transferor, after the creation or transfer, is one of the joint tenants as provided in subdivision (b) of Section 65.

(g) Any transfer of a lessor's interest in taxable real property subject to a lease with a remaining term (including renewal options) of 35 years or more. For the purpose of this subdivision, for 1979–80 and each year thereafter, it shall be conclusively presumed that all homes eligible for the homeowners' exemption, other than mobilehomes located on rented or leased land and subject to taxation pursuant to Part 13 (commencing with Section 5800), which are on leased land and have a renewal option of at least 35 years on the lease of that land, whether or not in fact that renewal option exists in any contract or agreement.

(h) Any purchase, redemption, or other transfer of the shares or units of participation of a group trust, pooled fund, common trust fund, or other collective investment fund established by a financial institution.

(i) Any transfer of stock or membership certificate in a housing cooperative which was financed under one mortgage, provided that mortgage was insured under Section 213, 221(d)(3), 221(d)(4), or 236 of the National Housing Act, as amended, or that housing cooperative was financed or assisted pursuant to Section 514, 515, or 516 of the Housing Act of 1949 or Section 202 of the Housing Act of 1959, or the housing cooperative was financed by a direct loan from the California Housing Finance Agency, and provided that the regulatory and occupancy agreements were approved by the governmental lender or insurer, and provided that the transfer is to the housing cooperative or to a person or family qualifying for purchase by reason of limited income. Any subsequent transfer from the housing cooperative to a person or family not eligible for state or federal assistance in reduction of monthly carrying charges or interest reduction assistance by reason of the income level of that

person or family shall constitute a change of ownership.

(j) Any transfer during the period March 1, 1975 to March 1, 1981, between coowners in any property which was held by them as coowners for all or part of that period, and which was eligible for a homeowner's exemption during the period of the coownership, notwithstanding any other provision of this chapter. Any transferee whose interest was revalued in contravention of the provisions of this subdivision shall obtain a reversal of that revaluation with respect to the 1980–81 assessment year and thereafter, upon application to the county assessor of the county in which the property is located filed on or before March 26, 1982. No refunds shall be made under this subdivision for any assessment year prior to the 1980–81 fiscal year.

(k) Any transfer of property or an interest therein between a corporation sole, a religious corporation, a public benefit corporation, and a holding corporation as defined in Section 23701h holding title for the benefit of any of the aforementioned corporations, or any combination thereof (including any transfer from one such entity to the same type of entity), provided that both the transferee and transferor are regulated by laws, rules, regulations, or canons of the same religious denomination.

(*l*) Any transfer, which would otherwise be a transfer subject to reappraisal under this chapter, between or among the same parties for the purpose of correcting or reforming a deed to express the true intentions of the parties, provided that the original relationship between the grantor and grantee is not changed.

(m) Any intrafamily transfer of an eligible dwelling unit from a parent or parents or legal guardian or guardians to a minor child or children or between or among minor siblings as a result of a court order or judicial decree due to the death of the parent or parents. As used in this subdivision, "eligible dwelling unit" means the dwelling unit which was the principal place of residence of the minor child or children prior to the transfer and remains the principal place of residence of the minor child or children after the transfer.

SEC. 5. Section 64 of the Revenue and Taxation Code is amended to read:

64. (a) Except as provided in subdivision (h) of Section 61 and subdivisions (c) and (d) of this section, the purchase or transfer of ownership interests in legal entities, such as corporate stock or partnership interests, shall not be deemed to constitute a transfer of the real property of the legal entity.

(b) Any corporate reorganization, where all of the corporations involved are members of an affiliated group, and which qualifies as a reorganization under Section 368 of the United States Internal Revenue Code and which is accepted as a nontaxable event by similar California statutes, or any transfer of real property among members of an affiliated group shall not be a change of ownership. The taxpayer shall furnish proof, under penalty of perjury, to the assessor that the transfer meets the requirements of this subdivision.

For purposes of this subdivision "affiliated group" means one or

more chains of corporations connected through stock ownership with a common parent corporation if:

(1) One hundred percent of the voting stock, exclusive of any share owned by directors, of each of the corporations, except the parent corporation, is owned by one or more of the other corporations; and

(2) The common parent corporation owns, directly, 100 percent of the voting stock, exclusive of any shares owned by directors, of at least one of the other corporations.

(c) When a corporation, partnership, other legal entity or any other person obtains control, as defined in Section 25105, in any corporation, or obtains a majority ownership interest in any partnership or other legal entity through the purchase or transfer of corporate stock, partnership interest, or ownership interests in other legal entities, such purchase or transfer of such stock or other interest shall be a change of ownership of property owned by the corporation, partnership, or other legal entity in which the controlling interest is obtained.

(d) If property is transferred on or after March 1, 1975, to a legal entity in a transaction excluded from change in ownership by paragraph (2) of subdivision (a) of Section 62, then the persons holding ownership interests in such legal entity immediately after the transfer shall be considered the "original coowners." Whenever shares or other ownership interests representing cumulatively more than 50 percent of the total interests in the entity are transferred by any of the original coowners in one or more transactions, a change in ownership of that real property owned by the legal entity shall have occurred, and the property which was previously excluded from change in ownership under the provisions of paragraph (2) of subdivision (a) of Section 62 shall be reappraised.

The date of reappraisal shall be the date of the transfer of the ownership interest representing individually or cumulatively more than 50 percent of the interests in the entity.

The persons holding ownership interests in the legal entity immediately following the reappraisal shall be considered the new original coowners.

A transfer of shares or other ownership interests which results in a change in control of a corporation, partnership, or any other legal entity is subject to reappraisal as provided in subdivision (c) rather than this subdivision.

(e) In order to assist in the determination of whether a change of ownership has occurred under subdivisions (c) and (d), the Franchise Tax Board shall include a question in substantially the following form on returns for partnerships, banks and corporations (except tax-exempt organizations):

If the corporation (or partnership) owns real property in California, has cumulatively more than 50 percent of the voting stock (or more than 50 percent of total interest in both partnership capital and partnership profits) (1) been transferred by the corporation (or

partnership) since March 1, 1975, or (2) been acquired by another legal entity or person during the year? (See instructions.)

If the entity answers "yes" to (1) or (2) in the above question, then the Franchise Tax Board shall furnish the names and addresses of that entity and of the stock or partnership ownership interest transferees to the State Board of Equalization.

SEC. 5.5. Section 68 is added to the Revenue and Taxation Code, to read:

68. For purposes of Section 2 of Article XIII A of the Constitution, the term "change in ownership" shall not include the acquisition of real property as a replacement for comparable property if the person acquiring the real property has been displaced from property in this state by eminent domain proceedings, by acquisition by a public entity, or by governmental action which has resulted in a judgment of inverse condemnation.

The adjusted base year value of the property acquired shall be the lower of the fair market value of the property acquired or the adjusted base year value of the property from which the person was displaced.

The provisions of this section shall apply to eminent domain proceedings, acquisitions, or judgments of inverse condemnation after March 1, 1975, and shall affect only those assessments of that property which occur after June 8, 1982.

Persons acquiring replacement property between March 1, 1975, and January 1, 1983, shall request assessment under this section with the assessor on or before January 1, 1987. Persons acquiring replacement property on and after January 1, 1983, shall request assessment within four years of the date the property was acquired by eminent domain or purchase or the date the judgment of inverse condemnation becomes final.

SEC. 6. Chapter 2.6 (commencing with Section 172) is added to Part 1 of Division 1 of the Revenue and Taxation Code, to read:

CHAPTER 2.6. DISASTER RELIEF FOR MOBILEHOMES

172. Whenever a mobilehome is destroyed on or after January 1, 1982, as the result of a disaster declared by the Governor, the owner shall be entitled to relief from local property taxation or vehicle license fees in accordance with the provisions of this chapter.

172.1. (a) To claim tax relief in accordance with the provisions of this chapter, the owner shall execute an declaration under penalty of perjury that the replaced mobilehome was destroyed by a disaster declared by the Governor and shall furnish with that declaration such other information, as prescribed by the Department of Housing and Community Development after consultation with the California Assessors' Association, as is necessary to establish eligibility for relief under this chapter.

To be eligible for relief under this chapter, the replacement mobilehome must be comparable in size, utility, and location, as

determined by the county assessor, with the destroyed mobilehome.

For purpose of this section, "destroyed" means damaged to such an extent that the cost of repair to the mobilehome would exceed its value at that time immediately preceding its destruction, or the mobilehome is declared a total loss for insurance purposes.

(b) If the replacement mobilehome is subject to local property taxation, the affidavit and documentation required by subdivision (a) shall be forwarded to the assessor of the county of situs. If the assessor determines that the owner of the replacement mobilehome is eligible for tax relief in accordance with the provisions of this chapter, the assessor shall, notwithstanding any other provision of law, do either of the following:

(1) If the destroyed mobilehome was subject to the vehicle license fee, enroll the replacement mobilehome with an assessed valuation so that the local property taxes paid shall be the same amount as the vehicle license fee and registration fee due on the destroyed mobilehome for the year prior to its destruction.

(2) If the destroyed mobilehome was subject to local property taxation, enroll the replacement mobilehome at a taxable value equal to the taxable value of the destroyed mobilehome at the time of its destruction.

(c) If the assessor determines that the owner of the replacement mobilehome is not eligible for tax relief in accordance with the provisions of this chapter, the replacement mobilehome shall be assessed in accordance with Section 5819.

(d) If the replacement mobilehome is subject to vehicle license fee, the affidavit and documentation required by subdivision (a) shall be forwarded to the Department of Housing and Community Development. If the department determines that the owner is eligible for tax relief in accordance with the provisions of this chapter, the department shall do either of the following:

(1) If the destroyed mobilehome was subject to the vehicle license fee, assign an in-lieu taxation classification and rating year for determination of depreciation such that the owner of the replacement mobilehome will be charged registration and license fees no greater than those he or she would have been charged for the destroyed mobilehome.

(2) If the destroyed mobilehome was subject to local property taxation, assign an in-lieu taxation classification and rating year for determination of depreciation such that the owner of the replacement mobilehome will be charged registration and license fees equal to local property taxes paid on the destroyed mobilehome for the year prior to its destruction.

(e) If the department determines that a replacement mobilehome subject to vehicle license fee is not eligible for tax relief in accordance with the provisions of this chapter, the vehicle license fee for the replacement mobilehome shall be determined in accordance with the provisions of Sections 18115 and 18115.5 of the Health and Safety Code.

(f) If the tax on a replacement mobilehome determined in accordance with subdivision (b) or (d) is greater than the tax would be if determined without reference to this chapter, the lesser amount shall be levied.

(g) If a mobilehome subject to tax relief in accordance with the provisions of this chapter is subsequently sold or transferred to another party, the subsequent owner shall not receive this tax relief unless he or she is eligible in his or her own right for that relief.

SEC. 6.5. Section 231 of the Revenue and Taxation Code is amended to read:

231. (a) Property which is owned by a nonprofit corporation and leased to, and used exclusively by, government for its interest and benefit shall be exempt from taxation within the meaning of "charitable purposes" in subdivision (b) of Section 4 and Section 5 of Article XIII of the Constitution of the State of California if:

(1) All of the provisions of Section 214 are complied with, except subdivision (6). For purposes of subdivision (6) of Section 214, irrevocable dedication to charitable purpose shall be deemed to exist if the lease provides that the property shall be transferred in fee to the entity of government leasing the same upon the sooner of either the liquidation, dissolution, or abandonment of the owner or at the time the last rental payment is made under the provisions of the lease.

(2) All of the provisions of Section 254.5 relating to owners are complied with, commencing during calendar year 1969.

(3) All of the provisions of Section 214.01 are complied with by March 15, 1970.

(b) As used in this section "property" means:

(1) Any building or structure of a kind or nature which is uniquely of a governmental character and includes, but is not limited to, the following:

(A) City halls.
(B) Courthouses.
(C) Administration buildings.
(D) Police stations, jails, or detention facilities.
(E) Fire stations.
(F) Parks or playgrounds.
(G) Hospitals.
(H) Water systems and waste water facilities.
(I) Toll bridges.

(2) Any other property required for the use and occupation of the buildings and leased to government.

(3) Any possessory interest of the nonprofit corporation in property and in the land upon which the property was constructed and so much of the surrounding land that is required for the use and occupation of the property.

(4) Any building and its equipment in the course of construction on or after the first Monday of March, 1954, together with the land on which it is located as may be required for the use and occupation

of the building when such building and equipment is being contructed for the sole purpose of being leased to government to lessen its burden.

"Uniquely of a governmental character" means the property, except hospitals, water systems, waste water facilities and toll bridges, is not intended to produce income or revenue in the form of rents or admission, user or service fees, or charges.

(c) As used in this section "property" does not include any possessory interest of any person or organization not exempt from taxation.

(d) As used in this section "nonprofit corporation" means a community chest, fund, foundation or corporation, not conducted for profit, and no part of the net earnings of which inures to the benefit of any private shareholder or individual and such nonprofit corporation is organized and operated for the sole purpose of leasing property to government and to lessen the burden of government and, in fact, only leases property to government. Such nonprofit corporation shall qualify as an exempt organization under Section 23701f of this code or Section 501(c)(4) of the Internal Revenue Code of 1954. This subdivision is not intended to enlarge the "welfare exemption" to apply to organizations qualified under Section 501(c)(4) of the Internal Revenue Code of 1954 but not otherwise qualified for the "welfare exemption" under this section. Nonprofit corporations meeting the tests of this subdivision are deemed to be organized and operated for charitable purposes.

(e) As used in this section "government" means the State of California, a city, city and county, county, public corporation, and a hospital district.

(f) The exemption provided for in this section shall be deemed to be within the "welfare exemption" for purposes of Section 251.

(g) For leases first entered into by and between government and nonprofit corporation on or after January 1, 1969, all requirements of this section shall be met for the property and the nonprofit corporation to qualify for the exemption provided by this section.

(h) For leases first entered into by and between government and nonprofit corporation on or before December 31, 1968, all requirements of this section shall be met except that the last unnumbered paragraph of subdivision (b) shall not apply and for the purposes of subdivision (b)(1) the list of real property qualifying for this exemption includes community recreation buildings or facilities, golf courses, airports, water, sewer and drainage facilities, music centers and their related facilities, and public parking incidental to and in connection with one of the buildings or structures set forth in this section.

(i) Property exempt under this section shall be located within the boundaries of the entity of government leasing the same.

(j) Where the construction has commenced on or after January 1, 1969, improvements shall be advertised and put to competitive bid to qualify for the exemption provided by this section.

SEC. 7. Section 423.7 of the Revenue and Taxation Code is amended to read:

423.7. (a) When valuing open-space land subject to a wildlife habitat contract, as defined in subdivision (f) of Section 421, the board, for purposes of surveys required by Section 1815, and all assessors shall value that land by using the average current per-acre value based on recent sales including the sale of an undivided interest therein, of lands subject to a wildlife habitat contract within the same county. Whenever ownership of open-space land is held by a corporation and the principal underlying asset of that corporation is represented by those lands, the price received for each bona fide sale of shares of stock in those corporations or certificates of membership in nonprofit corporations shall be treated as a sale of open-space land by the assessor in determining average value for open-space lands within the meaning of this section.

(b) In the valuation of open-space land subject to a wildlife habitat contract as defined in subdivision (f) of Section 421, irrespective of the number of parcels represented by a single ownership, the assessor shall use sales of less than 150 acres in determining the average value of those lands only if the sale is of an undivided interest of land subject to a wildlife habitat contract as defined in subdivision (f) of Section 421. The assessor shall not use any other sale of less than 150 acres of land.

(c) In the event of sales of corporate stock or membership, as referred to in subdivision (a), the assessor shall determine the average per-acre sales price and multiply such sales price by the number of acres held under the single ownership from which the land was sold, in order to determine the current total value of the single ownership.

(d) The assessor shall then determine the average current per-acre value of that land subject to a wildlife habitat contract, as defined in subdivision (f) of Section 421, by adding the current value of all those lands including corporate sales as set forth in subdivision (c), of which there has been a recent sale, and then dividing the total current value by the total number of acres of all that land of which there has been a recent sale.

(e) Whenever less than 10 years remain to the expiration of a wildlife habitat contract, the value of land determined under subdivision (a) shall be modified pursuant to this subdivision. If the full cash value of that land as determined under Section 110.1 is greater than the value determined under subdivision (a) of this section, a pro rata share of the amount of that difference shall be added in annual equal installments to the value determined pursuant to subdivision (a) over the remaining term of the wildlife habitat contract.

(f) Owners of open space land subject to a wildlife habitat contract which has been used exclusively for habitat by native or migratory wildlife, recreation, and native pasture shall report the sale of that land, or an interest therein, to the county assessor within

30 days of the sale.

(g) In the event that a wildlife habitat contract is canceled upon the application of an owner of the land covered by the contract, a penalty equal to 6 percent of the full cash value of the land as determined under Section 110.1 on the lien date next following cancellation shall be imposed. The penalty shall become delinquent on the December 10 next following that lien date and shall be treated in all respects as a delinquent penalty imposed under Section 2617 or 2704. This subdivision shall not apply when a wildlife habitat contract is canceled without the consent of an owner of the land affected.

(h) The provisions of Section 426 shall not apply to any lands valued for assessment purposes pursuant to the provisions of this section.

(i) The assessor shall not value any land under a single ownership under this section unless the owners of that land have provided the assessor with a schedule of sales of that land that have occurred during the previous four years.

(j) If there are no prior sales within the county of open-space land subject to a wildlife contract and used exclusively for habitat by native or migratory wildlife, recreation, and native pasture, the assessor shall value the land pursuant to Section 110.1.

(k) Unless a party to an instrument which creates an enforceable restriction expressly prohibits such a valuation, the valuation resulting from the method described in this section shall not exceed the valuation that would have resulted by calculation under Section 110.1, as though the property was not subject to an enforceable restriction in the base year.

SEC. 7.5. Section 483 of the Revenue and Taxation Code is amended to read:

483. (a) If the assessee establishes to the satisfaction of the county board of supervisors that the failure to file the change in ownership statement within the time required by subdivision (a) of Section 482 was due to reasonable cause and not due to willful neglect, and has filed the statement with the assessor, the board of supervisors may order the penalty abated, provided the assessee has filed with the board of supervisors written application for abatement of the penalty no later than 60 days after the date on which the assessee was notified of the penalty.

If the penalty is abated it shall be canceled or refunded in the same manner as an amount of tax erroneously charged or collected.

(b) The provisions of subdivision (a) shall not apply in any county in which the board of supervisors adopts a resolution to that effect. In that county the penalty provided for in subdivision (a) of Section 482 shall be abated if the assessee files the change of ownership statement with the assessor no later than 60 days after the date on which the assessee was notified of the penalty.

If the penalty is abated it shall be canceled or refunded in the same manner as an amount of tax erroneously charged or collected.

(c) If a person or legal entity establishes to the satisfaction of the board that the failure to file the change in ownership statement within the time required by subdivision (b) of Section 482 was due to reasonable cause and not due to willful neglect, and has filed the statement with the board, the board may recommend to the county board of supervisors that the penalty be abated, provided the person or legal entity has filed with the board written application for abatement of the penalty no later than 60 days after the date on which the person or legal entity was notified of the penalty.

If the penalty is abated by the board of supervisors, it shall be canceled or refunded in the same manner as an amount of tax erroneously charged or collected.

SEC. 8. Section 672 of the Revenue and Taxation Code is amended to read:

672. At the time of certification, each applicant shall disclose, on forms provided by the Board of Equalization, his or her financial interest in any corporation. Thereafter, the form shall be completed annually.

If the applicant is also required to annually file with the Fair Political Practices Commission pursuant to Article 3 (commencing with Section 87300) of Chapter 7 of Title 9 of the Government Code, then a duplicate of that filing shall be deemed to meet the requirements of this section.

SEC. 9. Section 758 of the Revenue and Taxation Code is amended to read:

758. If the board roll has been transmitted to the local auditors, the board may make an assessment of escaped property or a roll correction. At least 30 days prior to transmitting a statement of assessment of escaped property or making a roll correction, the board shall notify the assessee whose property's full value has increased as a result of an escape assessment or roll correction of the assessed value of that property as it shall appear on the corrected roll. The notice shall be mailed to the assessee at its address shown in the records of the board. The notice shall advise the assessee of the date by which and the place where a declaration of intent to petition for reassessment, and the date by which and the place where a petition for reassessment may be filed. The date for filing of the declaration of intent shall not be less than 20 days from the date of the mailing of the notice of value and the date for filing the petition shall not be less than 30 days from the date set for filing the declaration of intent to petition. The provisions of Sections 741 to 744, inclusive, shall be applicable to petitions and hearings pursuant to this section except for the dates prescribed for decisions of the board.

SEC. 10. Section 830 of the Revenue and Taxation Code is amended to read:

830. (a) The property statement shall be filed with the board annually by April 1, and shall be in such detail as the board may prescribe.

Except as hereinafter provided, if any person fails to file the

property statement, in whole or in part, by April 1, or by such later date to which the filing period is extended pursuant to Section 15620 of the Government Code, a penalty shall be added to the full value of the assessment of so much of the property as is not timely reported as follows:

(1) For any part of the property statement relating to the derivation of the unit value of operating property, the penalty shall be 10 percent of the unit value.

(2) For any part of the property statement that lists or describes specific operating property, the penalty shall be 10 percent of the allocated value of the property, which penalty shall be added to the unit value.

(3) For any part of the property statement that lists or describes specific nonoperating property, the penalty shall be 10 percent of the value of the property.

(4) If the failure to timely file a property statement is due to a fraudulent or willful attempt to evade the tax, a penalty of 25 percent of the assessed value of the estimated assessment shall be added to the assessment. A willful failure to file a property statement as required by Article 5 (commencing with Section 826) shall be deemed to be a willful attempt to evade the tax.

(5) No penalty added pursuant to paragraph (1), (2), (3), or (4) shall exceed five million dollars ($5,000,000) of full value.

(b) Any person who subscribes to the board's tax rate area change service and receives a change mailed between April 1 and May 1, shall file a corrected statement no later than May 30 with respect to those parts of the property statement which are affected by the change.

If such person receives a change mailed after May 1, a corrected statement shall be filed no later than the 60th day following the mailing of such change.

(c) Penalties incurred for filings received after June 30 may be included with the assessments for the succeeding fiscal year.

(d) If the assessee establishes to the satisfaction of the board that the failure to file the property statement or any of its parts within the time required by this section was due to 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 the filing of applications for assessment reductions.

SEC. 11. Section 864 of the Revenue and Taxation Code is amended to read:

864. (a) Property which is found to have escaped assessment may either be added to the roll for the fiscal year in which it is discovered or included with the assessments for the succeeding fiscal year. To the escaped assessment, there shall be added, in lieu of interest, three-quarters of 1 percent of the escaped assessed value for each month or fraction thereof from December 10 of the year in

which the escaped assessment should have been enrolled to the date the escaped assessment is added to the board roll; provided, however, that an assessment in lieu of interest shall not be added if the escape was due to an error, other than an erroneous opinion of value, on the part of the board. The property shall be taxed at the rates applicable to assessments on the roll to which it is added.

(b) If the escaped assessment is made as a result of an audit which discloses that property assessed to the party audited has been excessively assessed for any year covered by the audit which falls within the period provided for corrections under Section 4876, the excessive assessments together with any assessment in lieu of interest under subdivision (c) shall be an offset against proposed escaped assessments, including accumulated penalties and additional assessments in lieu of interest. If the excessive assessments exceed the escaped assessments, including penalties and assessments in lieu of interest, the excess may either be credited to the roll for the fiscal year in which it is discovered or deducted from the assessment for the succeeding fiscal year.

(c) Whenever the excessive assessments were due to clerical errors or other errors by the board not involving exercise of judgment, there shall be added, in lieu of interest, three-quarters of 1 percent of the excessive assessment for each month or fraction thereof, from December 10 of the year in which the excessive assessment was enrolled to the date the excessive assessment is credited to the board roll or to the date the excessive assessment is deducted from the assessment from the succeeding fiscal year, as provided in subdivision (b).

SEC. 11.5. Section 1604 of the Revenue and Taxation Code is amended to read:

1604. (a) In counties of the first class, annually, on the fourth Monday in September, the county board shall meet to equalize the assessment of property on the local roll. The board shall continue to meet for that purpose, from time to time, until the business of equalization is disposed of.

(b) In all other counties, annually, on the third Monday in July, the county board shall meet to equalize the assessment of property on the local roll. It shall continue to meet for that purpose, from time to time, until the business of equalization is disposed of.

Any taxpayer may petition said board for a reduction in an assessment and a proportionate reduction or refund of the taxes extended thereon by filing an application pursuant to Section 1603 or Section 5097.

The county board shall have no power to receive or hear any petition for a reduction in an escaped assessment made pursuant to Section 531.1 nor a penal assessment levied in respect thereto, nor to reduce such assessments.

(c) If the county assessment appeals board fails to hear evidence on the application for reduction in assessment of property within two years of the timely filing of the application, the taxpayer's opinion of

market value as reflected on the application for reduction in assessment pursuant to subdivision (a) of Section 1603 shall prevail as the basis upon which taxes are to be levied, unless the taxpayer and the county assessment appeals board mutually agree in writing to an extension of time for the hearing. However, this subdivision shall not apply to applications for reductions in assessments of property where the taxpayer has failed to provide full and complete information as required by law or where litigation is pending directly relating to the issues involved in the application. This subdivision is only applicable to applications filed on or after January 1, 1983.

SEC. 11.6. Section 3445 of the Revenue and Taxation Code is repealed.

SEC. 12. Section 4876.5 of the Revenue and Taxation Code is amended to read:

4876.5. When it can be ascertained by the board from an audit of an assessee's books of account or other papers that the property of the assessee was incorrectly valued or misclassified for any cause, then to the extent that this error caused the board to assess taxable tangible property which should not have been assessed or to assess it at a higher valuation than the board would have entered on the roll if the the error had not occurred, the roll may be corrected under this article at any time within four years after the assessment was made.

SEC. 13. Section 5801 of the Revenue and Taxation Code is amended to read:

5801. (a) As used in this part, "mobilehome" means a mobilehome as defined in Sections 18008 and 18211 of the Health and Safety Code which:

(1) Was first sold new on or after July 1, 1980.

(2) Was first sold new on or before June 30, 1980, and with respect to which the license fee required to be paid pursuant to Part 5 (commencing with Section 10701) of Division 2 has been delinquent for 120 days or more.

(3) Was, at the request of the owner, and following his or her notification of the Department of Housing and Community Development and the assessor, made subject to taxation under this part.

If a mobilehome consists of two or more transportable sections which have been assembled as a single unit or were manufactured or fabricated for later assembly as a single unit, and each section has been separately registered under the Vehicle Code, the provisions of this part shall apply to all sections of the mobilehome if the license fee for any section has been delinquent for 120 days or more.

(b) "Mobilehome" as used in this part does not include a mobilehome which has become real property by being affixed to land on a permanent foundation system or otherwise and is taxed as all other real property is taxed.

SEC. 13.5. Section 5812 of the Revenue and Taxation Code is amended to read:

5812. (a) The base year value of a mobilehome which is purchased or which changed ownership shall be entered on the roll for the lien date next succeeding the date of the purchase or change in ownership. The value of any new construction shall be entered on the roll for the lien date next succeeding the date of completion of the new construction. The value of new construction in progress on the lien date shall be entered on the roll as of the lien date.

(b) The base year value of a mobilehome described in paragraph (2) of subdivision (a) of Section 5801 shall be entered on the roll for the lien date next succeeding: (1) the date on which it is discovered; or (2) if the listing required by subdivision (b) of Section 18119 of the Health and Safety Code has been furnished, the 120th day following the date upon which the fee became delinquent.

SEC. 14. Section 5831 of the Revenue and Taxation Code, as amended by Chapter 40 of the Statutes of 1982, is amended to read:

5831. (a) Except as provided in subdivision (f), the assessor shall, upon or prior to completion of the local roll:

(1) Notify each assessee whose mobilehome's taxable value has increased of the taxable value of that mobilehome as it shall appear on the completed local roll; and

(2) Notify each assessee whose mobilehome is to be placed on the local roll pursuant to subdivision (b) of Section 5812 because its license fee has become delinquent for 120 days or more of the taxable value of the mobilehome. The notification shall also be given to the legal owner, if any, of the mobilehome, at the same time it is given to the assessee.

(b) The information given by the assessor to the assessee and legal owner, as applicable, pursuant to paragraph (1) or (2) of subdivision (a) shall include a notification of hearings by the county board of equalization, which shall include the period during which assessment protests will be accepted and the place where they may be filed. The information shall also include an explanation of the stipulation procedure set forth in Section 1607 and the manner in which the assessee may request use of this procedure.

(c) The information shall also include the full value of the property.

(d) The information shall be furnished by the assessor to the assessee personally or by regular United States mail directed to him at his latest address known to the assessor.

(e) Neither the failure of the assessee to receive the information nor the failure of the assessor to so inform the assessee shall in any way affect the validity of any assessment or the validity of any taxes levied pursuant thereto.

(f) This section shall not apply to annual increases in the valuation of property which reflect the inflation rate, not to exceed 2 percent, pursuant to Section 5813.

(g) This section does not apply to increases in assessed value caused solely by changes in the assessment ratio provided for in Section 401.

SEC. 15. Section 10759.5 of the Revenue and Taxation Code, as amended by Chapter 40 of the Statutes of 1982, is amended to read:

10759.5. (a) Notwithstanding the provisions of Section 10758, on or after July 1, 1980, any mobilehome, with respect to which the license fee required to be paid by this part has been delinquent for a period of 120 days or more, shall no longer be subject to the provisions of this part. Instead, that mobilehome shall be subject to the provisions of law governing local property taxation.

Except as provided in Article 4 (commencing with Section 10910) of Chapter 3 of Part 5 of Division 2, if a mobilehome consists of two or more transportable sections which have been assembled as a single unit or were manufactured or fabricated for later assembly as a single unit, and each section has been separately registered under the Vehicle Code, and the license fee for any section of the mobilehome has been delinquent for 120 days or more, all sections of the mobilehome shall no longer be subject to the provisions of this part and shall become subject to the provisions of law governing local property taxation.

(b) In determining whether the license fee has been delinquent for 120 days or more, the 120-day period shall not include any days during which the mobilehome is the subject of any probate proceedings in this state. The 120-day period shall commence upon sale or distribution of the mobilehome by the executor or administrator. If the license fee was delinquent for 120 days or more prior to the date of death, the mobilehome shall be subject to property taxation.

(c) With regard to any mobilehome subject to local property taxation pursuant to the provisions of subdivision (a), the delinquent taxes and fees due under this part and under Article 2 (commencing with Section 9250) of Chapter 6 of Division 3 of the Vehicle Code as reported by the Department of Motor Vehicles or the Department of Housing and Community Development shall be added to the applicable property tax bill. The delinquent taxes and fees may be added to the secured roll and may be collected and distributed in the same manner as property taxes, or, in the alternative, may be added to the unsecured roll, collected like and distributed like all other taxes on that roll. If the amount of delinquent taxes and penalties does not appear in the records of the Department of Motor Vehicles or the Department of Housing and Community Development, the Department of Housing and Community Development shall determine from available information, if any, what the delinquent taxes and fees would have been had the mobilehome been registered. If the amount of delinquent fees cannot be determined by the Department of Housing and Community Development, there shall be added a penalty for failure to register in the amount of one hundred dollars ($100) or 1 percent of the current value of the mobilehome for each year or part thereof the mobilehome has been in this state without a current registration, not to exceed four years, whichever is more.

Whenever there is a transfer of registration, the liability for delinquent fees and penalties is that of the seller and not the buyer of the mobilehome.

(d) The State Board of Equalization shall adopt and amend as necessary rules and regulations to carry out as well as enforce the provisions of this section.

(e) For purposes of this section, "mobilehome" is defined in Section 396 of the Vehicle Code.

(f) If any mobilehome owner disputes the amount of delinquent taxes and fees reported by the Department of Housing and Community Development, the owner shall pay the amount reported to the county tax collector. If the Department of Housing and Community Development determines that a refund is due, it shall notify the auditor who shall refund the overpayment or erroneous payment of fees and taxes to the owner.

SEC. 15.5. Section 10910 of the Revenue and Taxation Code is amended to read:

10910. Any assessee, registered owner, or legal owner of a mobilehome which has become subject to local property taxation because the license fee has been delinquent for 120 days or more may file a petition for reinstatement to the vehicle license fee in accordance with this article. That petition shall be filed with the Department of Housing and Community Development within 210 days of the of date of delinquency. The petition shall state the grounds upon which the petition is filed and shall be in a form and contain that information which the Department of Housing and Community Development may prescribe. If the petition is not timely filed, the placement of the mobilehome on the local property tax roll shall become final.

SEC. 16. Section 10911 of the Revenue and Taxation Code, as added by Chapter 40 of the Statutes of 1982, is amended to read:

10911. Upon receipt of a timely petition, and a service fee to cover the cost of processing the petition, the director shall investigate into the circumstances presented in the petition. If the director determines that the failure to pay the license fee was due to reasonable cause and circumstances beyond the person's control, including, but not limited to, the administrative or clerical error of the department, and occurred notwithstanding the exercise of ordinary care and the absence of willful neglect, the director may grant the petition, and upon payment to the Department of Housing and Community Development of all delinquent fees, the mobilehome shall be removed from the local roll and reinstated to the status of a mobilehome subject to the fee imposed pursuant to this part.

If a petitioner has paid delinquent fees or local property taxes to the county tax collector on a mobilhome for which a petition is granted, the delinquent fees due to the department shall be paid within 60 days of the date the petition was granted. Failure to pay the delinquent fees within this period shall void the reinstatement

and the petition shall be deemed denied. The director may extend this period if the repayment to the petitioner by the county as provided by Section 10913 is delayed.

SEC. 16.5. Section 10913 of the Revenue and Taxation Code is amended to read:

10913. If delinquent fees and penalties, or local property taxes, have been paid to a local tax collector for a mobilehome which is reinstated, the amount of those fees, penalties, and taxes shall be refunded by the county to which they were paid, to the person who paid them, within 30 days of the date the petition was granted. If those fees, penalties, and local property taxes have been billed on such a mobilehome but have not been paid, the billing, including any penalties, shall be canceled. If those fees, penalties, and taxes have been billed on a mobilehome for which a petition for reinstatement is denied, but have not been paid, those fees, penalties, and taxes may be paid within 60 days of the date of denial of the petition without penalty for time elapsed within that 60-day period.

SEC. 17. Section 11317 of the Revenue and Taxation Code is amended to read:

11317. An escape assessment shall be entered on the current private railroad car tax record, and if this is not the record for the year in which the property escaped assessment, the entry shall be followed with "escape assessment for year 19____". The property shall be assessed at the same value and taxed at the same rate as it would have been assessed and taxed had it not escaped.

If the assessments are made as a result of an audit which discloses that property assessed to the party audited has been incorrectly assessed for a past tax year for which taxes have been paid and a claim for refund is not barred by Section 11553, the tax refunds, including applicable interest under Section 11555, resulting from the incorrect assessments shall be an offset against proposed tax liabilities, including accummulated penalties and interest, resulting from escaped assessments for any tax year covered by the audit. If the refunds exceed any proposed tax liabilities, including penalties and interest, the excess shall be processed in accordance with Section 11551.

Beginning with the 1981–82 fiscal year, assessments for the current year and escape assessments for prior years shall be entered using a 100-percent assessment ratio and the tax rates for years prior to the 1981–82 fiscal year shall be divided by four.

SEC. 18. Section 11319 of the Revenue and Taxation Code is amended to read:

11319. If any assessment made pursuant to this article results in a tax that is paid after December 10 of the year to which the assessment relates, the tax shall bear interest at the adjusted annual rate established pursuant to Section 19269 from December 10 of the year in which the assessment should have been made to the date the assessment is added to the board roll; provided, however, that no addition shall be made whenever the escape was due to an error,

other than an erroneous opinion of value, on the part of the board.

SEC. 19. Section 11597 is added to the Revenue and Taxation Code, to read:

11597. Any penalty provided for in Section 11341, 11354, 11405, or 11430 may be canceled by the board upon a finding that (1) the failure to make a timely payment is due to reasonable cause and circumstances beyond the taxpayer's control, and occurred notwithstanding the exercise of ordinary care and the absence of willful neglect, provided the principal payment is made within 30 days after the delinquency date, or (2) there was an inadvertent error in the amount of payment made by the taxpayer, provided the principal payment for the proper amount of tax due is made within 10 days after the notice of shortage is mailed by the board.

Any taxpayer seeking cancellation of the penalty shall file with the board a petition for cancellation or refund within 20 days of payment of the principal amount of the tax or within 20 days after the board mails notice of the entry of the penalty, whichever date is later. The petition shall be accompanied by a statement under penalty of perjury setting forth the facts upon which the claim for relief is based.

SEC. 20. Section 11655 of the Revenue and Taxation Code is amended to read:

11655. (a) Except as provided herein, all information and records relating to the business affairs of persons required to report to the board pursuant to this part shall be held secret by the board.

(b) The board shall disclose information and records to law enforcement agencies, grand juries, and other duly authorized legislative or administrative officials of the state pursuant to their authorization to examine such information and records.

(c) The board also may disclose information, records, and appraisal data relating to state assessment of private railroad companies whose cars operate in interstate commerce to tax officials of other states having duties corresponding to those described by this part. The disclosure shall be limited to instances in which there is a reciprocal exchange of information by the states in which the cars operate, and shall be made only pursuant to a written agreement between the agencies involved. The agreement shall provide that any request for information be in writing, shall specify the information to be exchanged, and shall require that any information furnished be used solely for tax administration purposes and otherwise shall be held secret. The request for information and any written material furnished pursuant to the request shall be open to inspection by the person to whom the information relates at the office of the board in Sacramento.

SEC. 21. Section 20645.6 of the Revenue and Taxation Code is amended to read:

20645.6. If the Controller denies a postponement claim under Chapter 2 (commencing with Section 20581), Chapter 3 (commencing with Section 20625), or Chapter 3.5 (commencing

with Section 20640), and such denial is reversed after appeal pursuant to Section 20645.1, the Controller shall issue a warrant to the claimant, if the taxes for the fiscal year have been paid, for the amount of such taxes. If the taxes for the fiscal year are delinquent, any resulting penalties or interest shall be canceled.

SEC. 22. The provisions of Section 6 of this act with respect to replacement mobilehomes placed on the local property tax roll shall apply to any replacement mobilehome placed on the roll on or after January 1, 1982. However, the provisions of this act entitling owners of replacement mobilehomes to local property tax relief shall be operative commencing with the 1983–84 fiscal year, and no refunds shall be made for the 1982–83 fiscal year for any decreases in value made for the 1983–84 fiscal year or fiscal years thereafter as the result of the enactment of this act.

SEC. 23. The provisions of Section 6 of this act with respect to replacement mobilehomes subject to the vehicle license fee shall apply to any replacement mobilehome subject to vehicle license fees on or after January 1, 1982. However, the provisions of this act entitling owners of replacement mobilehomes to vehicle license fee relief shall be operative only with respect to registration and vehicle license fees for those mobilehomes which are due on or after the effective date of this act, and no refunds shall be made for any fees due prior to the effective date of this act.

SEC. 24. It is the intent of the Legislature, if this bill and Assembly Bill 2718 are both chaptered and become effective January 1, 1983, both bills amend Section 62 of the Revenue and Taxation Code, and this bill is chaptered after Assembly Bill 2718, that the amendments to Section 62 proposed by both bills be given effect and incorporated in Section 62 in the form set forth in Section 4.5 of this act. Therefore, Section 4.5 of this act shall become operative only if this bill and Assembly Bill 2718 are both chaptered and become effective January 1, 1983, both amend Section 62, and this bill is chaptered after Assembly Bill 2718, in which case Section 4 of this act shall not become operative.

SEC. 25. There is hereby appropriated from the Mobilehome-Manufactured Home Revolving Fund to the Department of Housing and Community Development and amount not to exceed ten thousand dollars ($10,000) for the initial implementation costs incurred by that department pursuant to this act.

If this act and Assembly Bill 2460 of the 1981–82 Regular Session are both chaptered, and both chaptered bills contain an appropriation not to exceed ten thousand dollars ($10,000) from the Mobilhome-Manufactured Home Revolving Fund to the Department of Housing and Community Development for the initial implemenation costs of the respective acts, then only one such appropriation shall be made, and shall be for the initial implementation costs of both acts.

SEC. 26. Notwithstanding Section 2229 of the Revenue and

Taxation Code, no appropriation is made by this act and the state shall not reimburse any local agency or school district for property tax revenues lost by it under this act.

SEC. 27. No appropriation is made and no reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution or Section 2231 or 2234 of the Revenue and Taxation Code because the Legislature finds and declares that there are savings as well as costs in this act which, in the aggregate, do not result in additional net costs.

CHAPTER 1466

An act to amend Sections 14105.7 and 14184 of, and to add Section 14187 to, the Welfare and Institutions Code, relating to Medi-Cal.

[Approved by Governor September 27, 1982. Filed with Secretary of State September 28, 1982]

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

SECTION 1. Section 14105.7 of the Welfare and Institutions Code is amended to read:

14105.7. (a) In order to fairly reimburse pharmacies for the furnishing of prescription drugs to Medi-Cal beneficiaries, the director shall update allowable drug product prices no less often than every 60 days. The update shall include any prior change in drug product price of which the director has received notice. Notice to the director shall include, but not be limited to, publication of the price change in the supplier's catalog or supplement or in nationally distributed drug price reference guides.

(b) No regulation reducing allowable drug product cost reimbursement or removing a drug from the Medi-Cal drug formulary shall be operative until at least 30 days after eligible pharmacies have been mailed a notice of the reimbursement limitation by the department or the fiscal intermediary.

(c) The director shall limit the rate of payment for the professional fee portion of prescription services rendered under this chapter pursuant to Section 4229.5 of the Business and Professions Code or Section 11201 of the Health and Safety Code and the professional fee portion of prescription services rendered as a refill immediately subsequent to such prescription to ensure that the total professional fee paid for the two services does not exceed the professional fee paid for the same prescription refill when provided as a routine service.

SEC. 2. Section 14184 of the Welfare and Institutions Code is amended to read:

14184. The committee shall:

(a) Meet at least semiannually to review drugs on the Medi-Cal

drug formulary and make written recommendations to the director as to the addition of any drug to or the deletion of any drug from the formulary.

(b) Review and report in writing to the director as to the comparative therapeutic effect of drugs in accordance with Section 14053.5.

SEC. 3. Section 14187 is added to the Welfare and Institutions Code, to read:

14187. The functions of the Drug Utilization and Peer Review Committees shall include, but not be limited to, the following:

(a) Evaluating the quality and quantity of an individual Medi-Cal provider's service in order to review drug utilization patterns in each community within the committee's jurisdiction.

(b) Identifying current parameters of drug utilization practices of pharmacists and other health care professionals.

(c) Establishing and promoting adherence to local standards of drug utilization criteria for health professionals and beneficiaries. Local standards of drug utilization for prescribers shall be developed in conjunction with the local physician peer review committee.

(d) Determining variances from expected local standards of medical and pharmaceutical practice. Where the committee is unable to resolve a question of a physician's prescribing practices, the case shall be referred to a local physician peer review committee. A local physician peer review committee shall be a committee of a local medical society, composed of persons either licensed pursuant to the State Medical Practices Act or the Osteopathic Act, or foundation for medical care or a professional standards review organization, which makes available professional competence to review health care services with respect to medical necessity, quality of care, or economic justification of charges or level of care. Local physician peer review committees shall submit a report on the disposition of these referrals to the department.

(e) Providing education to health professionals to bring about better drug utilization practices.

(f) At the option of each committee, educating Medi-Cal beneficiaries in methods in order to obtain a reduction in inappropriate use of pharmaceutical and medically related services by Medi-Cal beneficiaries.

The department shall provide any reports within the scope of the department's contract for fiscal intermediary services, or as otherwise may reasonably be made available, pertaining to pharmacists, physicians, and beneficiary utilization which may be necessary to accomplish the functions of this section. Notwithstanding Section 14188, the committee shall keep meaningful minutes and records of their meetings and activities which shall be made available to the department to facilitate evaluation of the pilot project. These minutes and records need not disclose the identity of individual providers.

SEC. 4. Section 3 of this act shall become effective only if Senate

Bill 595 is enacted during the 1981–82 Regular Session, if Senate Bill 595 adds Section 14187 to the Welfare and Institutions Code, and if this bill is chaptered after Senate Bill 595, in which case Section 14187 of the Welfare and Institutions Code, as added by Senate Bill 595 shall not become effective.

CHAPTER 1467

An act to amend Section 66477 of the Government Code, relating to subdivisions.

[Approved by Governor September 27, 1982. Filed with Secretary of State September 28, 1982.]

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

SECTION 1. Section 66477 of the Government Code is amended to read:

66477. The legislative body of a city or county may, by ordinance, require the dedication of land or impose a requirement of the payment of fees in lieu thereof, or a combination of both, for neighborhood and community park or recreational purposes as a condition to the approval of a tentative map or parcel map, provided that:

(a) The ordinance has been in effect for a period of 30 days prior to the filing of the tentative map of the subdivision or parcel map.

(b) The ordinance includes definite standards for determining the proportion of a subdivision to be dedicated and the amount of any fee to be paid in lieu thereof. The amount of land dedicated or fees paid shall be based upon the residential density, which shall be determined on the basis of the approved or conditionally approved tentative map and the average household size. There shall be a rebuttable presumption that the average size of each class of household is the same as that disclosed by the most recent available federal census or a census taken pursuant to Chapter 17 (commencing with Section 40200) of Part 2 of Division 3 of Title 4. However, the dedication of land, or the payment of fees, or both, shall not exceed the proportionate amount necessary to provide 3 acres of park area per 1,000 persons residing within a subdivision subject to this section, unless the amount of existing neighborhood and community park area, as calculated pursuant to this subdivision, exceeds that limit, in which case the legislative body may adopt the calculated amount as a higher standard not to exceed 5 acres per 1,000 persons residing within a subdivision subject to this section.

(1) The park area per 1,000 members of the population of the city, county, or local public agency shall be derived from the ratio that the amount of neighborhood and community park acreage bears to the total population of the city, county, or local public agency as shown

in the most recent available federal census. The amount of neighborhood and community park acreage shall be the actual acreage of existing neighborhood and community parks as shown on the records, maps, or reports of the city, county, or local public agency as of the date of the most recent available federal census.

(2) For cities incorporated after the date of the most recent available federal census, the park area per 1,000 members of the population of the city shall be derived from the ratio that the amount of neighborhood and community park acreage shown on the records, maps, or reports of the county in which the newly incorporated city is located bears to the total population of the new city as determined pursuant to Section 11005 of the Revenue and Taxation Code. In making any subsequent calculations pursuant to this section, the county in which the newly incorporated city is located shall not include the figures pertaining to the new city which were calculated pursuant to this paragraph. Fees shall be payable at the time of the recording of the final map or at a later time as may be prescribed by local ordinance.

(c) The land, fees, or combination thereof are to be used only for the purpose of developing new or rehabilitating existing park or recreational facilities to serve the subdivision.

(d) The legislative body has adopted a general plan containing a recreational element, and the park and recreational facilities are in accordance with definite principles and standards contained therein.

(e) The amount and location of land to be dedicated or the fees to be paid shall bear a reasonable relationship to the use of the park and recreational facilities by the future inhabitants of the subdivision.

(f) The city, county, or other local public agency to which the land or fees are conveyed or paid shall develop a schedule specifying how, when, and where it will use the land or fees, or both, to develop park or recreational facilities to serve the residents of the subdivision. Any fees collected under the ordinance shall be committed within five years after the payment of such fees or the issuance of building permits on one-half of the lots created by the subdivision, whichever occurs later. If such fees are not committed, they shall be distributed and paid to the then record owners of the subdivision in the same proportion that the size of their lot bears to the total area of all lots within the subdivision.

(g) Only the payment of fees may be required in subdivisions containing 50 parcels or less.

(h) Subdivisions containing less than five parcels and not used for residential purposes shall be exempted from the requirements of this section; provided however, that a condition may be placed on the approval of such parcel map that if a building permit is requested for construction of a residential structure or structures on one or more of the parcels within four years the fee may be required to be paid by the owner of each such parcel as a condition to the issuance of such permit.

(i) If the subdivider provides park and recreational improvements to the dedicated land, the value of the improvements together with any equipment located thereon shall be a credit against the payment of fees or dedication of land required by the ordinance.

Land or fees required under this section shall be conveyed or paid directly to the local public agency which provides park and recreational services on a communitywide level and to the area within which the proposed development will be located, if such agency elects to accept the land or fee. The local agency accepting such land or funds shall develop the land or use the funds in the manner provided herein.

In the event park and recreational services and facilities are provided by a public agency other than a city or a county, the amount and location of land to be dedicated or fees to be paid shall, subject to subdivision (b), be jointly determined by the city or county having jurisdiction and such public agency.

The provisions of this section do not apply to commercial or industrial subdivisions; nor do they apply to condominium projects or stock cooperatives which consist of the subdivision of airspace in an existing apartment building which is more than five years old when no new dwelling units are added.

Planned developments and real estate developments, as defined in Sections 11003 and 11003.1, respectively, of the Business and Professions Code, shall be eligible to receive a credit, as determined by the legislative body, against the amount of land required to be dedicated, or the amount of the fee imposed, pursuant to this section, for the value of private open space within the development which is usable for active recreational uses.

Park and recreation purposes shall include land and facilities for the activity of "recreational community gardening," which activity consists of the cultivation by persons other than, or in addition to, the owner of such land, of plant material not for sale.

SEC. 2. Notwithstanding Section 6 of Article XIII B of the California Constitution and Section 2231 or 2234 of the Revenue and Taxation Code, no appropriation is made by this act for the purpose of making reimbursement pursuant to these sections. It is recognized, however, that a local agency or school district may pursue any remedies to obtain reimbursement available to it under Chapter 3 (commencing with Section 2201) of Part 4 of Division 1 of that code.

SEC. 3. Notwithstanding Section 2231.5 of the Revenue and Taxation Code, this act does not contain a repealer, as required by that section; therefore, the provisions of this act shall remain in effect unless and until they are amended or repealed by a later enacted act.

CHAPTER 1468

An act to amend Sections 66796.32 and 66796.34 of, to amend and renumber Sections 66780, 66784.1, and 66784.2 of, and to add Sections 66714.9, 66780, 66780.2, 66784.1, and 66784.3 to, the Government Code, relating to waste.

[Approved by Governor September 27, 1982. Filed with Secretary of State September 28, 1982.]

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

SECTION 1. Section 66714.9 is added to the Government Code, to read:

66714.9. "Implementation schedule" means a schedule which indicates approximate dates for the orderly, timely implementation of plan policies and programs, and includes approximate dates for the establishment, expansion, and closure of a site for any solid waste facility identified and reserved in the plan.

SEC. 2. Section 66780 of the Government Code is amended and renumbered to read:

66780.1. Each county, in cooperation with affected local jurisdictions, shall prepare, subject to the approval of the plan by a majority of the cities within the county which contain a majority of the population of the incorporated area of the county, a comprehensive, coordinated solid waste management plan, consistent with state policy and any appropriate regional or subregional solid waste management plan, for all waste disposal within the county and for all waste originating therein which is to be disposed of outside of the county. Each solid waste management plan shall be submitted for review and comments to the regional planning agency for the region prior to submission to the board. Any county, with the agreement of a majority of the cities within the county which contain a majority of the population of the incorporated area of the county, may transfer the responsibility for the preparation of the solid waste management plan to the regional planning agency for the region. Each plan shall be submitted to the board for approval as to its compliance with state policy. Each plan shall include an implementation schedule as defined in Section 66714.9, not later than July 1, 1984. Each plan shall include an analysis of the economic feasibility of the plan. Where appropriate, the plan may include elements providing for subregional solid waste management covering more than one county or parts thereof. The plan shall not supersede plans of any local jurisdiction unless there is agreement by all parties concerned.

SEC. 3. Section 66780 is added to the Government Code, to read:

66780. (a) The Legislature finds that decisions involving the establishment or expansion of solid waste facilities should be guided by an effective planning process, including meaningful public and

private solid waste industry participation.

(b) It is, therefore, the policy of the state and the intent of the Legislature that solid waste management plans prepared pursuant to this chapter shall be consistent with the general plan required by Article 5 (commencing with Section 65300) of Chapter 3 of Division 1 of Title 7, and that these solid waste management plans shall accomplish both of the following:

(1) Identify and reserve sites for the establishment or expansion of solid waste facilities.

(2) Ensure that land uses adjacent to or near those sites are compatible with the solid waste facilities.

(c) The Legislature further declares that it is the policy of the state and the intent of the Legislature that each state, regional, and local agency concerned with the solid waste facility planning and siting process involve the public through public hearings and informative meetings and that, at those hearings and other public forums, the public be granted the opportunity to respond to clearly defined alternative objectives, policies, and actions.

(d) The Legislature further declares that it is the policy of the state and the intent of the Legislature, as stated in Section 4271 of the Health and Safety Code, to foster and encourage private solid waste enterprises. In furtherance of that policy, it is the intent of the Legislature that each state, regional, and local agency concerned with the solid waste facility planning and siting process involve the private solid waste industry, and that the hazardous waste disposal industry also be involved in the review of the hazardous waste portion of county solid waste management plans, as specified in Section 66780.7 of the Government Code.

SEC. 4. Section 66780.2 is added to the Government Code, to read:

66780.2. (a) Notwithstanding any other provision of law, the board shall not approve a county solid waste management plan or approve a revision or amendment to the plan, unless the county, and any city within the county in which a site has been designated as a site, or as a potential site, for any solid waste facility, makes a finding that the plan, together with the plan's provisions for its implementation, is consistent with all applicable city or county general plans.

(b) A county solid waste management plan shall be consistent with a general plan only if the following requirements are met:

(1) The city or county has adopted a general plan which complies with the requirements of Article 5 (commencing with Section 65300) of Chapter 3 of Division 1 of Title 7.

(2) Any site designated in the county solid waste management plan as a site, or as a potential site, for a solid waste facility is also designated in the applicable city or county general plan as a site or potential site for such a facility.

(3) The land uses authorized in the applicable city or county general plan adjacent to, and near, any site designated in the general

plan as a site or as a potential site for a solid waste facility, are compatible with the establishment or expansion of the site.

SEC. 5. Section 66784.1 of the Government Code is amended and renumbered to read:

66784.2. In addition to the requirements of Section 66784, no person shall establish sites for solid waste disposal without a finding by the city or county in which the site is located that the distance from the site to the nearest residential structures is in compliance with all of the state minimum standards for solid waste management, and especially that the distance of residences from the site is sufficient to permit adequate control of noise levels, odor nuisances, traffic congestion, litter nuisances and vectors.

SEC. 6. Section 66784.1 is added to the Government Code, to read:

66784.1. (a) The board shall not concur in the issuance of a permit, as provided in subdivision (d) of Section 66796.32, for the establishment or expansion of a site for any solid waste facility unless the city or county in which the site is located makes a finding that the establishment or expansion of the site is consistent with the applicable general plan of the city or county in which the site is located. This finding shall not be made unless the city or county has adopted a general plan which complies with the provisions of Article 5 (commencing with Section 65300) of Chapter 3 of Division 1 of Title 7.

(b) A site for any solid waste facility shall be found to be consistent with the general plan only if both of the following requirements are met:

(1) The site is designated in the applicable city or county general plan as a site for any solid waste facility or as a potential site for a solid waste facility, except that if an area is zoned for the siting of a solid waste facility which is designed to produce an alternative source of energy through the conversion of solid waste material into energy, synthetic fuels, or reusable materials and if the zoning of the area is consistent with the applicable city or county general plan, the city or county shall deem this area to be in compliance with this requirement for the purposes of siting this type of solid waste facility.

(2) The land uses authorized adjacent to and near the site are compatible with the establishment or expansion of the site.

(c) A city or county shall not authorize any land use adjacent to or near a site for any solid waste facility designated in the applicable city or county general plan if the land use would restrict or preclude the establishment of a solid waste facility or expansion of the facility or site.

(d) Notwithstanding any other provision of law, a land use permit authorizing the establishment or expansion of a site for any solid waste facility shall not be issued unless the city or county in which the site is located has held a public hearing on the matter, pursuant to Section 65355.

(e) Nothing in this section shall limit the authority of a city or

county to amend its general plan to remove the designation of a site as a site, or as a potential site, for the establishment or expansion of a solid waste facility.

SEC. 7. Section 66784.2 of the Government Code is amended and renumbered to read:

66784.4. The board may, by regulation, specify classifications of solid waste facilities that shall be exempt from the requirements of Sections 66783.1 and 66784. Any such regulation may be adopted only if the board makes all of the following findings:

(a) The exemption is not contrary to the public interest.

(b) The quantity of solid wastes to be disposed of at each site is insignificant.

(c) The nature of the solid wastes poses no significant threat to the public health, the public safety or the environment.

SEC. 8. Section 66784.3 is added to the Government Code, to read:

66784.3. (a) Each county may, upon a majority vote of the board of supervisors, adopt a schedule of fees to be collected from each operator within its jurisdiction, including an operator who operates solely within an incorporated city. The fee shall be established in an amount sufficient to pay only those costs incurred by a county for the preparation, maintenance, and administration of the solid waste management plan required by this chapter, which are reasonable and necessary. A county may also authorize any rate adjustments necessary to carry out the provisions of this subdivision, upon a majority vote of the board of supervisors, and upon the approval by a majority of those cities within the county which contain a majority of the population of the incorporated area of the county. These fees shall not be used to pay any costs incurred for mediation or for the implementation of any recycling or resource recovery program.

(b) A regional planning agency responsible for the preparation of a plan pursuant to Section 66780.1 may also adopt a schedule of fees to be collected from each operator as provided in subdivision (a). However, in no event, shall an operator be required to pay a fee to a county and to a regional planning agency.

SEC. 9. Section 66796.32 of the Government Code is amended to read:

66796.32. (a) Upon receipt of an application or report required by Section 66796.30, the enforcement agency shall submit a copy of the application or report to the board within seven days.

(b) The enforcement agency shall not issue, modify, or revise a solid waste facilities permit unless it has, at least 45 days in advance, provided the board and the applicant with a copy of the proposed permit, which shall contain the terms and conditions the enforcement agency proposes to establish and unless the city or county in which the site is located has issued a land use permit authorizing the establishment or expansion of the site.

(c) A decision to issue or not issue the permit shall be made by the enforcement agency within 120 days of the time the application is

filed, unless waived by the applicant.

(d) The board shall, in writing, concur or object to the issuance, modification, or revision of any solid waste facilities permit within 40 days of the board's receipt of any proposed solid waste facilities permit submitted under subdivision (b). If the board determines that the permit would not be consistent with the county solid waste management plan, the state standards, or the applicable city or county general plan, it shall object to provisions of the permit and shall submit the objections to the enforcement agency for its consideration. If the board fails to concur or object in writing within 40 days, it shall be deemed to have concurred in the issuance of the permit as submitted to it.

SEC. 10. Section 66796.34 of the Government Code is amended to read:

66796.34. (a) Upon compliance with Section 66796.32 and after any necessary hearing, the enforcement agency may issue, modify, or revise a solid waste facilities permit if the board has concurred in the permit and if the enforcement agency makes the following findings based on substantial evidence:

(1) The proposed solid waste facilities permit is consistent with the county solid waste management plan prepared under Section 66780.

(2) The proposed solid waste facilities permit is consistent with the standards adopted by the board.

(3) The proposed solid waste facilities permit is consistent with the applicable city or county general plan required by Article 5 (commencing with Section 65300) of Chapter 3 of Division 1 of Title 7.

(b) The permit shall contain all terms and conditions which the enforcement agency determines to be appropriate for the operation of the solid waste facility. The operator shall comply with all terms and conditions of the permit.

(c) Within 15 days of issuing, modifying, or revising a solid waste facilities permit, the enforcement agency shall transmit a copy of the solid waste facilities permit to the disposal site owner and the person who is, or proposes to become, an operator of a transfer/processing station or a disposal site, or both.

SEC. 11. No appropriation is made and no reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution or Section 2231 or 2234 of the Revenue and Taxation Code because the local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the program or level of service mandated by this act.

CHAPTER 1469

An act to add and repeal Section 1607 of the Fish and Game Code, to amend Section 51282.2 of the Government Code, to amend Sections 4799.10, 30312, and 30313 of, and to add Section 30315.1 to, the Public Resources Code, and to amend Item 3600-001-200 of the Budget Act of 1982, relating to resources, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 27, 1982. Filed with Secretary of State September 28, 1982.]

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

SECTION 1. Section 1607 of the Fish and Game Code is repealed.

SEC. 2. Section 1607 is added to the Fish and Game Code, to read:

1607. Commencing with the 1982–83 fiscal year, the director may establish a schedule of fees to be charged to any entity or person subject to the provisions of this chapter. The fees charged shall not exceed an amount sufficient to meet one-half of the costs incurred by the department in preparing and submitting proposals and conducting investigations pursuant to this chapter and administering and enforcing the provisions of this chapter. Fees received pursuant to this section shall be deposited in the Fish and Game Preservation Fund as a reimbursement.

SEC. 3. Section 51282.2 of the Government Code is amended to read:

51282.2. (a) In the event that a city has within its boundaries on the effective date of this section 300 acres or less of land which are under contract, or an application for annexation to a city has been filed with that city and a petition for cancellation has been filed with the county within the time period set forth in subdivision (c) of Section 51282.1, which application, if approved, will result in the city having within its boundaries 300 acres or less of land which are under contract, the provisions and requirements of subdivisions (e), (f), (g) and (h) of Section 51282.1 shall not apply within that city and a petition for cancellation of a contract shall be approved as otherwise provided in Section 51282.1. If the annexation, if approved, will result in the city having more than 300 acres of land under contract, the provisions and requirements of subdivisions (e), (f), (g), and (h) of Section 51282.1 shall apply.

(b) The provisions of this section shall not apply to any contract which is applicable to land located within the coastal zone as described and delineated in Division 20 (commencing with Section 30000) of the Public Resources Code.

SEC. 4. Section 4799.10 of the Public Resources Code, as amended by Chapter 327 of the Statutes of 1982, is amended to read:

4799.10. (a) The department is authorized to implement a

program in urban forestry to encourage better tree management and planting in urban areas, to assist the cities in seeking innovative solutions to problems such as tree maintenance and vandalism, encourage demonstration projects to maximize the benefits of urban forests, and otherwise accomplish the purposes of this chapter.

The department shall assume the primary responsibility in carrying out the intent of this chapter in cooperation with other private and public entities or persons and appropriate local, state, and federal agencies such as the Cooperative Extension, the Department of Parks and Recreation, the Department of Transportation, resource conservation districts, and the United States Forest Service.

(b) The department shall be the agent of the state and shall have full power to cooperate with those agencies of the federal government which have powers and duties concerning urban forestry, and shall perform all things necessary to secure for this state the benefits of federal urban forestry programs.

To facilitate implementation of this chapter, the director is authorized to enter into agreements and contracts with any public or private organization including local agencies having forestry-related jurisdictional responsibilities and established and operating urban forestry programs. The director shall consult with such agencies when carrying out the provisions of this chapter in their respective areas.

(c) The director shall take all steps necessary to prevent or retard the introduction, establishment, and spread of the Dutch elm disease including the detection and removal of infected and high-hazard elm trees.

The department and the Department of Food and Agriculture shall cooperate in setting quarantine boundary lines and in enforcing the provisions relating to quarantine and pest abatement contained in Division 4 (commencing with Section 5001) of the Food and Agricultural Code when a quarantine is established with regard to the Dutch elm disease.

(d) The department may use available recipients of the Aid to Families with Dependent Children or General Assistance Program who are participating in state or county work experience programs for carrying out the purposes of this chapter. The participation of Work Experience Program registrants shall be consistent with their employability development plan. Persons being used by the department pursuant to this subdivision shall not be in the same crew as persons being used pursuant to subdivision (e).

(e) Whenever it is feasible to do so, the department may utilize inmates and wards assigned to conservation camps in implementing this chapter.

SEC. 5. Section 30312 of the Public Resources Code is amended to read:

30312. The terms of office of commission members shall be as follows:

(a) Any person qualified for membership because he or she holds a specified office as a locally elected official shall serve at the pleasure of his or her selecting or appointing authority. However, the membership shall cease 60 days after his or her term of office as a locally elected official ceases, or when a person has been appointed to fill that position by the appropriate appointing authority, if that occurs sooner.

(b) Any member appointed by the Governor, the Senate Rules Committee, or the Speaker of the Assembly shall serve for two years at the pleasure of their appointing power, provided that the members may continue to serve beyond the two-year term until their appointing power has acted and the appointee is authorized to sit and serve on the commission. These members may be reappointed for succeeding two-year periods.

SEC. 6. Section 30313 of the Public Resources Code is amended to read:

30313. (a) Vacancies that occur shall be filled within 30 days after the occurrence of the vacancy, and shall be filled in the same manner in which the vacating member was selected or appointed.

(b) The executive director of the commission shall notify the appropriate appointing authority of any expected vacancies on the commission. If the expected vacancy is a person qualified for membership because he or she holds a specified office as a locally elected official, whose term of office as a locally elected official is expected to expire or has expired, then the appointing authority shall notify the boards of supervisors and city selection committees of each county within the affected region of the expected vacancy.

SEC. 7. Section 30315.1 is added to the Public Resources Code, to read:

30315.1. Adoption of findings for any action taken by the commission requires a majority vote of the members from the prevailing side present at the meeting of the commission, with a least three of the prevailing members present and voting.

SEC. 8. Item 3600-001-200 of Chapter 326 of the Statutes of 1982 is amended to read:

3600-001-200—For support of Department of Fish and Game, and for the maintenance and construction of fish screens and other stream improvements, and for the purchase of land for game production, improvement of waterfowl areas and research in game management under provisions of the Pittman-Robertson Act, fish restoration and management projects under the provisions of the Dingell-Johnson Act, and the Anadromous Fish Act, payable from moneys in the Fish and Game Preservation Fund, including revenues subject to the provisions of Section 13005 of the Fish and Game Code, which revenues are hereby appro-

priated to the extent required to meet the appropriation made by this item 43,761,000
Schedule:
(a) 100000-Personal Services 43,324,000
(b) 300000-Operating Expenses and Equipment 30,134,000
(c) Special Items of Expense..... 157,000
(d) Reimbursements ..... -5,872,000
(e) Amount payable from the General Fund (Item 3600-001-001) ..... -4,678,000
(f) Amount payable from the California Environmental License Plate Fund (Item 3600-001-140) ..... -2,365,000
(g) Amount payable from the Resources Account, Energy and Resources Fund (Item 3600-001-190) -4,805,000
(h) Amount payable from the Federal Trust Fund (Item 3600-001-890) .. -11,064,000
(i) Amount payable from the Renewable Resources Investment Fund (Item 3600-001-940) ..... -1,070,000
Provisions:
1. The amount appropriated by this item may be increased with the approval of and under the conditions set by the Department of Finance to meet current obligations proposed to be funded by categories (d) and (h) of this item. This increased authorization may not be used to expand services or create new obligations.

   Reimbursements received under categories (d) and (h) of this item shall be used in repayment of any funds utilized to meet current obligations pursuant to this provision.
2. Notwithstanding Sections 711 and 712 of the Fish and Game Code, $75,000 of the amount appropriated by this item shall be utilized for support of the Sea Otter Research Project because the primary objective of this study is the protection of the abalone and clam fisheries.
3. $469,000 for Wildlife Management is appropriated from the Resources Account, Energy and Resources Fund (Item 3600-001-190) for consulting and professional services in order to dredge Buena Vista Lagoon.

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:

Action taken in connection with the Budget Act of 1982 (Chapter

326 of the Statutes of 1982) in setting fees for processing streambed alteration proposals may result in excess reimbursements being deposited in the Fish and Game Preservation Fund. Recent revisions to the California Land Conservation Act of 1965 do not adequately take into account islands of unincorporated territory that are in the process of being annexed. Provisions of Senate Bill No. 1326 (Chapter 327 of the Statutes of 1982) relating to the Dutch Elm disease control program conflict with other legislation pending in the 1981–82 Regular Session. Also, the California Coastal Commission currently has a vacancy which is impeding commission activities. Thus, to avoid excess reimbursements to the Fish and Game Preservation Fund, to clarify the application of the California Land Conservation Act of 1965 to lands to be incorporated, to avoid a conflict with the provisions of Senate Bill No. 1326, and to expedite matters before the commission, it is necessary that this act take effect immediately.

CHAPTER 1470

An act to amend Sections 30152 and 30610 of, and to add Sections 30343 and 30344 to, the Public Resources Code, relating to coastal resources, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 27, 1982. Filed with Secretary of State September 28, 1982.]

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

SECTION 1. Section 30152 of the Public Resources Code is amended to read:

30152. In Del Norte County:

(a) Near the community of Smith River, approximately 255 acres are excluded as specifically shown on map 1.

(b) The Fort Dick, Kings Valley, and Meadowbrook Acres areas are excluded as specifically shown on maps 2 and 3.

(c) In and near the City of Crescent City, approximately 2,250 acres between Lake Earl Drive and State Highway Route 101 and other partially urbanized areas, such as the Bertsch Subdivision, are excluded as specifically shown on maps 2 and 3.

(d) In the City of Crescent City, approximately two acres are excluded as specifically shown on map 2A, dated May 5, 1982, and filed on May 20, 1982, with the Office of the Secretary of State.

SEC. 2. Section 30343 is added to the Public Resources Code, to read:

30343. (a) The Legislature finds that scientific studies and technical data relevant to resources located within the coastal zone and the Outer Continental Shelf are often fragmented, uncoordinated, and stored in widely dispersed places. The

Legislature hereby finds and declares that in order to provide state and local government agencies with integrated, coordinated studies and data widely needed to carry out consistency review in regard to the federal Outer Continental Shelf oil leasing policies and programs and for local governments to implement their local coastal programs, it is necessary to provide a central storage and clearinghouse facility.

(b) The commission shall, not later than July 1, 1984, establish a coastal resource information center. The center shall develop a pilot program that will do the following:

(1) Store existing studies and data pertaining to marine, estuarine, and terrestrial environments.

(2) Integrate and coordinate the material to provide a referral service for ongoing studies and a data base for policy decisions.

(3) Carry out those functions through the use of an automated data storage and retrieval system, tying in with existing compatible systems.

(c) The center shall produce reports free of charge, where feasible, and where it is not feasible, at a reasonable cost, to any governmental agency, and at a reasonable cost to members of the private sector, in order to further the wise use of all relevant knowledge and to avoid costly duplication of studies and data gathering.

(d) The commission shall utilize innovative techniques for the establishment of the center. To this end, the commission is encouraged to enlist the voluntary assistance of private and public organizations with appropriate expertise. In addition, the commission shall seek grants from private and public institutions to augment its limited funding.

SEC. 3. Section 30344 is added to the Public Resources Code, to read:

30344. (a) The Legislature hereby finds and declares that the coastal zone is one of its most precious natural resources, rich in diversity of living and nonliving resources and in the wide range of opportunities it provides for the use and conservation by the people of this state and nation. The Legislature further finds that, in order to promote the wise use of coastal resources for, among other things, recreation, habitat conservation, educational, and scientific study, the production of food and fiber, residential purposes, and economic growth, it is necessary to provide the public with an informative and educational guide to coastal resources.

(b) The commission shall, not later than July 1, 1984, prepare a guide to coastal resources. The guide shall include, but not be limited to, the following components:

(1) An inventory of the natural resources which are of environmental, social, economic, and educational importance to the public. The inventory shall include a description of the resources, their location, and their significance to the people and the natural environment.

(2) An inventory of manmade resources of cultural, historic,

economic, and educational importance to the public. The inventory shall focus on those resources which, by virtue of their location in or near the coastal zone, take on a special character or which, because of their nature, require a coastal location. The inventory shall include a description of the resource and any historic, educational, and technical notes of interest.

(3) A listing of public and private entities having responsibility for the planning, management, use, and restoration of the coastal resources and how interested persons can contact those entities for further information about their projects and programs.

The purpose of this guide shall be to contribute to a better understanding by the public of the importance of coastal resources, both to the quality of life for people and to the maintenance of a healthy and productive natural environment. The guide shall be sensitive to the need for a balanced approach to the conservation and use of coastal resources, to the rights and responsibilities of individuals and the public in the protection and use of these resources, and the need to limit human use of some resources in order to avoid their degradation or destruction. The guide shall not be a policy guide, but rather it shall be an educational tool to increase the public understanding and appreciation of the value of California's coastal resources.

(c) The commission shall utilize innovative techniques for the preparation, production, and distribution of the guide so as to minimize costs to the public. To this end, the commission is encouraged to enlist the voluntary assistance of private and public organizations with appropriate expertise. In addition, the commission shall seek grants from private and public institutions to augment its limited funding.

Notwithstanding Section 14850 of the Government Code or any other provision of law, the commission may contract for the production of this guide with any public or private entity in order to meet the objective of this section.

(d) The guide shall be written and illustrated so as to be easily understood by the general public and shall be set forth in a format that ensures its usefulness.

(e) The guide shall be made available to the public at a reasonable cost.

SEC. 4. Section 30610 of the Public Resources Code is amended to read:

30610. Notwithstanding any provision in this division, no coastal development permit shall be required pursuant to this chapter for the following types of development and in the following areas:

(a) Improvements to existing single-family residences; provided, however, that the commission shall specify, by regulation, those classes of development which involve a risk of adverse environmental effect and shall require that a coastal development permit be obtained under this chapter.

(b) Improvements to any structure other than a single-family

residence or a public works facility; provided, however, that the commission shall specify, by regulation, those types of improvements which (1) involve a risk of adverse environmental effect, (2) adversely affect public access, or (3) involve a change in use contrary to any policy of this division. Any improvement so specified by the commission shall require a coastal development permit.

(c) Maintenance dredging of existing navigation channels or moving dredged material from those channels to a disposal area outside the coastal zone, pursuant to a permit from the United States Army Corps of Engineers.

(d) Repair or maintenance activities that do not result in an addition to, or enlargement or expansion of, the object of those repair or maintenance activities; provided, however, that if the commission determines that certain extraordinary methods of repair and maintenance that involve a risk of substantial adverse environmental impact, it shall, by regulation, require that a permit be obtained under this chapter.

(e) Any category of development, or any category of development within a specifically defined geographic area, that the commission, after public hearing, and by two-thirds vote of its appointed members, has described or identified and with respect to which the commission has found that there is no potential for any significant adverse effect, either individually or cumulatively, on coastal resources or on public access to, or along, the coast and, where the exclusion precedes certification of the applicable local coastal program, that the exclusion will not impair the ability of local government to prepare a local coastal program.

(f) The installation, testing, and placement in service or the replacement of any necessary utility connection between an existing service facility and any development approved pursuant to this division; provided, however, that the commission may, where necessary, require reasonable conditions to mitigate any adverse impacts on coastal resources, including scenic resources.

(g) The replacement of any structure, other than a public works facility, destroyed by a disaster. The replacement structure shall conform to applicable existing zoning requirements, shall be for the same use as the destroyed structure, shall not exceed either the floor area, height, or bulk of the destroyed structure by more than 10 percent, and shall be sited in the same location on the affected property as the destroyed structure.

As used in this subdivision, " disaster" means any situation in which the force or forces which destroyed the structure to be replaced were beyond the control of its owner.

As used in this subdivision, "bulk" means total interior cubic volume as measured from the exterior surface of the structure.

As used in this subdivision, "structure" includes landscaping and any erosion control structure or device which is similar to that which existed prior to the occurrence of the disaster.

(h) Any activity anywhere in the coastal zone that involves the

conversion of any existing multiple-unit residential structure to a time-share project, estate, or use, as defined in Section 11003.5 of the Business and Professions Code. If any improvement to an existing structure is otherwise exempt from the permit requirements of this division, no coastal development permit shall be required for that improvement on the basis that it is to be made in connection with any conversion exempt pursuant to this subdivision. The division of a multiple-unit residential structure into condominiums, as defined in Section 783 of the Civil Code, shall not be considered a time-share project, estate, or use for purposes of this subdivision.

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 that certain prescribed developments and programs may be undertaken as soon as possible, it is necessary that this act take effect immediately.

CHAPTER 1471

An act to add Division 7 (commencing with Section 8600) to the Public Resources Code, relating to public lands, and making an appropriation therefor.

[Approved by Governor September 27, 1982. Filed with Secretary of State September 28, 1982.]

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

SECTION 1. Division 7 (commencing with Section 8600) is added to the Public Resources Code, to read:

DIVISION 7. KAPILOFF LAND BANK ACT

CHAPTER 1. GENERAL PROVISIONS

8600. This division shall be known and may be cited as the Kapiloff Land Bank Act.

8601. Unless the context otherwise requires, the definitions in this section govern the construction of this division.

(a) "Commission" means the State Lands Commission.

(b) "Fund" means the Land Bank Fund created pursuant to Section 8610.

(c) "Trustee" means the State Lands Commission acting in its role as trustee for the Land Bank Fund.

(d) "Title settlements" means exchanges pursuant to Section 6307 and any agreements between the commission and others as a part of, or in lieu of, litigation in compromise settlements of public trust title

questions, including real property exchanges, boundary determinations, or other means leading to a resolution of those questions and the necessary conveyances or other documentation provided by the agreements.

(e) "Mitigation" means any measure to mitigate adverse environmental impacts which are lawfully imposed as a condition to the issuance of a permit or other authorization to undertake a project.

(f) "Project" means, for purposes of mitigation only, any improvement to real property which adversely impacts existing or former wetlands.

8602. The Legislature finds and declares as follows:

(a) Wetlands are essential to the environmental, economic, and social well-being of the people of the State of California.

(b) In many instances, uncertainty and disputes exist with respect to the existence or nonexistence of a public trust right, title, or interest within or along waterways of the state. This uncertainty results in impeding both the development of these lands by owners of the private property interests and preservation and public use of public trust lands, and, therefore, in the interest of protecting, enhancing, and preserving the public trust on the one hand, while permitting reasonable use and development where appropriate on the other hand, title settlements will result in the avoidance of substantial delays, uncertainties, and cost to all parties of protracted litigation, and constitute sound public policy.

(c) State policy requires the examination of mitigation measures for all projects having a potentially significant adverse impact on the environment.

(d) State law further requires the adoption of mitigation measures for projects having a significant impact on certain environmentally sensitive areas, including wetlands.

(e) So that projects can be expeditiously commenced and completed, it is in the state's interest to facilitate their completion through the provisions of this division.

CHAPTER 2. LAND BANK FUND

8610. There is in the State Treasury the Land Bank Fund, which fund is hereby created. All moneys in the fund are appropriated to the commission for expenditure, without regard to fiscal years, for the purposes of Section 8625. When performing the powers and duties set forth in this division, the commission shall be known as the Land Bank Trustee.

8611. The commission shall be responsible for carrying out the provisions of this division.

8612. The trustee is authorized to acquire real property or any interest in real property for the purposes of facilitating title settlements and, with respect to a project requiring mitigation, to facilitate such mitigation.

8613. Moneys in the fund shall be available for expenditure by the trustee to purchase outstanding interests in tide and submerged lands whether or not they have been filled, diked, or cut off from tidal waters, lands which have been or may be converted to wetlands, or adjoining or nearby lands where the public use and ownership of the land is necessary or extremely beneficial for furtherance of public trust purposes.

8614. The acquisition and subsequent management of the real property shall be consistent with the San Francisco Bay Plan specified in Section 66603 of the Government Code, the Suisun Marsh Protection Plan as defined in Section 29113 of the Public Resources Code, and any land use plan of a local agency, including, but not limited to, a port district, regional park, park and open-space, or open-space district, or recreation and park district, whose jurisdiction includes in whole or in part the acquired real property.

8615. The trustee shall act only at an open, scheduled public meeting, subject to all provisions of Division 6 (commencing with Section 6000) relating to meetings of the commission. The trustee may combine its meetings with the meetings of the commission.

8616. The provisions of this division are not intended as exclusive, and shall not restrict the commission in otherwise meeting its responsibilities for resolving title disputes in lieu of litigation or in settlement of litigation, in whole or in part, by land bank agreements, or otherwise, or any other responsibilities and jurisdiction the commission may presently have by law.

8617. The trustee is authorized to accept gifts of real property or money for the purposes of this division.

8618. On or before January 2 of each year, the trustee shall prepare and submit to the Governor and the Legislature a report describing its progress in achieving the objectives of this division, including the status of property acquisitions and an accounting of the moneys in the fund.

CHAPTER 3. ADMINISTRATION

8620. Acquisitions may be made by negotiated agreement with the owners of the outstanding interests. No provision of this division is intended to confer any authority to exercise the power of eminent domain for the purposes of this division.

8621. The purchase price shall not exceed the fair market value of the outstanding interests to be acquired. Prior to any such acquisition the trustee shall review the evidence and applicable law and shall determine whether the state may have any right, title, or interest therein and deduct from the economic value of the acquisition the value of any such state interest.

8622. As soon as practicable after initiating a title and parcel acceptability study for possible acquisition pursuant to this division, the trustee shall mail a "Notice of Potential Land Bank Acquisition" to the Department of Fish and Game, the San Francisco Bay

Conservation and Development Commission, the Coastal Conservancy, the district office of the United States Army Corps of Engineers for the district in which the real property is located, other persons, entities, or public agencies who have previously requested to be placed on the mailing list for the notices, and any others deemed appropriate by the trustee. The notice shall contain a "Plat of Potential Land Bank Parcel," showing the approximate location, character, and size of the parcel.

8623. The trustee shall make all reasonable attempts to acquire the mineral and other subsurface rights in any acquisition pursuant to this division. In the event the trustee is unable to acquire the mineral and other subsurface rights, the trustee may purchase the parcel subject to the reserved subsurface rights upon the trustee expressly finding that: (1) a reasonable attempt has been made to acquire the subsurface rights without success, (2) it is unlikely that the subsurface rights can be acquired within the provisions of this division, (3) the outstanding subsurface rights are not likely to unreasonably damage or interfere with the contemplated public trust uses for the parcel, and (4) the public benefits to be derived from acquisition are so substantial that acquisition of the parcel without the subsurface rights is in the best interests of the state for the public purposes set forth in this division.

8624. The trustee shall have the exclusive jurisdiction and authority to administer the fund and the interests in real property acquired pursuant to this division, including the selection, acquisition, and conveyance of real property by the trustee as provided in this division, provided that the trustee shall solicit and consider the comments and recommendations of other state, federal, and local public agencies and members of the public, prior to any such selection, acquisition, and conveyance.

8625. (a) The consideration passing to the state in title settlements may consist, in whole or in part, of monetary payments to the trustee for deposit into the fund which are subject to a statutory trust limiting their use exclusively to the purchase of interests in a Land Bank Fund parcel and conveyance of those interests to the state pursuant to Section 8626 as soon as practicable thereafter.

(b) A project applicant other than a public agency may donate moneys for deposit to the fund for purposes of mitigation with the approval of the agency responsible for approving the project and the trustee shall accept the donation if land is held by the trustee for those purposes. A donation so deposited is subject to a statutory trust limiting its use exclusively to the identified mitigation.

8626. Upon acceptance of a conveyance pursuant to Section 8627 the trustee shall thereafter convey to the state a parcel or other interest therein, whose economic value determined pursuant to Section 8621 is equal to the payment made.

8627. The state, in its sovereign capacity, shall accept any such conveyance, and the land shall thereafter be held by the state as land

of the legal character of tide and submerged lands subject to the public trust under the jurisdiction of the commission pursuant to the provisions of Division 6 (commencing with Section 6001).

8628. The commission shall accept the conveyances on the part of the state and shall authorize their acknowledgment and recordation.

8629. Until expended for acquisitions in accordance with the provisions of this division, moneys in the fund shall be deposited in the Pooled Money Investment Fund and the interest deposited in the fund.

8630. In addition to the purchase price to be paid, the costs and expenses attributable to the acquisition may be payable from the fund, provided that such costs shall not exceed 5 percent of the expended funds.

8631. The provisions of this division shall not be subject to the provisions of the California Environmental Quality Act (commencing with Section 21000 of the Public Resources Code), the Subdivision Map Act (commencing with Section 66410 of the Government Code), or the Property Acquisition Law (commencing with Section 15850 of the Government Code).

8632. Nothing in this division shall be construed to impair the ability of any other state agency from acquiring lands for wetlands restoration and enhancement.

8633. Nothing in this division relieves the trustee or its successors in interest from any requirement to obtain state permits, licenses, or approvals otherwise required for work, activities, or uses conducted on any real property acquired pursuant to this division.

CHAPTER 1472

An act to add Part 2.5 (commencing with Section 10600) to Division 6 of the Water Code, relating to water.

[Approved by Governor September 27, 1982. Filed with Secretary of State September 28, 1982.]

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

SECTION 1. Part 2.5 (commencing with Section 10600) is added to Division 6 of the Water Code, to read:

PART 2.5. SOUTH FORK AMERICAN RIVER

10600. The Legislature hereby finds and declares that there is an increasing conflict between water development projects and instream beneficial uses such as rafting, swimming, and fishing on the South Fork of the American River between Chili Bar Reservoir and the Salmon Falls Bridge. The Legislature further finds and declares

that the state should make reasonable efforts to find solutions to this conflict which will satisfy local water needs while continuing instream beneficial uses.

10601. Where a potentially economically viable water supply development on the South Fork of the American River between Chili Bar Reservoir and the Salmon Falls Bridge which will meet local water needs would eliminate or substantially impair significant instream beneficial uses of water, the department may undertake cooperative studies with equal state-local cost sharing to determine whether there is an alternative solution which will meet the local water needs from a different source or location and which will preserve most or all of the instream beneficial uses on that part of the south fork.

10602. The department, with regard to the South Fork of the American River between Chili Bar Reservoir and the Salmon Falls Bridge, may recommend to the Legislature that state financial assistance be provided (1) where it is necessary to make the alternative solution financially attractive to the local area compared to the development which would eliminate or substantially impair the significant instream beneficial uses, and (2) where the value of the instream beneficial uses that would be preserved are greater than the proposed state financial assistance.

10603. In undertaking studies pursuant to this part, the department shall take into consideration the potential necessity to produce hydroelectric energy to pay for future water supplies.

10604. The department shall undertake cooperative studies pursuant to this part for the following:

(a) The Georgetown Divide Public Utility District and the South Fork of the American River between Chili Bar Reservoir and Salmon Falls Bridge.

10605. Where the state provides financial assistance to implement or assist in the implementation of an alternative solution, the State Water Resources Control Board, in considering a subsequent permit or license to be issued for a project on the stretch of river where the preserved instream beneficial uses occur, shall give great weight to the preservation of the instream beneficial uses preserved as a result of the state financial assistance.

10606. If the instream beneficial uses on the South Fork of the American River between Chili Bar Reservoir and the Salmon Falls Bridge preserved by the state financial assistance will be reduced by a subsequent permit or license issued for a project on the stretch of river where the preserved instream beneficial uses occur, the board shall require as a condition of issuance of the permit or license that the recipient repay the amount of the state assistance, or proportionate amounts thereof as determined by the board, including interest at the rate earned by the Pooled Money Investment Account to the fund from which the financial assistance was appropriated.

10607. The Legislature finds and declares that the circumstances

which resulted in the enactment of this part are unique and therefore this part shall not be considered a precedent.

CHAPTER 1473

An act to amend Section 43015 of, to add Sections 39010.5 and 39010.6 to, and to add and repeal Chapter 6 (commencing with Section 39900) of Part 2 of Division 26 of, the Health and Safety Code, relating to air pollution.

[Approved by Governor September 27, 1982. Filed with Secretary of State September 28, 1982.]

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

SECTION 1. Section 39010.5 is added to the Health and Safety Code, to read:

39010.5. "Acid deposition" means the wet or dry deposition of acid chemical compounds from the atmosphere.

SEC. 2. Section 39010.6 is added to the Health and Safety Code, to read:

39010.6. "Acid deposition precursor" means an air contaminant which may be transformed to an acid gas or particle in the atmosphere.

SEC. 3. Chapter 6 (commencing with Section 39900) is added to Part 2 of Division 26 of the Health and Safety Code, to read:

CHAPTER 6. ACID DEPOSITION

39900. This chapter shall be known and may be cited as the Kapiloff Acid Deposition Act.

39901. The Legislature finds and declares that acid deposition resulting from other than natural sources is occurring in various regions of California and that this deposition may have significant adverse effects on the environment, on the economy, and on public health, including the following:

(a) Increasing pollution of natural and manmade water systems.

(b) Reducing the productivity of agricultural and forest lands.

(c) Degrading natural ecosystems, including fish and wildlife and their habitat.

(d) Adversely affecting public health.

(e) Accelerating the deterioration of metals, woods, paint, and masonry.

39902. The Legislature declares that it is the purpose of the program established by this chapter to do all of the following:

(a) Identify and determine (1) the relative contribution to acid deposition of various sources of acid deposition precursor emissions and (2) the chemical, physical, and meteorological mechanisms by

which acid deposition is formed and transported within California.

(b) Determine the regions in California where acid deposition is occurring, or might be expected to occur, in amounts which could be adverse to the environment, the economy, or the public health.

(c) Determine the present and potential environmental, public health, and economic effects of continued acid deposition in the regions identified in subdivision (b).

(d) Analyze the technological effectiveness and economic cost of advanced emission control technologies, alternative energy policies, and air quality management strategies which could reduce acid deposition.

39903. The state board shall be the state agency responsible for the implementation of the provisions of this chapter. The state board shall not adopt any rules or regulations to control acid deposition without further statutory authorization.

39904. There is hereby established a State Agency Working Group on Acid Deposition to assist and advise the state board in the design and implementation of the comprehensive research and monitoring program required by Section 39906.

The state agency working group shall include, in addition to the chairperson of the state board, the agency or department head, or designated representative thereof, of the State Water Resources Control Board, the Department of Fish and Game, the Department of Water Resources, the Department of Forestry, the Department of Food and Agriculture, the State Department of Health Services, the Public Utilities Commission, and the State Energy Resources Conservation and Development Commission.

39905. (a) There shall be appointed a nine-member Scientific Advisory Committee on Acid Deposition to advise and assist the state board in the design and implementation of the comprehensive research and monitoring program required by Section 39906.

(b) The members of the scientific advisory committee shall be recognized experts in scientific and technical fields related to acid deposition and its causes and effects, and shall be appointed as follows:

(1) Three members shall be appointed by the Governor, one of whom shall be from the Lawrence Berkeley Laboratory and one of whom shall be a member of the research screening committee of the state board.

(2) Three members shall be appointed by the Senate Rules Committee, one of whom shall be from the W.M. Keck Laboratory at the California Institute of Technology and one of whom shall be from the Electric Power Research Institute.

(3) Three members shall be appointed by the Speaker of the Assembly, one of whom shall be from the Statewide Air Pollution Research Center at the University of California, Riverside, and one of whom shall have experience in or knowledge of the petroleum refining industry.

(c) The scientific advisory committee shall review and critically

evaluate the research results and review, prior to final action, any reports or recommendations adopted by the state board.

(d) Members of the scientific advisory committee shall receive one hundred dollars ($100) per day for attending committee meetings, and shall be reimbursed for reasonable and necessary travel and other expenses incurred in performance of their duties.

39906. The state board, with the advice and participation of the state agency working group and the scientific advisory committee, shall design and implement a comprehensive research and monitoring program.

39907. The comprehensive research and monitoring program shall be designed and operated to accomplish all of the following:

(a) Determine the primary atmospheric chemical and physical mechanisms by which acid deposition precursor emissions can be transformed into acid deposition.

(b) Identify and assess the relative significance of meteorological factors, including seasonal variations, which affect the formation and transport of acid deposition, with special emphasis on transport to regions which are the most sensitive to the effects of acid deposition.

(c) Establish and operate a statewide, long-term monitoring network to detect and measure levels and effects of acid deposition, including changes in the chemistry of sensitive bodies of water and soils.

(d) Determine if acid deposition varies significantly from one geographic region to another, identify regions or areas especially sensitive to acid deposition, and assess the significant impacts of the acid deposition.

(e) Identify the need for and, if necessary, carry out additional epidemiological and related research on the health effects of acid gases and particles which could affect human populations, including, but not limited to, the health effects of sulfate, sulfuric acid, nitrate, nitric acid, and fine particulates, alone or in combination with photochemical oxidants.

(f) Expand and improve impact data bases through compilation of existing data on water chemistry and soil chemistry, through improved quality control and standardization of sampling and analytical techniques, and through temporal trend and spatial distribution analysis.

(g) Develop dose-response functions with respect to soil organisms, aquatic and amphibious organisms, crop plants, and forest plants.

(h) Establish and carry out system studies with respect to plant physiology, aquatic chemistry, aquatic ecology, soil chemistry systems, soil microbial systems, and forest ecosystems, with priority given to poorly buffered aquatic and soils systems.

(i) Project the economic consequences of the potential environmental impact of acid deposition on crops, forests, fisheries, and recreational and aesthetic resources and structures.

(j) Document and incorporate all current federal, state, and other

relevant monitoring and research activities related to acid deposition and ensure that the activities are coordinated so as to prevent needless duplication and waste of financial and technical resources.

(k) Identify and evaluate the technological effectiveness and economic cost of current and developing control technologies and strategies.

(*l*) Formulate and present periodic recommendations to the Legislature and appropriate regulatory bodies about actions to be taken by these bodies concerning acid deposition and its effects.

39908. The state board shall implement the comprehensive research and monitoring program to the extent permitted by available fiscal resources. The state board shall endeavor to receive federal or other funds to carry out the program.

The state board, with the advice and participation of the state agency working group and the scientific advisory committee, shall establish annual priorities for implementation of the program.

39909. Not later than January 1, 1984, and annually thereafter, the state board, with the advice and participation of the state agency working group and the scientific advisory committee, shall prepare and submit a report to the Governor and the Legislature.

The report shall include a description of activities undertaken pursuant to this chapter; the findings to date of the research and monitoring program, including the current levels, anticipated effects, and future trends of acid deposition in California; and further actions, if any are required, in addition to existing laws, adopted regulations, and ongoing research programs, to control or mitigate acid deposition and its potential adverse effects.

39910. In addition to funds in the Motor Vehicle Account in the State Transportation Fund which may be appropriated by the Legislature to the state board to carry out research and monitoring activities on acid deposition, the state board may require, beginning July 1, 1983, districts to impose additional variance and permit fees on nonvehicular sources within their jurisdiction.

39911. The additional fees imposed pursuant to Section 39910 may be expended only for the purpose of recovering the costs of acid deposition monitoring and research which is required to provide districts and the state board with the necessary scientific basis for evaluating the public health and environmental impacts of issuing variances and of issuing and renewing permits for large sources of acid deposition precursors and for determining the feasibility and cost of control measures and air quality management strategies to mitigate the potential adverse effects of existing and increased levels of emissions of acid deposition precursors by large nonvehicular sources of sulfur and nitrogen oxides.

39912. The additional fees imposed pursuant to Section 39910 shall be collected from nonvehicular sources of sulfur and nitrogen oxides which are authorized pursuant to district permits to emit 1,000 tons or more per year of either sulfur or nitrogen oxides.

The additional fees for issuance of permits shall not exceed

twenty-five one-hundreds of one cent ($0.0025) per pound of sulfur or nitrogen oxides emitted.

In the case of additional fees imposed for the issuance of variances, the fees shall be based on the amount of excess emissions authorized by the variance and the length of time the variance is to remain in effect.

39913. The additional fees collected by a district pursuant to Section 39910, after deducting the administrative costs to the district of collecting the fees, shall be transmitted to the Controller for deposit in the Air Pollution Control Fund.

39914. The total amount of funds collected from additional fees, exclusive of district administrative costs, in any fiscal year shall not exceed the amount of funds appropriated by the Legislature for acid deposition research from the Motor Vehicle Account and the California Environmental License Plate Fund for that fiscal year. In no event shall the amount of additional fees, exclusive of district administrative costs, exceed one million dollars ($1,000,000) for the 1983–84 fiscal year, and two million dollars ($2,000,000) for the 1984–85 and subsequent fiscal years. The amount of additional fees collected shall be reduced proportionally from the maximum allowed, if the Legislature appropriates a lesser amount of funds to carry out the purposes of this chapter.

39915. This chapter shall remain in effect only until January 1, 1988, and as of that date is repealed, unless a later enacted statute, which is chaptered before January 1, 1988, deletes or extends that date.

SEC. 4. Section 43015 of the Health and Safety Code is amended to read:

43015. The Air Pollution Control Fund is continued in existence in the State Treasury. Upon appropriation by the Legislature, the money in the fund shall be available to the state board to carry out its duties and functions.

SEC. 5. No appropriation is made and no reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution or Section 2231 or 2234 of the Revenue and Taxation Code because the local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the program or level of service mandated by this act.

CHAPTER 1474

An act to add Article 7 (commencing with Section 41980) to Chapter 3 of Part 4 of Division 26 of the Health and Safety Code, relating to toxic wastes.

[Approved by Governor September 27, 1982 Filed with Secretary of State September 28, 1982]

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

SECTION 1. Article 7 (commencing with Section 41980) is added to Chapter 3 of Part 4 of Division 26 of the Health and Safety Code, to read:

Article 7. Incineration of Toxic Waste Materials

41980. The Legislature finds and declares that:

(a) Incineration has not been used extensively in California as a means of disposal of toxic waste materials, primarily because of the extensive area available for landfill, the low cost of landfill as a method of disposal, and problems with air pollution.

(b) Because problems may result from disposing of certain toxic waste materials in landfills, incineration should be investigated as a method of disposal.

(c) Incineration of certain toxic waste materials has the advantage, when compared to disposal by landfill, of breaking down toxic waste materials into harmless compounds or elements.

(d) The incineration of certain toxic waste materials can result in the net production of energy, which can help to displace the combustion of fossil fuels and reduce dependence on imported energy supplies.

(e) Improper or incomplete incineration of toxic waste materials can result in emissions of compounds in amounts or concentrations which may be hazardous to public health, and hazardous to economically or environmentally significant animal or plant life.

Therefore, it is the intent and purpose of the Legislature to investigate the methods of ensuring that emissions from incineration of toxic wastes do not endanger public health and welfare, while determining what appropriate role incineration could play in reducing the landfilling of toxic waste materials in California.

41980.5. For purposes of this article, "toxic waste" means hazardous waste, as defined in Section 25117.

41981. The state board shall, in consultation with the affected district and the Department of Health Services, complete a study, using all available data on the emissions from incineration of toxic waste materials.

The state board shall report its findings to the Legislature on or before January 1, 1984.

41982. The state board shall, after completing the study referred to in Section 41981, in consultation with the affected districts and the Department of Health Services, and after public hearings, establish guidelines for the issuance of permits by the districts for the incineration of toxic waste materials. The guidelines shall take into consideration factors including, but not limited to, the following:

(a) The characteristics of the toxic waste materials to be incinerated.

(b) The methods or equipment available to minimize or eliminate the emission of air contaminants.

(c) The applicable federal standards, including, but not limited to, the regulations found in Part 264 of Title 40 of the Code of Federal Regulations (40 CFR 264) concerning standards for owners and operators of hazardous waste treatment, storage, and disposal facilities. Where the guidelines deviate from the adopted federal standards, the reason for the difference shall be noted by the board.

41983. (a) This article shall not be construed as preventing any district from establishing permit criteria more stringent than the guidelines specified in Section 41982.

(b) This article shall not be construed as limiting the authority of the Department of Health Services concerning hazardous waste control (Chapter 6.5 (commencing with Section 25100) of Division 20), or any regulations promulgated under the authority of those provisions.

CHAPTER 1475

An act to add Sections 66710.5, 66713.5, and 66718.5 to, and to add Article 7 (commencing with Section 66761) to Chapter 1 of Title 7.3 of, the Government Code, relating to recyclable materials.

[Approved by Governor September 27, 1982. Filed with Secretary of State September 28, 1982.]

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

SECTION 1. Section 66710.5 is added to the Govenment Code, to read:

66710.5. "Authorized recycling agent" means a person that a local governing body or private commercial entity authorizes or contracts with to collect its recyclable waste material. An authorized recycling agency may be a municipal collection service, private refuse hauler, private recycling enterprise, or private nonprofit corporation or association.

SEC. 2. Section 66713.5 is added to the Government Code, to read:

66713.5. "Designated collection location" means the place where an authorized recycling agent has contracted with either the local governing body or a private entity to pick up segregated, recyclable material. This location will customarily be the curbside of a residential neighborhood or the service alley of a commercial enterprise.

SEC. 3. Section 66718.5 is added to the Government Code, to read:

66718.5. "Segregated from other waste material" means any of the following:

(a) The placement of recyclable materials in separate containers.

(b) The binding of recyclable material separately from the other waste material.

(c) The physical separation of recyclable material from other waste material.

SEC. 4. Article 7 (commencing with Section 66761) is added to Chapter 1 of Title 7.3 of the Government Code, to read:

Article 7. Unauthorized Collection of Recyclable Materials

66761. No person, other than the authorized recycling agent, shall remove paper, glass, cardboard, plastic, used motor oil, ferrous metal, aluminum, or other recyclable materials which have been segregated from other waste materials and placed at a designated collection location for the purposes of collection and recycling. No person shall be subject to an action for a violation of this section unless the person knows, or reasonably should know, that the materials would otherwise be collected by the authorized recycling agent for the purpose of recycling the materials.

66762. Unless otherwise provided by contract, paper, glass, cardboard, plastics, used motor oil, ferrous metal, aluminum, and other waste materials, which are segregated for the purposes of recycling, and placed at the designated collection location, may not be removed by anyone other than the authorized collection agent of the local governing body or private commercial entity.

66763. Nothing in this article shall limit the right of the individual person to donate, sell, or otherwise dispose of his or her recyclable materials.

66764. In any civil action by an authorized recycling agent against a person alleged to have violated Section 66761, the court may allow treble damages against the unauthorized person removing the recyclable material as measured by the value of the material removed.

66765. Nothing in this article shall limit the authority of a local agency to enact or enforce regulations or ordinances on the same matters.

CHAPTER 1476

An act to amend, repeal, and add Sections 40403 and 40448 of the Health and Safety Code, relating to the South Coast Air Quality Management District.

[Approved by Governor September 27, 1982. Filed with Secretary of State September 28, 1982.]

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

SECTION 1. Section 40403 of the Health and Safety Code is amended to read:

40403. The Legislature further finds and declares that the problems of small businesses and of the public in effectively participating in the development of, and in complying with, the rules and regulations of the south coast district will frequently require special attention, and that it is the intent of the Legislature that the south coast district actively assist the public and small businesses in dealing with its administrative procedures, the procedures of the district's hearing board, and the process of development and adoption of rules and regulations, and that the district make every effort to assure full public participation by all interested citizens in the preparation, adoption, implementation, and enforcement of the air quality management plan.

This section shall remain in effect only until January 1, 1989, and as of that date is repealed, unless a later enacted statute, which is chaptered before January 1, 1989, deletes or extends that date.

SEC. 2. Section 40403 is added to the Health and Safety Code, to read:

40403. The Legislature further finds and declares that the problems of small businesses in complying with the rules and regulations of the south coast district will frequently require special attention, and that it is the intent of the Legislature that the south coast district assist small businesses in dealing with its administrative procedure and in the acquisition of low-interest financing for the purchase of air pollution control equipment.

This section shall become operative January 1, 1989.

SEC. 3. Section 40448 of the Health and Safety Code is amended to read:

40448. (a) The south coast district board shall establish an office of public adviser and small business assistance to provide administrative and technical services to small businesses and the public.

(b) The office shall facilitate and encourage small business compliance with the rules and regulations of the south coast district, assist small businesses in applying for permits and variances, and facilitate the participation of small businesses in the development and adoption of rules and regulations. The office shall also develop a data base on the economic impact and cost effectiveness of the rules and regulations of the south coast district on small businesses within the south coast district. The office shall develop and make available to small businesses information regarding low-cost financing for air pollution control equipment.

The south coast district board, upon receiving findings and

recommendations from the office, shall endeavor to coordinate compliance schedules with the availability of low-cost financing to small businesses in implementing its control programs.

(c) The office shall insure full and adequate participation by all interested groups and the public at large in the process of development and adoption of rules and regulations and the development and adoption of the air quality management plan and insure that a reasonable effort be made to provide timely and complete notice of south coast board and hearing board meetings and public hearings is disseminated to all interested groups and to the public at large. The office shall also advise interested groups and the public as to effective ways of participating in the south coast board and hearing board proceedings. The office shall recommend to the south coast board and the hearing board additional measures to assure open consideration and public participation in all proceedings of the boards.

This section shall remain in effect only until January 1, 1989, and as of that date is repealed, unless a later enacted statute, which is chaptered before January 1, 1989, deletes or extends that date.

SEC. 4. Section 40448 is added to the Health and Safety Code, to read:

40448. The south coast district board shall establish an office of small business assistance to provide administrative and technical services to small businesses seeking permits and variances from the south coast district board or the hearing board.

The primary purpose of the office shall be to facilitate and encourage small business compliance with the rules and regulations of the south coast district, and to develop a data base on the economic impact and cost effectiveness of the rules and regulations of the south coast district on small businesses within the south coast district. The office shall develop and make available to small businesses information regarding low-cost financing for air pollution control equipment.

The south coast district board, upon receiving findings and recommendations from the office, shall endeavor to coordinate compliance schedules with the availability of low-cost financing to small businesses in implementing its control programs.

This section shall become operative January 1, 1989.

SEC. 5. No appropriation is made and no reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution or Section 2231 or 2234 of the Revenue and Taxation Code because the local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the program or level of service mandated by this act.

CHAPTER 1477

An act to add and repeal Section 8680.5 of the Fish and Game Code, relating to fish.

[Approved by Governor September 27, 1982. Filed with Secretary of State September 28, 1982.]

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

SECTION 1. Section 8680.5 is added to the Fish and Game Code, to read:

8680.5. (a) If the department determines that a fishery resource is being adversely impacted by the use of gill nets, the department shall initiate and conduct a study to evaluate the impact on an area-by-area or species-by-species basis, and shall determine if regulatory action is necessary to provide resource protection.

(b) If the director determines, after a public hearing, that regulatory action is necessary, he or she may restrict wholly or in part or regulate the use or construction of gill nets to protect the impacted resources. The department shall submit to the Legislature not later than April 1 of each year, a written report describing any studies or regulatory actions taken pursuant to this section.

(c) Any regulation adopted pursuant to this section shall include provisions permitting prompt closure by the director under Section 7710 of any fishery to which the regulation applies whenever the closure is deemed necessary to protect the resource. The regulation shall also provide for a method of appeal of the director's closure order.

(d) Regulations to be adopted under this section shall first be submitted to the Chairman of the Joint Committee on Fisheries and Aquaculture of the Legislature 30 days prior to the regulations becoming effective. The chairman may determine a shorter time for this prior notification requirement in each case.

This section shall remain in effect only until January 1, 1985, and as of that date is repealed, unless a later enacted statute, which is chaptered before January 1, 1985, deletes or extends that date.

CHAPTER 1478

An act to add Division 10 (commencing with Section 10000) to the Public Resources Code, relating to streamflow protection standards.

[Approved by Governor September 27, 1982. Filed with Secretary of State September 28, 1982.]

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

SECTION 1. Division 10 (commencing with Section 10000) is added to the Public Resources Code, to read:

DIVISION 10. STREAMFLOW PROTECTION STANDARDS

10000. The Legislature finds and declares as follows:

(a) A substantial increase has occurred in the number of requests to appropriate water from the various streams and watercourses of this state, especially for the purpose of generating electric energy.

(b) These requests, if approved without due regard for their cumulative effect on streamflows, could adversely affect, to a serious and significant degree, the fish and wildlife resources dependent on those streams and watercourses.

(c) These fish and wildlife resources are important for the entire state and are inextricably linked to the continued economic viability of industries, such as the fishing industry, which are desirable and important components of the state's economy.

10001. The Director of Fish and Game shall identify and list those streams and watercourses throughout the state for which minimum flow levels need to be established in order to assure the continued viability of stream-related fish and wildlife resources. The director shall include in this identification list those streams and watercourses the director determines are significant, along with a statement of findings as to why that stream or watercourse was selected. The identification list required by this section shall rank the streams and watercourses beginning with those where the need for establishing minimum flow levels is the greatest. The director, at his discretion, may revise the list and may add or delete streams or watercourses as circumstances require. The initial identification list required by this section shall be completed no later than January 1, 1984.

10002. The Director of Fish and Game shall prepare proposed stream flow standards for each stream or watercourse identified pursuant to Section 10001. In developing the standards for each stream, the director shall consult with the Director of Water Resources, the Director of Boating and Waterways, the Director of Parks and Recreation and with all affected local governments. The Director of Fish and Game may also consult with any private individuals, groups, or organizations as he deems advisable. Upon completion of the proposed stream flow standards for any individual stream or watercourse, the Director of Fish and Game shall transmit these proposed standards to the State Water Resources Control Board. The Director of Fish and Game shall complete the preparation of proposed standards for all streams on the initial identification list no later than January 1, 1986.

10003. The Director of Fish and Game, on his own motion or at the request of the State Water Resources Control Board, may review any streamflow standard and may propose revision or modification

thereof. The proposed revision or modification shall be transmitted to the State Water Resources Control Board.

CHAPTER 1479

An act to amend Section 6871.2 of the Public Resources Code, relating to state lands.

[Approved by Governor September 27, 1982. Filed with Secretary of State September 28, 1982.]

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

SECTION 1. Section 6871.2 of the Public Resources Code is amended to read:

6871.2. Except as provided in Sections 6872 and 6872.1 of this code, the commission shall not enter into any lease for the extraction of oil and gas from state-owned tide and submerged lands within the areas to which this section is applicable.

The provisions of this section shall be applicable only to the lands within the following described areas, but shall not be construed so as to prohibit operations or activities under any state oil and gas leases of any portion or portions of the tide and submerged lands to which this section is applicable and which leases are in effect on January 1, 1955, nor to prohibit renewals or extensions of any such leases in accordance with the provisions thereof.

(a) All those tide or submerged lands situated in the areas of the County of Los Angeles described as follows:

Area No. 1: Beginning at the point of intersection of the ordinary high-water mark of the Pacific Ocean with the southerly point of Point Fermin; thence in a generally northerly and westerly direction along said ordinary high-water mark to the Ventura county line; thence due south three nautical miles to a point in the Pacific Ocean; thence in a generally easterly and southerly direction parallel to said ordinary high-water mark to a point in the Pacific Ocean three nautical miles due south from the point of beginning; thence due north to the point of beginning.

Area No. 2: The tide and submerged lands surrounding the Islands of San Clemente and Santa Catalina waterward of the ordinary high-water mark of the Pacific Ocean on such islands to a distance three nautical miles therefrom.

(b) All those tide and submerged lands being in the County of Santa Barbara and lying within an area beginning at the point of intersection of the ordinary high water mark of the Pacific Ocean with the westerly line of that certain 408.60 acres, more or less, tract of land shown as belonging to the University of California, Santa Barbara College, upon that certain map thereof, recorded in Book 29 at page 143 Record of Surveys, in the Office of the Santa Barbara

County Recorder; thence in a general easterly direction along said ordinary high water mark of the Pacific Ocean to a point distant 500 feet westerly from, measured at right angles thereto, the southerly prolongation of the easterly line of that certain tract of land deeded to Nino Brambilla, et ux., by that certain deed, recorded April 2, 1947, in Book 724 at page 353 of Official Records, in said county recorder's office; thence due south to a point in the Pacific Ocean three nautical miles from said ordinary high water mark; thence in a general westerly direction, parallel with the ordinary high water mark of the Pacific Ocean to a point due south from the point of beginning; thence due north to the point of beginning.

(c) All those tide and submerged lands being in the County of San Luis Obispo and lying within an area beginning at the intersection of the ordinary high water mark of the Pacific Ocean and the common boundary line between the Counties of San Luis Obispo and Santa Barbara; thence northerly and westerly along the ordinary high water mark of the Pacific Ocean and San Luis Obispo Bay to a point at the intersection of the ordinary high water mark of the Pacific Ocean and the common boundary line between the Counties of San Luis Obispo and Monterey; thence northwest along the prolongation of said common boundary line to a point in the Pacific Ocean, said point being the most westerly boundary line of the County of San Luis Obispo; thence in a southerly and easterly direction along the westerly boundary of the County of San Luis Obispo to a point in the Pacific Ocean where said westerly boundary of the County of San Luis Obispo intersects with the common boundary between the Counties of San Luis Obispo and Santa Barbara; thence due east to the point of beginning.

(d) All those tide and submerged lands being in the Counties of Monterey and Santa Cruz and lying within an area beginning at the intersection of the ordinary high water mark of the Pacific Ocean and the common boundary line between the Counties of Monterey and San Luis Obispo; thence northerly and westerly along the ordinary high water mark of the Pacific Ocean and the bay of Monterey to a point at the intersection of the ordinary high water mark of the Pacific Ocean and the common boundary line between the Counties of Santa Cruz and San Mateo; thence southwest along the prolongation of said common boundary line to a point in the Pacific Ocean, said point being the most westerly boundary line of the County of Santa Cruz; thence in a southerly and easterly direction along the westerly boundary of the Counties of Santa Cruz and Monterey to a point in the Pacific Ocean where said westerly boundary of the County of Monterey intersects with the common boundary between the Counties of Monterey and San Luis Obispo; thence due east to the point of beginning.

(e) All those tide and submerged lands being in the Counties of Humboldt and Mendocino and lying within an area beginning at the intersection of the ordinary high water mark of the Pacific Ocean and the south line of Township 5 South, Humboldt Base Line; thence

northerly and westerly along the ordinary high water mark of the Pacific Ocean to the intersection of said high water mark and the north line of Township 1 North, Humboldt Base Line; thence due west to a point in the Pacific Ocean, said point being three nautical miles from the ordinary high water mark; thence in a southerly and easterly direction, parallel to and three nautical miles distant from said high water mark to a point due west from the point of beginning; thence due east to the point of beginning.

(f) Until January 1, 1995, all those tide or submerged lands situated in San Mateo, San Francisco, Marin, Sonoma, Napa, Alameda, Santa Clara, and Del Norte Counties, and all those tide and submerged lands situated in Solano and Contra Costa Counties except those situated east of the parallel Carquinez Bridges (Interstate 80).

(g) All those tide and submerged lands surrounding the Islands of Anacapa, Santa Cruz, Santa Rosa, and San Miguel waterward of the ordinary high-water mark of the Pacific Ocean on such islands to a distance three nautical miles therefrom.

CHAPTER 1480

An act to add Section 13272 to the Water Code, relating to pollution.

[Approved by Governor September 27, 1982. Filed with Secretary of State September 28, 1982.]

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

SECTION 1. Section 13272 is added to the Water Code, to read:

13272. (a) Except as provided by subdivision (b), any person who, without regard to intent or negligence, causes or permits any oil or petroleum product to be discharged in or on any waters of the state, or discharged or deposited where it is, or probably will be, discharged in or on any waters of the state, shall, as soon as (1) such person has knowledge of the discharge, (2) notification is possible, and (3) notification can be provided without substantially impeding cleanup or other emergency measures, immediately notify the Office of Emergency Services of the discharge in accordance with the spill reporting provision of the state oil spill contingency plan adopted pursuant to Article 3.5 (commencing with Section 8574.1) of Chapter 7 of Division 1 of Title 2 of the Government Code.

(b) The notification required by this section shall not apply to a discharge in compliance with waste discharge requirements or other provisions of this division.

(c) Any person who fails to provide the notice required by this section is guilty of a misdemeanor and shall be punished by a fine of not less than five hundred dollars ($500) or more than five thousand dollars ($5,000) per day for each day of failure to notify, or

imprisonment of not more than one year, or both. Except where a discharge to the waters of this state would have occurred but for cleanup or emergency response by a public agency, this subdivision shall not apply to any discharge to land which does not result in a discharge to the waters of this state. This subdivision shall not apply to any person who is fined by the federal government for a failure to report a discharge of oil.

(d) Notification received pursuant to this section or information obtained by use of such notification shall not be used against any person providing the notification in any criminal case, except in a prosecution for perjury or giving a false statement.

(e) Immediate notification of an appropriate agency of the federal government of the discharge shall constitute compliance with the requirements of subdivision (a).

(f) Immediate notification of the appropriate regional board of the discharge, in accordance with reporting requirements set under Section 13267 or 13383, shall constitute compliance with the requirements of subdivision (a).

(g) The reportable quantity for oil or petroleum products shall be one barrel (42 gallons) or more, by direct discharge to the receiving waters, unless a more restrictive reporting standard for a particular body of water is adopted subsequent to January 1, 1983.

SEC. 2. No appropriation is made and no reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution or Section 2231 or 2234 of the Revenue and Taxation Code because the only costs which may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, changes the definition of a crime or infraction, changes the penalty for a crime or infraction, or eliminates a crime or infraction.

CHAPTER 1481

An act to amend Sections 5093.50, 5093.52, 5093.53, 5093.54, 5093.55, 5093.56, 5093.61, and 5093.62 of, to repeal and add Sections 5093.58 and 5093.60 of, to add Sections 5093.541, 5093.545, 5093.546, 5093.68, and 5093.69 to, and to repeal Section 5093.59 of, the Public Resources Code, relating to wild and scenic rivers.

[Approved by Governor September 27, 1982. Filed with Secretary of State September 28, 1982.]

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

SECTION 1. Section 5093.50 of the Public Resources Code is amended to read:

5093.50. It is the policy of the State of California that certain rivers which possess extraordinary scenic, recreational, fishery, or

wildlife values shall be preserved in their free-flowing state, together with their immediate environments, for the benefit and enjoyment of the people of the state. The Legislature declares that such use of these rivers is the highest and most beneficial use and is a reasonable and beneficial use of water within the meaning of Section 2 of Article X of the California Constitution. It is the purpose of this chapter to create a California Wild and Scenic Rivers System to be administered in accordance with the provisions of this chapter.

SEC. 2. Section 5093.52 of the Public Resources Code is amended to read:

5093.52. As used in this chapter:

(a) "Secretary" means the Secretary of the Resources Agency.

(b) "Resources Agency" means the Secretary of the Resources Agency and such constituent units of the Resources Agency as the secretary deems necessary to accomplish the purposes of this chapter.

(c) "River" means the water, bed, and shoreline of rivers, streams, channels, lakes, bays, estuaries, marshes, wetlands and lagoons, up to the first line of permanently established riparian vegetation.

(d) "Free-flowing" means existing or flowing without artificial impoundment, diversion, or other modification of the river. The presence of low dams, diversion works, and other minor structures shall not automatically bar any river's inclusion within the system; provided, however, that this subdivision shall not be construed to authorize or encourage future construction of such structures on any component of the system.

(e) "System" means the California Wild and Scenic Rivers System.

(f) "Land use regulation" means the regulation by any state or local governmental entity, agency, or official of any activities which take place other than directly on the waters of the segments of the rivers designated in Section 5093.54.

(g) "Director" means the Director of Fish and Game.

(h) "Immediate environments" means the land immediately adjacent to the segments of the rivers designated in Section 5093.54.

(i) "Special treatment areas" means, for the purpose of this chapter, those areas defined as special treatment areas in Section 895.1 of Title 14 of the California Administrative Code, as in effect on January 1, 1981, as such definition is applicable to wild and scenic river segments designated from time to time in Section 5093.54.

(j) "Board" means the Board of Forestry.

SEC. 3. Section 5093.53 of the Public Resources Code is amended to read:

5093.53. Those rivers or segments of rivers included in the system shall be classified as one of the following:

(a) Wild rivers, which are those rivers or segments of rivers that are free of impoundments and generally inaccessible except by trail, with watersheds or shorelines essentially primitive and waters unpolluted.

(b) Scenic rivers, which are those rivers or segments of rivers that are free of impoundments, with shorelines or watersheds still largely primitive and shorelines largely undeveloped, but accessible in places by roads.

(c) Recreational rivers, which are those rivers or segments of rivers that are readily accessible by road or railroad, that may have some development along their shorelines, and that may have undergone some impoundment or diversion in the past.

SEC. 4. Section 5093.54 of the Public Resources Code is amended to read:

5093.54. The following rivers and segments thereof are designated as components of the system:

(a) Klamath River. The main stem from 100 yards below Iron Gate Dam to the Pacific Ocean; the Scott River from the mouth of Shackleford Creek west of Fort Jones to the river mouth near Hamburg; the Salmon River from Cecilville Bridge to the river mouth near Somesbar; the North Fork of the Salmon River from the intersection of the river with the south boundary of the Marble Mountain Wilderness Area to the river mouth; Wooley Creek from the western boundary of the Marble Mountain Wilderness Area to its confluence with the Salmon River.

(b) Trinity River. The main stem from 100 yards below Lewiston Dam to the river mouth at Weitchpec; the North Fork of the Trinity from the intersection of the river with the southern boundary of the Salmon-Trinity Primitive Area downstream to the river mouth at Helena; New River from the intersection of the river with the southern boundary of the Salmon-Trinity Primitive Area downstream to the river mouth near Burnt Ranch; South Fork of the Trinity from the junction of the river with State Highway Route 36 to the river mouth near Salver.

(c) Smith River. The main stem from the confluence of the Middle and South Forks to its mouth at the Pacific Ocean; the Middle Fork from its source about three miles south of Sanger Lake as depicted on 1956 USGS 15' "Preston Peak" topographic map to the middle of Section 7 T17N R5E; the Middle Fork from the middle of Section 7 T17N R5E to the middle of Section 6 T17N R5E; the Middle Fork from the middle of Section 6 T17N R5E to one-half mile upstream from the confluence with Knopki Creek; the Middle Fork from one-half mile upstream from the confluence with Knopki Creek to the confluence with the South Fork; Myrtle Creek from its source in Section 9 T17N R1E as depicted on 1952 USGS 15' "Crescent City" topographic map to the middle of Section 28 T17N R1E; Myrtle Creek, from the middle of Section 28 T17N R1E to the confluence with the Middle Fork; Shelly Creek from its source in Section 1 T18N R3E as depicted on 1951 USGS 15' "Gasquet" topographic map to the confluence with Patrick Creek; Kelly Creek from its source in Section 32 T17N R3E as depicted on 1951 USGS 15' "Gasquet" topographic map to the confluence with the Middle Fork; Packsaddle Creek from its source about 0.8 miles southwest of

Broken Rib Mountain as depicted on 1956 USGS 15' "Preston Peak" topographic map to the eastern boundary of Section 3 T17N R1E; Packsaddle Creek from the eastern boundary of Section 3 T17N R4E to the northern boundary of Section 3 T17N R4E; Packsaddle Creek from the northern boundary of Section 3 T17N R4E to the confluence with the Middle Fork; East Fork Patrick Creek from its source in Section 10 T18N R3E as depicted on 1951 USGS 15' "Gasquet" topographic map to the confluence with West Fork Patrick Creek; West Fork Patrick Creek from its source in Section 18 T18N R3E as depicted on 1951 15' "Gasquet" topographic map to the confluence with East Fork Patrick Creek; Griffin Creek from its source about 0.2 miles southwest of Hazel View Summit as depicted on 1956 USGS 15' "Preston Peak" topographic map to the confluence with the Middle Fork; Knopki Creek from its source about 0.4 miles west of Sanger Peak as depicted on 1956 USGS 15' "Preston Peak" topographic map to the confluence with Middle Fork; Monkey Creek from its source in the northeast quadrant of Section 12 T18N R3E as depicted on 1951 USGS 15' "Gasquet" topographic map to the northern boundary of Section 26 T18N R3E; Monkey Creek from the northern boundary of Section 26 T18N R3E to the confluence with the Middle Fork; Patrick Creek from the junction of the East and West Forks of Patrick Creek to the confluence with Middle Fork; the North Fork from the California-Oregon boundary to the confluence with an unnamed tributary in the northern quarter Section 5 T18N R2E as depicted on 1951 USGS 15' "Gasquet" topographic map; the North Fork from the confluence with an unnamed tributary in northern quarter of Section 5 T18N R2E to the southern-most intersection of eastern boundary Section 5 T18N R2E as depicted on 1951 USGS 15' "Gasquet" topographic map; the North Fork from the southern-most intersection of the eastern boundary Section 5 T18N R2E as depicted on 1951 USGS 15' "Gasquet" topographic map to the confluence with Stony Creek; the North Fork from the confluence with Stony Creek to the confluence with the Middle Fork; Diamond Creek from the California-Oregon state boundary to the confluence with High Plateau Creek; Diamond Creek from the confluence with High Plateau Creek to the confluence with the North Fork; Bear Creek from its source in Section 24 T18N R2E as depicted on 1951 USGS 15' "Gasquet" topographic map to the confluence with Diamond Creek; Still Creek from its source in Section 11 T18N R1E as depicted on 1952 USGS 15' "Crescent City" topographic map to the confluence with the North Fork Smith River; North Fork Diamond Creek from the California-Oregon state boundary to the confluence with Diamond Creek; High Plateau Creek from its source in Section 26 T18N R2E as depicted on 1951 USGS 15' "Gasquet" topographic map to northern boundary Section 23 T18N R2E; High Plateau Creek from the northern boundary Section 23 T18N R2E to the confluence with Diamond Creek; the Siskiyou Fork from its source about 0.7 miles southeast of Broken Rib Mountain as depicted on 1956 USGS 15' "Preston Peak" topographic map to the confluence with the

South Siskiyou Fork; the Siskiyou Fork from its confluence with the South Siskiyou Fork to the confluence with the Middle Fork; the South Siskiyou Fork from its source about 0.6 miles southwest of Buck Lake as depicted on 1956 USGS 15' "Preston Peak" topographic map to the confluence with the Siskiyou Fork; the South Fork from its source about 0.5 miles southwest of Bear Mountain as depicted on 1956 USGS 15' "Preston Peak" topographic map to Blackhawk Bar; the South Fork from Blackhawk Bar to the confluence with the Middle Fork; Williams Creek from its source in Section 31 T14N R4E as depicted on 1952 USGS 15' "Ship Mountain" topographic map to the confluence with Eight Mile Creek; Eight Mile Creek from its source in Section 29 T14N R4E as depicted on 1955 USGS 15' "Dillon Mountain" topographic map to the confluence with the South Fork; the Prescott Fork from its source about 0.5 miles southeast of Island Lake as depicted on 1955 USGS 15' "Dillon Mountain" topographic map to the confluence with the South Fork; Quartz Creek from its source in Section 31 T16N R4E as depicted on 1952 USGS 15' "Ship Mountain" topographic map to the confluence with the South Fork; Jones Creek from its source in Section 36 T16N R3E as depicted on 1952 USGS 15' "Ship Mountain" topographic map to the middle of Section 5 T15N R3E; Jones Creek from the middle of Section 5 T15N R3E to the confluence with the South Fork; Hurdygurdy Creek from its source about 0.4 miles southwest of Bear Basin Butte as depicted on 1956 USGS 15' "Preston Peak" topographic map to the confluence with the South Fork; Gordon Creek from its source in Section 18 T16N R3E as depicted on 1951 USGS 15' "Gasquet" topographic map to the confluence with the South Fork; Coon Creek from the junction of the two-source tributaries in the southwest quadrant of Section 31 T17N R3E as depicted on 1951 USGS 15' "Gasquet" topographic map to the western boundary Section 14 T16N R2E; Coon Creek from the western boundary Section 14 T16N R2E to the confluence with the South Fork; Craigs Creek from its source in Section 36 T17N R2E as depicted on 1951 USGS 15' "Gasquet" topographic map to the confluence with the South Fork; Buck Creek from its source at Cedar Camp Spring as depicted on 1952 USGS 15' "Ship Mountain" topographic map to the confluence with the South Fork; Muzzleloader Creek from its source in Section 2 T15N R3E as depicted on 1952 USGS 15' "Ship Mountain" topographic map to the confluence with Jones Creek; Canthook Creek from its source in Section 2 T15N R2E as depicted on 1952 USGS 15' "Ship Mountain" topographic map to the confluence with South Fork.

(d) Eel River. The main stem from 100 yards below Van Arsdale Dam to the Pacific Ocean; the South Fork of the Eel from the mouth of Section Four Creek near Branscomb to the river mouth below Weott; Middle Fork of the Eel from the intersection of the river with the southern boundary of the Middle Eel-Yolla Bolly Wilderness Area to the river mouth at Dos Rios; North Fork of the Eel from the Old Gilman Ranch downstream to the river mouth near Ramsey; Van Duzen River from Dinsmores Bridge downstream to the river

mouth near Fortuna. It is the intent of the Legislature, with respect to the Eel River and its tributaries, that after an initial period of 12 years following the effective date of this chapter, the Department of Water Resources shall report to the Legislature as to the need for water supply and flood control projects on the Eel River and its tributaries, and the Legislature shall hold public hearings to determine whether legislation should be enacted to delete all or any segment of the river from the system.

(e) American River. The North Fork from its source to the Iowa Hill Bridge; the Lower American from Nimbus Dam to its junction with the Sacramento River.

(f) Other rivers which qualify for inclusion in the system may be recommended to the Legislature by the secretary.

SEC. 5. Section 5093.541 is added to the Public Resources Code, to read:

5093.541. (a) Notwithstanding the fact that the tributaries of the Smith River specified in this subdivision are not included in the system, no dam, reservoir, diversion, or other water impoundment facility shall be constructed on any of the following tributaries of the Smith River:

(1) Dominie Creek.
(2) Rowdy Creek.
(3) South Fork Rowdy Creek.
(4) Savoy Creek.
(5) Little Mill Creek.
(6) Bummer Lake Creek.
(7) East Fork Mill Creek.
(8) West Branch Mill Creek.
(9) Rock Creek.
(10) Goose Creek.
(11) East Fork Goose Creek.
(12) Mill Creek.

(b) All state agencies exercising powers under any other provision of law with respect to the protection and restoration of fishery resources shall continue to exercise those powers in a manner to protect and restore fishery resources in the tributaries specified in subdivision (a). In carrying out the provisions of this subdivision, any exercise of powers shall be consistent with the provisions of Section 5093.58.

SEC. 6. Section 5093.545 is added to the Public Resources Code, to read:

5093.545. The classifications heretofore established by the secretary for the rivers or segments of rivers included in the system are revised and adopted as follows:

Rivers	Classification
(a) Klamath River: The Klamath River from the FERC Project 2082 downstream boundary in Section 17 T47N R5W as shown on Exhibit K-7 sheet 1 dated May 25, 1962, to the	

river mouth at the Pacific Ocean	Recreational
(b) Scott River:	
(1) The Scott River from Shackleford Creek to McCarthy Creek	Recreational
(2) The Scott River from McCarthy Creek to Scott Bar	Scenic
(3) The Scott River from Scott Bar to the confluence with the Klamath River	Recreational
(c) Salmon River:	
(1) The Salmon River from the Forks of Salmon to the Lewis Creek confluence	Recreational
(2) The Salmon River from the Lewis Creek confluence to the Wooley Creek confluence	Scenic
(3) The Salmon River from the Wooley Creek confluence to the confluence with the Klamath River	Recreational
(4) The South Fork of the Salmon River from Cecilville to St. Claire Creek confluence	Recreational
(5) The South Fork from St. Claire Creek confluence to the Matthews Creek confluence	Scenic
(6) The South Fork from Matthews Creek confluence to the Forks of Salmon	Recreational
(7) The North Fork of the Salmon River from Marble Mountain Wilderness boundary to Mule Bridge Campground in Section 35 T12N R11W and Section 12 T11N R11W	Wild
(8) The North Fork from Mule Bridge Campground to the Forks of Salmon	Recreational
(9) Wooley Creek from the Marble Mountain Wilderness Area boundary to ½ mile upstream of the confluence with Salmon River	Wild
(10) Wooley Creek downstream most ½ mile above the confluence with the Salmon River	Recreational
(d) Trinity River:	
(1) The Trinity River from 100 yards below Lewiston Dam to Cedar Flat Creek confluence	Recreational
(2) The Trinity River from Cedar Flat Creek confluence to Gray Falls	Scenic
(3) The Trinity River from Gray Falls to the west boundary of Section 2 T8N R4E	Recreational

(4) The Trinity River from the west boundary of Section 2 T8N R4E to the confluence with the Klamath River at Weitchpec	Scenic
(5) The North Fork of the Trinity River from the Trinity Alps Primitive Area boundary to north boundary Section 20 T34N R11W	Wild
(6) The North Fork from the north boundary Section 20 T34N R11W to mouth	Recreational
(7) The South Fork Trinity River from Forest Glen to Hidden Valley Ranch	Wild
(8) The South Fork from Hidden Valley Ranch to the Naufus Creek confluence in Section 8 T1N R7E	Scenic
(9) The South Fork from the Naufus Creek confluence in Section 8 T1N R7E to Johnson Creek confluence near the boundary of Sections 13 and 14 T2N R6E	Wild
(10) The South Fork from Johnson Creek confluence near the boundary of Sections 13 and 14 T2N R6E to the boundary of Sections 25 and 36 T2N R6E	Scenic
(11) The South Fork from the boundary of Sections 25 and 36 T2N R6E to the footbridge near the mouth of Underwood Creek in Section 17 T4N R6E Humboldt Base and Meridian	Recreational
(12) The South Fork from the footbridge near the mouth of Underwood Creek in Section 17 T4N R6E to Todd Ranch in Section 18 T5N R5E	Wild
(13) The South Fork from Todd Ranch in Section 18 T5N R5E to the confluence with Main Trinity	Scenic
(14) New River from the Salmon Trinity Primitive Area boundary to the junction with the East Fork New River in Section 23 T7N R7E	Wild
(15) New River from the Junction with the East Fork New River in Section 23 T7N R7E to 100 yards below Panther Creek Campground in Section 18 T6N R7E	Recreational
(16) New River from 100 yards below Panther Creek Campground in Section	

18 T6N R7E to Dyer Creek confluence in Section 25 T26N R6E	Scenic
(17) New River from Dyer Creek confluence in Section 25 T26N R6E to the confluence with Trinity River	Wild
(e) Smith River:	
(1) Smith River from the confluence of the Middle and South Forks to its mouth at the Pacific Ocean	Recreational
(2) Middle Fork Smith River from its source about 3 miles south of Sanger Lake as depicted on 1956 USGS 15' "Preston Peak" topographic map to the middle of Section 7 T17N R5E	Wild
(3) Middle Fork Smith River from the middle of Section 7 T17N R5E to the middle of Section 6 T17N R5E	Scenic
(4) Middle Fork Smith River from middle of Section 6 T17N R5E to one-half mile upstream from the confluence with Knopki Creek	Wild
(5) Middle Fork Smith River from one-half mile upstream from the confluence with Knopki Creek to the confluence with South Fork Smith River	Recreational
(6) Myrtle Creek from its source in Section 9 T17N R1E as depicted on 1952 USGS 15' "Crescent City" topographic map to the middle of Section 28 T17N R1E	Recreational
(7) Myrtle Creek from the middle of Section 28 T17N R1E to the confluence with the Middle Fork Smith River	Recreational
(8) Shelly Creek from its source in Section 1 T18N R3E as depicted on 1951 USGS 15' "Gasquet" topographic map to the confluence with Patrick Creek	Recreational
(9) Kelly Creek from its source in Section 32 T17N R3E as depicted on 1951 USGS 15' "Gasquet" topographic map to the confluence with the Middle Fork Smith River	Recreational
(10) Packsaddle Creek from its source about 0.8 miles southwest of Broken Rib Mountain as depicted on 1956 USGS 15' "Preston Peak" topographic map to the eastern boundary of Section 3 T17N R1E	Recreational

(11) Packsaddle Creek from the eastern boundary of Section 3 T17N R4E to the northern boundary of Section 3 T17N R4E	Recreational
(12) Packsaddle Creek from the northern boundary of Section 3 T17N R4E to the confluence with the Middle Fork of Smith River	Recreational
(13) East Fork Patrick Creek from its source in Section 10 T18N R3E as depicted on 1951 USGS 15′ "Gasquet" topographic map to the confluence with the West Fork Patrick Creek	Recreational
(14) West Fork Patrick Creek from its source in Section 18 T18N R3E as depicted on 1951 15′ "Gasquet" topographic map to the confluence with the East Fork Patrick Creek	Recreational
(15) Griffin Creek from its source about 0.2 miles southwest of Hazel View Summit as depicted on 1956 USGS 15′ "Preston Peak" topographic map to the confluence with the Middle Fork Smith River	Recreational
(16) Knopki Creek from its source about 0.4 miles west of Sanger Peak as depicted on 1956 USGS 15′ "Preston Peak" topographic map to the confluence with the Middle Fork Smith River	Recreational
(17) Monkey Creek from its source in the northeast quadrant of Section 12 T18N R3E as depicted on 1951 USGS 15′ "Gasquet" topographic map to the northern boundary of Section 26 T18N R3E	Recreational
(18) Monkey Creek from the northern boundary of Section 26 T18N R3E to the confluence with the Middle Fork of Smith River	Recreational
(19) Patrick Creek from the junction of East and West Forks of Patrick Creek to the confluence with the Middle Fork Smith River	Recreational
(20) North Fork Smith River from the California-Oregon boundary to the confluence with an unnamed tributary in the northern quarter Section 5 T18N R2E as depicted on 1951 USGS	

15' "Gasquet" topographic map	Wild
(21) North Fork Smith River from the confluence with an unnamed tributary in the northern quarter of Section 5 T18N R2E to the southern-most intersection of the eastern boundary of Section 5 T18N R2E as depicted on 1951 USGS 15' "Gasquet" topographic map	Scenic
(22) North Fork Smith River from the southern most intersection of the eastern boundary Section 5 T18N R2E as depicted on 1951 USGS 15' "Gasquet" topographic map to the confluence with Stony Creek	Wild
(23) North Fork Smith River from the confluence with Stony Creek to the confluence with the Middle Fork of the Smith River	Recreational
(24) Diamond Creek from the California-Oregon state boundary to the confluence with High Plateau Creek	Recreational
(25) Diamond Creek from the confluence with High Plateau Creek to the confluence with the North Fork Smith River	Recreational
(26) Bear Creek from its source in Section 24 T18N R2E as depicted on 1951 USGS 15' "Gasquet" topographic map to the confluence with Diamond Creek	Recreational
(27) Still Creek from its source in Section 11 T18N R1E as depicted on 1952 USGS 15' "Crescent City" topographic map to the confluence with the North Fork Smith River	Recreational
(28) North Fork Diamond Creek from the California-Oregon state boundary to the confluence with Diamond Creek	Recreational
(29) High Plateau Creek from its source in Section 26 T18N R2E as depicted on 1951 USGS 15' "Gasquet" topographic map to the northern boundary Section 23 T18N R2E	Recreational
(30) High Plateau Creek from the northern boundary Section 23 T18N R2E to the confluence with Diamond Creek	Recreational
(31) Siskiyou Fork of Smith River from its	

source about 0.7 miles southeast of Broken Rib Mountain as depicted on 1956 USGS 15' "Preston Peak" topographic map to the confluence with the South Siskiyou Fork of the Smith River	Wild
(32) Siskiyou Fork of the Smith River from the confluence with the South Siskiyou Fork of the Smith River to the confluence with the Middle Fork of the Smith River	Recreational
(33) South Siskiyou Fork of the Smith River from its source about 0.6 miles southwest of Buck Lake as depicted on 1956 USGS 15' "Preston Peak" topographic map to the confluence with the Siskiyou Fork of the Smith River	Wild
(34) South Fork Smith River from its source about 0.5 mile southwest of Bear Mountain as depicted on 1956 USGS 15' "Preston Peak" topographic map to Blackhawk Bar	Wild
(35) South Fork Smith River from Blackhawk Bar to the confluence with the Middle Fork Smith River	Recreational
(36) Williams Creek from its source in Section 31 T14N R4E as depicted on 1952 USGS 15' "Ship Mountain" topographic map to the confluence with Eight Mile Creek	Recreational
(37) Eight Mile Creek from its source in Section 29 T14N R4E as depicted on 1955 USGS 15' "Dillon Mtn." topographic map to the confluence with the South Fork Smith River	Recreational
(38) Prescott Fork of the Smith River from its source about 0.5 miles southeast of Island Lake as depicted on 1955 USGS 15' "Dillon Mtn." topographic map to the confluence with the South Fork Smith River	Recreational
(39) Quartz Creek from its source in Section 31 T16N R4E as depicted on 1952 USGS 15' "Ship Mountain" topographic map to the confluence with the South Fork Smith River	Recreational
(40) Jones Creek from its source in Section 36 T16N R3E as depicted on 1952	

USGS 15' "Ship Mountain" topographic map to the middle of Section 5 T15N R3E	Recreational
(41) Jones Creek from the middle of Section 5 T15N R3E to the confluence with the South Fork of the Smith River	Recreational
(42) Hurdygurdy Creek from its source about 0.4 miles southwest of Bear Basin Butte as depicted on 1956 USGS 15' "Preston Peak" topographic map to the confluence with the South Fork Smith River	Recreational
(43) Gordon Creek from its source in Section 18 T16N R3E as depicted on 1951 USGS 15' "Gasquet" topographic map to the confluence with the South Fork Smith River	Recreational
(44) Coon Creek from the junction of the two source tributaries in the southwest quadrant of Section 31 T17N R3E as depicted on 1951 USGS 15' "Gasquet" topographic map to the western boundary of Section 14 T16N R2E	Recreational
(45) Coon Creek from the western boundary of Section 14 T16N R2E to the confluence with the South Fork Smith River	Recreational
(46) Craigs Creek from its source in Section 36 T17N R2E as depicted on 1951 USGS 15' "Gasquet" topographic map to the confluence with the South Fork Smith River	Recreational
(47) Buck Creek from its source at Cedar Camp Spring as depicted on 1952 USGS 15' "Ship Mountain" topographic map to the confluence with the South Fork Smith River	Recreational
(48) Muzzleloader Creek from its source in Section 2 T15N R3E as depicted on 1952 USGS 15' "Ship Mountain" topographic map to the confluence with Jones Creek	Recreational
(49) Canthook Creek from its source in Section 2 T15N R2E as depicted on 1952 USGS 15' "Ship Mountain" topographic map to the confluence with the South Fork Smith River	Recreational

(f) Eel River:

(1) The Eel River from 100 yards below Van Arsdale Dam to the confluence with Tomki Creek	Recreational
(2) The Eel River from the confluence with Tomki Creek to the middle of Section 22 T19N R12W	Scenic
(3) The Eel River from the middle of Section 22 T19N R12W to the boundary between Sections 7 and 8 T19N R12W	Recreational
(4) The Eel River from the boundary between Sections 7 and 8 T19N R12W to the confluence with Outlet Creek	Wild
(5) The Eel River from the confluence with Outlet Creek to the mouth at the Pacific Ocean	Recreational
(6) The South Fork of the Eel River from the mouth of Section Four Creek near Branscomb	Recreational
(7) The South Fork of the Eel River from Horseshoe Bend to the middle of Section 29 T23N R16W	Wild
(8) The South Fork of the Eel River from the middle of Section 29 T23N R16W to the confluence with the main Eel near Weott	Recreational
(9) Middle Fork of the Eel River from the intersection of the river with the southern boundary of the Middle Eel-Yolla Bolly Wilderness Area to the Eel River Ranger Station	Wild
(10) The Middle Fork of the Eel River from Eel River Ranger Station to Williams Creek	Recreational
(11) The Middle Fork of the Eel River from Williams Creek to the southern boundary of the northern quarter of Section 25 T22N R12W	Scenic
(12) The Middle Fork of the Eel River from the southern boundary of the northern quarter of Section 25 T22N R12W to the boundary between Sections 4 and 5 T21N R13W	Wild
(13) The Middle Fork of the Eel River from the boundary between Sections 4 and 5 T21N R13W to the confluence with main Eel at Dos Rios	Recreational

(14) The North Fork of the Eel River from the Old Gilman Ranch to the middle of Section 8 T24N R13W	Wild
(15) The North Fork of the Eel River from the middle of Section 8 T24N R13W to the boundary between Sections 12 and 13 T24N R14W	Recreational
(16) The North Fork of the Eel River from the boundary between Sections 12 and 13 T24N R14W to the confluence with main Eel	Wild
(g) Van Duzen River:	
(1) The Van Duzen River from the Dinsmore Bridge to the powerline crossing above Little Larribee Creek	Scenic
(2) The Van Duzen River from the powerline crossing above Little Larribee Creek to the confluence with Eel River	Recreational
(h) Lower American River: The Lower American River from Nimbus Dam to its junction with the Sacramento River	Recreational
(i) North Fork American River:	
(1) The North Fork from the source of the North Fork American River to two and one-half miles above the Forest Hill-Soda Springs Road	Wild
(2) The North Fork from two and one-half miles above the Forest Hill-Soda Springs Road to one-half mile below the Forest Hill-Soda Springs Road	Scenic
(3) The North Fork from one-half mile below the Forest Hill-Soda Springs Road to one-quarter mile above the Iowa Hill Bridge	Wild
(4) The North Fork from one-quarter mile above the Iowa Hill Bridge to the Iowa Hill Bridge	Scenic

SEC. 7. Section 5093.546 is added to the Public Resources Code, to read:

5093.546. Classification or reclassification of rivers or segments of rivers within the system as wild, scenic, or recreational shall be by statute. The secretary may recommend legislation to classify or reclassify rivers or segments of rivers within the system, and may include specific land use restrictions relative to each particular classification in such recommendations.

SEC. 8. Section 5093.55 of the Public Resources Code is amended to read:

5093.55. Except as provided in subdivision (d) of Section 5093.54, no dam, reservoir, diversion, or other water impoundment facility, other than temporary flood storage facilities permitted pursuant to Section 5093.57, shall be constructed on any river designated in Section 5093.54 after the effective date of this chapter; nor shall any water diversion facility be constructed on any such river unless and until the secretary determines that such facility is needed to supply domestic water to the residents of the county or counties through which the river flows, and unless and until the secretary determines that facility will not adversely affect its free-flowing condition and natural character.

SEC. 9. Section 5093.56 of the Public Resources Code is amended to read:

5093.56. Except for geologic, hydrologic, economic, or any other technical studies deemed necessary or desirable by the Department of Water Resources in order to determine the feasibility of alternate sites for dams on the Eel River and its tributaries, which studies are hereby authorized, no department or agency of the state shall assist or cooperate, whether by loan, grant, license, or otherwise, with any department or agency of the federal, state, or local government, in the planning or construction of any dam, reservoir, diversion, or other water impoundment facility that could have an adverse effect on the free-flowing condition and natural character of the river segments designated in Section 5093.54 as included in the system.

SEC. 10. Section 5093.58 of the Public Resources Code is repealed.

SEC. 11. Section 5093.58 is added to the Public Resources Code, to read:

5093.58. This chapter neither diminishes the power of the secretary or any other state or local official or agency under any other statute, nor conveys any authority, express or implied, to the secretary or any state or local agency, commission, board, or official to adopt or implement any interim or permanent order, rule, regulation, guideline, or directive concerning land use regulation.

SEC. 12. Section 5093.59 of the Public Resources Code is repealed.

SEC. 13. Section 5093.60 of the Public Resources Code is repealed.

SEC. 14. Section 5093.60 is added to the Public Resources Code, to read:

5093.60. The Resources Agency shall be responsible for coordinating the activities of state agencies whose activities affect the rivers in the system with those of other state, local, and federal agencies with jurisdiction over matters which may affect the rivers.

SEC. 15. Section 5093.61 of the Public Resources Code is amended to read:

5093.61. All departments and agencies of the state and all local governmental agencies shall exercise their powers granted under any other provision of law in a manner consistent with the policy and

provisions of this chapter.

SEC. 16. Section 5093.62 of the Public Resources Code is amended to read:

5093.62. Nothing in this chapter shall affect the jurisdiction or responsibility of the state with regard to fish, wildlife, or their habitat. Hunting and fishing may be permitted on lands and waters administered as parts of the system under applicable state or federal laws and regulations.

SEC. 17. Section 5093.68 is added to the Public Resources Code, to read:

5093.68. (a) Within the boundaries of special treatment areas, all of the following provisions shall apply, in addition to any other provisions whether by statute or regulation:

(1) A timber operator, whether licensed or not, shall be responsible for the actions of his or her employees. The registered professional forester who prepares and signs a timber harvesting plan, a timber management plan, or a notice of timber operations shall be responsible for its contents but shall not be responsible for implementation or execution of the plan or notice unless employed for that purpose.

(2) Any registered professional forester preparing a timber harvest plan shall certify that he or she or a qualified representative has personally inspected the plan area on the ground.

(3) Any person operating within the special treatment area who willfully violates any provision of Chapter 8 (commencing with Section 4511) of Division 4 or any rule or regulation of the State Board of Forestry adopted pursuant thereto that results in significant environmental damage shall be guilty of a misdemeanor punishable by a fine of not less than five hundred dollars ($500) or more than five thousand dollars ($5,000) or imprisonment for not more than one year in the county jail, or both. The person shall also be subject to civil damages to the state not to exceed ten thousand dollars ($10,000) for each misdemeanor violation.

(4) The Director of Forestry may require a bond or other evidence of financial responsibility from any timber operator whose ability to pay the civil damages provided for herein is reasonably deemed to be uncertain.

(b) In order to temporarily suspend timber operations which are being conducted within special treatment areas adjacent to wild and scenic rivers designated pursuant to Section 5093.54, while judicial remedies are pursued pursuant to this section, an inspecting forest officer of the Department of Forestry may issue a written timber operations stop order if, upon reasonable cause, the officer determines that a timber operation is being conducted or is about to be conducted in violation of Chapter 8 (commencing with Section 4511) of Division 4, or of rules and regulations adopted pursuant thereto, and that the violation or threatened violation would result in imminent and substantial damage to soil, water, or timber resources or to fish and wildlife habitat. A stop order shall apply only to those acts

or omissions that are the proximate cause of the violation or that are reasonably foreseen would be the proximate cause of a violation. The stop order shall be effective immediately and throughout the next day.

(c) A supervising forest officer may, after an onsite investigation, extend a stop order issued pursuant to subdivision (b) for up to five days, excluding Saturday and Sunday, provided that he or she finds that the original stop order was issued upon reasonable cause. A stop order shall not be issued or extended for the same act or omission more than one time.

(d) Each stop order shall identify the specific act or omission that constitutes a violation or that is foreseen would constitute a violation, the specific timber operation that is to be stopped, and any corrective or mitigative actions that may be required.

(e) The Department of Forestry may terminate the stop order if the timber operator enters into a written agreement with the department assuring that he or she will resume operations in compliance with the provisions of Chapter 8 (commencing with Section 4511) of Division 4, and with the rules and regulations adopted pursuant thereto, and will correct any violation. The department may require a reasonable cash deposit or bond payable to the department as a condition of compliance with the agreement.

(f) Notice of the issuance of a stop order or an extension of a stop order shall be deemed to have been made to all persons working on the timber operation when a copy of the written order is delivered to the person in charge of operations at the time the order is issued or, if no persons are present at that time, then by posting a copy of the order conspicuously on the yarder or log loading equipment at a currently active landing on the timber operations site. If no persons are present at the site when the order is issued, the issuing officer shall deliver a copy of the order to the timber operator either in person or to the operator's address of record prior to the commencement of the next working day.

(g) As used in this section, "forest officer" means a registered professional forester employed by the Department of Forestry in a civil service classification of forester II or higher grade.

(h) (1) Failure of the timber operator or an employee of the timber operator, after receiving notice pursuant to this section, to comply with a validly issued stop order is a violation of this section and is punishable as provided in paragraph (3) of subdivision (a); provided, however, that, in all cases, the timber operator, and not an employee of the operator or any other person, shall be charged with that violation.

Each day or portion thereof that the violation continues shall constitute a new and separate offense.

(2) In determining the penalty for any timber operator guilty of violating a validly issued stop order, the court shall take into consideration all relevant circumstances, including, but not limited to, the following:

(A) The extent of harm to soil, water, or timber resources or to fish and wildlife habitat.

(B) Corrective action, if any, taken by the defendant.

(i) Nothing in this section shall prevent a timber operator from seeking an alternative writ as prescribed in Chapter 2 (commencing with Section 1084) of Title 1 of Part 3 of the Code of Civil Procedure, or as provided by any other provision of law.

(j) (1) If a timber operator believes that a forest officer lacked reasonable cause to issue or extend a stop order pursuant to this section, the timber operator may present a claim to the State Board of Control pursuant to Part 3 (commencing with Section 900) of Title 1 of the Government Code for compensation and damages resulting from the stopping of timber operations.

(2) If the State Board of Control finds that the forest officer lacked reasonable cause to issue or extend the stop order, the board shall award a sum of not less than one hundred dollars ($100), nor more than one thousand dollars ($1,000), per day for each day the order was in effect.

SEC. 18. Section 5093.69 is added to the Public Resources Code, to read:

5093.69. (a) The Resources Agency shall conduct studies specifically funded by the Legislature relative to the condition of the system and may make recommendations to the Legislature for protection and enhancement of the system.

(b) The director shall conduct studies specifically funded by the Legislature and shall make recommendations relating to all of the following:

(1) The restoration of salmon and steelhead habitat in the system, including measures that can be taken to increase spawning populations, and provide at least 100 miles of reopened spawning and nursery areas each year until the year 1990.

(2) Enforcement requirements necessary to protect the system from fish or wildlife degradation.

(3) Development of information or statistical data necessary to provide the most beneficial management of the fisheries included within the system.

(4) Legislative action deemed necessary to protect the fishery and wildlife values of the system.

SEC. 19. In enacting the provisions of this act, the Legislature intends to expedite and improve the efficient administration and enforcement of the provisions of the California Wild and Scenic Rivers Act while reserving its existing control and supervision of how these rivers are to be managed and not to affect in any way (1) litigation involving the action of the Secretary of the Interior on January 19, 1981, approving designation of certain California rivers as components of the National Wild and Scenic Rivers System, nor (2) any reconsideration by the Secretary of the Interior of the Governor's application for designation by letter dated July 18, 1980.

SEC. 20. No appropriation is made and no reimbursement is re-

quired by this act pursuant to Section 6 of Article XIII B of the California Constitution or Section 2231 or 2234 of the Revenue and Taxation Code because the only costs which may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, changes the definition of a crime or infraction, changes the penalty for a crime or infraction, or eliminates a crime or infraction.

CHAPTER 1482

An act to add Sections 110, 1250.5, and 1525.5 to the Water Code, relating to water, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 27, 1982. Filed with Secretary of State September 28, 1982.]

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

SECTION 1. Section 110 is added to the Water Code, to read:

110. In accordance with Section 25001 of the Public Resources Code, subdivision (a) of Section 1 of Chapter 1010 of the Statutes of 1975, and recommendations of the State Energy Resources and Conservation Commission in their 1981 final report, Electricity Tomorrow, it is hereby declared to be the established policy of the state that development of hydroelectric energy is essential to the health, safety, and welfare of the people of this state and to the state economy, and that the creation and development of small hydroelectric facilities, up to and including 30 megawatts, will substantially reduce the state's need for, and dependence upon, domestic and imported oil and other nonrenewable energy sources used for generating electricity and will thereby promote the general welfare and economy of the people of the state.

SEC. 2. Section 1250.5 is added to the Water Code, to read:

1250.5. The board shall consider and act upon all applications for permits to appropriate water which propose, as a primary purpose of the application, the development of small hydroelectric energy facilities at an existing dam, canal, or conduit, up to and including 30 megawatts, or the development of any other hydroelectric facility with a generating capacity of five megawatts or less, within one year from the date a complete application and an instream beneficial use assessment have been filed with the board, except that the assessment need not be filed if the streamflow regime will not be changed, and except that final board action may be continued for a reasonable time not to exceed one year upon the request of the applicant or upon a finding by the board that the additional time is necessary to determine (1) if unappropriated water is available or (2) the effect upon instream uses.

SEC. 3. Section 1525.5 is added to the Water Code, to read:

1525.5. Every person making application for a permit to appropriate water subject to Section 1250.5 shall pay to the board an application fee which shall be in an amount determined by the board to cover the reasonable costs of the board and the Department of Fish and Game in evaluating and processing the application. The board shall reimburse the Department of Fish and Game for its actual costs incurred in evaluating applications submitted pursuant to Section 1250.5.

SEC. 4. This act shall apply to applications which are filed with the State Water Resources Control Board on or after the effective date of this act.

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 encourage and permit the development of small hydroelectric facilities at the earliest possible time, and to reduce the state's need for, and dependence upon, foreign and imported oil and other nonrenewable energy sources, and to thereby provide the people of the state with an increased supply of cheap reliable power at minimum costs and impacts, it is necessary that this act take effect immediately.

CHAPTER 1483

An act to amend Section 3 of Chapter 344 of the Statutes of 1981, relating to fish and game, and making an appropriation therefor.

[Approved by Governor September 27, 1982. Filed with Secretary of State September 28, 1982.]

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

SECTION 1. Section 3 of Chapter 344 of the Statutes of 1981 is amended to read:

SEC. 3. The Department of Fish and Game is authorized to make grants to nonprofit organizations, political subdivisions of the state, and Indian tribes to cooperate with the department in salmon and steelhead rehabilitation along the north coast of California.

The Director of Fish and Game may promulgate regulations to establish criteria for the awarding of these grants to applicants who demonstrate the greatest expertise in accomplishing the salmon and steelhead rehabilitation projects.

SEC. 2. There is hereby appropriated the amount equal to the unencumbered balance, as of January 1, 1983, of the nine hundred thousand dollars ($900,000) for the Cooperative Salmon-Steelhead Project contained in Item 3600-001-940 of the Budget Act of 1982 from the Renewable Resources Investment Fund to the Department of Fish and Game for the purpose of making grants to nonprofit

organizations, political subdivisions of the state, and Indian tribes in return for their cooperation in salmon and steelhead rehabilitation along the north coast of California pursuant to the authority granted to the department in Section 3 of Chapter 344 of the Statutes of 1981.

CHAPTER 1484

An act to add Section 106.7 to, and to add Article 7 (commencing with Section 1490) to Chapter 7 of Part 2 of Division 2 of, the Water Code, relating to water.

[Approved by Governor September 27, 1982. Filed with Secretary of State September 28, 1982.]

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

SECTION 1. Section 106.7 is added to the Water Code, to read:

106.7. (a) It is hereby declared to be the established policy of this state to support and encourage the development of environmentally compatible small hydroelectric projects as a renewable energy source, provided that the projects do not result in surface disturbances within the following sensitive areas:

(1) Any component of the California Wild and Scenic Rivers System or the National Wild and Scenic Rivers System.

(2) Any river designated for study pursuant to Section 5(a) of the National Wild and Scenic River Act (16. U.S.C. 1276(a)). This paragraph shall not apply to any river which, upon the completion of the study, is not included in the National Wild and Scenic Rivers System.

(3) Any state or federally designated wilderness area.

(4) Any areas designated as a "Critical Condor Habitat" by the United States Fish and Wildlife Service.

(b) State agencies shall not approve small hydroelectric development within the sensitive areas specified in subdivision (a).

(c) Significant adverse impacts associated with small hydroelectric projects shall be identified by those agencies responsible for the preparation of the environmental impact document.

SEC. 2. Article 7 (commencing with Section 1490) is added to Chapter 7 of Part 2 of Division 2 of the Water Code, to read:

Article 7. Priority of Applications for Hydroelectric Power

1490. Applications or petitions for retrofit hydroelectric plants at existing dams, canals, or conduits where the streamflow regime will not be changed and where there will be no significant adverse environmental impacts shall receive expedited processing by the

board. The applicant shall not be required to show a need for the power that will be generated by the plant unless protests are filed that are not resolved.

1491. Applications for hydroelectric powerplants with a generating capacity not to exceed five megawatts, which do not impound water during times of high waterflow to be used to generate power during times of low waterflow, and which will not have any significant adverse environmental impacts shall receive expedited processing by the board. The applicant shall not be required to show a need for the power that will be generated by the plant unless protests are filed against the project that are not resolved.

CHAPTER 1485

An act to amend Section 214.02 of the Revenue and Taxation Code, and to repeal Section 2 of Chapter 1772 of the Statutes of 1971, relating to taxation.

[Approved by Governor September 27, 1982. Filed with Secretary of State September 28, 1982.]

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

SECTION 1. Section 214.02 of the Revenue and Taxation Code is amended to read:

214.02. (a) Except as provided in subdivision (b) or (c), property used exclusively for the preservation of native plants or animals, or biotic communities, or geological or geographical formations of scientific or educational interest, or open-space lands used solely for recreation and for the enjoyment of scenic beauty, and which property is open to the general public subject to reasonable restrictions concerning the needs of the land and is owned and operated by a scientific or charitable fund, foundation or corporation, the primary interest of which is to preserve such natural areas, and which meets all the requirements of Section 214, shall be deemed to be within the exemption provided for in subdivision (b) of Section 4 and Section 5 of Article XIII of the Constitution of the State of California and Section 214.

(b) The exemption provided by this section shall not apply to any property of an organization which owns in the aggregate 30,000 acres or more in one county which were exempt under this section prior to March 1, 1983, or which is proposed to be exempt, unless the nonprofit organization which holds the property is constituted in such a way as to be fully independent of the owner of any taxable real property which is adjacent to the property otherwise qualifying for tax exemption under this section. For purposes of this section, the nonprofit organization which holds the property shall be considered

fully independent if the exempt property is not used or operated by that organization or by any other person so as to benefit any officer, trustee, director, shareholder, member, employee, contributor or bondholder of the exempt organization or operator, or the owner of any adjacent property, or any other person, through the distribution of profits, payment of excessive charges or compensations, or the more advantageous pursuit of their business or profession.

(c) The exemption provided by this section shall not apply to property which is reserved for future development.

SEC. 2. Section 2 of Chapter 1772 of the Statutes of 1971 is repealed.

SEC. 3. Notwithstanding Section 2229 of the Revenue and Taxation Code, no appropriation is made by this act and the state shall not reimburse any local agency or school district for property tax revenues lost by it under this act.

SEC. 4. This act shall be operative on the lien date in 1983 and shall be operative to and including the lien date in 1987, after which date it shall be of no further force or effect.

CHAPTER 1486

An act to add Section 1822.58 to the Code of Civil Procedure, to amend Sections 1700, 2345, 5503, 6300, 6302, 6401, 6651, 6851, 6852, 7600, 8433, 8435, 8436, and 12002 of, to add Sections 14, 17, 61, 5669, 5675, 5701.5, and 6403 to, to add Division 12 (commencing with Section 15000) to, to repeal Section 6307 of, to repeal Article 4 (commencing with Section 2301) of Chapter 3 and Article 3 (commencing with Section 2430) of Chapter 4 of Division 3 of, and to repeal Article 2 (commencing with Section 6420), Article 3 (commencing with Section 6450), Article 4 (commencing with Section 6480), and Article 5 (commencing with Section 6510) of Chapter 5 of Part 1 of Division 6 of, and to repeal, add, and repeal Article 4.5 (commencing with Section 8230) of Chapter 2 of, the Fish and Game Code, to amend Section 23.5 of the Food and Agricultural Code, to amend Section 6302 of the Labor Code, to amend Section 30411 of, to add Sections 30100.2 and 30222.5 to, and to repeal Sections 831, 832, and 834 of, the Public Resources Code, and to amend Section 17063 of the Revenue and Taxation Code, relating to commercial fishing, and making an appropriation therefor.

[Approved by Governor September 27, 1982. Filed with Secretary of State September 28, 1982]

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

SECTION 1. Section 1822.58 is added to the Code of Civil Procedure, to read:

1822.58. A warrant may be issued under the requirements of this

title to authorize personnel of the Department of Fish and Game to conduct inspections of locations where fish, amphibia, or aquatic plants are held or stored under Division 12 (commencing with Section 15000) of the Fish and Game Code.

SEC. 1.5. Section 14 is added to the Fish and Game Code, to read:

14. "Anadromous fish" means fish which spawn in fresh water and spend a portion of their lives in the ocean.

SEC. 2. Section 17 is added to the Fish and Game Code, to read:

17. "Aquaculture" means that form of agriculture devoted to the propagation, cultivation, maintenance, and harvesting of aquatic plants and animals in marine, brackish, and fresh water.

SEC. 3. Section 61 is added to the Fish and Game Code, to read:

61. "Ocean ranching" means aquaculture where juvenile anadromous fish are reared and released into state waters to grow and return to an aquaculture facility to be harvested commercially.

SEC. 4. Section 1700 of the Fish and Game Code is amended to read:

1700. It is hereby declared to be the policy of the state to encourage the conservation, maintenance, and utilization of the living resources of the ocean and other waters under the jurisdiction and influence of the state for the benefit of all the citizens of the state and to promote the development of local fisheries and distant-water fisheries based in California in harmony with international law respecting fishing and the conservation of the living resources of the oceans and other waters under the jurisdiction and influence of the state. This policy shall include all of the following objectives:

(a) The maintenance of sufficient populations of all species of aquatic organisms to insure their continued existence.

(b) The recognition of the importance of the aesthetic, educational, scientific, and nonextractive recreational uses of the living resources of the California Current.

(c) The maintenance of a sufficient resource to support a reasonable sport use, where a species is the object of sport fishing, taking into consideration the necessity of regulating individual sport fishery bag limits to the quantity that is sufficient to provide a satisfying sport.

(d) The growth of local commercial fisheries, consistent with aesthetic, educational, scientific, and recreational uses of such living resources, the utilization of unused resources, taking into consideration the necessity of regulating the catch within the limits of maximum sustainable yields, and the development of distant-water and overseas fishery enterprises.

(e) The management, on a basis of adequate scientific information promptly promulgated for public scrutiny, of the fisheries under the state's jurisdiction, and the participation in the management of other fisheries in which California fishermen are engaged, with the objective of maximizing the sustained harvest.

(f) The development of commercial aquaculture.

SEC. 5. Article 4 (commencing with Section 2301) of Chapter 3

of Division 3 of the Fish and Game Code is repealed.

SEC. 6. Section 2345 of the Fish and Game Code is amended to read:

2345. This article applies to all dead wild birds, mammals, fish, and amphibia. This article also applies to live mollusks and crustaceans which are transported for purposes other than placement in the waters of this state. This article does not apply to animals imported for purposes of aquaculture under Division 12 (commencing with Section 15000).

SEC. 7. Article 3 (commencing with Section 2430) of Chapter 4 of Division 3 of the Fish and Game Code is repealed.

SEC. 8. Section 5503 of the Fish and Game Code is amended to read:

5503. It is unlawful to take any fish for the sole purpose of removing its eggs except for the purpose of developing a brood stock for aquaculture purposes under Division 12 (commencing with Section 15000) pursuant to regulations promulgated by the Fish and Game Commission.

The commission shall also determine ownership and regulate distribution of progeny taken from wild brood stock, other than those obtained pursuant to Section 15300.

SEC. 9. Section 5669 is added to the Fish and Game Code, immediately preceding Section 5670, to read:

5669. For purposes of this chapter, "shellfish" means any bivalve mollusk.

SEC. 10. Section 5675 is added to the Fish and Game Code, to read:

5675. If examinations are conducted pursuant to this article for purposes of certifying the quality of shellfish-growing waters, certification of water quality shall be commenced within 30 days, and completed within three months of the filing of an application by an aquaculturist.

SEC. 11. Section 5701.5 is added to the Fish and Game Code, to read:

5701.5. If examinations are conducted by the State Department of Health Services pursuant to this article for purposes of certifying the quality of shellfish-growing waters, certification of water quality shall be commenced within 30 days and completed within six months of the filing of an application by an aquaculturist.

SEC. 12. Section 6300 of the Fish and Game Code is amended to read:

6300. This chapter applies to all fish and amphibia, including, but not limited to, fish and amphibia being imported or transported. This chapter does not apply to activities governed by Division 12 (commencing with Section 15000).

SEC. 13. Section 6302 of the Fish and Game Code is amended to read:

6302. Except as otherwise provided in Division 12 (commencing with Section 15000), all fish, amphibia, or aquatic plants found to be

infected, diseased, or parasitized are a public nuisance and shall be summarily destroyed by the department.

SEC. 14. Section 6307 of the Fish and Game Code is repealed.

SEC. 15. Section 6401 of the Fish and Game Code is amended to read:

6401. Any person may, under the terms of a permit first obtained from the department, under regulations the commission may prescribe, purchase or receive live fish from any registered aquaculturist, and may stock the fish in a stream or a lake.

SEC. 15.1. Section 6403 is added to the Fish and Game Code, to read:

6403. This chapter does not apply to activities governed by Division 12 (commencing with Section 15000).

SEC. 15.2. Article 2 (commencing with Section 6420) of Chapter 5 of Part 1 of Division 6 of the Fish and Game Code is repealed.

SEC. 15.3. Article 3 (commencing with Section 6450) of Chapter 5 of Part 1 of Division 6 of the Fish and Game Code is repealed.

SEC. 15.4. Article 4 (commencing with Section 6480) of Chapter 5 of Part 1 of Division 6 of the Fish and Game Code is repealed.

SEC. 15.5. Article 5 (commencing with Section 6510) of Chapter 5 of Part 1 of Division 6 of the Fish and Game Code is repealed.

SEC. 16. Section 6651 of the Fish and Game Code is amended to read:

6651. A license granting the privilege to harvest kelp or other aquatic plants shall be issued and delivered upon application and the payment of a fee of fifteen dollars ($15) to the department. The license shall be valid for a term of one year from the date of issuance.

This chapter shall not apply to aquatic plants grown on private land or on state water bottoms leased pursuant to Division 12 (commencing with Section 15000).

SEC. 16.5. Section 6851 of the Fish and Game Code is amended to read:

6851. Except as otherwise provided in this code or in regulations adopted by the commission, it is unlawful to take or possess any frog for commercial purposes.

This article does not apply to frogs grown pursuant to Division 12 (commencing with Section 15000).

SEC. 17. Section 6852 of the Fish and Game Code is amended to read:

6852. Any person who conducts a place of business where frogs are sold to the public for food, or who takes or possesses frogs for sale to, or for use by, educational or scientific institutions for scientific purposes, may possess only at the place of business any number of frogs which have been legally obtained pursuant to this code or regulations adopted by the commission.

SEC. 18. Section 7600 of the Fish and Game Code is amended to read:

7600. The provisions of this part apply to the taking and possession of fish for any commercial purpose. This part does not

apply to activities governed under Division 12 (commencing with Section 15000).

SEC. 19. Article 4.5 (commencing with Section 8230) of Chapter 2 of Part 3 of Division 6 of the Fish and Game Code is repealed.

SEC. 19.5. Article 4.5 (commencing with Section 8230) of Chapter 2 of Part 3 of Division 6 of the Fish and Game Code, as proposed to be added by Assembly Bill 2928 of the 1981–82 Regular Session, is repealed.

This section shall only become operative if Assembly Bill 2928 is enacted in the 1981–82 Regular Session and adds Article 4.5 (commencing with Section 8230) to Chapter 2 of Part 3 of Division 6 of the Fish and Game Code.

SEC. 20. Article 4.5 (commencing with Section 8230) is added to Chapter 2 of Part 3 of Division 6 of the Fish and Game Code, to read:

Article 4.5. Commercial Salmon Vessel Permit

8230. The Legislature finds and declares that commercial salmon fishing is affected with a public interest and that the preservation of commercial salmon fishing directly affects the health and welfare of the public. The Legislature further finds and declares that due to past declines in salmon stocks, the increase in the number of persons participating in commercial salmon fishing, and the increase in the salmon fishing potential of the commercial salmon fishing fleet it is necessary and proper to limit the persons who are eligible to take salmon for commercial purposes and to regulate the amount of salmon that may be taken by restricting the number and salmon fishing potential of the vessels in the commercial salmon fishing fleet in order to preserve and rebuild the salmon resource, to protect commercial salmon fishing, and thereby protect the health and welfare of the public.

8231. The following definitions apply to the provisions of this article:

(a) "Commercial salmon permit" means a nontransferable, revocable permit which was issued by the department during the calendar year 1980, 1981, or 1982 to an individual engaged in the taking and landing of salmon in California waters for commercial purposes.

(b) "Operator" means an individual who is designated in writing on the federal documentation papers of a vessel as master or alternate master, on a boat registration statement provided by the department pursuant to Sections 7887 to 7890, inclusive, as the operator of the vessel, or by written proof including landing receipts submitted to and approved by the review board that the individual did operate a vessel engaged in the taking of salmon.

(c) "Owner" means an individual who is designated in writing on a boat registration statement provided by the department pursuant to Sections 7887 to 7890, inclusive, as the owner of the vessel.

(d) "Review board" means the Commercial Salmon Fishing

Review Board created pursuant to Section 8244.

(e) "Vessel permit" means a commercial salmon vessel permit created pursuant to Section 8232.

8232. A commercial salmon vessel permit shall be issued by the department to the following:

(a) Upon application, to the owner or owners of a vessel which was registered pursuant to Sections 7887 to 7890 and was used to take and land salmon commercially in California during the 1980, 1981, or before August 11th of the 1982 commercial salmon season as evidenced by a salmon landing receipt issued to a commercial salmon permittee with that vessel's Department of Fish and Game registration number on it pursuant to Article 6 (commencing with Section 8010) of Chapter 1.

(b) Upon application, to a natural person who possessed a commercial salmon permit and has prior to August 11, 1982, under construction, reconstruction, contracted for construction, or purchased, a vessel with good faith anticipation, as determined by the review board, of that vessel's entry into the California salmon fishery.

(c) Upon application, to a natural person seeking new entry into the commercial fishery pursuant to Section 8240.

8233. Application for a vessel permit shall be made on such forms and contain such information reasonably related to this article as the department may require. Vessel permit applications made pursuant to Section 8232, except as provided in Section 8240, shall be received by the department no later than April 1, 1983.

8234. The vessel permit shall remain with the vessel upon change of ownership and shall not be transferred to another vessel.

8235. (a) If a vessel, licensed under a salmon vessel permit, is lost, destroyed, or permanently retired from the commercial salmon fishery, that vessel permit shall be reissued by the department to the vessel owner of the lost, destroyed, or retired vessel, but the permit shall only be placed on another vessel within one year after reissuance and only on a vessel having a salmon fishing potential, as determined by a majority of the review board, no greater than that of the lost, destroyed, or retired vessel. The department shall not reissue a vessel permit to a vessel owner who lost or destroyed a vessel by fraudulent means.

(b) A vessel that is declared lost, destroyed, or retired pursuant to this section shall not be relicensed under a new vessel permit.

8236. A vessel permit shall be renewed annually by April 1. The department shall set a fee to be charged for a vessel permit which shall not exceed the reasonable costs of implementing and administering the provisions of this article.

8237. The commercial fishing privilege of an individual may be suspended or revoked by the commission for violation and conviction of any of the provisions pertaining to commercial salmon fishing. The commission may revoke or suspend a vessel permit issued pursuant to this article that was obtained by fraudulent means.

8238. No salmon shall be taken aboard or landed from any vessel for commercial purposes except those vessels licensed pursuant to this article.

8239. A vessel may not be used to take salmon for commercial purposes and sport purposes in the same calendar year. However, boats licensed as commercial passenger fishing boats pursuant to Section 7920 and engaged in that business, may be used to take salmon for commercial purposes, but not on the same day that sport fishing passengers are carried on the vessel.

8240. (a) A natural person seeking to gain new entry into the commercial salmon fishery may obtain a vessel permit by either purchasing a vessel already licensed under a vessel permit, or obtaining a new vessel permit issued by the department.

(b) Eligibility for new entry pursuant to subdivision (a) shall be established by the review board under the terms of, but not limited to, Sections 8241, 8242, and 8243, and shall be published and included in the annual report to the Legislature. Factors including, but not limited to, crew experience, and experience in other fisheries, may be included as criteria for establishing eligibility. The review board shall also consider the viability of the commercial salmon fishery in determining how many, if any, new permits shall be recommended for issue. The review board may establish a points system for determining eligibility for new permits.

8241. The commission, upon recommendation of the department and the review board, shall determine the number of new vessel permits to be issued annually as necessary to protect the resource and insure efficient and economic operation of the fishery. Whenever there are more applicants than there are new vessel permits available to individuals with equal qualifications, a drawing shall be held to determine which of the eligible applicants shall receive permits. When new permits are issued, the selection or drawing of permits shall be held on the first Monday of February in the year in which the new permits will be issued.

8242. No new vessel permits shall be issued to other than a natural person or be issued to any person owning or having an interest in a vessel holding a salmon permit.

8243. Any applicant whose name is drawn or selected for a new vessel permit, shall submit a statement to the department designating which vessel shall be licensed under the interim vessel permit by April 1 of the following year. The designated vessel shall remain licensed under the permit in the applicant's name and operated by the applicant for a period of not less than two consecutive salmon seasons, at which time a permanent vessel permit shall be issued. Transfer of ownership during the interim period shall cancel the permit status.

8244. There is hereby established in the department a Commercial Salmon Fishing Review Board which shall consist of the director or his or her designee and four commercial salmon vessel owners and three alternate vessel owners, selected by the director

from a list submitted by an association deemed to represent the majority of commercial salmon vessel owners.

The board shall be limited to factual determinations as specified by this article and shall render determinations based upon substantial evidence by a majority vote of the full board.

8245. The Legislature declares that individuals appointed as members of the review board shall be chosen from the commercial salmon fishing industry in order to represent and further the interests of the industry, and this representation serves the general public interest. Thus, the members of the review board are exempt from Section 87100 of the Government Code, unless the results of their actions taken as board members have a material financial effect on them distinguishable from their effect on other members of their industry generally.

8246. The review board shall:

(a) Consider and render decisions on all appeals of vessel permit denials.

(b) Make recommendations to the department in any revocation of vessel permit proceedings brought pursuant to Section 8237.

(c) Consider and render decisions on the removal, issuance, or reissuance of vessel permits pursuant to subdivision (b) of Section 8232, and Sections 8234, 8235, and 8242.

(d) Recommend to the department the number of new vessel permits to be issued annually, which will be based on the health and status of the salmon resource, and the economic stability of the commercial salmon industry.

(e) Issue an annual report to the Legislature on the effectiveness of the provisions of this article. The report shall include any recommendations for eligibility proposed pursuant to Section 8240 prior to their implementation and the recommended number of new vessel permits, if any, to be issued that year.

(f) Recommend to the department whether an examination should be held for permits granted pursuant to Section 8240, and if an examination is recommended, what criteria should be considered in such an examination. The recommendation shall be made to the department before April 1, 1983. The department shall transmit the review board recommendations relating to an examination along with any recommendations of the department to the Legislature no later than April 15, 1983. The recommendations of the department shall become effective 30 days after they are submitted, unless the department alters or withdraws them.

8247. The term of appointment to the review board shall be for four years. However, with respect to the members initially appointed, the director shall designate one member to serve for a term of one year, one member to serve for a term of two years, one member to serve for a term of three years, and the remaining members to serve the term of four years. Necessary and proper expenses shall be paid to review board members; the rate of per diem shall be the same as the rate established pursuant to Section 8902 of

the Government Code. The director may adopt standards and criteria that shall be applied by the board in carrying out its activities under this article.

8248. The vessel permit shall be physically attached to the vessel and clearly visible at all times. Upon the recommendation of the review board, the permit shall be of a size, color and other specification as the department shall establish.

8249. This article shall remain in effect only until January 1, 1988, and as of that date is repealed unless a later enacted statute, which is chaptered before January 1, 1988, deletes or extends that date.

SEC. 21. Section 8433 of the Fish and Game Code is amended to read:

8433. Nothing in this article applies to trout grown pursuant to Division 12 (commencing with Section 15000).

SEC. 22. Section 8435 of the Fish and Game Code is amended to read:

8435. No catfish may be sold, except catfish imported from without the state or catfish grown pursuant to Division 12 (commencing with Section 15000).

SEC. 23. Section 8436 of the Fish and Game Code is amended to read:

8436. No fish of the family Centrarchidae (Sacramento perch, crappie, black bass, and sunfish) may be sold or purchased, other than fish which are grown pursuant to Division 12 (commencing with Section 15000).

SEC. 24. Section 12002 of the Fish and Game Code is amended to read:

12002. The maximum punishment for a violation constituting a misdemeanor is a fine of five hundred dollars ($500) or imprisonment in the county jail for six months, or both, except as follows:

(a) The maximum punishment for violation of any of the following provisions is a fine of one thousand dollars ($1,000) or imprisonment in the county jail for one year, or both:

(1) Section 1059.

(2) Section 2052.

(3) Sections 3511, 4700, 5050, and 5515.

(4) Sections 4600 to 4606, inclusive.

(5) Subdivision (a) or (b) of Section 5650.

(6) Section 8670.

(7) Section 10500.

(b) The maximum punishment for violation of any of the following provisions is a fine of two thousand dollars ($2,000) or imprisonment in the county jail for one year, or both:

(1) Section 3005.9.

(2) A violation of commission regulations which is discovered pursuant to Section 3005.91 or 3005.92.

(3) Section 15200.

(4) Section 15509.

SEC. 25. Division 12 (commencing with Section 15000) is added to the Fish and Game Code, to read:

DIVISION 12. AQUACULTURE

CHAPTER 1. GENERAL PROVISIONS

15000. The business of aquaculture is governed by this division. Aquaculture and its products are exempt from those provisions of this code dealing with commercial fishing and harvesting.

15001. The cultured progeny of wild plants and animals lawfully obtained under Section 15300 are the exclusive property of that person who cultured them or that person's successor in interest.

15002. Any person who takes aquaculture products without lawful entitlement is subject to prosecution for theft.

15003. (a) The department may assess a fee on persons growing aquaculture products on public lands and in public waters based on the price per pound of the products sold. The fees, if imposed, shall be set at amounts necessary to defray the costs of the commission and the department in administering this division. However, the fees if any, may not exceed the privilege taxes as provided in Section 8045.

(b) The price per pound for these taxation purposes shall be based on the whole product weight or its equivalent as taken by the lessee.

(c) The privilege tax imposed by this section shall be paid monthly to the department within 30 days after the close of each month. If not paid within 60 days after the close of the month in which it is due, a 10 percent penalty shall be paid.

15004. Aquaculturists operating under this division shall pay all costs incurred by the department when conducting any inspections of plants, animals, facilities, or culture areas required by this division, or by regulations made pursuant to it, when requested by the aquaculturists.

15005. (a) When necessary for the protection of native wildlife, the commission may regulate the transportation and sale of specific aquaculture products as provided for in this section.

(b) The commission may determine that aquaculture products shall be accompanied by a document containing any of the following information:

(1) The registration number of the aquaculture producer.

(2) The species.

(3) The weight, volume or count within the container.

(4) The date of the shipment.

(5) The name and address of the intended receiver.

(c) The commission may require that certain aquaculture products shall be additionally identified as being aquaculture produced, except for the following:

(1) Trout.

(2) Catfish.

(3) Kelp and aquatic plants.

(4) Frogs and amphibia.
(5) All bivalve mollusks (except little neck clams).
(6) All members of the family Centrarchidae.
(7) Crayfish.
(8) Sea urchins.
(9) Shrimp and fresh water prawns.
(10) Crab.

CHAPTER 2. AQUACULTURE DEVELOPMENT SECTION

15100. There is within the department the Aquaculture Development Section. The Aquaculture Development Section shall perform all of the following duties:

(a) Promote understanding of aquaculture among public agencies and the general public.

(b) Propose methods of reducing the negative impact of public regulation at all levels of government on the aquaculture industry.

(c) Provide information on all aspects of regulatory compliance to the various sectors of the aquaculture industry.

(d) Provide such advice to aquaculturists on project siting and facility design that may be needed to comply with regulatory requirements.

15101. The owner of each aquaculture facility shall register all of the following information with the department by March 1 of each year.

(a) The owner's name.

(b) The species grown.

(c) The location or locations of each operation or operations.

The department may provide registration forms for this purpose and may impose a registration fee not to exceed fifty dollars ($50). Anyone failing to register under this section shall be operating unlawfully.

15102. The department may prohibit an aquaculture operation or the culturing of any species at any location where it is determined it would be detrimental to adjacent native wildlife.

CHAPTER 3. STOCKING AQUATIC ORGANISMS

15200. The commission may regulate the placing of aquatic plants and animals in waters of the state. Movement of live fish between two registered aquaculturists who are registered for those species does not require a permit.

15201. A permit is required to place fish on public or private land or water in any watershed above an established public or private fish hatchery. The department shall deny the permit if there is evidence that water quality and potential disease transfers will be adverse to the established hatchery.

15202. The commission may prohibit the placement of specific species of aquatic plants or animals in designated waters of the state.

The prohibition may not include species that are found to be native or that are stocked by the state in a location where prohibition is contemplated.

CHAPTER 4. BROOD STOCK ACQUISITION

15300. Aquatic plants or animals may be legally obtained for use as brood stock from all of the following sources:

(a) A holder of a commercial fishing license.

(b) A registered aquaculturist.

(c) The department.

(d) Imported sources authorized by Chapter 7 (commencing with Section 15600).

15301. The department may sell wild aquatic plants or animals, except rare or endangered species, for use in aquaculture at a price approximating the cost to the department of administering these sales. The commission shall set this price.

CHAPTER 5. LEASING OF STATE WATER BOTTOMS

15400. The commission may lease state water bottoms to any person for aquaculture. The commission may adopt regulations governing the terms of the leases. No state water bottoms shall be leased, unless the commission determines that the lease is in the public interest.

15401. Areas used by the public for digging clams shall not be leased. The department shall designate those areas.

15402. A lessee of state water bottom owns all lawfully cultivated organisms produced under the terms of the lease. The lessee has the exclusive right to cultivate and harvest the aquatic organisms in the area leased.

15403. Persons wishing to lease a state water bottom shall make a written application to the commission. An application shall contain all of the following information:

(a) A map showing the area to be leased, its general vicinity, and all ownership and boundary lines in the vicinity.

(b) A description of the organisms to be grown and the culture techniques to be used.

(c) An estimate of the acreage to be leased.

(d) A nonrefundable one hundred dollar ($100) filing fee.

The lessee shall assume responsibility for any infringement on privately owned water bottoms, or water bottoms owned by, or under the jurisdiction of any city, county, or district.

15404. (a) If the commission finds that the area applied for is available for lease and that the lease would be in the public interest, it shall publish a notice that the area is being considered for leasing.

(b) The commission shall have legal notices published in a newspaper of general circulation in each county where the water bottom, or any part thereof, is located, describing the area to be

leased and the type of operation to be conducted. The publication shall comply with Sections 6060 and 6066 of the Government Code.

15405. No state water bottom lease may do any of the following:

(a) Exceed 25 years.

(b) Tend to foster a monopoly.

15406. Water bottom leases shall specify a period prior to expiration when renewal of the lease may be requested. If a request for renewal is made by the lessee, the commission shall advertise for bids on the lease. The lessee has the right to renewal by meeting the highest lease bid obtained. The commission may reject any or all bids for the lease of state water bottoms if it deems the rejection to be in the public interest.

15407. The commission shall award aquaculture leases to the highest responsible bidder, if the bid meets or exceeds the minimum rental fee established by the commission, which shall not be less than ten dollars ($10) per acre, for all species cultivated. The annual rental fee shall be paid to the department within 30 days of the commencement of the lease. The commission may establish penalty fees for late payment and may cancel the lease if rental fees are not paid within 90 days of the commencement of the lease.

15408. The commission shall promulgate regulations governing the termination of leases due to failure to pay rent or improper use of the leasehold.

15409. Upon termination of a lease, for any reason, all structures will be removed at the lessee's expense from the leasehold, and the area shall be restored to its original condition. If the lessee fails to remove the structures, the state may remove them and the lessee shall pay the removal costs so incurred.

15410. All leases shall be subject to the power of the Legislature to increase or otherwise change the fees, taxes, and other charges relating to the lease.

15411. Lessees under a state water bottom lease may not unreasonably impede public access to state waters for purpose of fishing, navigation, commerce, or recreation. The lessee may, however, limit public access to the extent necessary to avoid damage to the leasehold and the aquatic life culture therein.

The commission may prohibit any recreational activity in any aquaculture area subject to a state water bottom lease if it determines that the activity is detrimental to the enhancement of the resource.

15412. No water bottom lease may be assigned without the prior approval of the commission. Application for approval of a lease assignment shall comply with all of the requirements for an original lease.

15413. No person may enter upon any area subject to a water bottom lease in which aquatic life is cultivated, or remove the aquatic life therefrom without the consent of the lessee, or willfully destroy the cultivated aquatic life or any markers intended to designate the boundaries and limits of the leased area.

15414. A water bottom lease may require periodic reports that the commission deems necessary for the proper administration of the state's water bottoms.

15415. The department shall notify the State Lands Commission of all applications for water bottom leases.

The department shall inform the State Lands Commission of all leases executed, renewed, or assigned pursuant to this chapter, and shall furnish the State Lands Commission with such information concerning these leases that it may require.

CHAPTER 6. DISEASE CONTROL

15500. Upon the recommendation of the department and after consultation with the Aquaculture Disease Committee created pursuant to this chapter, the commission shall compile a list of diseases, and the aquatic plants and animals they are known to infect, which constitute a public nuisance. All government activities relating to aquaculture disease detection, control, and eradication shall be the responsibility of the department.

15501. The department may enter, under an inspection warrant issued pursuant to Title 5 (commencing with Section 1822.50) of Part 3 of the Code of Civil Procedure, at any time, any car, warehouse, depot, ship, or growing area where any fish, amphibia, or aquatic plants are held or stored, for the purpose of making an examination to ascertain whether the fish, amphibia, or aquatic plants are infected, diseased, or parasitized.

15502. The director, in consultation with the Aquaculture Industry Advisory Committee and the Interagency Committee for Aquaculture Development, shall appoint an 11-member Aquaculture Disease Committee consisting of at least six industry producers selected to represent geographic, specie, and other diverse aspects of the industry; two to represent the department; one to represent the Department of Food and Agriculture; an academic scientist who is an expert in aquatic diseases; and one representative of the University of California Cooperative Extension. Members of the committee shall serve without compensation, but shall be paid their necessary expenses.

15503. The Aquaculture Disease Committee may recommend regulations to the commission designed to safeguard wild and cultured organisms from the list of diseases compiled pursuant to Section 15500.

15504. Disease regulations recommended under Section 15503 and adopted by the commission may include all of the following:

(a) Routine monitoring procedures.

(b) Standardized diagnostic procedures.

(c) A requirement for the confirmation of the diagnosis by the state through at least one other independent and qualified laboratory.

(d) Criteria for ordering quarantine, condemnation, or

destruction.

(e) A stated maximum time period between diagnosis and destruction.

(f) Methods to be employed in animal destruction and facility cleanup.

(g) Procedures for determining fair and rapid compensation.

(h) Any other related procedures that the commission may determine are necessary.

15505. If any of the diseases listed pursuant to Section 15500 is found to exist which the director, in consultation with the Aquaculture Disease Committee and consistent with the regulations established under Section 15504, deems to be detrimental to the aquaculture industry or to wild stocks of aquatic plants and animals, the director may do any of the following:

(a) Fix and proclaim the boundaries of a quarantine area in which the disease is found.

(b) Establish, proclaim, and maintain a quarantine of the district and of all aquatic plants and animals within it.

(c) Hold and impound diseased plants and animals.

(d) Forbid, prevent, or restrict the movement of all plants and animals subject to the disease from or into the area, or from place to place within it, during the existence of the quarantine.

(e) Order the destruction and disposal of diseased plants and animals consistent with Section 15504.

15506. Except for those diseases in the list compiled pursuant to Section 15500, infected plants or animals shall not be quarantined or destroyed, unless the director, in consultation with the Aquaculture Disease Committee, finds that an outbreak of aquatic disease among privately cultured plants or animals presents a threat to the aquaculture industry or to fish life or plant life.

15507. If the director, in consultation with the Aquaculture Disease Committee, finds that a disease is present in a nearby government operated facility or in nearby wild stocks, infected plants or animals in a private aquaculture facility shall not be quarantined or destroyed unless similar action is taken with respect to the government facility and wild stocks.

15508. Reports of those diseases compiled pursuant to Section 15500 shall be immediately forwarded by the director to the Aquaculture Disease Committee and shall be promptly investigated by the department.

15509. No person may move, or allow to be moved, any of the aquatic plants or animals which are subject to a quarantine established pursuant to Section 15505 across the quarantine line which is established, unless the person has first obtained a permit from the director authorizing the movement.

The director may issue a permit after inspection, if the aquatic plants or animals, premises, transportation vehicles, and equipment which are subject to the quarantine established pursuant to Section 15505 are properly cleaned and disinfected.

15510. If the director determines that any disease designated pursuant to Section 15500 exists among domestic aquatic plants and animals, or that aquatic plants and animals have been exposed, or may have been exposed, to the disease, or to the vectors of the disease, in any other state or territory in the United States or in any foreign country, and the importation of aquatic plants or animals from the state, territory, or foreign country may transmit, carry, or disseminate the disease to domestic plants and animals within this state, the director shall notify the commission which may, after consulting the State Department of Health Services and the Department of Food and Agriculture, issue a regulation restricting or prohibiting the importation of the diseased or infected aquatic plants or animals into this state from any other state, territory, or foreign country.

15511. There is hereby established in the General Fund the Aquaculture Disease Compensation Account. The money in the account is continuously appropriated to the department for the purpose of carrying out the department's duties under this chapter.

15512. Where aquatic plants or animals are destroyed pursuant to subdivision (e) of Section 15505, the owner shall be promptly paid, from the Aquaculture Disease Compensation Account, an amount equal to the replacement value of the plants or animals as determined by an appraiser appointed by the director and an appraiser appointed by the owner. Appraiser's fees are to be paid by the appointing party. Disputes between these two appraisers as to the value of plants or animals destroyed shall be submitted to arbitration under the Commercial Arbitration Rules of the American Arbitration Association.

15513. Claims against the department arising under this chapter may be submitted pursuant to Section 905.2 of the Government Code.

15514. No claim arising under this chapter shall be paid where the director, in consultation with the Aquaculture Disease Committee, finds that the claimant's management practices were negligent or in violation of law, and that the negligence or violation was the proximate cause of the disease or infection prompting the order of destruction or finds the claimant willfully violated any provision of Section 15505.

CHAPTER 7. IMPORTATION OF AQUATIC PLANTS AND ANIMALS

15600. No live aquatic plant or animal may be imported into this state without the prior written approval of the department pursuant to regulations adopted by the commission.

15601. A written application for the importation submitted in conformance with the procedural requirements established by the commission is deemed to be approved where it has not been denied within 60 days.

CHAPTER 8. AQUACULTURE INDUSTRY ADVISORY COMMITTEE

15700. The director shall appoint an Aquaculture Industry Advisory Committee consisting of at least 12 members representing all sectors of the fresh and salt water aquaculture industry.

15701. The term of membership shall be three years.

Members of the committee shall serve without compensation.

15702. The committee shall be advisory to the director on all matters pertaining to aquaculture.

The committee shall assist the director in developing and implementing a state aquaculture plan, identifying the opportunities for regulatory relief, assisting in the developing of research and development priorities, assisting in the development of criteria to assure that publicly financed pilot programs are compatible with industry needs, and identify other opportunities for industrial development.

15703. The committee shall meet on the call of the director, but not less than twice each year.

CHAPTER 9. INTERAGENCY COMMITTEE FOR AQUACULTURE DEVELOPMENT

15800. The director shall appoint an Interagency Committee for Aquaculture Development, with one member representing the department, one member each from and chosen by the Department of Food and Agriculture, the California Coastal Commission, the State Lands Commission, the State Water Resources Control Board, the State Department of Health Services, the University of California Cooperative Extension Service, the University of California aquaculture program, and the Joint Legislative Committee on Fisheries and Aquaculture.

15801. Each member of the Interagency Committee for Aquaculture Development shall serve a three-year term. Vacancies shall be filled for the remaining portion of an unexpired term.

15802. Members of the committee shall serve without compensation.

15803. The committee shall be advisory to the director on all matters pertaining to aquaculture and act in a coordinating role among agencies. It shall meet on the call of the director, but not less frequently than twice each year.

SEC. 26. Section 23.5 of the Food and Agricultural Code is amended to read:

23.5. The commercial production of fish propagated and raised by a registered aquaculturist pursuant to Section 15101 of the Fish and Game Code in the state is a growing industry and provides a healthful and nutritious food product, and, as a commercial operation, utilizes management, land, water, and feed as do other agricultural enterprises. Therefore, the commercial production of that fish and marine life shall be considered a branch of the

agricultural industry of the state for the purpose of any law which provides for the benefit or protection of the agricultural industry of the state.

SEC. 27. Section 6302 of the Labor Code is amended to read:

6302. As used in this division:

(a) "Director" means the Director of Industrial Relations.

(b) "Department" means the Department of Industrial Relations.

(c) "Insurer" includes the State Compensation Insurance Fund and any private company, corporation, mutual association, and reciprocal or interinsurance exchange, authorized under the laws of this state to insure employers against liability for compensation under this part and under Division 4 (commencing with Section 3201), and any employer to whom a certificate of consent to self-insure has been issued.

(d) "Division" means the Division of Occupational Safety and Health.

(e) "Standards board" means the Occupational Safety and Health Standards Board, within the department.

(f) "Appeals board" means the Occupational Safety and Health Appeals Board, within the department.

(g) "Aquaculture" means a form of agriculture that is devoted to the controlled growing and harvesting of fish, shellfish, and plants in marine, brackish, and fresh water. Aquaculture enterprises and activities are agricultural enterprises and activities for all purposes of this division.

SEC. 28. Section 831 of the Public Resources Code is repealed.

SEC. 29. Section 832 of the Public Resources Code is repealed.

SEC. 30. Section 834 of the Public Resources Code is repealed.

SEC. 31. Section 30100.2 is added to the Public Resources Code, to read:

30100.2. "Aquaculture" means a form of agriculture that is devoted to the controlled growing and harvesting of fish, shellfis[1] and plants in marine, brackish, and fresh water. Aquacultu, products are agricultural products, and aquaculture facilities and land uses shall be treated as agricultural facilities and land uses in all planning and permit-issuing decisions governed by this division.

SEC. 32. Section 30222.5 is added to the Public Resources Code, to read:

30222.5. Ocean front land that is suitable for coastal dependent aquaculture shall be protected for that use, and proposals for aquaculture facilities located on those sites shall be given priority, except over other coastal dependent developments or uses.

SEC. 33. Section 30411 of the Public Resources Code is amended to read:

30411. (a) The Department of Fish and Game and the Fish and Game Commissio[n] are the principal state agencies responsible for the establishment and control of wildlife and fishery management programs and neither the commission nor any regional commission shall establish or impose any controls with respect thereto that

duplicate or exceed regulatory controls established by such agencies pursuant to specific statutory requirements or authorization.

(b) The Department of Fish and Game, in consultation with the commission and the Department of Boating and Waterways, may study degraded wetlands and identify those which can most feasibly be restored in conjunction with development of a boating facility as provided in subdivision (a) of Section 30233. Any such study shall include consideration of all of the following:

(1) Whether the wetland is so severely degraded and its natural processes so substantially impaired that it is not capable of recovering and maintaining a high level of biological productivity without major restoration activities.

(2) Whether a substantial portion of the degraded wetland, but in no event less than 75 percent, can be restored and maintained as a highly productive wetland in conjunction with a boating facilities project.

(3) Whether restoration of the wetland's natural values, including its biological productivity and wildlife habitat features, can most feasibly be achieved and maintained in conjunction with a boating facility or whether there are other feasible ways to achieve such values.

(c) The Legislature finds and declares that salt water or brackish water aquaculture is a coastal-dependent use which should be encouraged to augment food supplies and to further the policies set forth in Chapter 4 (commencing with Section 825) of Division 1. The Department of Fish and Game may identify coastal sites it deems appropriate for aquaculture facilities. If the department identifies such sites, it shall do so by October 1, 1980, and shall by the same date transmit information identifying such sites to the commission and the relevant local government agency. The commission, and where appropriate, local governments shall, consistent with the coastal planning requirements of this division, provide for as many coastal sites identified by the Department of Fish and Game for such uses as are consistent with the policies of Chapter 3 (commencing with Section 30200) of this division.

(d) Any agency of the state owning or managing land in the coastal zone for public purposes shall be an active participant in the selection of suitable sites for aquaculture facilities and shall make the land available for use in aquaculture when feasible and consistent with other policies of this division and other provision of law.

SEC. 34. Section 17063 of the Revenue and Taxation Code is amended to read:

17063. For purposes of this chapter, the items of tax preference are:

(a) An amount equal to the excess itemized deductions for the taxable year (as determined under Section 17063.2).

(b) With respect to each "Section 18212 property" (as defined in Section 18214), the amount by which the deduction allowable for the taxable year for exhaustion, wear or tear, obsolescence, or

amortization exceeds the depreciation deduction which would have been allowable for the taxable year, had the taxpayer depreciated the property under the straight line method for each taxable year of its useful life (determined without regard to Section 17211.7 or 17228.5) for which the taxpayer has held the property.

(c) With respect to each item of Section 18211 property (as defined in Section 18214) which is subject to a lease, the amount by which—

(1) The deduction allowable for the taxable year for depreciation or amortization, exceeds

(2) The deduction which would have been allowable for the taxable year had the taxpayer depreciated the property under the straight line method for each taxable year of its useful life for which the taxpayer has held the property.

(d) With respect to the transfer of a share of stock pursuant to the exercise of a qualified stock option (as defined in subdivision (b) of Section 17532) or a restricted stock option (as defined in subdivision (b) of Section 17534), the amount by which the fair market value of the share at the time of exercise exceeds the option price.

(e) With respect to each property (as defined in Sections 17681 to 17690, inclusive), the excess of the deduction for depletion allowable under Section 17681 for the taxable year over the adjusted basis of the property at the end of the taxable year (determined without regard to the depletion deduction for the taxable year).

(f) An amount equal to one-half of the amount by which net long-term capital gain exceeds the net short-term capital loss for the taxable year.

(g) Subdivision (f) of this section shall apply only to taxable years beginning after December 31, 1970, and ending on or before November 30, 1972. For taxable years beginning after December 31, 1971, the amount of the tax preference income with respect to capital gains shall be an amount (but not below zero) equal to the difference between (1) the taxpayer's total net capital gains and losses (determined without regard to any capital loss carryover) for the taxable year, and (2) the taxpayer's net capital gains and losses recognized by virtue of Section 18162.5 for the same taxable year.

(h) The amount of net farm loss in excess of fifty thousand dollars ($50,000) which is deducted from nonfarm income. In the case of a husband or wife who files a separate return, the amount specified in the preceding sentence shall be twenty-five thousand dollars ($25,000). This subdivision shall not apply if two-thirds or more of the taxpayer's average gross income from all sources for the taxable year and immediately preceding two years is from farming. Nor shall this subdivision apply if the net farm loss is the result of aquaculture activities. For purposes of this subdivision, "aquaculture" means a form of agriculture which is devoted to the controlled growing and harvesting of fish, shellfish, and plants in marine, brackish, and fresh water.

(i) The excess of the intangible drilling and development costs

described in Section 17283 (c) paid or incurred in connection with oil, gas, and geothermal wells (other than costs incurred in drilling a nonproductive well) allowable under this part for the taxable year over the amount which would have been allowable for the taxable year if such costs had been capitalized and straight line recovery of intangibles (as defined in Section 17063.3) had been used with respect to such costs. This subdivision shall be applied separately with respect to:

(1) All oil and gas properties which are not described in paragraph (2), and

(2) All properties which are geothermal deposits (as defined in Section 613(e)(3) of the Internal Revenue Code of 1954).

SEC. 35. Except for the waters of Davenport Landing Creek, which is contained in the County of Santa Cruz and located near the town of Davenport Landing, nothing in this act shall be construed to permit or apply to ocean ranching of anadromous fish.

SEC. 36. The State Coastal Conservancy shall consult with the Pacific Coast Federation of Fishermen's Associations in preparing the report on the adequacy of existing and planned wharfs, harbors, off-loading facilities, and other onshore support facilities needed by the California commercial fishing industry which report is proposed in Assembly Bill 2928 of the 1981–82 Regular Session.

SEC. 37. No appropriation is made and no reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution or Section 2231 or 2234 of the Revenue and Taxation Code because the only costs which may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, changes the definition of a crime or infraction, changes the penalty for a crime or infraction, or eliminates a crime or infraction.

CHAPTER 1487

An act to amend Sections 5002.2 and 5003 of, to add Section 5019.26 to, to add Chapter 1.2 (commencing with Section 5080.01) to Division 5 of, to repeal and add Section 5010.1 to, and to repeal Section 5007 of, the Public Resources Code, relating to parks and recreation, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 27, 1982 Filed with Secretary of State September 28, 1982.]

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

SECTION 1. Section 5002.2 of the Public Resources Code is amended to read:

5002.2. (a) Following classification or reclassification of a unit by

the State Park and Recreation Commission, and prior to the development of any new facilities in any previously classified unit, the department shall prepare a general plan or revise any existing plan, as the case may be, for the unit.

The general plan shall consist of elements that will evaluate and define the proposed land use, facilities, concessions, operation, environmental impact, management of resources, and any other matter deemed appropriate for inclusion in the plan.

The general plan shall constitute a report on a project for the purposes of Section 21100. The general plan for a unit shall be submitted by the department to the State Park and Recreation Commission for approval.

(b) The resource element of the general plan shall evaluate the unit as a constituent of an ecological region and as a distinct ecological entity, based upon historical and ecological research of plant-animal and soil-geological relationships and shall contain a declaration of purpose, setting forth specific long-range management objectives for the unit consistent with the unit's classification pursuant to Article 1.7 (commencing with Section 5019.50), and a declaration of resource management policy, setting forth the precise actions and limitations required for the achievement of the objectives established in the declaration of purpose.

(c) Notwithstanding the requirements of subdivision (a), the department is not required to prepare a general plan for a unit that has no general plan or to revise an existing plan, as the case may be, if the only development contemplated by the department consists of the repair, replacement, or rehabilitation of an existing facility; the construction of a temporary facility, so long as such construction does not result in the permanent commitment of a resource of the unit; any undertaking necessary for the protection of public health or safety; or any emergency measure necessary for the immediate protection of natural or cultural resources; or any combination thereof at a single unit. Any such development shall be subject to the requirements of the California Environmental Quality Act (Division 13 (commencing with Section 21000)).

(d) Any general plan approved prior to July 1, 1972, may be used as the basis for development if the director finds that there has been no significant change in the resources of the unit since approval of the plan and that the plan is compatible with current policies governing development of the unit and the classification of the unit.

SEC. 2. Section 5003 of the Public Resources Code is amended to read:

5003. The department shall administer, protect, develop, and interpret the state park system for the use and enjoyment of the public. Except as provided in Section 18930 of the Health and Safety Code, the department may establish rules and regulations not inconsistent with law for the government and administration of the state park system. The department may expend all moneys of the

department, from whatever source derived, for the care, protection, supervision, extension, and improvement or development of the state park system.

SEC. 3. Section 5007 of the Public Resources Code is repealed.

SEC. 4. Section 5010.1 of the Public Resources Code is repealed.

SEC. 5. Section 5010.1 is added to the Public Resources Code, to read:

5010.1. (a) All fees, rents, and other returns for the use of any state park system area are the property of the state or the public agency operating a state park system area pursuant to an agreement entered into pursuant to Article 2 (commencing with Section 5080.30) of Chapter 1.2. However, whenever significant savings can be achieved by the department or the operating public agency, the department or the public agency may enter into a contract with a concessionaire, lessee, or other natural person, corporation, partnership, or association for the collection of fees, rents, or other returns on behalf of the state or the public agency. The contract may provide for the retention of a portion of any fee, rent, or other return as reimbursement for the cost of collection.

(b) Whenever significant savings can be achieved, the department may enter into a contract with any natural person, corporation, partnership, or association for the operation of a reservation system for the state park system and for the collection of state park fees in connection therewith. The contract may provide for the retention of a portion of every fee or the imposition of a surcharge as reimbursement for the cost of providing that service.

SEC. 6. Section 5019.26 is added to the Public Resources Code, to read:

5019.26. This article governs all concession contracts in effect on January 1, 1983, except that whenever such a concession contract is to be renewed, renegotiated, or amended in any material respect, it shall be governed by Article 1 (commencing with Section 5080.01) of Chapter 1.2.

SEC. 7. Chapter 1.2 (commencing with Section 5080.01) is added to Division 5 of the Public Resources Code, to read:

CHAPTER 1.2. OPERATION AND MANAGEMENT OF STATE PARK SYSTEM PROPERTIES

Article 1. Concessions

5080.01. This article governs new concession contracts bid and entered into after January 1, 1983, and existing concession contracts renewed, renegotiated, or amended in any material respect after January 1, 1983. Until a concession contract becomes subject to this article, it shall continue to be governed by Article 1.5 (commencing with Section 5019.10) of Chapter 1.

5080.02. As used in this article, the following terms shall have the following meanings:

(a) "Board" means the State Public Works Board.

(b) "Commission" means the State Park and Recreation Commission.

(c) "Contract" means a contract for the construction, maintenance, and operation of a concession.

5080.03. (a) The department may enter into contracts with natural persons, corporations, partnerships, and associations for the construction, maintenance, and operation of concessions within units of the state park system for the safety and convenience of the general public in the use and enjoyment of, and the enhancement of recreational and educational experiences at, units of the state park system.

(b) Concessions shall not be entered into solely for their revenue producing potential.

(c) With respect to any unit of the state park system for which a general development plan has been approved by the commission, any proposed concession at that unit shall be compatible with that plan.

5080.05. Except as provided in Section 5080.16, all contracts authorizing occupancy of any portion of the state park system for a period of more than two years shall be awarded to the best responsible bidder. "Best responsible bidder" means the bidder, as determined by specific standards established by the department, which, as determined by the department, will operate the concession (1) consistent with the contract, (2) in a manner fully compatible with, and complimentary to, the characteristics, features, and theme of the unit in which the concession will be operated, and (3) in the best interests of the state and public.

5080.06. For any contract authorizing occupancy by the concessionaire for a period of more than two years of any portion of the state park system, the department shall prepare an invitation to bid, which shall include a summary of the terms and conditions of the concession sufficient to enable persons to bid solely on the basis of rates to be paid to the state. The invitation to bid shall specify the minimum acceptable rent, except in instances in which a minimum acceptable rent cannot be ascertained because of the novelty or uniqueness of the service or facility to be provided or in instances in which the department has determined that a better return to the state can be secured by not specifying a minimum acceptable rent. Bids shall be made only on the basis of the invitition to bid.

5080.07. (a) Notwithstanding the provisions of Sections 11080 and 11081 of the Government Code, public notice to bidders shall be given of all proposed contracts authorizing the occupancy of property in the state park system for a period of more than two years, as follows:

(1) The department shall advertise the notice through appropriate public media to the extent that the department determines is sufficient to provide adequate coverage.

(2) The department shall publish an advertisement for bid at least

once a week for two consecutive weeks in a newspaper of general circulation in the county in which the concession is to operate and in a major daily newspaper in the closest metropolitan area.

(3) If the director determines that, in view of the type of concession involved, the public interest would be best served by the solicitation of bids from out-of-state bidders, he or she shall give such additional notice as he or she finds is best suited to attract bids from out-of-state bidders.

(b) The published notice shall state where bid forms may be obtained, the time and place for the receiving and opening of sealed bids, and shall describe, in general terms, the concession to be operated.

5080.08. (a) The department shall require from prospective bidders answers to questions contained in a standard form of questionnaire and financial statement, including a complete statement of the prospective bidder's financial ability and experience in maintaining and operating similar or related concessions or business activities. When completed, the questionnaire and financial statement shall be verified under oath by the bidder.

(b) The questionnaires and financial statements are confidential and are not open to public inspection. However, this subdivision shall not be construed to prevent reference thereto or use thereof in a civil action or a criminal prosecution by the state for a false statement contained therein.

5080.09. All bids shall be presented under sealed cover.

5080.10. Whether or not bids are opened exactly at the time fixed in the public notice for opening bids, a bid shall not be received after that time.

5080.11. Any bid may be withdrawn at any time prior to the time fixed in the public notice for the opening of bids, but only by written request of the withdrawal of the bid filed with the director. The request shall be signed by the bidder or by an authorized representative. The withdrawal of a bid does not prejudice the right of a bidder to file a new bid prior to the date and time set for the opening of bids.

This section does not authorize the withdrawal of any bid after the time fixed in the public notice for the opening of bids.

5080.12. On the day named in the public notice, the department shall publicly open the sealed bids. The department shall carefully study and analyze all bids and, on or after the 15th day after the bids are opened, may award the concession to the bidder then determined to be the best responsible bidder.

5080.13. If the successful bidder does not sign and deliver the contract within 30 days of receipt thereof and does not provide the state with a bond or other surety and evidence of insurance required thereunder, and on the time limit presented, the department may elect to treat that omission as a refusal to execute the contract. If the director deems it is for the best interests of the state, he or she may,

on the refusal or failure of the successful bidder to execute the contract, award it to the second best responsible bidder.

If the second best responsible bidder fails or refuses to execute the contract, the director may likewise award it to the third best responsible bidder.

5080.14. If the director deems that the acceptance of any bid is not for the best interests of the state, he or she may reject all bids.

5080.15. A bidder shall not be relieved of his or her bid and no change shall be made in his or her bid because of mistakes.

5080.16. If the director deems it is for the best interests of the state, he or she may, upon giving notice to the State Park and Recreation Commission, negotiate or renegotiate a contract, including terms and conditions, when one or more of the following conditions exist:

(a) The bid process as prescribed in this article has failed to produce a best responsible bidder.

(b) The negotiation or renegotiation would constitute an extension of an existing contract obtained through the process required by this article and the extended contract would provide for substantial and additional concession facilities, which would be constructed at the sole expense of the concessionaire and which are set forth in the general plan for the unit and are needed to accommodate existing or projected increased public usage.

(c) Lands in the state park system administered by the department and lands under the legal control of the prospective concessionaire are so situated that the concession is dependent upon the use of such public and private lands for the physical or economic success, or both, of the concession.

(d) Whenever a concession is desired for particular interpretive purposes in a unit of the state park system and the prospective concessionaire possesses special knowledge, experience, skills, or ability appropriate to the particular interpretive purposes.

5080.17. (a) Every contract awarded pursuant to the bidding requirements of this article or negotiated or renegotiated pursuant to Section 5080.16 shall be submitted to the Attorney General for approval for legal sufficiency and to the Director of General Services for approval, including, specifically, approval of the terms of the contract relating to rent and duration of the concession in light of market conditions prevailing in the area in which the concession is to be let. The contract is not binding on the state until approved by the Attorney General and the Director of General Services.

(b) Notwithstanding Section 11005.2 of the Government Code and subdivision (a) of this section, the approval of a contract by the Director of General Services shall not be required unless the contract authorizes occupancy of a unit of the state park system for a period of more than one year.

5080.18. All contracts entered into pursuant to this article shall contain at least all of the following provisions:

(a) The maximum term shall be five years, except that a term of

more than five years may be provided if the director determines that the longer term is necessary to allow the concessionaire to amortize improvements made by the concessionaire, to facilitate the full utilization of a structure that is scheduled by the department for replacement or redevelopment, or to serve the best interests of the state. In no event, however, may the term exceed 20 years without specific authorization by statute.

(b) Every concessionaire shall submit to the department all sales and use tax returns.

(c) Every concession shall be subject to audit by the department.

(d) A performance bond shall be obtained and maintained by the concessionaire. In lieu of a bond, the concessionaire may substitute a deposit of funds acceptable to the department. Interest on the deposit shall accrue to the concessionaire.

(e) A policy of liability insurance, in an amount adequate for the nature and extent of public usage of the concession and naming the state as an additional insured, shall be obtained and maintained in force at all times.

(f) Any discrimination by the concessionaire or his agents or employees against any person because of the race, color, religion, sex, marital status, national origin, or ancestry of that person is prohibited.

(g) To be effective, any modification of the contract shall be evidenced by a writing.

(h) Whenever a contract is terminated for substantial breach, there shall be no obligation on the part of the state to purchase any improvements made by the concessionaire.

5080.19. (a) In order to assure the best possible return to the state from concessions, the department shall periodically survey, and obtain advice and information from professional property managers regarding, the commercial rental market for public and private properties in areas where concessions exist or are expected to be authorized and compile information therefrom and shall use that information for the purposes of Section 5080.06 and subdivision (b) of this section.

(b) Rent and other returns received by the department pursuant to contracts entered into pursuant to this article shall reflect current commercial rental market conditions, except in instances when the director has determined that a particular service or facility needs to be furnished to the public and that service or facility cannot be furnished except at less than a fair market value rate of return to the state.

(c) Rental terms of concessions that operate seasonally shall reflect the seasonal characteristics of those concessions.

(d) Rent shall be paid on the basis of the higher of a flat monthly amount or a percentage of gross sales, except in those instances in which part of the compensation paid by a concessionaire consists of the value assigned to services performed by the concessionaire on behalf of the department and those services are of a type normally

performed by departmental personnel.

5080.20. No contract, including a contract entered into on lands operated pursuant to an agreement entered into under Article 2 (commencing with Section 5080.30), which is expected to involve a total investment or estimated annual gross sales in excess of one hundred thousand dollars ($100,000), may be advertised for bid, negotiated, renegotiated, or amended in any material respect unless and until all of the following requirements have been complied with:

(a) The commission has reviewed the proposed services, facilities, and location of the concession and determined that they meet the requirements of Sections 5001.9 and 5080.03 and are compatible with the classification of the unit in which the concession will be operated.

(b) The Legislature has reviewed and approved the proposed concession as part of the annual budget process or the requirements of subdivision (c) have been complied with.

(c) Following enactment of the Budget Bill, the board has determined that the proposed concession could not have been presented to the Legislature for review and approval in the course of its consideration of the Budget Bill and that it would be adverse to the interests of the state to defer that review and approval to a time when the Legislature next considers a Budget Bill. Upon making that determination, the board may review and approve the proposed concession after giving at least 20 days' written notice to the Chairman of the Joint Legislative Budget Committee and to the chairmen of the fiscal and appropriate policy committees of its intended action. All actions taken by the board pursuant to this subdivision shall be reported to the Legislature in the next Governor's Budget.

(d) The proposed concession is accompanied with documentation sufficient to enable the Legislature, the commission, and the board, as the case may be, to ascertain whether the concession will conform to the requirements of this article and, as to the Legislature and the board, to evaluate fully all terms on which the concession is proposed to be let, including the rent and other returns anticipated to be received.

5080.21. The department shall include in its annual statement on the concessions program a section setting forth all new concessions entered into during the preceding fiscal year, the terms of each contract, and the terms on which each concession was advertised for bid.

Article 2. Operating Agreements with Other Public Agencies

5080.30. Agreements may be entered into between the department and any agency of the United States, any city, county, district, or other public agency, or any combination thereof, for the care, maintenance, administration, and control by any party to the agreement, of lands under the jurisdiction of any party to the agreement for the purpose of the state park system. The expenses of

the care, maintenance, administration, and control may be paid from the general fund of the city, county, district, or other public agency, from the funds of the department, from any funds available to the agency of the United States for these purposes, as the case may be, or from revenues generated on the lands subject to the agreement.

5080.31. (a) The general plan for a unit of the state park system that is the subject of an agreement entered into pursuant to this article shall, in addition to the requirements set forth in Section 5002.2, specifically evaluate and define the manner in which the unit is proposed to be operated. The general plan shall be reviewed by the commission for a determination that the unit will be operated in a manner that generally meets the standards followed by the department in its operation of similar units, that enhances the general public use and enjoyment of, and recreational and educational experiences at, the unit, and that provides for the satisfactory management of park resources.

(b) The general plan for a unit that is the subject of an agreement entered into pursuant to this article may be prepared either by the department or by the public agency that is to operate the unit pursuant to the agreement.

5080.32. All revenues received from lands subject to an agreement entered into pursuant to this article shall be expended only for the care, maintenance, operation, administration, improvement, or development of the unit of the state park system in which the lands from which the revenues were derived are located and any recreational trail providing access to those lands. This section applies to all agreements in force on January 1, 1983, and any agreement that may subsequently be entered into.

5080.33. A concession may be authorized on lands subject to an agreement entered into pursuant to this article, so long as the public agency complies with public bidding procedures that provide for at least the same degree of participation and competition as the procedures established by Article 1 (commencing with Section 5080.01). No concession may be advertised for bid unless and until the director has approved in writing the terms on which the concession is proposed to be let.

5080.34. Every agreement entered into pursuant to this article and every contract for a concession on lands that are subject to an agreement entered into pursuant to this article shall expressly prohibit discrimination against any person because of the race, color, religion, sex, marital status, national origin, or ancestry of that person.

5080.35. Whenever the department intends to enter into an operating agreement pursuant to this article with respect to a unit of the state park system, the department shall notify each Member of the Legislature in whose district that unit is located of its intention.

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 that urgently needed reforms in policies regarding concession contracts and operating agreements in the state park system may be enacted at the earliest possible time, it is necessary that this act take effect immediately.

CHAPTER 1488

An act to amend Sections 66780, 66796.32, and 66796.34 of, to amend and renumber Section 66780 of, and to add Sections 66714.9, 66784.1, 66784.3, and 66794.5 to, the Government Code, relating to waste.

[Approved by Governor September 27, 1982. Filed with Secretary of State September 28, 1982.]

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

SECTION 1. Section 66714.9 is added to the Government Code, to read:

"Implementation schedule" means a schedule which indicates approximate dates for the orderly, timely implementation of plan policies and programs, and includes approximate dates for the establishment, expansion, and closure of a site for any solid waste facility identified and reserved in the plan.

SEC. 2. Section 66780 of the Government Code is amended to read:

66780. (a) Each county, in cooperation with affected local jurisdictions, shall prepare, subject to the approval of the plan by a majority of the cities within the county which contain a majority of the population of the incorporated area of the county, a comprehensive, coordinated solid waste management plan, consistent with state policy and any appropriate regional or subregional solid waste management plan, for all waste disposal within the county and for all waste originating therein which is to be disposed of outside such county. Each solid waste management plan shall be submitted for review and comments to the regional planning agency for the region prior to submission to the board. Any county, with the agreement of a majority of the cities within the county which contain a majority of the population of the incorporated area of the county, may transfer the responsibility for the preparation of the solid waste management plan to the regional planning agency for the region. Each plan shall include an implementation schedule, as defined in Section 66714.9, no later than July 1, 1984. Each plan shall also include an analysis of the economic feasibility of the plan. Where appropriate the plans may include elements providing for subregional solid waste management covering more than one county or parts thereof. The plans shall not supersede plans of any local jurisdiction unless there is agreement by all parties concerned.

(b) On or before January 1, 1989, the board shall review, after

consultation with local officials, the adoption, application, and cost of the implementation schedules required by subdivision (a), and report its findings to the Legislature.

SEC. 2.5. Section 66780 of the Government Code is amended and renumbered to read:

66780.1. (a) Each county, in cooperation with affected local jurisdictions, shall prepare, subject to the approval of the plan by a majority of the cities within the county which contain a majority of the population of the incorporated area of the county, a comprehensive, coordinated solid waste management plan, consistent with state policy and any appropriate regional or subregional solid waste management plan, for all waste disposal within the county and for all waste originating therein which is to be disposed of outside of the county. Each solid waste management plan shall be submitted for review and comments to the regional planning agency for the region prior to submission to the board. Any county, with the agreement of a majority of the cities within the county which contain a majority of the population of the incorporated area of the county, may transfer the responsibility for the preparation of the solid waste management plan to the regional planning agency for the region. Each plan shall include an implementation schedule, as defined in Section 66714.9, no later than July 1, 1984. Each plan shall also include an analysis of the economic feasibility of the plan. Where appropriate, the plan may include elements providing for subregional solid waste management covering more than one county or parts thereof. The plan shall not supersede plans of any local jurisdiction unless there is agreement by all parties concerned.

(b) On or before January 1, 1989, the board shall review, after consultation with local officials, the adoption, application and cost of the implementation schedules required by subdivision (a) and report its findings to the Legislature.

SEC. 3. Section 66784.1 is added to the Government Code, to read:

66784.1. (a) The board shall not concur in the issuance of a permit, as provided in subdivision (d) of Section 66796.32, for the establishment or expansion of a site for any solid waste facility unless the city or county in which the site is located makes a finding that the establishment or expansion of the site is consistent with the city's or county's applicable general plan. This finding shall not be made unless the city or county has adopted a general plan which complies with the provisions of Article 5 (commencing with Section 65300) of Chapter 3 of Division 1 of Title 7.

(b) A site for any solid waste facility shall be found to be consistent with the general plan only if both of the following requirements are met:

(1) The site is designated, in the applicable city or county general plan, as a site for any solid waste facility, or as a potential site for a solid waste facility, except that if an area is zoned for the siting of a solid waste facility which is designed to produce an alternative

source of energy through the conversion of solid waste material into energy, synthetic fuels, or reusable materials, the city or county shall deem this area to be in compliance with this requirement for the purposes of siting this type of solid waste facility.

(2) The land uses authorized adjacent to and near the site are compatible with the establishment or expansion of the site.

(c) A city or county shall not authorize land uses adjacent to or near a site for any solid waste facility designated in the applicable city or county general plan if the land uses would restrict or preclude the establishment of a solid waste facility or expansion of the facility or site.

(d) Notwithstanding any other provision of law, a land use permit authorizing the establishment or expansion of a site for any solid waste facility shall not be issued unless the city or county in which the site is located has held a public hearing on this matter pursuant to Section 65355.

(e) Nothing in this section shall limit the authority of a city or county to amend its general plan to remove the designation of a site, or as a potential site, for the establishment or expansion of a solid waste facility.

SEC. 4. Section 66784.3 is added to Government Code, to read:

66784.3. (a) Each county may, upon a majority vote of the board of supervisors, adopt a schedule of fees to be collected from each operator within its jurisdiction, including an operator who operates solely within an incorporated city. The fee shall be established in an amount sufficient to pay only those costs incurred by a county for the preparation, maintenance, and administration of the solid waste management plan required by this chapter, which are reasonable and necessary. A county may also authorize any rate adjustments necessary to carry out the provisions of this subdivision, upon a majority vote of the board of supervisors, and upon the approval by a majority of those cities within the county which contain a majority of the population of the incorporated area of the county. These fees shall not be used to pay any costs incurred for mediation or for the implementation of any recycling or resource recovery program.

(b) A regional planning agency responsible for the preparation of a plan pursuant to Section 66780 may also adopt a schedule of fees to be collected from each operator as provided in subdivision (a). However, in no event, shall an operator be required to pay a fee to both a county and a regional planning agency.

SEC. 5. Section 66794.5 is added to the Government Code, to read:

66794.5. (a) The Legislature hereby finds and declares all of the following:

(1) California is rapidly losing its ability to safely and economically manage the 46 to 50 million tons of solid waste it generates each year.

(2) Approximately one-half of this amount, or 23 million tons of solid waste is destined for sanitary landfills.

(3) One-third of the state's total landfill capacity will be consumed

in the next two years, and approximately 40 percent will be lost by 1985.

(4) Expansion of existing landfills, and the establishment of new ones, in close proximity to waste generation sources is becoming increasingly difficult due to local citizen opposition.

(5) Mediation, a voluntary approach to decisionmaking using an impartial third party, has been shown to be an effective tool in resolving landfill siting controversies.

(b) As its budgetary resources permit, the board shall encourage all parties to a landfill siting controversy to enlist the services of an impartial third party mediator to resolve the controversy in a timely and orderly manner. The board may also provide lists of mediators and other relevant information to the parties upon request.

SEC. 6. Section 66796.32 of the Government Code is amended to read:

66796.32. (a) Upon receipt of an application or report required by Section 66796.30, the enforcement agency shall submit a copy of such application or report to the board within seven days.

(b) The enforcement agency shall not issue, modify, or revise a solid waste facilities permit unless it has, at least 45 days in advance, provided the board and the applicant with a copy of the proposed permit, which shall contain the terms and conditions the enforcement agency proposes to establish and unless the city or county in which the site is located has issued a land use permit authorizing the establishment or expansion of the site.

(c) A decision to issue or not issue the permit shall be made by the enforcement agency within 120 days of the time application is filed unless waived by the applicant.

(d) The board shall, in writing, concur or object to the issuance, modification, or revision of any solid waste facilities permit within 40 days of the board's receipt of any proposed solid waste facilities permit submitted under subdivision (b). If the board determines that the permit would not be consistent with the county solid waste management plan or the state standards, it shall object to provisions of the permit, and shall submit such objections to the enforcement agency for its consideration. If the board fails to concur or object in writing within such 40 days it shall be deemed to have concurred in the issuance of the permit as submitted to it.

SEC. 7. Section 66796.34 of the Government Code is amended to read:

66796.34. (a) Upon compliance with the provisions of Section 66796.32 and after any necessary hearing, the enforcement agency may issue, modify, or revise a solid waste facilities permit if the board has concurred in the permit and if the enforcement agency makes the following findings based on substantial evidence:

(1) The proposed solid waste facilities permit is consistent with the county solid waste management plan prepared under Section 66780.

(2) The proposed solid waste facilities permit is consistent with

the standards adopted by the board.

(3) The proposed solid waste facilities permit is consistent with the applicable city or county general plan required by Article 5 (commencing with Section 65300) of Chapter 3 of Division 1 of Title 7.

(b) The permit shall contain all terms and conditions which the enforcement agency determines to be appropriate for the operation of the solid waste facility. The operator shall comply with all terms and conditions of the permit.

(c) Within 15 days of issuing, modifying, or revising a solid waste facilities permit, the enforcement agency shall transmit to the disposal site owner and the person who is or proposes to become an operator of a transfer/processing station or a disposal site, or both, a copy of the solid waste facilities permit.

SEC. 8. No appropriation is made and no reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution or Section 2231 or 2234 of the Revenue and Taxation Code because the local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the program or level of service mandated by this act.

SEC. 9. It is the intent of the Legislature, if this bill and Assembly Bill 3302 are both chaptered and become effective January 1, 1983, both bills amend Section 66780 of the Government Code, and this bill is chaptered after Assembly Bill 3302, that the amendments to Section 66780 be given effect and incorporated in Section 66780 in the form set forth in Section 2.5 of this act. Therefore, Section 2.5 of this act shall become operative only if this bill and Assembly Bill 3302 are both chaptered and become effective January 1, 1983, both amend Section 66780, and this bill is chaptered after Assembly Bill 3302, in which case Section 2 of this act shall not become operative.

CHAPTER 1489

An act to amend Sections 51113, 51113.5, 51114, 51115, 51116, 51117, 51118, 51119, 51119.5, 51120, 51130, 51131, 51133, 51134, 51142, 51150, 51151, 51152, 51154, 51155, 51230, 51246, and 51282.5 of, to amend and renumber Section 51100 of, to amend the heading of Article 2 (commencing with Section 51110) of Chapter 6.7 of Part 1 of Division 1 of Title 5 of, and to add Sections 51100, 51101, 51102, 51103, 51115.2, and 51115.5 to, the Government Code, to amend Sections 4621.2, 4789.6, and 4795.5 of, and to add Sections 4602.5 and 4602.6 to, the Public Resources Code, and to amend Sections 423.9, 433, 434.5, and 436 of the Revenue and Taxation Code, relating to timber.

[Approved by Governor September 27, 1982. Filed with Secretary of State September 28, 1982.]

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

SECTION 1. Section 51100 of the Government Code is amended and renumbered to read:

51104. As used in this chapter, unless otherwise apparent from the context:

(a) "Board" means the board of supervisors of a county or city and county, whether general law or chartered, which establishes or proposes to establish a timberland production zone pursuant to this chapter.

(b) "Contiguous" means two or more parcels of land that are adjoining or neighboring or are sufficiently near to each other, as determined by the board or council, that they are manageable as a single forest unit.

(c) "Council" means the city council of a city, whether general law or chartered, which establishes or proposes to establish a timberland production zone pursuant to this chapter.

(d) "County" or "city" means the county or city having jurisdiction over the land.

(e) "Timber" means trees of any species maintained for eventual harvest for forest products purposes, whether planted or of natural growth, standing or down, on privately or publicly owned land, including Christmas trees, but does not mean nursery stock.

(f) "Timberland" means privately owned land, or land acquired for state forest purposes, which is devoted to and used for growing and harvesting timber, or for growing and harvesting timber and compatible uses, and which is capable of growing an average annual volume of wood fiber of at least 15 cubic feet per acre.

(g) "Timberland production zone" or "TPZ" means an area which has been zoned pursuant to Section 51112 or 51113 and is devoted to and used for growing and harvesting timber, or for growing and harvesting timber and compatible uses, as defined in subdivision (h).

With respect to the general plans of cities and counties, "timberland preserve zone" means "timberland production zone."

(h) "Compatible use" is any use which does not significantly detract from the use of the property for, or inhibit, growing and harvesting timber, and shall include, but not be limited to, any of the following, unless in a specific instance such a use would be contrary to the preceding definition of compatible use:

(1) Management for watershed.

(2) Management for fish and wildlife habitat or hunting and fishing.

(3) A use integrally related to the growing, harvesting and processing of forest products, including but not limited to roads, log landings, and log storage areas.

(4) The erection, construction, alteration, or maintenance of gas, electric, water, or communication transmission facilities.

(5) Grazing.

(6) A residence or other structure necessary for the management of land zoned as timberland production.

(i) "Parcel" means that portion of an assessor's parcel that is timberland, as defined.

(j) "Anniversary date" means the anniversary of the date on which zoning is established pursuant to Section 51112 or 51113 takes effect.

(k) "Tax rate area" means a geographical area in which there is a unique combination of tax levies.

(*l*) "Nonconforming use" means any use within a TPZ which lawfully existed on the effective date of zoning established pursuant to Sections 51112 and 51113, and continuing since that time, which is not a compatible use.

SEC. 2. Section 51100 is added to the Government Code, to read:

51100. This chapter shall be known and may be cited as the California Timberland Productivity Act of 1982.

SEC. 3. Section 51101 is added to the Government Code, to read:

51101. The Legislature hereby finds and declares all of the following:

(a) The forest resources and timberlands of this state, together with the forest products industry, contribute substantially to the health and stability of the state's economy and environment by providing high quality timber, employment opportunities, resource protection, and aesthetic enjoyment.

(b) The state's increasing population threatens to erode the timberland base and diminish forest resource productivity through pressures to divert timberland to urban and other uses and through pressures to restrict or prohibit timber operations when viewed as being in conflict with nontimberland uses.

(c) A continued and predictable commitment of timberland, and of investment capital, for the growing and harvesting of timber are necessary to ensure the long term productivity of the forest resource and the long term economic viability of the forest products industry.

SEC. 4. Section 51102 is added to the Government Code, to read:

51102. (a) The Legislature further declares that in order to fully realize the productive potential of the forest resources and timberlands of the state, and to provide a favorable climate for long-term investment in forest resources, it is the policy of this state to do all of the following:

(1) Maintain the optimum amount of the limited supply of timberland so as to ensure its current and continued availability for the growing and harvesting of timber and compatible uses.

(2) Discourage premature or unnecessary conversion of timberland to urban and other uses.

(3) Discourage expansion of urban services into timberland.

(4) Encourage investment in timberlands based on reasonable expectation of harvest.

(b) The Legislature further declares that it is the policy of this state that timber operations conducted in a manner consistent with

forest practice rules adopted by the State Board of Forestry shall not be or become restricted or prohibited due to any land use in or around the locality of those operations.

SEC. 5. Section 51103 is added to the Government Code, to read:

51103. It is the intent of the Legislature to implement the policies of this chapter by including all qualifying timberland in timberland production zones.

SEC. 5.5. The heading of Article 2 (commencing with Section 51110) of Chapter 6.7 of Part 1 of Division 1 of Title 5 of the Government Code is amended to read:

Article 2. Timberland Production Zones

SEC. 6. Section 51113 of the Government Code is amended to read:

51113. (a) (1) After November 1, 1977, an owner may petition the board or council to zone his or her land as timberland production. The board or council by ordinance, after the advice of the planning commission pursuant to Section 51110.2, and after public hearing, shall zone as timberland production all parcels submitted to it by petition pursuant to this section, which meet all of the criteria adopted pursuant to subdivision (c). Any owner who has so petitioned and whose land is not zoned as timberland production may petition the board or council for a rehearing on the zoning.

(2) This section shall not be construed as limiting the ability of the board or council to zone as timberland production any parcel submitted upon petition, which is timberland, defined pursuant to subdivision (f) of Section 51104, and which is in compliance with the compatible use ordinance adopted by the board or council pursuant to Section 51111.

(b) The board or council, on or before March 1, 1977, by resolution, shall adopt procedures for initiating, filing, and processing petitions for timberland production zoning and for rezoning. The rules shall be applied uniformly throughout the county or city.

(c) On or before March 1, 1977, the board or council by ordinance shall adopt a list of criteria required to be met by parcels being considered for zoning as timberland production under this section. The criteria shall not impose any requirements in addition to those listed in this subdivision and in subdivision (d). The following shall be included in the criteria:

(1) A map shall be prepared showing the legal description or the assessor's parcel number of the property desired to be zoned.

(2) A plan for forest management shall be prepared or approved as to content, for the property by a registered professional forester. The plan shall provide for the eventual harvest of timber within a reasonable period of time, as determined by the preparer of the plan.

(3) The parcel shall currently meet the timber stocking standards as set forth in Section 4561 of the Public Resources Code and the forest practice rules adopted by the State Board of Forestry for the

district in which the parcel is located, or the owner must sign an agreement with the board or council to meet those stocking standards and forest practice rules by the fifth anniversary of the signing of the agreement. If the parcel is subsequently zoned as timberland production under subdivision (a), then failure to meet the stocking standards and forest practice rules within this time period provides the board or council with a ground for rezoning of the parcel pursuant to Section 51121.

Upon the fifth anniversary of the signing of an agreement, the board shall determine whether the parcel meets the timber stocking standards in effect on the date the agreement was signed. Notwithstanding the provisions of Article 4 (commencing with Section 51130), if the parcel fails to meet the timber stocking standards, the board or council shall immediately rezone the parcel and specify a new zone for the parcel which is in conformance with the county general plan and whose primary use is other than timberland;

(4) The parcel shall be timberland, as defined in subdivision (f) of Section 51104; and

(5) The parcel shall be in compliance with the compatible use ordinance adopted by the board or council pursuant to Section 51111.

(d) The criteria required by subdivision (c) may also include any or all of the following:

(1) The land area concerned shall be in the ownership of one person, as defined in Section 38106 of the Revenue and Taxation Code, and shall be comprised of single or contiguous parcels of a certain number of acres, provided, that such number required may not exceed 80 acres.

(2) The land shall be a certain site quality class or higher under Section 434 of the Revenue and Taxation Code; provided, that the parcel shall not be required to be of the two highest site quality classes.

SEC. 7. Section 51113.5 of the Government Code is amended to read:

51113.5. (a) After March 1, 1977, an owner with timberlands in a timberland production zone pursuant to Section 51112 or 51113 may petition the board or council to add to his or her timberland production lands that meet the criteria of subdivisions (f) and (g) of Section 51104 and that are contiguous to the timberland already zoned as timberland production. Section 51113 shall not apply to these lands.

(b) In the event of land exchanges with, or acquisitions from, a public agency in which the size of an owner's parcel or parcels zoned as timberland production pursuant to Section 51112 or 51113 is reduced, the timberland production shall not be removed from the parcel except pursuant to Section 51121 and except for a cause other than the smaller parcel size.

SEC. 8. Section 51114 of the Government Code is amended to read:

51114. Parcels zoned as timberland production shall be zoned as such for an initial term of 10 years. On the first and each subsequent anniversary date of the initial zoning, a year shall be added to the initial term of 10 years, unless a notice of rezoning is given as provided in Section 51120.

SEC. 9. Section 51115 of the Government Code is amended to read:

51115. Parcels zoned as timberland production shall be zoned so as to restrict their use to growing and harvesting timber and to compatible uses and shall be entered as a timber production element of the county general plan.

SEC. 10. Section 51115.2 is added to the Government Code, to read:

51115.2. (a) Changes or additions to any nonconforming use shall be limited to ordinary maintenance and repair, except that no change or addition which enlarges or tends to make more permanent any nonconforming use shall be permitted.

(b) If any nonconforming use ceases for a period of one year or more, use subsequent to the cessation shall comply with this chapter.

SEC. 11. Section 51115.5 is added to the Government Code, to read:

51115.5. (a) Notwithstanding any other provision of law, timber operations conducted within a timber production zone pursuant to the provisions of the Z'berg-Nejedly Forest Practice Act of 1973 (Chapter 8 (commencing with Section 4511) of Division 4 of the Public Resources Code) shall not constitute a nuisance, private or public.

(b) This section is not applicable with respect to any timber operation which (1) endangers public health or public safety or (2) prohibits the free passage or use of any navigable lake, river, bay, stream, canal, or basin, or any public park, street, or highway.

(c) For purposes of this section, the term "timber operation" means the cutting, removal, or both, of timber or other wood forest products, including Christmas trees, from timberlands for commercial purposes, together with all the work incidental thereto, including, but not limited to, construction and maintenance of roads, fuel breaks, fire breaks, stream crossings, landings, skid trails, beds for falling trees, fire hazard abatement, and preparation, transportation, and delivery of timber and other wood products to market.

SEC. 12. Section 51116 of the Government Code is amended to read:

51116. The county or city may bring any action in court necessary to prohibit a use not permitted with respect to land zoned as timberland production, including, but not limited to, an action to enforce the zoning restrictions by specific performance or injunction.

SEC. 13. Section 51117 of the Government Code is amended to read:

51117. When land is zoned as timberland production or

subsequently rezoned from a timberland production zone and after exhaustion of appeals, a notice of timberland production zone status, together with a map and assessor's parcel numbers describing such land, shall be filed for record by the city or county in the recorder's office. The notice and map shall become a part of the official records of the county recorder upon its acceptance by him for filing. The filing for record of a notice of timberland production, together with a map and assessor's parcel numbers describing the land, shall impart constructive notice thereof.

SEC. 14. Section 51118 of the Government Code is amended to read:

51118. Land zoned as timberland production under this chapter shall be enforceably restricted within the meaning of Section 3(j) of Article XIII of the Constitution and the restriction shall be enforced and administered by the city or county in a manner to accomplish the purposes of that section and this chapter.

SEC. 15. Section 51119 of the Government Code is amended to read:

51119. Any action of the board or council undertaken to zone a parcel as timberland production pursuant to Section 51112 or 51113 is exempt from the requirements of Section 21151 of the Public Resources Code.

SEC. 16. Section 51119.5 of the Government Code is amended to read:

51119.5. Parcels zoned as timberland production under this chapter may not be divided into parcels containing less than 160 acres unless the original owner prepares a joint timber management plan prepared or approved as to content by a registered professional forester for the parcels to be created. The joint timber management plan shall provide for the management and harvesting of timber by the original and any subsequent owners, and shall be recorded with the county recorder as a deed restriction on all newly created parcels. The deed restriction shall run with the land rather than with the owners, and shall remain in force for a period of not less than 10 years from the date division is approved by the board or council. The division shall be approved only by a four-fifths vote of the full board or council, and only after recording of the deed restriction.

SEC. 17. Section 51120 of the Government Code is amended to read:

51120. (a) If the owner desires in any year to rezone a parcel from its current timberland production zone, the owner shall give written notice, naming the new zone desired, and shall follow procedures established pursuant to Sections 65854 to 65857, inclusive. Unless the written notice is given at least 90 days prior to the anniversary date of initial zoning, the zoning term shall be deemed extended.

(b) Within 120 days of receipt of the written notice of an owner's desire to rezone a parcel, the board or council, after a public hearing, shall rule on the request for rezoning.

(c) The board or council by a majority vote of the full body may remove the parcel from the timberland production zone and shall specify a new zone for the parcel.

(d) The new zone approved pursuant to subdivision (c) shall become effective 10 years from the date of approval. Upon rezoning the parcel shall be valued pursuant to Section 426 of the Revenue and Taxation Code, in the same manner as if a restriction were terminated as provided for in Section 51091 or 51245.

(e) If the board or council denies the owner's request for change of zone pursuant to subdivision (b), the owner may petition for a rehearing.

SEC. 18. Section 51130 of the Government Code is amended to read:

51130. The purpose of this article is to provide relief from zoning as timberland production pursuant to this chapter only when the continued use of land in the timberland production zone is neither necessary nor desirable to accomplish the purposes of Section 3(j) of Article XIII of the Constitution and of this chapter.

SEC. 19. Section 51131 of the Government Code is amended to read:

51131. A timberland production zone may not be immediately rezoned except pursuant to a request by a landowner, and as provided in this article.

SEC. 20. Section 51133 of the Government Code is amended to read:

51133. (a) If application for conversion is required pursuant to Section 4621 of the Public Resources Code, the board or council may tentatively approve the immediate rezoning after notice and hearing and only if by a four-fifths vote of the full body, and:

(1) A public hearing is held with notice of the hearing being given to all owners of lands situated within one mile of the exterior boundary of the land upon which immediate rezoning is proposed.

(2) The board or council makes written findings that immediate rezoning is not inconsistent with the purposes of subdivision (j) of Section 3 of Article XIII of the Constitution and of this chapter.

(3) The board or council makes written findings that immediate rezoning is in the public interest.

(b) The board or council shall forward its tentative approval to the State Board of Forestry, together with the application for immediate rezoning, a summary of the public hearing and any other information required by the State Board of Forestry. The State Board of Forestry shall consider the tentative approval pursuant to Section 4621.2 of the Public Resources Code. Final approval to an immediate rezoning is given only if the State Board of Forestry has approved conversion pursuant to Section 4621.2 of the Public Resources Code. Upon final approval of conversion, the State Board of Forestry shall notify the board or council of the approval, and the board or council shall remove the parcel from the timberland production zone and shall specify a new zone for the parcel.

SEC. 21. Section 51134 of the Government Code is amended to read:

51134. (a) If an application for conversion is not required pursuant to Section 4621 of the Public Resources Code, the board or council may approve the immediate rezoning request only if by a four-fifths vote of the full board or council it makes written findings that all of the following exist:

(1) The immediate rezoning would be in the public interest.

(2) The immediate rezoning does not have a substantial and unmitigated adverse effect upon the continued timber-growing use or open-space use of other land zoned as timberland production and situated within one mile of the exterior boundary of the land upon which immediate rezoning is proposed.

(3) The soils, slopes, and watershed conditions will be suitable for the uses proposed by the applicant if the immediate rezoning is approved.

(4) The immediate rezoning is not inconsistent with the purposes of subdivision (j) of Section 3 of Article XIII of the Constitution and of this chapter.

(b) The existence of an opportunity for an alternative use of the land shall not alone be sufficient reason for granting a request for immediate rezoning pursuant to this section. Immediate rezoning shall be considered only if there is no proximate and suitable land which is not zoned as timberland production for the alternate use not permitted within a timberland production zone.

(c) The uneconomic character of the existing use shall not be sufficient reason for the approval of immediate rezoning pursuant to this section. The uneconomic character of the existing use may be considered only if there is no other reasonable or comparable timber-growing use to which the land may be put.

(d) Immediate rezoning action shall comply with all the applicable provisions of state law and local ordinances.

(e) The county or city may require the payment of a fee by the landowner for the cost of processing the application and recording the necessary documentation.

SEC. 22. Section 51142 of the Government Code is amended to read:

51142. (a) Upon immediate rezoning of a parcel in a timberland production zone, a tax recoupment fee shall be imposed on the owner of the land. Within 90 days following rezoning of land in the timberland production zone the county assessor shall reassess the rezoned parcels on the basis of the value of the property in its rezoned use. The assessor shall certify this value to the owner of the land and to the county auditor. The owner may appeal this new valuation in the same manner as an assessment appeal. Except when under such an appeal, after the certification the auditor shall, in cases of immediate rezoning, within 10 days compute the tax recoupment fee and certify the amount to the tax collector. The tax collector shall notify the owner in writing of the amount and due date of the fee.

Fees shall be due 60 days after receipt of notification.

(b) The tax recoupment fee shall apply only in cases of immediate rezoning and shall be a multiple of the difference between the amount of the tax last levied against the property when zoned as timberland production and the amount equal to the assessed valuation of the rezoned property times the tax rate of the current levy for the tax rate area, that multiple to be chosen from the following table according to subdivision (c):

Year	*Multiple*
1	1.06000
2	2.18360
3	3.37462
4	4.63709
5	5.97332
6	7.39384
7	8.89747
8	10.49132
9	12.18080
10	13.97164

(c) The multiple shall correspond to the number of years or fraction thereof, but in no event greater than 10, for which the land was zoned as timberland production or was subject to a contract under chapter 7 (commencing with Section 51200).

(d) Tax recoupment fees imposed pursuant to this section shall be due and payable to the State of California, and shall be placed in the Timber Tax Fund pursuant to Section 38903 of the Revenue and Taxation Code.

(e) In cases of immediate rezoning, an owner may make written application to the State Board of Equalization requesting waiver of tax recoupment fees and explaining the reasons therefor. The board, if it determines that it is in the public interest, may waive all or any portion of the fee.

SEC. 23. Section 51150 of the Government Code is amended to read:

51150. It is the policy of the state to avoid, whenever practicable, the location of any state or local public improvements and any improvements of public utilities, and the acquisition of land therefor, in timberland production zones.

SEC. 24. Section 51151 of the Government Code is amended to read:

51151. (a) As used in this section, Section 51152, and Section 51155, "public agency" means the state, or any department or agency thereof, and any county, city, school district, or other local public district, agency, or entity; and "person" means any person authorized to acquire property by eminent domain.

(b) Whenever it appears that land within a timberland production zone (TPZ) may be required by a public agency or

person for a public use, the public agency or person shall advise the Secretary of Resources and the local governing body responsible for the administration of the land of the intention to consider the location of a public improvement within the TPZ.

Within 30 days thereafter the Secretary of Resources and the local governing body shall forward to the public agency or person concerned their comments with respect to the effect of the location of the public improvement on the land within the TPZ and those comments shall be considered by the public agency or person. Failure of any public agency or person to comply with the requirements of this section shall invalidate any action by the agency or person to locate a public improvement within a TPZ. This subdivision does not apply to the erection, construction, alteration or maintenance of gas, electric, water, or communication transmission facilities within a TPZ if that TPZ was established after submission of the location of the facilities to the city or county for review or approval.

SEC. 25. Section 51152 of the Government Code is amended to read:

51152. (a) No public agency or person shall locate a public improvement within a timberland production zone (TPZ) based primarily on a consideration of the lower cost of acquiring a land in a TPZ.

(b) No public agency or person shall acquire timberland zoned as timberland production pursuant to this chapter for any public improvement if there is other land within or outside the TPZ on which it is reasonably feasible to locate the public improvement.

SEC. 26. Section 51154 of the Government Code is amended to read:

51154. Section 51152 shall be enforceable only by mandamus proceedings by the local governing body administering the timberland production zone or the Secretary of Resources. However, as applied to condemnors whose determination of necessity is not conclusive by statute, evidence as to the compliance of the condemnor with Section 51152 shall be admissible on motion of any of the parties in any action otherwise authorized to be brought by the landowner or in any action against him.

SEC. 27. Section 51155 of the Government Code is amended to read:

51155. When any action in eminent domain for the condemnation of the fee title of an entire parcel of land zoned as timberland production is filed or when such land is acquired in lieu of eminent domain for a public agency or person or whenever there is any such action or acquisition by the federal government or any person, instrumentality or agency acting under authority or power of the federal government, the parcel shall be deemed immediately rezoned (pursuant to Section 51130) as to the land actually being condemned or so acquired as of the date the action is filed and for the purposes of establishing the value of such land, the timberland

production zone (TPZ) shall be deemed never to have existed.

Upon the termination of such a proceeding, the parcel shall be immediately rezoned for all land actually taken or acquired.

When such an action to condemn or acquire less than all of a parcel of land subject to a TPZ is commenced, the parcel shall be deemed immediately rezoned as to the land actually condemned or acquired and shall be disregarded in the valuation process only as to the land actually being taken, unless the remaining land subject to the TPZ will be adversely affected by the condemnation, in which case the value of that damage shall be computed without regard to the TPZ.

When such an action to condemn or acquire an interest which is less than the fee title of an entire parcel or any portion thereof, of land subject to a TPZ is commenced, the parcel shall be deemed immediately rezoned as to such interest and for the purpose of establishing the value of such interest only shall be deemed never to have existed, unless the remaining interests in any of the land subject to the TPZ will be adversely affected, in which case the value of that damage shall be computed without regard to the TPZ.

The land actually taken shall be removed from the TPZ. Under no circumstances shall land be removed that is not actually taken, except that when only a portion of the land or less than a fee interest in the land is taken or acquired, the parcel may be immediately rezoned with respect to the remaining portion or interest upon petition of either party, and pursuant to the provisions of Article 4 (commencing with Section 51130).

For the purposes of this section, a finding by the board or council that no authorized use may be made of the land if the TPZ is continued on the remaining portion or interest in the land may satisfy the requirements of subdivision (a) of Section 51132, subdivisions (a), (b), and (c) of Section 51134, and subdivisions (a), (b), and (c) of Section 4621.2 of the Public Resources Code.

SEC. 28. Section 51230 of the Government Code is amended to read:

51230. Beginning January 1, 1971, any county or city having a general plan, and until December 31, 1970, any county or city, by resolution, and after a public hearing may establish an agricultural preserve. Notice of the hearing shall be published pursuant to Section 6061, and shall include a legal description, or the assessor's parcel number, of the land which is proposed to be included within the preserve. The preserves shall be established for the purpose of defining the boundaries of those areas within which the city or county will be willing to enter into contracts pursuant to this act. An agricultural preserve shall consist of no less than 100 acres; provided, that in order to meet this requirement two or more parcels may be combined if they are contiguous or if they are in common ownership; and further provided, that in order to meet this requirement land zoned as timberland production pursuant to Chapter 6.7 (commencing with Section 51100) may be taken into account.

A county or city may establish agricultural preserves of less than

100 acres if it finds that smaller preserves are necessary due to the unique characteristics of the agricultural enterprises in the area and that the establishment of preserves of less than 100 acres is consistent with the general plan of the county or city.

An agricultural preserve may contain land other than agricultural land, but the use of any land within the preserve and not under contract shall within two years of the effective date of any contract on land within the preserve be restricted by zoning or other suitable means in such a way as not to be incompatible with the agricultural use of the land, the use of which is limited by contract in accordance with this chapter.

Failure on the part of the board or council to restrict the use of land within a preserve but not subject to contract shall not be sufficient reason to cancel or otherwise invalidate a contract.

SEC. 29. Section 51246 of the Government Code is amended to read:

51246. (a) If the county or city or the landowner serves notice of intent in any year not to renew the contract, the existing contract shall remain in effect for the balance of the period remaining since the original execution or the last renewal of the contract, as the case may be.

(b) No city or county shall enter into a new contract or shall renew an existing contract on or after February 28, 1977, with respect to timberland zoned as timberland production. The city or county shall serve notice of its intent not to renew the contract as provided in this section.

(c) In order to meet the minimum acreage requirement of an agricultural preserve pursuant to Section 51230, land formerly within the agricultural preserve which is zoned as timberland production pursuant to Chapter 6.7 (commencing with Section 51100) may be taken into account.

(d) Notwithstanding any other provision of law, commencing with the lien date for the 1977–78 fiscal year all timberland within an existing contract which has been nonrenewed as mandated by this section shall be valued according to Section 423.5 of the Revenue and Taxation Code, succeeding to and including the lien date for the 1981–82 fiscal year. Commencing with the lien date for the 1982–83 fiscal year and on each lien date thereafter, such timberland shall be valued according to Section 434.5 of the Revenue and Taxation Code.

SEC. 30. Section 51282.5 of the Government Code is amended to read:

51282.5. The owner of any land which has been zoned as a timberland production pursuant to Section 51112 or 51113, and that zoning has been recorded as provided in Section 51117, may petition the board or council for cancellation of any contract as to all or part of the land. Upon petition, the board or council shall approve the cancellation of the contract.

The provisions of Section 51283 shall not apply to any cancellation under this section, and no cancellation fee shall be imposed.

SEC. 31. Section 4602.5 is added to the Public Resources Code, to read:

4602.5. (a) This section provides an administrative procedure to suspend timber operations temporarily while judicial remedies are pursued pursuant to this article.

(b) An inspecting forest officer may issue a written timber operations stop order if, upon reasonable cause, the officer determines that a timber operation is being conducted or is about to be conducted in violation of this chapter or of forest practice rules adopted by the board pursuant to this chapter and that the violation or threatened violation would result in imminent and substantial harm to soil, water, or timber resources, or to fish and wildlife habitat. A stop order shall apply only to those acts or omissions that are the proximate cause of the violation or threatened violation. The stop order shall be effective immediately and throughout the next day.

(c) A supervising forest officer may, after an onsite investigation, extend a stop order issued pursuant to subdivision (b) for up to five days, excluding Saturday and Sunday, provided that he or she finds that the original stop order was issued upon reasonable cause. A stop order shall not be issued or extended for the same act or omission more than one time.

(d) Each stop order shall identify the specific act or omission that constitutes the violation or threatened violation, any timber operation that is to be stopped, and any corrective or mitigative actions that may be required.

The department may terminate the stop order if the responsible parties enter into a written agreement with the department assuring that the parties will resume operations in compliance with this chapter and the rules adopted by the board and will correct the violations. The department may require a reasonable cash deposit or bond payable to the department as a condition of compliance with the agreement.

(e) Notice of the issuance of a stop order or an extension of a stop order shall be deemed to have been made to all persons working on a timber operation when a copy of the written order is delivered to the person in charge of operations at the time the order is issued or, if no persons are present at that time, then by posting a copy of the order conspicuously on the yarder or log loading equipment at a currently active landing on the timber operations. If no persons are present at the site of the timber operation when the order is issued, the issuing officer shall deliver a copy of the order to the timber operator either in person or to the operator's address of record prior to the commencement of the next working day.

(f) As used in this section, "forest officer" means a registered professional forester employed by the department in a civil service classification of forester II or higher grade.

(g) Failure of the timber operator or an employee of the timber operator, after receiving notice, to comply with a stop order is a

violation of this chapter and is punishable as provided in Section 4601; provided, however, that in all cases the timber operator, and not another person or the employee, shall be charged with this violation.

In determining the penalty for any timber operator found guilty of violating a validly issued stop order, the court shall take into consideration all relevant circumstances, including, but not limited to, the following:

(1) The extent of harm to soil, water, or timber resources or to fish and wildlife habitat.

(2) Corrective action, if any, taken by the defendant.

Each day or portion thereof that the violation continues shall constitute a new and separate offense.

(h) Nothing in this section shall prevent a timber operator from seeking an alternative writ as prescribed in Chapter 2 (commencing with Section 1084) of Title 1 of Part 3 of the Code of Civil Procedure, or as provided by any other provision of law.

SEC. 31.5. Section 4602.6 is added to the Public Resources Code, to read:

4602.6. If a timber operator believes that a forest officer lacked reasonable cause to issue or extend a stop order pursuant to Section 4602.5, the timber operator may present a claim to the State Board of Control pursuant to Part 3 (commencing with Section 900) of Title 1 of the Government Code for compensation and damages resulting from the stopping of timber operations.

If the board finds that the forest officer lacked reasonable cause to issue or extend the stop order, the board shall award a sum of not less than one hundred dollars ($100) nor more than one thousand dollars ($1,000) per day for each day the order was in effect.

SEC. 32. Section 4621.2 of the Public Resources Code is amended to read:

4621.2. (a) If the timberlands which are to be devoted to uses other than the growing of timber are zoned as timberland production zones under Section 51112 or 51113 of the Government Code, the application shall specify the proposed alternate use and shall include information the board determines necessary to evaluate the proposed alternate use. The board shall approve the application for conversion only if the board makes written findings that all of the following exist:

(1) The conversion would be in the public interest.

(2) The conversion would not have a substantial and unmitigated adverse effect upon the continued timber-growing use or open-space use of other land zoned as timberland preserve and situated within one mile of the exterior boundary of the land upon which immediate rezoning is proposed.

(3) The soils, slopes, and watershed conditions would be suitable for the uses proposed if the conversion were approved.

(b) The existence of an opportunity for an alternative use of the land shall not alone be sufficient reason for conditionally approving

an application for conversion. Conversion shall be considered only if there is no proximate and suitable land which is not zoned as timberland production for the alternate use not permitted within a timberland production zone.

(c) The uneconomic character of the existing use shall not be sufficient reason for the conditional approval of conversion. The uneconomic character of the existing use may be considered only if there is no other reasonable or comparable timber-growing use to which the land may be put.

(d) The board shall establish and publish a rate schedule of fees to be paid by the landowner for the cost of processing the application and recording the necessary documentation.

(e) In the event that the board delegates its responsibilities under this section to the director pursuant to Section 4627, the director shall make the written findings required by subdivision (a). In the event that the director denies a conversion, the applicant may request a hearing before the board within 15 days of the denial. The hearing shall be scheduled within 60 days from the filing of the appeal.

SEC. 33. Section 4789.6 of the Public Resources Code is amended to read:

4789.6. (a) The board, assisted by the director, shall biennially determine state needs for forest management research and recommend the conduct of needed projects to the Governor and the Legislature.

(b) To facilitate reporting and updating the assessment pursuant to Section 4789.3, the director, under guidance by the board, may prepare and implement a forest resource management information storage and retrieval program regarding forest land conditions in the state. Such program shall be coordinated and integrated to the maximum extent practicable with data storage and retrieval programs of other state and federal agencies and institutions. The director shall review existing forest resource management storage, retrieval, and analysis systems in the institutions of higher learning in this state, and insofar as the board deems desirable, may utilize such systems as a model for the state program established pursuant to this section.

(c) The director shall, as budgetary resources permit, develop a cost-effective and statistically valid system to periodically monitor the extent to which timberland is, or is becoming, less available for the growing and harvesting of timber due to zoning, onsite development, adjacent land uses, ownership patterns, parcel size, or any other factors.

SEC. 34. Section 4795.5 of the Public Resources Code is amended to read:

4795.5. A forest landowner who has entered into an undue hardship agreement with the Controller for the payment of inheritance taxes pursuant to Section 14143.5 of the Revenue and Taxation Code may apply annually to the director for a grant in the amount of 50 percent of the interest due on the annual installment

paid in the current calendar year. To be eligible for such a grant the forest landowner must show that his or her forest land is subject to either:

(a) The provisions of a timberland production zone, pursuant to Chapter 6.7 (commencing with Section 51100) of Part 1 of Division 1 of Title 5 of the Government Code; provided, that no petition is under consideration while the grant is being administered for rezoning pursuant to Section 51120 of the Government Code or immediate rezoning pursuant to Section 51130 of the Government Code.

(b) A contract pursuant to paragraph (2) of subdivision (e) of Section 4797.

The annual installment must be paid on or before the anniversary date of the first installment payment, or the eligible landowner shall be disqualified from receiving a grant pursuant to this section. The eligible landowner shall apply to the director subsequent to the current calendar year, in such form as the director may prescribe, and shall include proof of agreement with the Controller pursuant to Section 14143.5 of the Revenue and Taxation Code, proof of payment of the current calendar year's annual installment of inheritance taxes, and the amount of the installment payment which constituted interest. An eligible landowner who meets the requirements of this subdivision shall be deemed as having submitted an approved application. Within 60 days after receipt of an approved application, the director shall send to the eligible landowner by certified mail a check in the appropriate amount.

SEC. 35. Section 423.9 of the Revenue and Taxation Code is amended to read:

423.9. Land which is zoned as timberland production pursuant to Chapter 6.7 (commencing with Section 51100) of Part 1 of Division 1 of Title 5 of the Government Code and which is not under an open-space contract pursuant to Section 51240 of the Government Code shall be valued pursuant to Section 435.

SEC. 36. Section 433 of the Revenue and Taxation Code is amended to read:

433. When land is zoned as timberland production a notation of such zoning shall be made on the assessment rolls by the words "Timberland Production Zone" or the initials "T.P.Z."

SEC. 37. Section 434.5 of the Revenue and Taxation Code is amended to read:

434.5. (a) On March 1, 1977, and March 1 of each year thereafter, up to and including March 1, 1979, timberland shall be valued per acre according to the following schedule:

Redwood region		Pine-mixed conifer region	
Site I	$80	Site I	$60
Site II	$60	Site II	$50
Site III	$50	Site III	$40
Site IV	$30	Site IV	$30

Site V (and inoperable)	$20	Site V (and inoperable)	$20

When the assessor, pursuant to Section 434, designates a timberland parcel or portion thereof as inoperable, the timberland parcel, or portion thereof, shall be valued as if it is Site V.

(b) On or before January 1, 1980, and every third year thereafter, the board after consultation with the timber advisory committee and in compliance with procedures set forth for adoption of rules under the Administrative Procedure Act, shall adopt schedules reestablishing the value of each grade of timberland graded pursuant to Section 434 as if it were bare of forest growth, and recognizing that the restricted use of the land is for growing and harvesting timber and compatible uses. The board shall certify those values to county assessors by January 10 of each year. The schedule shall remain in effect until subsequent revision pursuant to this subdivision.

(c) Commencing January 1, 1977, the board shall collect such data as may be necessary to accurately value timberland pursuant to subdivision (b).

(d) In promulgating regulations pursuant to subdivision (b) the board shall determine the value of such timberland subject to the following:

(1) The board shall base the value of the land upon the existence of a 10-year enforceable restriction using commonly accepted systems of valuation.

(2) When the board is valuing timberland property within a timberland production zone by comparison with sales of other timberland properties in order to be considered comparable, the properties sold shall be at least 160 acres in size and shall be similarly restricted under a timberland production zone. Size and any discount for size and amenities shall not be factors in determining the value of land zoned as timberland production which is valued by a method employing the use of comparable sales.

(e) For purposes of this section, the value of each acre of timberland within each site class, within a timberland production zone, shall be presumed no greater than the value derived pursuant to subdivision (f).

(f) The board shall:

(1) Prepare, or cause to be prepared, timberland site capability tables which shall prescribe by site classification the potential annual yield of wood by species or mixture of species per acre.

(2) Multiply the potential annual yield by 10 percent.

(3) Multiply the result of paragraph (2) by an immediate harvest value, averaged for the previous 20 quarters, that is appropriate for the geographical area wherein the timberland values shall be applied.

(4) Divide the result of paragraph (3) by a capitalization rate of 10 percent expressed as a decimal.

Pursuant to paragraph (2), the Legislature declares that 10

percent is the average percent of income from potential annual yield of wood that can be attributed to timberland as a productive component contributing to that income, and the Legislature finds that it is in the public interest that values derived from analysis of sales of timberland restricted under timberland production zones shall not exceed this percentage.

(g) For the purposes of this section, the value of each acre of timberland within a timberland production zone shall be presumed to be no less than twenty dollars ($20) per acre.

(h) For the purposes of this section, the term "value" (and its derivatives) means "full value" as defined in Section 110.5.

(i) The Legislature finds and declares that the foregoing values are consistent with the taxation of timberland used primarily for growing timber and that these values are consistent with the intent of subdivision (j) of Section 3 of Article XIII of the Constitution.

SEC. 38. Section 436 of the Revenue and Taxation Code is amended to read:

436. On the lien date for the 1977–78 fiscal year and thereafter, all timber on both privately and publicly owned lands shall be exempt from property taxation, including possessory interest taxation, and shall not be assessed for taxation purposes. Nothing herein shall preclude the assessment of trees standing on land not zoned as timberland production under this article for purposes of property taxation based on their aesthetic or amenity value.

SEC. 39. No appropriation is made and no reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution or Section 2231 or 2234 of the Revenue and Taxation Code because the only costs which may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, changes the definition of a crime or infraction, changes the penalty for a crime or infraction, or eliminates a crime or infraction.

CHAPTER 1490

An act to amend Sections 1570.2, 1572, 1572.5, 1572.7, 1572.9, 1575.5, 1575.9, 1576, 1576.2, 1580.5, and 1585.2 of, and to add Section 1574.5 to, the Health and Safety Code, and to amend Sections 14521, 14529, 14530, 14552, 14571, 14573, 14575, and 14577 of the Welfare and Institutions Code, and to repeal Section 7 of Chapter 1066 of the Statutes of 1977, relating to health services.

[Approved by Governor September 27, 1982. Filed with Secretary of State September 28, 1982.]

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

SECTION 1. Section 1570.2 of the Health and Safety Code is amended to read:

1570.2. The Legislature hereby finds and declares that there exists a pattern of overutilization of long-term institutional care for the elderly and that there is an urgent need to establish and to continue a community-based system of quality adult day health care which will enable older persons with medical or psychiatric impairments to maintain maximum independence. While recognizing that there continues to be a substantial need for facilities providing custodial care, overreliance on such care has proven to be a costly panacea in both financial and human terms, often traumatic, and destructive of continuing family relationships and the capacity for independent living.

It is, therefore, the intent of the Legislature in enacting this chapter and related provisions to provide for the development of policies and programs which will accomplish the following:

(a) Assure that elderly persons are not institutionalized inappropriately or prematurely.

(b) Provide a viable alternative to institutionalization for those older impaired persons who are capable of living at home with the aid of appropriate health care or rehabilitative and social services.

(c) Establish adult day health centers in the community for such purpose, which will be easily accessible to all participants, including the economically disadvantaged older person, and which will provide outpatient health, rehabilitative, and social services necessary to permit the participants to maintain personal independence and lead meaningful lives.

(d) Include the services of adult day health centers as a benefit under the Medi-Cal Act, which shall be an initial and integral part in the development of an overall plan for a coordinated, comprehensive continuum of optional long-term care services based upon appropriate need.

SEC. 2. Section 1572 of the Health and Safety Code is amended to read:

1572. The Director of Health Services shall establish a distinct organizational entity within the state department which shall have primary responsibility for the adult day health care program. This entity shall coordinate and direct all required departmental activities for adult day health care.

An Adult Day Health Care Review Committee is hereby established in the State Department of Health Services. The committee shall include a representative of the Department of Aging, the California Commission on Aging, and each appropriate functional division within the state department, as determined by the director (including alternative health systems, social services, Medi-Cal, rates and fees, and licensing and certification). The committee shall assist the director in developing policies and

procedures for regulation of adult day health care pursuant to this chapter and respecting reimbursement therefor under the Medi-Cal Act. Additionally, the functions of the committee shall include the following:

(a) The committee shall develop guidelines for adoption by the director setting forth principles for evaluation of community need for adult day health care, which shall take into consideration the desirability of coordinating and utilizing existing resources, avoidance of duplication of services and inefficient operations, and locational preferences with respect to accessibility and availability to the economically disadvantaged older person.

(b) The committee shall review county plans submitted pursuant to Section 1572.9. Such county plans shall be approved if consistent with the guidelines adopted by the director pursuant to subdivision (a).

(c) The committee shall review and make recommendations to the director concerning individual proposals for startup funds and for original licensure of proposed adult day health centers. Such review may include onsite inspections by the committee, or a special subcommittee thereof, for the purpose of evaluating a proposed provider or its facility. The basis of such review shall be the approved county plan and an evaluation of the ability of the applicant to provide adult day health care in accordance with the requirements of this chapter and regulations adopted hereunder. A public hearing on each individual proposal for an adult day health care center shall be held by the committee in the county to be served. In order to provide the greatest public input, the hearing should preferably be held in the services area to be served.

SEC. 3. Section 1572.5 of the Health and Safety Code is amended to read:

1572.5. (a) The board of supervisors of any county may establish for the county an adult day health planning council as provided in this section. Alternatively, two or more adjacent counties may agree to form a single adult day health planning council with jurisdiction in all participating counties. Each council shall be comprised of 15 members appointed by the board of supervisors, or jointly appointed by the boards of supervisors of counties having a single council, as follows:

(1) Eight members of the council shall be persons over 55 years of age who have a demonstrated interest in the special health and social needs of the elderly and who are representative of organizations dedicated primarily to the needs of older persons, including those of low income and racial and ethnic minorities.

(2) A representative of the area agency on aging designated pursuant to Public Law 94-135 or, if none, a county agency responsible for services to senior citizens.

(3) A representative of a county agency responsible for administration of health programs for senior citizens.

(4) A representative of an area health planning agency

designated pursuant to Section 437.7 for an area included within the council's jurisdiction.

(5) A representative of the county medical society.

(6) A representative of a publicly funded senior citizen transportation program.

(7) A representative of a health facility or organization of health facilities providing acute or long-term care to the elderly.

(8) A member-at-large who has demonstrated an interest in alternatives to institutional long-term care.

(b) The board of supervisors, with the approval of the State Department of Health Services in consultation with the Department of Aging, may designate the area agency on aging advisory council as the adult day health care planning council in counties in which all of the following exist:

(1) An adult day health planning council has not been established.

(2) The board of supervisors governs the area agency on aging.

(3) The area agency on aging has demonstrated interest and commitment in alternatives to institutional long-term care.

(4) The area agency on aging advisory council includes representatives of county or community-based agencies which are responsible for administering or providing long-term care services or which have demonstrated an interest in developing long-term care alternatives.

The board of supervisors shall seek the advice and assistance of other health and transportation representatives identified in this section.

(c) If persons meeting the qualifications specified by any paragraph of subdivision (a) are unavailable or unwilling to serve on the council, the appointing power may apply to the director for an exemption. In this case, the director shall grant an exemption and shall specify such alternative qualifications as will best serve the purposes of this chapter with due regard for local conditions.

SEC. 4. Section 1572.7 of the Health and Safety Code is amended to read:

1572.7. Notice of intent to form a council shall be submitted to local senior and other relevant interest groups within the area to be served and published once a week for two successive weeks in every newspaper of general circulation published within the county or counties to be served by the proposed council, at least 10 days prior to public hearing thereon. The notice shall specify the date, time, and place of the hearing.

SEC. 5. Section 1572.9 of the Health and Safety Code is amended to read:

1572.9. Each planning council approved by the director as meeting the compositional requirements of Section 1572.5 shall adopt an adult day health plan for the county or counties represented by the council. The plan shall be consistent with the state guidelines adopted pursuant to subdivision (a) of Section 1572 and may include the council's recommendations respecting providers initially

determined to be suitable for approval as adult day health centers. Such initial recommendations shall not bind the council with respect to future consideration of individual applications for licensure.

Prior to adopting the plan, the council shall hold a hearing or hearings thereon at which public comment shall be received and considered. The hearing or hearings shall be noticed in advance in the manner prescribed by regulation of the state department. The number of hearings shall be determined by the state department in consultation with the local planning council. The plan shall become effective when approved by the state review committee.

SEC. 5.5. Section 1574.5 is added to the Health and Safety Code, to read:

1574.5. All adult day health centers shall maintain compliance with licensing and certification requirements. These requirements shall not prohibit program flexibility for the use of alternate concepts, methods, procedures, techniques, equipment, number and qualifications of personnel, or the conducting of pilot projects, if these alternatives or pilot projects are carried out with provisions for safe and adequate care and with the prior written approval of the state department. This approval shall provide for the terms and conditions under which permission to use an alternative or pilot program is granted. A written request and substantiating evidence supporting the request shall be submitted by the applicant or licensee to the state department. Particular attention shall be given to encourage the development of models appropriate to rural areas.

Any approval by the state department granted under this section, or a true copy thereof, shall be posted immediately adjacent to the center's license.

SEC. 6. Section 1575.5 of the Health and Safety Code is amended to read:

1575.5. Concurrently with the submission of any application under Section 1575.2, the applicant shall apply to the state department for eligibility certification as a provider of adult day health services reimbursable under the Medi-Cal Act (Chapter 7 (commencing with Section 14000) of Part 3 of Division 9 of the Welfare and Institutions Code). No license shall be issued or renewed for an adult day health center which is not approved as a Medi-Cal provider of adult day health services.

SEC. 7. Section 1575.9 of the Health and Safety Code is amended to read:

1575.9. Each application for a new license or renewal submitted to the state department shall be accompanied by a fee to be determined annually by the director. However, the director shall waive the fee or reduce the fee to thirty dollars ($30) for a new or renewal license when the director determines that there is the expectation that not less than 50 percent of the participants during the period covered by the fee will be Medi-Cal beneficiaries or would be at risk of becoming Medi-Cal beneficiaries should institutional long-term care be required.

SEC. 8. Section 1576 of the Health and Safety Code is amended to read:

1576. All applications for a new license shall be submitted to the state review committee and to the planning council for the county in which the adult day health center will be located, which shall review the application as provided in subdivision (c) of Section 1572 and in Section 1573. The director shall approve the application if he determines it is consistent with the county plan, that no substantial basis for denial of the license exists under Section 1575.7, and the applicant has met all the requirements for licensure set forth in this chapter and regulations adopted hereunder. Otherwise the director shall deny issuance of the license.

SEC. 9. Section 1576.2 of the Health and Safety Code is amended to read:

1576.2. Each license issued or renewed pursuant to this chapter shall not be transferable and the initial license shall expire 12 months from the date of its issuance. The State Director of Health Services shall be given the discretion to approve applications for relicensure for a period of up to 24 months. Application for annual renewal of a license, accompanied by the required fee, shall be filed with the state department not less than 30 days prior to the expiration date. Failure to submit a renewal application prior to such date shall result in expiration of the license.

A license shall be rescinded for an applicant which has had its Medi-Cal certification for adult day health care revoked.

SEC. 10. Section 1580.5 of the Health and Safety Code is amended to read:

1580.5. Following adoption of the uniform evaluation method pursuant to Section 1580.2, every licensed adult day health center shall be periodically inspected and evaluated for quality of care by a representative or representatives designated by the director. Evaluations shall be conducted prior to relicensure or at least once per year and as often as necessary to insure the quality of care being provided, whether initiated by the state department or pursuant to Section 1580.9.

After each inspection and evaluation, the state department shall notify the adult day health center in writing of any deficiencies in its compliance with the provisions of this chapter and the rules and regulations adopted pursuant to this chapter, and shall set a reasonable length of time for compliance by the facility. Upon a finding of noncompliance, the state department may also assess a civil penalty not to exceed fifty dollars ($50) per day for each violation continuing beyond the date fixed in the notice for correction. If the violation is not corrected within such time, the civil penalty shall accrue from the date of receipt of the notice by the licensee. If the violation continues beyond the date fixed for correction, the department may also initiate action against the licensee in accordance with the provisions of Article 7 (commencing with Section 1595) of this chapter.

Where a civil penalty is to be assessed pursuant to this section, the notice shall specify the amount thereof and shall be served upon the licensee in a manner prescribed by subdivision (c) of Section 11505 of the Government Code. Any judicial action required to collect a civil penalty assessed pursuant to this section shall be brought by the Attorney General acting on behalf of the state department in the superior court of the county in which the adult day health center is located.

SEC. 10.5. Section 1585.2 of the Health and Safety Code is amended to read:

1585.2. Any operator of a health facility, clinic, or community care facility licensed to provide adult day health care under this chapter shall provide such adult day health care as an independent program which is located in a separate, freestanding facility or in a distinct portion of the health facility, clinic, or community care facility.

The State Department of Health Services and the State Department of Social Services shall together explore the feasibility of a dual licensure process for combined adult day health care and social day care centers. A report shall be submitted to the Legislature regarding the feasibility of a single survey process. The State Department of Health Services shall have the primary responsibility for the development of this report.

SEC. 11. Section 14521 of the Welfare and Institutions Code is amended to read:

14521. It is the intent of the Legislature in enacting this chapter to establish adult day health care as a Medi-Cal benefit and allow persons eligible to receive the benefits under Chapter 7 (commencing with Section 14000) of this part, and who have medical or psychiatric impairments, to receive adult day health care services. It is the intent of the Legislature in authorizing such a Medi-Cal benefit to establish and continue a community-based system of quality day health services which will (1) ensure that older persons not be institutionalized prematurely and inappropriately, (2) provide appropriate health and social services designed to maintain older persons in their own homes, and (3) establish adult day health care centers in locations easily accessible to the economically disadvantaged older person.

SEC. 12. Section 14529 of the Welfare and Institutions Code is amended to read:

14529. The multidisciplinary health team conducting an assessment pursuant to Section 14528 shall consist of at least the individual's personal physician or a staff physician, or both, a registered nurse, social worker, occupational therapist, and physical therapist. The assessment team shall:

(a) Determine the medical, psychosocial, and functional status of each participant.

(b) Develop an individualized plan of care, including goals, objectives, and services designed to meet the needs of the person,

which shall be signed by each member of the multidisciplinary team, except that the signature of only one physician member of the team shall be required.

(c) At least quarterly reassess the participant's individualized plan of care and make any necessary adjustments to the plan.

SEC. 13. Section 14530 of the Welfare and Institutions Code is amended to read:

14530. Individualized plans of care and individual monthly service reports shall be submitted to the department. Each provider shall supply a written statement to the participant explaining what services will be provided and specifying the scheduled days of attendance. Such statement, which shall be known as the participation agreement, shall be signed by the participant and retained in the participant's file.

SEC. 14. Section 14552 of the Welfare and Institutions Code is amended to read:

14552. In order to obtain certification as a provider of adult day health care under the provisions of this chapter and Chapter 7 (commencing with Section 14000) of this part, the following standards shall be met:

(a) The provider shall have met all other requirements of licensure as an adult day health center pursuant to Chapter 3.5 (commencing with Section 1570) of Division 2 of the Health and Safety Code.

(b) The provider shall comply with requirements of this chapter regarding program and scope of services.

(c) The provider shall have appropriate licensed personnel.

(d) The provider shall employ allied health and social personnel for furnishing of services consistent with good medical practice.

(e) A provider serving a substantial number of participants of a particular racial group, or whose primary language is other than English, shall employ staff of that particular racial or linguistic group at all times.

(f) A provider shall have organizational and administrative capacity to provide services under provisions of this chapter.

SEC. 14.5. Section 14571 of the Welfare and Institutions Code is amended to read:

14571. The department shall establish comprehensive reimbursement rates for adult day health services and subject to reasonable cost. "Reasonable cost," as used in this section, means the level of costs generally incurred in the provision of the same or similar services in the area on an institutional basis.

Payment shall be for services provided during the preceding month in accordance with an approved individualized plan of care. Billing shall be submitted directly to the department. Additionally, the department shall establish a reasonable rate of reimbursement for the initial assessment.

Nothing in this section shall preclude the department from entering into specific prospective budgeting and reimbursement

agreements with providers.

SEC. 15. Section 14573 of the Welfare and Institutions Code is amended to read:

14573. Initial Medi-Cal certification for adult day health care providers shall expire 12 months from the date of issuance. Renewal of such certification shall expire 24 months from date of issuance. Before certification renewal the provider shall submit with the application therefor a report according to department specifications which includes an analysis of income and expenditures, continued demonstrated community need, services, participant statistics and outcome, and adherence to policies and procedures. Prior to approving renewal of Medi-Cal certification, the department shall conduct an onsite financial, medical, and management audit concurrent with the licensing review. Such review shall be conducted by a team of persons with appropriate technical skills. The management audit shall be performed by the departmental entity responsible for directing and coordinating the program.

Where the director determines that the public interests would be served thereby, a public hearing may be held on any such renewal application. The findings of the departmental program and licensing review and the provider's annual evaluation report shall be presented at the hearing.

SEC. 16. Section 14575 of the Welfare and Institutions Code is amended to read:

14575. Each adult day health care provider shall maintain financial records in accordance with generally accepted accounting principles and shall submit to the department an annual financial review performed by an independent certified public accountant as part of the provider's annual report. All certified financial statements shall be filed with the department as soon as practical after the end of the fiscal year and, in any event, within a period not to exceed 120 days thereafter. The department may require a limited or complete audit when the monitoring activities carried out pursuant to Section 14573 reveal significant financial management deficiencies. All of these financial statements shall be public records. The department shall have complete authority and responsibility for establishing uniform accounting and financial reporting procedures for adult day health care providers.

SEC. 17. Section 14577 of the Welfare and Institutions Code is amended to read:

14577. All subcontracts for services reimbursable under this chapter shall be entered into pursuant to regulations of the department. All subcontracts shall be in writing, and a copy shall be transmitted to the department for approval prior to taking effect. Each subcontract submitted by the department for approval shall contain the amount of compensation or other consideration which the subcontractor will receive under the terms of the subcontract with the adult day health care provider. However, this section shall not apply to employment contracts of salaried employees of an adult

day health care licensee.

All subcontracts to provide health care benefits, including emergency services, shall include specification of the time and days reserved for services to be provided to participants and specification of the service to be provided. All subcontracts to provide any of the basic services specified in Section 14550 through subcontractors, shall meet all of the qualifications required by, or pursuant to, this chapter as appropriate for the services which the subcontractors are required to perform.

Each subcontract shall require that the subcontractor make all of its books and records pertaining to the goods or services furnished under the terms of the subcontract available for inspection, examination, or copying by the department during normal working hours at the subcontractor's principal place of business, or at such other place in the state as the department shall designate. Subcontracts between an adult day health care provider and a subcontractor shall be public records and shall be kept on file with the department. The names of the officers and stockholders of the subcontractor shall also be kept on file as public records by the department.

SEC. 18. Section 7 of Chapter 1066 of the Statutes of 1977 is repealed.

SEC. 19. Chapter 3.5 (commencing with Section 1570) of Division 2 of the Health and Safety Code and Chapter 8.5 (commencing with Section 14520) of Part 3 of Division 9 of the Welfare and Institutions Code shall be operative only in a fiscal year during which the budget act for that fiscal year provides funding for the purposes of those chapters.

SEC. 20. No appropriation is made and no reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution or Section 2231 or 2234 of the Revenue and Taxation Code because the only costs which may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, changes the definition of a crime or infraction, changes the penalty for a crime or infraction, or eliminates a crime or infraction.

CHAPTER 1491

An act to add Article 4 (commencing with Section 11281) and Article 5 (commencing with Section 11301) to Chapter 2 of Part 4 of Division 5 of the Food and Agricultural Code, relating to mammals.

[Approved by Governor September 27, 1982. Filed with Secretary of State September 28, 1982.]

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

SECTION 1. Article 4 (commencing with Section 11281) is added to Chapter 2 of Part 4 of Division 5 of the Food and Agricultural Code, to read:

Article 4. Management of Coyotes on Public Lands

11281. If any coyotes are found to exist on land which is owned by the state, other than lands subject to the control of the Department of Parks and Recreation and other than ecological reserves established pursuant to Article 4 (commencing with Section 1580) of Chapter 5 of Division 2 of the Fish and Game Code and the coyotes are found to be causing damage on public or private land, the director may control, may employ persons pursuant to Article 1 (commencing with Section 11221) to control, or may contract with the commissioner to control, the coyotes which are determined to be the cause of the damage.

11282. Prior to implementation of any control program pursuant to this article, the director shall consult with and obtain the consent of the director of the department which has jurisdiction over the state land.

11283. The director shall submit an annual memorandum of understanding to the Director of Fish and Game for review and approval prior to implementing any coyote control program pursuant to this article.

11284. Nothing in this article authorizes the use of Compound 1080 for predator control on public lands.

SEC. 2. Article 5 (commencing with Section 11301) is added to Chapter 2 of Part 4 of Division 5 of the Food and Agricultural Code, to read:

Article 5. Management of Coyotes on State Park Lands and in Ecological Reserves

11301. As used in this article, "state park lands" means any lands subject to the control of the Department of Parks and Recreation.

11302. The director, upon receiving information causing him or her to believe that coyotes are finding refuge on state park lands or on ecological reserves and are causing damage to nearby private property, may request the Department of Parks and Recreation, in the case of state park lands, or the Department of Fish and Game, in the case of ecological reserves, to cooperate in the acquisition and evaluation of evidence to that effect. Upon a request by the director, the department or departments shall cooperate in the evaluation or acquisition.

11303. Upon a determination pursuant to Section 11302 that coyotes are finding refuge on state park lands or on an ecological reserve and are causing damage to nearby private property, the director and the Department of Parks and Recreation, with the

review and approval of the Director of Fish and Game as to state park lands, or the Department of Fish and Game as to ecological preserves, may enter into an interdepartmental agreement to control coyotes finding refuge on state park lands or on ecological reserves and causing damage to nearby private property. Methods utilized to take the coyotes shall be specific to those coyotes which are causing the damage. The Department of Parks and Recreation or the Department of Fish and Game shall specify the methods of take, location of take, time of take, necessary protections for public safety, protections convenient for state park lands or ecological reserve users and uses, and may specify whether the department is to employ persons to control coyotes pursuant to Article 1 (commencing with Section 11221) or whether control is to be done by the Department of Parks and Recreation or the Department of Fish and Game.

11304. The Department of Parks and Recreation or the Department of Fish and Game may submit claims to the department for reimbursement of direct costs incurred pursuant to the implementation of this article which shall be paid if found by the director to be reasonably necessary to implement this article.

11305. Nothing in this article authorizes the use of Compound 1080 for predator control on state park lands and in ecological reserves.

CHAPTER 1492

An act to amend Section 6254 of the Government Code, to add Section 7050.5 to the Health and Safety Code, to amend Section 5097.94 of, and to add Sections 5097.98 and 5097.99 to, the Public Resources Code, relating to Native American remains.

[Approved by Governor September 27, 1982. Filed with Secretary of State September 28, 1982.]

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

SECTION 1. (a) The Legislature finds as follows:

(1) Native American human burials and skeletal remains are subject to vandalism and inadvertent destruction at an increasing rate.

(2) State laws do not provide for the protection of these burials and remains from vandalism and destruction.

(3) There is no regular means at this time by which Native American descendents can make known their concerns regarding the treatment and disposition of Native American burials, skeletal remains, and items associated with Native American burials.

(b) The purpose of this act is:

(1) To provide protection to Native American human burials and

skeletal remains from vandalism and inadvertent destruction.

(2) To provide a regular means by which Native American descendents can make known their concerns regarding the need for sensitive treatment and disposition of Native American burials, skeletal remains, and items associated with Native American burials.

SEC. 2. Section 6254 of the Government Code is amended to read:

6254. Except as provided in Section 6254.7, nothing in this chapter shall be construed to require disclosure of records that are any of the following:

(a) Preliminary drafts, notes, or interagency or intra-agency memoranda which are not retained by the public agency in the ordinary course of business, provided that the public interest in withholding such records clearly outweighs the public interest in disclosure.

(b) Records pertaining to pending litigation to which the public agency is a party, or to claims made pursuant to Division 3.6 (commencing with Section 810) of Title 1 of the Government Code, until such litigation or claim has been finally adjudicated or otherwise settled.

(c) Personnel, medical, or similar files, the disclosure of which would constitute an unwarranted invasion of personal privacy.

(d) Contained in or related to:

(1) Applications filed with any state agency responsible for the regulation or supervision of the issuance of securities or of financial institutions, including, but not limited to, banks, savings and loan associations, industrial loan companies, credit unions, and insurance companies.

(2) Examination, operating, or condition reports prepared by, on behalf of, or for the use of any state agency referred to in subdivision (1).

(3) Preliminary drafts, notes, or interagency or intra-agency communications prepared by, on behalf of, or for the use of any state agency referred to in subdivision (1).

(4) Information received in confidence by any state agency referred to in subdivision (1).

(e) Geological and geophysical data, plant production data and similar information relating to utility systems development, or market or crop reports, which are obtained in confidence from any person.

(f) 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, and any state or local police agency, or any such investigatory or security files compiled by any other state or local police agency, or any such investigatory or security files compiled by any other state or local agency for correctional, law enforcement or licensing purposes, except that state and local law enforcement agencies shall disclose the names and addresses of persons involved in, or witnesses other

than confidential informants to, the incident, the description of any property involved, the date, time, and location of the incident, all diagrams, statements of the parties involved in the incident, the statements of all witnesses, other than confidential informants, to the victims of an incident, or an authorized representative thereof, an insurance carrier against which a claim has been or might be made, and any person suffering bodily injury or property damage or loss, as the result of the incident caused by arson, burglary, fire, explosion, larceny, robbery, vandalism, vehicle theft, or a crime of violence as defined by subdivision (b) of Section 13960, unless the disclosure would endanger the safety of a witness or other person involved in the investigation, or unless disclosure would endanger the successful completion of the investigation or a related investigation; provided, however, that nothing herein shall require the disclosure of that portion of those investigative files which reflect the analysis or conclusions of the investigating officer.

Other provisions of this subdivision notwithstanding, state and local law enforcement agencies shall make public the following information, except to the extent that disclosure of a particular item of information would endanger the safety of a person involved in an investigation or would endanger the successful completion of the investigation or a related investigation:

(1) The full name, current address, and occupation of every individual arrested by the agency, the individual's physical description including date of birth, color of eyes and hair, sex, height and weight, the time and date of arrest, the time and date of booking, the location of the arrest, the factual circumstances surrounding the arrest, the amount of bail set, the time and manner of release or the location where the individual is currently being held, and all charges the individual is being held upon, including any outstanding warrants from other jurisdictions and parole or probation holds; and

(2) The time, substance, and location of all complaints or requests for assistance received by the agency and the time and nature of the response thereto, including, to the extent such information regarding crimes alleged or committed or any other incident investigated is recorded, the time, date and location of occurrence, the time and date of the report, the name, age and current address of the victim, except that the address of the victim of any crime defined by Section 261, 264, 264.1, 273a, 273d, 286, 288, 288a, or 289 of the Penal Code shall not be disclosed, the factual circumstances surrounding the crime or incident, and a general description of any injuries, property or weapons involved.

(g) Test questions, scoring keys, and other examination data used to administer a licensing examination, examination for employment, or academic examination, except as provided for in Chapter 3 (commencing with Section 99150) of Part 65 of the Education Code.

(h) The contents of real estate appraisals, engineering or feasibility estimates and evaluations made for or by the state or local agency relative to the acquisition of property, or to prospective

public supply and construction contracts, until such time as all of the property has been acquired or all of the contract agreement obtained, provided, however, the law of eminent domain shall not be affected by this provision.

(i) Information required from any taxpayer in connection with the collection of local taxes which is received in confidence and the disclosure of the information to other persons would result in unfair competitive disadvantage to the person supplying such information.

(j) Library circulation records kept for the purpose of identifying the borrower of items available in libraries, and library and museum materials made or acquired and presented solely for reference or exhibition purposes. The exemption in this subdivision shall not apply to records of fines imposed on such borrowers.

(k) Records the disclosure of which is exempted or prohibited pursuant to provisions of federal or state law, including, but not limited to, provisions of the Evidence Code relating to privilege.

(*l*) Correspondence of and to the Governor or employees of the Governor's office or in the custody of or maintained by the Governor's legal affairs secretary, provided public records shall not be transferred to the custody of the Governor's legal affairs secretary to evade the disclosure provisions of this chapter.

(m) In the custody or maintained by the Legislative Counsel.

(n) Statements of personal worth or personal financial data required by a licensing agency and filed by an applicant with such licensing agency to establish his personal qualification for the license, certificate, or permit applied for.

(o) Financial data contained in applications for financing under Division 27 (commencing with Section 44500) of the Health and Safety Code, where an authorized officer of the California Pollution Control Financing Authority determines that disclosure of such financial data would be competitively injurious to the applicant and such data is required in order to obtain guarantees from the United States Small Business Administration. The California Pollution Control Financing Authority shall adopt rules for review of individual requests for confidentiality under this section and for making available to the public those portions of an application which are subject to disclosure under this chapter.

(p) Records of state agencies related to activities governed by Chapter 10.3 (commencing with Section 3512) of Division 4 of Title 1, Chapter 10.5 (commencing with Section 3525) of Division 4 of Title 1, and Chapter 12 (commencing with Section 3560) of Division 4 of Title 1, which reveal a state agency's deliberative processes, impressions, evaluations, opinions, recommendations, meeting minutes, research, work products, theories, or strategy, or which provide instruction, advice, or training to employees who do not have full collective bargaining and representation rights under the above chapters. Nothing in this subdivision shall be construed to limit the disclosure duties of a state agency with respect to any other records relating to the activities governed by the employee relations

acts referred to in this subdivision.

Nothing in this section is to be construed as preventing any agency from opening its records concerning the administration of the agency to public inspection, unless disclosure is otherwise prohibited by law.

(q) Records of Native American graves, cemeteries, and sacred places maintained by the Native American Heritage Commission.

SEC. 3. Section 7050.5 is added to the Health and Safety Code, to read:

7050.5. (a) Every person who knowingly mutilates or disinters, wantonly disturbs, or willfully removes any human remains in or from any location other than a dedicated cemetery without authority of law is guilty of a misdemeanor. The provisions of this subdivision shall not apply to any person carrying out an agreement developed pursuant to subdivision (*l*) of Section 5097.94 of the Public Resources Code or to any person authorized to implement the provisions of Section 5097.98 of the Public Resources Code.

(b) In the event of discovery or recognition of any human remains in any location other than a dedicated cemetery, there shall be no further excavation or disturbance of the site or any nearby area reasonably suspected to overlie adjacent remains until the coroner of the county in which the human remains are discovered has determined, in accordance with Chapter 10 (commencing with Section 27460) of Part 3 of Division 2 of Title 3 of the Government Code, that the remains are not subject to the provisions of Section 27491 of the Government Code or any other related provisions of law concerning investigation of the circumstances, manner and cause of any death, and the recommendations concerning the treatment and disposition of the human remains have been made to the person responsible for the excavation, or to his or her authorized representative, in the manner provided in Section 5097.98 of the Public Resources Code. The coroner shall make his or her determination within two working days from the time the person responsible for the excavation, or his or her authorized representative, notifies the coroner of the discovery or recognition of the human remains.

(c) If the coroner determines that the remains are not subject to his or her authority and if the coroner recognizes the human remains to be those of a Native American, or has reason to believe that they are those of a Native American, he or she shall contact, by telephone within 24 hours, the Native American Heritage Commission.

SEC. 4. Section 5097.94 of the Public Resources Code is amended to read:

5097.94. The commission shall have the following powers and duties:

(a) To identify and catalog places of special religious or social significance to Native Americans, and known graves and cemeteries of Native Americans on private lands. The identification and cataloguing of known graves and cemeteries shall be completed on

or before January 1, 1984. The commission shall notify landowners on whose property such graves and cemeteries are determined to exist, and shall identify the Native American group most likely descended from those Native Americans who may be interred on the property.

(b) To make recommendations relative to Native American sacred places that are located on private lands, are inaccessible to Native Americans, and have cultural significance to Native Americans for acquisition by the state or other public agencies for the purpose of facilitating or assuring access thereto by Native Americans.

(c) To make recommendations to the Legislature relative to procedures which will voluntarily encourage private property owners to preserve and protect sacred places in a natural state and to allow appropriate access to Native American religionists for ceremonial or spiritual activities.

(d) To appoint necessary clerical staff.

(e) To accept grants or donations, real or in kind, to carry out the purposes of this chapter.

(f) To make recommendations to the Director of Parks and Recreation and the California Arts Council relative to the California State Indian Museum and other Indian matters touched upon by department programs.

(g) To bring an action to prevent severe and irreparable damage to, or assure appropriate access for Native Americans to, a Native American sanctified cemetery, place of worship, religious or ceremonial site, or sacred shrine located on public property, pursuant to Section 5097.97. If the court finds that severe and irreparable damage will occur or that appropriate access will be denied, and appropriate mitigation measures are not available, it shall issue an injunction, unless it finds, on clear and convincing evidence, that the public interest and necessity require otherwise. The Attorney General shall represent the commission and the state in litigation concerning affairs of the commission, unless the Attorney General has determined to represent the agency against whom the commission's action is directed, in which case the commission shall be authorized to employ other counsel. In any action to enforce the provisions of this subdivision the commission shall introduce evidence showing that such cemetery, place, site, or shrine has been historically regarded as a sacred or sanctified place by Native American people and represents a place of unique historical and cultural significance to an Indian tribe or community.

(h) To request and utilize the advice and service of all federal, state, local, and regional agencies.

(i) To assist Native Americans in obtaining appropriate access to sacred places that are located on public lands for ceremonial or spiritual activities.

(j) To assist state agencies in any negotiations with agencies of the federal government for the protection of Native American sacred places that are located on federal lands.

(k) To mediate, upon application of either of the parties, disputes arising between landowners and known descendents relating to the treatment and disposition of Native American human burials, skeletal remains, and items associated with Native American burials.

The agreements shall provide protection to Native American human burials and skeletal remains from vandalism and inadvertent destruction and provide for sensitive treatment and disposition of Native American burials, skeletal remains, and associated grave goods consistent with the planned use of, or the approved project on, the land.

(*l*) To assist interested landowners in developing agreements with appropriate Native American groups for treating or disposing, with appropriate dignity, of the human remains and any items associated with Native American burials.

SEC. 5. Section 5097.98 is added to the Public Resources Code, to read:

5097.98. (a) Whenever the commission receives notification of a discovery of Native American human remains from a county coroner pursuant to subdivision (c) of Section 7050.5 of the Health and Safety Code, it shall immediately notify those persons it believes to be most likely descended from the deceased Native American. The decendents may, with the permission of the owner of the land, or his or her authorized representative, inspect the site of the discovery of the Native American remains and may recommend to the owner or the person responsible for the excavation work means for treating or disposing, with appropriate dignity, the human remains and any associated grave goods. The descendents shall complete their inspection and make their recommendation within 24 hours of their notification by the Native American Heritage Commission. The recommendation may include the scientific removal and nondestructive analysis of human remains and items associated with Native American burials.

(b) Whenever the commission is unable to identify a descendent, or the descendent identified fails to make a recommendation, or the landowner or his or her authorized representative rejects the recommendation of the descendent and the mediation provided for in subdivision (k) of Section 5097.94 fails to provide measures acceptable to the landowner, the landowner or his or her authorized representative shall reinter the human remains and items associated with Native American burials with appropriate dignity on the property in a location not subject to further subsurface disturbance.

(c) Notwithstanding the provisions of Section 5097.9, the provisions of this section, including those actions taken by the landowner or his or her authorized representative to implement this section and any action taken to implement an agreement developed pursuant to subdivision (*l*) of Section 5097.94, shall be exempt from the requirements of the California Environmental Quality Act (Division 13 (commencing with Section 21000)).

(d) Notwithstanding the provisions of Section 30244, the

provisions of this section, including those actions taken by the landowner or his or her authorized representative to implement this section, and any action taken to implement an agreement developed pursuant to subdivision (*l*) of Section 5097.94 shall be exempt from the requirements of the California Coastal Act of 1976 (Division 20 (commencing with Section 30000)).

SEC. 6. Section 5097.99 is added to the Public Resources Code, to read:

5097.99. No person shall obtain or possess any Native American artifacts or human remains which are taken from a Native American grave or cairn on or after January 1, 1984, except as otherwise provided by law or in accordance with an agreement reached pursuant to subdivision (*l*) of Section 5097.94 or pursuant to the provisions of Section 5097.98.

SEC. 7. No appropriation is made and no reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution or Section 2231 or 2234 of the Revenue and Taxation Code because the only costs which may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, changes the definition of a crime or infraction, changes the penalty for a crime or infraction, or eliminates a crime or infraction.

CHAPTER 1493

An act to amend Section 14100.2 of the Welfare and Institutions Code, relating to Medi-Cal.

[Approved by Governor September 27, 1982. Filed with Secretary of State September 28, 1982.]

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

SECTION 1. Section 14100.2 of the Welfare and Institutions Code is amended to read:

14100.2. (a) All types of information, whether written or oral, concerning a person, made or kept by any public officer or agency in connection with the administration of any provision of this chapter, Chapter 8 (commencing with Section 14200), or Chapter 8.7 (commencing with Section 14520) and for which a grant-in-aid is received by this state from the United States government pursuant to Title XIX of the Social Security Act shall be confidential, and shall not be open to examination other than for purposes directly connected with the administration of the Medi-Cal program.

(b) Except as provided in this section and to the extent permitted by federal law or regulation all information about applicants and recipients as provided for in subdivision (a) to be safeguarded includes, but is not limited to, names and addresses, medical services

provided, social and economic conditions or circumstances, agency evaluation of personal information, and medical data, including diagnosis and past history of disease or disability.

(c) Purposes directly connected with the administration of the Medi-Cal Program, Chapter 8 (commencing with Section 14200), or Chapter 8.7 (commencing with Section 14520) encompass those administrative activities and responsibilities the State Department of Health Services and its agents are required to engage in to insure effective program operations. Such activities include but are not limited to: establishing eligibility and methods of reimbursement; determining the amount of medical assistance; providing services for recipients; conducting or assisting an investigation, prosecution, or civil or criminal proceeding related to the administration of the Medi-Cal Program; and conducting or assisting a legislative investigation or audit related to the administration of the Medi-Cal Program.

(d) Any officer, agent, or employee of the State Department of Health Services or of any public agency shall provide the Joint Legislative Audit Committee and the Auditor General with any and all the information described in subdivision (b) within a reasonable period of time as determined by the committee in consultation with the State Department of Health Services, after receipt of a request from the committee approved by a majority of the members of the committee. The Joint Legislative Audit Committee and the Auditor General may use such information only for the purpose of investigating or auditing the administration of the Medi-Cal Program, Chapter 8 (commencing with Section 14200), or Chapter 8.7 (commencing with Section 14520), and shall not use such information for commercial or political purposes. In any case where disclosure of information is authorized by this section, the Joint Legislative Audit Committee or the Auditor General shall not disclose the identity of any applicant or recipient, except in the case of a criminal or civil proceeding conducted in connection with the administration of the Medi-Cal Program.

(e) The access to information provided in subdivision (d) shall be permitted only to the extent and under the conditions provided by Federal Law and regulations governing the release of such information.

(f) The State Department of Health Services may make rules and regulations governing the custody, use and preservation of all records, papers, files and communications pertaining to the administration of the laws relating to the Medi-Cal Program, Chapter 8 (commencing with Section 14200), or Chapter 8.7 (commencing with Section 14520). The rules and regulations shall be binding on all departments, officials and employees of the state, or of any political subdivision of the state and may provide for giving information to or exchanging information with agencies, public or political subdivisions of the state, and may provide for giving information to or exchanging information with agencies, public or

private, which are engaged in planning, providing or securing such services for or in behalf of recipients or applicants; and for making case records available for research purposes, provided, that such research will not result in the disclosure of the identity of applicants for or recipients of such services.

(g) Upon request, the department shall release to the negotiator established pursuant to Article 2.6 (commencing with Section 14081) all computer tapes and any modifications thereto, including paid claims, connected with the administration of the Medi-Cal program which are in the possession or under the control of the department, including tapes prepared prior to the effective date of this section.

To ensure compliance with federal law and regulations, the department shall make the minimum necessary modifications to its computer tapes prior to releasing the tapes to the negotiator in order to assure the confidentiality of the identity of all applicants for, or recipients of, those services. The department shall not make any modifications to paid claims tapes which affect information regarding beneficiaries' aid categories or counties of origin.

(h) Any person who knowingly releases or possesses confidential information concerning persons who have applied for or who have been granted any form of Medi-Cal benefits or benefits under Chapter 8 (commencing with Section 14200) or Chapter 8.7 (commencing with Section 14520) for which state or federal funds are made available in violation of this section is guilty of a misdemeanor.

CHAPTER 1494

An act to amend Sections 19612.1, 19612.2, and 19614.2 of the Business and Professions Code, relating to horseracing, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 27, 1982. Filed with Secretary of State September 28, 1982.]

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

SECTION 1. Section 19612.1 of the Business and Professions Code is amended to read:

19612.1. (a) In addition to the amounts otherwise deducted pursuant to this chapter, every association with an average daily handle of more than six hundred fifty thousand dollars ($650,000), which conducts a harness, quarter, or Appaloosa horse meeting may deduct from the total amount handled in daily double, quinella, exacta, and other multiple wagering pools approved by the board up to 3 percent thereof to be distributed as additional commissions and purses in the following percentage ratio: to the association as additional commission, 59.5 percent; to the horsemen as additional

purses, 40.5 percent.

(b) From the amount deducted for quarter or Appaloosa horse purses under subdivision (a), a sum equal to 13.33 percent thereof shall be held by the association to be paid as owners' premiums for California breds winning at the meeting. The premiums shall be distributed within 30 days of the close of the meeting on a prorated percentage basis of first moneys earned to persons owning California-bred quarter horses and California-bred Appaloosa horses at the time of their wins in races having a total purse value in excess of the average purse value for races, other than stakes races, won by California-bred horses during the previous year. Except for fair meetings, the maximum award made to an owner in any one race shall not exceed 15 percent of the total awards fund.

The board shall designate the officially recognized organizations representing quarter horse and Appaloosa horsemen to administer this subdivision and to distribute premiums. The organizations may, with the approval of the board, make a deduction for expenses not to exceed 5 percent of the total awards fund.

(c) At least 30 days prior to the commencement of its meeting, the association shall file with the board a statement of the additional deduction to be made pursuant to subdivision (a). Except with the consent of the board, the amount of the deduction shall not be changed during the course of the meeting.

(d) In addition to the amounts otherwise deducted pursuant to this section, every harness racing association shall deduct an additional 2 percent of its exotic parimutuel pools to be distributed equally as commissions and purses.

SEC. 1.5. Section 19612.1 of the Business and Professions Code is amended to read:

19612.1. (a) In addition to the amounts otherwise deducted pursuant to this chapter, except for associations conducting meetings pursuant to Section 19549.2, every association with an average daily handle of more than six hundred fifty thousand dollars ($650,000), which conducts a harness, quarter, or Appaloosa horse meeting may deduct from the total amount handled in daily double, quinella, exacta, and other multiple wagering pools approved by the board up to 3 percent thereof to be distributed as additional commissions and purses in the following percentage ratio: to the association as additional commission, 59.5 percent; to the horsemen as additional purses, 40.5 percent. Any association conducting a meeting pursuant to Section 19549.2 may deduct from the total amount handled in daily double, quinella, exacta, and other multiple wagering pools approved by the board up to 3 percent thereof to be distributed as additional commissions and purses in the following percentage ratio: to the association as additional commissions, 50 percent; to the horsemen as additional purses, 50 percent.

(b) From the amount deducted for quarter or Appaloosa horse purses under subdivision (a), a sum equal to 13.33 percent thereof shall be held by the association to be paid as owners' premiums for

California breds winning at the meeting. The premiums shall be distributed within 30 days of the close of the meeting on a prorated percentage basis of first moneys earned to persons owning California-bred quarter horses and California-bred Appaloosa horses at the time of their wins in races having a total purse value in excess of the average purse value for races, other than stakes races, won by California-bred horses during the previous year. Except for fair meetings, the maximum award made to an owner in any one race shall not exceed 15 percent of the total awards fund.

The board shall designate the officially recognized organizations representing quarter horse and Appaloosa horsemen to administer this subdivision and to distribute premiums. The organizations may, with the approval of the board, make a deduction for expenses not to exceed 5 percent of the total awards fund.

(c) At least 30 days prior to the commencement of its meeting, the association shall file with the board a statement of the additional deduction to be made pursuant to subdivision (a). Except with the consent of the board, the amount of the deduction shall not be changed during the course of the meeting.

(d) In addition to the amounts otherwise deducted pursuant to this section, every harness racing association shall deduct an additional 2 percent of its exotic parimutuel pools to be distributed equally as commissions and purses.

SEC. 2. Section 19612.2 of the Business and Professions Code is amended to read:

19612.2. (a) In addition to the amounts otherwise deducted pursuant to this chapter, every association with an average daily handle of six hundred fifty thousand dollars ($650,000) or less, except an association subject to Section 19614.2, which conducts a harness, quarter, or Appaloosa horse meeting may deduct from the total amount handled in its daily exotic parimutuel pool up to 3 percent thereof to be distributed as additional commissions and purses as follows:

(1) For quarter horse meetings conducted other than pursuant to Section 19612.6 and for Appaloosa horse meetings, as agreed to by the association conducting the meeting and the organization representing the horsemen participating at the meeting.

(2) For harness and quarter horse meetings conducted pursuant to Section 19612.6, 50 percent as commissions and 50 percent as purses.

(b) From the amount deducted for quarter horse and Appaloosa horse purses under subdivision (a), a sum equal to 13.33 percent thereof shall be held by the association to be paid as owners' premiums for California breds winning at the meeting. The premiums shall be distributed within 30 days of the close of the meeting on a prorated percentage basis of first moneys earned to persons owning California-bred quarter horses and California-bred Appaloosa horses at the time of their wins in races having a total purse value in excess of the average purse value for races, other than

stakes races, won by California-bred horses during the previous year. Except for fair meetings, the maximum award made to an owner in any one race shall not exceed 15 percent of the total awards fund.

The board shall designate the officially recognized organizations representing quarter horse and Appaloosa horsemen to administer this subdivision and to distribute premiums. The organizations may, with the approval of the board, make a deduction for expenses not to exceed 5 percent of the total awards fund.

(c) At least 30 days prior to the commencement of its meeting, the association shall file with the board a statement of the additional deduction to be made pursuant to subdivision (a) and its distribution between commissions and purses. Except with the consent of the board, the amount of the deduction and its distribution shall not be changed during the course of the meeting.

(d) In addition to any deductions pursuant to this section, every harness racing association shall also deduct an additional 2 percent of its daily exotic parimutuel pool to be distributed equally as commissions and purses.

SEC. 3. Section 19614.2 of the Business and Professions Code is amended to read:

19614.2. (a) In addition to the amounts otherwise deducted pursuant to this chapter, the California Exposition and State Fair, or a district or county fair, or an association conducting its meeting pursuant to Section 19549.1, may deduct from the total amount handled in daily double, quinella, exacta, and other multiple wagering pools approved by the board up to 3 percent thereof to be distributed as additional commissions and purses in the current year of the fair meet. Of the amount deducted, if any, 52 percent shall be distributed as additional purses and 48 percent shall be distributed as additional commissions.

(b) At least 30 days prior to the commencement of its meeting, the association shall file with the board a statement of the additional deduction to be made pursuant to subdivision (a). Except with the consent of the board, the amount of the deduction shall not be changed during the course of the meeting.

(c) From the amount deducted for thoroughbred purses under subdivision (a), a sum equal to 13.33 percent thereof shall be held by the association to be paid as owners' premiums for California-breds winning at the meeting. The sum shall be deposited within seven days of the close of the meeting with the official registering agency of California thoroughbred racehorses in a depository approved by the board. After deduction of expenses, not to exceed 5 percent, and approval of all the deductions by the board, the fund shall then be distributed on a prorated percentage basis of first moneys earned to the persons owning California-bred thoroughbreds at the time of their wins at races having a total purse value of five thousand dollars ($5,000) or more.

(d) From the amount deducted for quarter horse and Appaloosa horse purses under subdivision (a), a sum equal to 13.33 percent

thereof shall be held by the association to be paid as owners' premiums for California-breds winning at the meeting. The premiums shall be distributed within 30 days of the close of the meeting on a prorated percentage basis of first moneys earned to persons owning California-bred quarter horses and California-bred Appaloosa horses at the time of their wins in races having a total purse value in excess of the average purse value for races, other than stakes races, won by California-bred horses during the previous year.

The board shall designate the officially recognized organizations representing quarter horse and Appaloosa horsemen to administer this subdivision and to distribute premiums. The organization may, with the approval of the board, make a deduction for expenses not to exceed 5 percent of the total awards fund.

SEC. 4. It is the intent of the Legislature, if this bill and Assembly Bill 2927 are both chaptered and become effective on or before January 1, 1983, both bills amend Section 19612.1 of the Business and Professions Code, and this bill is chaptered after Assembly Bill 2927, that Section 19612.1 of the Business and Professions Code, as amended by Section 4 of Assembly Bill 2927, be further amended on the effective date of this act in the form set forth in Section 1.5 of this act to incorporate the changes in Section 19612.1 proposed by this bill. Therefore, Section 1.5 of this act shall become operative only if this bill and Assembly Bill 2927 are both chaptered and become effective on or before January 1, 1983, and Assembly Bill 2927 is chaptered before this bill and amends Section 19612.1, in which case Section 1 of this act shall not become operative.

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 that this act will apply to the current racing season, it is necessary that this act take effect immediately.

CHAPTER 1495

An act to amend Sections 5621, 5780.1, 5781.2, and 5785 of, and to add Section 5780.05 to, the Public Resources Code, relating to parks and recreation, and making an appropriation therefor.

[Approved by Governor September 27, 1982. Filed with Secretary of State September 28, 1982.]

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

SECTION 1. Section 5621 of the Public Resources Code is amended to read:

5621. As used in this chapter:

(a) "City" includes the City and County of San Francisco;

"county" does not include the City and County of San Francisco.

(b) "Districts" means regional park districts formed under Article 3 (commencing with Section 5500) of Chapter 3; recreation and park districts formed under Chapter 4 (commencing with Section 5780); any public utility district formed under Division 7 (commencing with Section 15501) of the Public Utilities Code in a nonurbanized area that employs a full-time park and recreation director and offers year-round park and recreation services on lands and facilities owned by the district; any community services district formed under Division 3 (commencing with Section 61000) of Title 6 of the Government Code in a nonurbanized area which is authorized to provide public recreation as specified in subdivision (e) of Section 61600 of the Government Code; and the Malaga County Water District exercising powers authorized under Section 31133 of the Water Code.

(c) "Urbanized area" consists of a central city or cities and surrounding closely settled territory, as determined by the Department of Parks and Recreation in cooperation with the Department of Finance on the basis of the most recent verifiable census data. "Urbanized county" means any county, except the City and County of San Francisco, with a population of 200,000 or more, as determined by the Department of Parks and Recreation in cooperation with the Department of Finance on the basis of the most recent verifiable census data.

(d) "Heavily urbanized area" means a large city with a population of 300,000 or more and a large county or regional park district with a population of 1,000,000 or more, as determined by the Department of Parks and Recreation in cooperation with the Department of Finance on the basis of the most recent verifiable census data.

(e) "Nonurbanized area" means any city, county, or district which does not qualify as an urbanized area or urbanized county under the definitions in subdivision (c).

(f) "Block grant" means the allocation of moneys for one or more projects for the acquisition or development of recreational lands and facilities.

(g) "Need basis grant" means the allocation of moneys for one or more projects for the acquisition or development of recreational lands and facilities in nonurbanized areas on a project-by-project basis, based upon need.

SEC. 1.2. Section 5621 of the Public Resources Code is amended to read:

5621. As used in this chapter:

(a) "City" includes the City and County of San Francisco; "county" does not include the City and County of San Francisco.

(b) "Districts" means regional park districts formed under Article 3 (commencing with Section 5500) of Chapter 3; recreation and park districts formed under Chapter 4 (commencing with Section 5780); any public utility district formed under Division 7 (commencing with Section 15501) of the Public Utilities Code in a nonurbanized

area that employs a full-time park and recreation director and offers year-round park and recreation services on lands and facilities owned by the district; any community services district formed under Division 3 (commencing with Section 61000) of Title 6 of the Government Code in a nonurbanized area which is authorized to provide public recreation as specified in subdivision (e) of Section 61600 of the Government Code; and the Malaga County Water District exercising powers authorized under Section 31133 of the Water Code.

(c) "Urbanized area" consists of a central city or cities and surrounding closely settled territory, as determined by the Department of Parks and Recreation in cooperation with the Department of Finance on the basis of the most recent verifiable census data. "Urbanized county" means any county, except the City and County of San Francisco, with a population of 200,000 or more, as determined by the Department of Parks and Recreation in cooperation with the Department of Finance on the basis of the most recent verifiable census data.

(d) "Heavily urbanized area" means a large city with a population of 300,000 or more and a large county or regional park district with a population of 1,000,000 or more, as determined by the Department of Parks and Recreation in cooperation with the Department of Finance on the basis of the most recent verifiable census data.

(e) "Nonurbanized area" means any city, county, or district which does not qualify as an urbanized area or urbanized county under the definitions in subdivision (c).

(f) "Block grant" means the allocation of moneys for one or more projects for the acquisition or development of recreational lands and facilities.

(g) "Need basis grant" means the allocation of moneys for one or more projects for the acquisition or development of recreational lands and facilities on a project-by-project basis, based upon need.

(h) "Account" means the Roberti-Z'berg Urban Open-Space and Recreation Program Account in the General Fund.

SEC. 1.4. Section 5621 of the Public Resources Code is amended to read:

5621. As used in this chapter:

(a) "City" includes the City and County of San Francisco; "county" does not include the City and County of San Francisco.

(b) "Districts" means regional park districts formed under Article 3 (commencing with Section 5500) of Chapter 3; recreation and park districts formed under Chapter 4 (commencing with Section 5780); any public utility district formed under Division 7 (commencing with Section 15501) of the Public Utilities Code in a nonurbanized area that employs a full-time park and recreation director and offers year-round park and recreation services on lands and facilities owned by the district; any community services district formed under Division 3 (commencing with Section 61000) of Title 6 of the Government Code in a nonurbanized area which is authorized to

provide public recreation as specified in subdivision (e) of Section 61600 of the Government Code; any memorial district formed under Chapter 1 (commencing with Section 1170) of Division 6 of the Military and Veterans Code that employs a full-time park and recreation director and offers year-round park and recreation services on lands and facilities owned by the district; and the Malaga County Water District exercising powers authorized under Section 31133 of the Water Code.

(c) "Urbanized area" consists of a central city or cities and surrounding closely settled territory, as determined by the Department of Parks and Recreation in cooperation with the Department of Finance on the basis of the most recent verifiable census data. "Urbanized county" means any county, except the City and County of San Francisco, with a population of 200,000 or more, as determined by the Department of Parks and Recreation in cooperation with the Department of Finance on the basis of the most recent verifiable census data.

(d) "Heavily urbanized area" means a large city with a population of 300,000 or more and a large county or regional park district with a population of 1,000,000 or more, as determined by the Department of Parks and Recreation in cooperation with the Department of Finance on the basis of the most recent verifiable census data.

(e) "Nonurbanized area" means any city, county, or district which does not qualify as an urbanized area or urbanized county under the definitions in subdivision (c).

(f) "Block grant" means the allocation of moneys for one or more projects for the acquisition or development of recreational lands and facilities.

(g) "Need basis grant" means the allocation of moneys for one or more projects for the acquisition or development of recreational lands and facilities on a project-by-project basis, based upon need.

SEC. 1.6. Section 5621 of the Public Resources Code is amended to read:

5621. As used in this chapter:

(a) "City" includes the City and County of San Francisco; "county" does not include the City and County of San Francisco.

(b) "Districts" means regional park districts formed under Article 3 (commencing with Section 5500) of Chapter 3; recreation and park districts formed under Chapter 4 (commencing with Section 5780); any public utility district formed under Division 7 (commencing with Section 15501) of the Public Utilities Code in a nonurbanized area that employs a full-time park and recreation director and offers year-round park and recreation services on lands and facilities owned by the district; any community services district formed under Division 3 (commencing with Section 61000) of Title 6 of the Government Code in a nonurbanized area which is authorized to provide public recreation as specified in subdivision (e) of Section 61600 of the Government Code; any memorial district formed under Chapter 1 (commencing with Section 1170) of Division 6 of the

Military and Veterans Code that employs a full-time park and recreation director and offers year-round park and recreation services on lands and facilities owned by the district; and the Malaga County Water District exercising powers authorized under Section 31133 of the Water Code.

(c) "Urbanized area" consists of a central city or cities and surrounding closely settled territory, as determined by the Department of Parks and Recreation in cooperation with the Department of Finance on the basis of the most recent verifiable census data. "Urbanized county" means any county, except the City and County of San Francisco, with a population of 200,000 or more, as determined by the Department of Parks and Recreation in cooperation with the Department of Finance on the basis of the most recent verifiable census data.

(d) "Heavily urbanized area" means a large city with a population of 300,000 or more and a large county or regional park district with a population of 1,000,000 or more, as determined by the Department of Parks and Recreation in cooperation with the Department of Finance on the basis of the most recent verifiable census data.

(e) "Nonurbanized area" means any city, county, or district which does not qualify as an urbanized area or urbanized county under the definitions in subdivision (c).

(f) "Block grant" means the allocation of moneys for one or more projects for the acquisition or development of recreational lands and facilities.

(g) "Need basis grant" means the allocation of moneys for one or more projects for the acquisition or development of recreational lands and facilities on a project-by-project basis, based upon need.

(h) "Account" means the Roberti-Z'berg Urban Open-Space and Recreation Program Account in the General Fund.

SEC. 2. Section 5780.05 is added to the Public Resources Code, to read:

5780.05. (a) If the area proposed to be organized or reorganized as a district lies within more than one county, or if subsequent to any change in organization or reorganization a district contains territory lying within more than one county, "principal county," as used in this chapter, means that county having the greatest proportion of the total assessed valuation of the district or proposed district.

(b) Whenever a duty or responsibility is given to a county or a county official under this chapter and the district lies within more than one county, the duty shall be performed by the principal county or the county official of the principal county.

SEC. 3. Section 5780.1 of the Public Resources Code is amended to read:

5780.1. "Supervising authority," as used in this chapter, means the board of supervisors of the principal county in which lies the territory within the district or proposed district. If the territory is composed of one or more cities only, either at the time it was created or at any time thereafter by annexations, withdrawals of territory or

otherwise, the city council of the largest city, as determined by the last United States census or by a special census taken pursuant to the provisions of Chapter 17 (commencing with Section 40200), Part 2, Division 3, Title 4 of the Government Code, shall be the supervising authority. If all the territory of the district or proposed district lies within one city, or if the district is a subsidiary district of any city, pursuant to Division 1 (commencing with Section 56000), Title 6 of the Government Code, the city council shall be the supervising authority.

SEC. 4. Section 5781.2 of the Public Resources Code is amended to read:

5781.2. Any incorporated or unincorporated territory or any combination thereof may be organized and incorporated into a recreation and park district if the territory is not included in any other recreation and park district. Contiguous or noncontiguous portions of unincorporated territory within one or more counties may be included in a district.

SEC. 5. Section 5785 of the Public Resources Code is amended to read:

5785. Any incorporated or unincorporated territory or any combination thereof may be annexed to a recreation and park district if the territory is contiguous to the district and is not included in any other recreation and park district.

SEC. 6. It is the intent of the Legislature that if this bill and Senate Bill 398 or Senate Bill 1427, or both, are chaptered and become effective January 1, 1983, each of the bills amends Section 5621 of the Public Resources Code, and this bill is chaptered last, that amendments proposed by each of the bills which are chaptered be given effect as follows:

(1) If this bill and Senate Bill 398 are both chaptered and become effective January 1, 1983, both bills amend Section 5621 of the Public Resources Code, but Senate Bill 1427 is not chaptered or as chaptered does not amend that section, and this bill is chaptered after Senate Bill 398, the amendments proposed by both bills shall be given effect and incorporated in Section 5621 in the form set forth in Section 1.2 of this act. Therefore, if this bill and Senate Bill 398 are both chaptered and become effective January 1, 1983, both bills amend Section 5621, this bill is chaptered after Senate Bill 398, and Senate Bill 1427 is not chaptered or as chaptered does not amend that section, Section 1.2 of this act shall be operative and Sections 1, 1.4, and 1.6 of this act shall not become operative.

(2) If this bill and Senate Bill 1427 are both chaptered and become effective on or before January 1, 1983, both bills amend Section 5621 of the Public Resources Code, but Senate Bill 398 is not chaptered or as chaptered does not amend that section, and this bill is chaptered after Senate Bill 1427, the amendments proposed by both bills shall be given effect and incorporated in Section 5621 in the form set forth in Section 1.4 of this act. Therefore, if this bill and Senate Bill 1427 are both chaptered and become effective on or before January 1,

1983, both bills amend Section 5621, this bill is chaptered after Senate Bill 1427, and Senate Bill 398 is not chaptered or as chaptered does not amend that section, Section 1.4 of this act shall be operative and Sections 1, 1.2, and 1.6 of this act shall not become operative.

(3) If this bill and Senate Bill 398 and Senate Bill 1427 are all chaptered and become effective on or before January 1, 1983, all three bills amend Section 5621 of the Public Resources Code, and this bill is chaptered after Senate Bill 398 and Senate Bill 1427, the amendments proposed by all three bills shall be given effect and incorporated in Section 5621 in the form set forth in Section 1.6 of this act. Therefore, if this bill and Senate Bill 398 and Senate Bill 1427 are all chaptered and become effective on or before January 1, 1983, all three bills amend Section 5621 of the Public Resources Code, and this bill is chaptered after Senate Bill 398 and Senate Bill 1427, Section 1.6 of this act shall be operative and Sections 1, 1.2, and 1.4 of this act shall not become operative.

CHAPTER 1496

An act to amend Sections 20132, 20234, and 21235 of, and to repeal and add Section 20203 of, the Government Code, and to amend Sections 1, 36.5, and 39 of Chapter 330 of the Statutes of 1982, relating to the Public Employees' Retirement System, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 27, 1982 Filed with Secretary of State September 28, 1982.]

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

SECTION 1. Section 1 of Chapter 330 of the Statutes of 1982 is amended to read:

Sec. 1. It is the intent of the Legislature in enacting this act to preserve the actuarial integrity of the Public Employees' Retirement System, to recognize the fiduciary role of the Board of Administration of the Public Employees' Retirement System, to assist in the orderly and equitable disposition of the reserve against deficiencies created by Section 20203 of the Government Code, and to provide for repayment of state and school employer retirement contributions. In enacting this act, the Legislature agrees with the findings of the chief actuary and the board, who, on June 16, 1982, determined that funds in the reserve for deficiencies may be allocated from the reserve without jeopardizing the actuarial soundness of the system. The Legislature also concurs with the board's finding that direct relief from contributions in this time of fiscal stress is for the exclusive benefit of the members and retired members of the system.

It is also the intent of the Legislature in enacting this act to

acknowledge that certain employer accounts in the Public Employees' Retirement Fund may have been adversely affected by the temporary cessation of employer contributions mandated by Chapter 115 of the Statutes of 1982. In enacting this act, the Legislature provides for the augmented crediting of interest earnings to those accounts in an effort to assure that the accounts are in actuarially sound condition in relation to their current liabilities and existing statutory requirements regarding the full funding of present unfunded obligations.

If, however, the Board of Administration of the Public Employees' Retirement System determines, pursuant to the next actuarial valuation of that system, that the augmented interest crediting measures provided in this act have been insufficient to maintain the affected employer accounts in the fund in actuarially sound condition, it is the intent of the Legislature to increase employer contributions to a level the board determines necessary to accomplish existing statutory full funding goals.

SEC. 2. Section 20132 of the Government Code is amended to read:

20132. Notwithstanding Section 20750.9, whenever the board determines that there is in any account within an employer a temporary excess of assets over actuarial liabilities the board may, in its discretion, utilize all or any portion of the temporary excess funds to reduce that employer's contributions for a period of time determined by the board. In the case of state employer accounts, the board shall annually review such accounts and shall report to the Legislature on the amount and disposition of the excess.

This section shall remain in effect only until June 30, 1983, and as of that date is repealed, unless a later enacted statute, which is chaptered on or before June 30, 1983, deletes or extends that date.

SEC. 3. Section 20203 of the Government Code is repealed.

SEC. 4. Section 20203 is added to the Government Code, to read:

20203. Interest earned on any cash deposit in a bank by the Treasurer and income on other assets constituting a part of the fund shall be credited to the fund as received. Income, of whatever nature, earned on the Retirement Fund during any fiscal year, in excess of the interest credited to contributions during that year shall be retained in the fund as a reserve against deficiencies in interest earned in other years, losses under investments, court-mandated costs, and actuarial losses resulting from terminations, mergers, and dissolutions of contracting agencies.

Unless specifically authorized by provisions of this part, no funds in the reserve against deficiencies shall be available for the payment of benefits. The board, however, may apply to reduce the book value of securities purchased all or part of the excess of the proceeds of the sale or the redemption prior to maturity of securities over the book value of the securities sold (a) if the purchase of securities is made with those proceeds and (b) if the terms of both securities from the date of sale, redemption prior to maturity, or purchase, as the case

may be, to the respective dates of maturity do not differ by more than five years. All applications of such excess proceeds, even with greater differences in terms, heretofore made by the board are hereby validated and confirmed.

At the end of each fiscal year, the amount in the reserve against deficiencies which exceeds 1 percent of the total assets of the system shall be credited to other accounts as prescribed by this part.

SEC. 5. Section 20234 of the Government Code is amended to read:

20234. The board shall annually contract with an independent actuary to analyze and comment on the application of generally accepted actuarial practices to the actuarial assumptions utilized by the board during the preceding fiscal year and the effect of the benefit provided by Section 21235 on employer contribution rates.

A copy of the report shall be filed with each house of the Legislature, the chairman of each affected policy committee, and the Governor at the same time as the report required by Section 20136.

SEC. 6. Section 21235 of the Government Code is amended to read:

21235. (a) The board shall establish an Investment Dividend Disbursement Account, or such subaccounts as may be established by the board, in the retirement fund consisting of that amount of the earnings of the retirement fund which remains after the sequential application of Sections 20202.5, 20203, 20131.1, and 20131. The transfer to the account made each year shall be adjusted to reflect actuarial losses arising from any difference between assumptions respecting salary increases and the actual salary experience, through an actuarial method determined by the board.

This subdivision shall become operative on July 1, 1982, and shall remain operative only until July 1, 1987, when it shall cease to have any force or effect.

(b) The Investment Dividend Disbursement Account may be utilized, as specified in subdivision (e), to increase all monthly allowances paid by the system to an amount equal to a maximum of 75 percent of the purchasing power, as determined by the board, of the initial monthly allowances that were received by every retired person or survivor or beneficiary of a state, school or local member or retired person who was eligible to receive any allowance at the end of each fiscal year. If sufficient funds are not available to adjust allowances to a maximum of 75 percent of purchasing power, the board shall adjust allowances to eligible recipients by a lesser amount. The board may, for reasons of insufficient funds, determine that no increase under this section shall be made.

This subdivision shall become operative on January 1, 1984, and shall remain operative only until January 1, 1989, when it shall cease to have any force or effect.

(c) The amount specified in subdivision (a) is hereby appropriated from the Investment Dividend Disbursement Account to the board without regard to fiscal years. Whenever the board

determines that there are sufficient funds the board shall apply those funds to the increases authorized by this section. If the funds are more than sufficient to pay the increases prescribed in subdivision (b), the board shall retain the funds for three fiscal years. If, at the end of the third fiscal year, a balance remains, the funds allocated in the first fiscal year shall revert to the member accounts in the Public Employees' Retirement Fund. It is the intent of the Legislature that this method of reversion of remaining balances be continued under those circumstances.

(d) The board shall inform each recipient of benefits under subdivision (b) that the increases are not cumulative, not part of the base retirement allowance, and may be available for only a limited period of time and that the board may discontinue the increases.

(e) The board, on January 1, 1984, and, upon the commencement of each quarter thereafter, shall pay the benefit provided by this section for the succeeding quarter.

SEC. 7. Section 36.5 of Chapter 330 of the Statutes of 1982 is amended to read:

Sec. 36.5. Sections 21232, 21235, 21263.4, 21263.5, 21263.6, and 21263.65 of the Government Code shall become operative after the Board of Administration has acted to: (a) reduce state and school employer contribution rates for 1982–83 in the manner authorized at the June 16, 1982, board meeting, (b) reduce the reserve against deficiencies to levels prescribed in Section 20203, as amended by this act, and (c) utilize additional interest earnings credited to state and school employer accounts pursuant to subsection (b) to further reduce state and school employer contribution rates for 1982–83.

SEC. 8. Section 39 of Chapter 330 of the Statutes of 1982 is amended to read:

Sec. 39. Sections 1.5, 2, 3, 4, 5, 6, 7, 8, 9, 15, 17, 18, 20, 21, 22, 23, 24, 25, 26, 27, 28, 31, 32, 33, 33.5, and 34 of this act shall become operative on July 1, 1983. Sections 13.5, 14, 26.5, and 29 of this act shall become operative on July 1, 1982.

Sections 10, 11, and 12 of this act shall be operative January 1, 1983.

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 for substantial savings of public funds to be realized from the reduction of public employer retirement contributions commencing with the 1982–83 fiscal year and subsequent fiscal years, this act must take effect immediately.

CHAPTER 1497

An act to amend Sections 19612.1, 19612.2, and 19614.2 of, and to add Section 19617.7 to, the Business and Professions Code, relating to horseracing.

[Approved by Governor September 27, 1982. Filed with Secretary of State September 28, 1982.]

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

SECTION 1. Section 19612.1 of the Business and Professions Code is amended to read:

19612.1. (a) In addition to the amounts otherwise deducted pursuant to this chapter, every association with an average daily handle of more than six hundred fifty thousand dollars ($650,000), which conducts a harness, quarter, or Appaloosa horse meeting may deduct from the total amount handled in daily double, quinella, exacta, and other multiple wagering pools approved by the board up to 3 percent thereof to be distributed as additional commissions and purses in the following percentage ratio: to the association as additional commission, 59.5 percent; to the horsemen as additional purses, 40.5 percent.

(b) From the amount deducted for quarter horse purses under subdivision (a), a sum equal to 25 percent thereof shall be held by the association to be paid as owners' premiums for California breds winning or placing second at the meeting. The premiums shall be distributed within 30 days of the close of the meeting on a prorated percentage basis of first and second moneys earned to persons owning California-bred quarter horses at the time of their wins or places in races having a total purse value equal to or in excess of the average purse value for races, other than stakes races, won by California-bred horses during the previous year. Except for fair meetings, the maximum award made to an owner in any one race shall not exceed 15 percent of the total awards fund.

The board shall designate the officially recognized organizations representing quarter horse to administer this subdivision and to distribute premiums. The organizations may, with the approval of the board, make a deduction for expenses not to exceed 5 percent of the total awards fund.

(c) From the amount deducted for Appaloosa horse purses under subdivision (a), a sum equal to 13.33 percent thereof shall be held by the association to be paid as owners' premiums for California breds winning at the meeting. The premiums shall be distributed within 30 days of the close of the meeting on a prorated percentage basis of first moneys earned to persons owning California-bred Appaloosa horses at the time of their wins in races having a total purse value in excess of the average purse value for races, other than stakes races, won by California-bred horses during the previous year. Except for fair

meetings, the maximum award made to an owner in any one race shall not exceed 15 percent of the total awards fund. The board shall designate the officially recognized organization representing Appaloosa horsemen to administer this subdivision and to distribute premiums. The organization may, with the approval of the board, make a deduction for expenses not to exceed 5 percent of the total awards fund.

(d) At least 30 days prior to the commencement of its meeting, the association shall file with the board a statement of the additional deduction to be made pursuant to subdivision (a). Except with the consent of the board, the amount of the deduction shall not be changed during the course of the meeting.

(e) In addition to the amounts otherwise deducted pursuant to this section, every harness racing association shall deduct an additional 2 percent of its exotic parimutuel pools to be distributed equally as commissions and purses.

SEC. 2. Section 19612.2 of the Business and Professions Code is amended to read:

19612.2. (a) In addition to the amounts otherwise deducted pursuant to this chapter, every association with an average daily handle of six hundred fifty thousand dollars ($650,000) or less, except an association subject to Section 19614.2, which conducts a harness, quarter, or Appaloosa horse meeting may deduct from the total amount handled in its daily exotic parimutuel pool up to 3 percent thereof to be distributed as additional commissions and purses as follows:

(1) For quarter horse meetings conducted other than pursuant to Section 19612.6 and for Appaloosa horse meetings, as agreed to by the association conducting the meeting and the organization representing the horsemen participating at the meeting.

(2) For harness and quarter horse meetings conducted pursuant to Section 19612.6, 50 percent as commissions and 50 percent as purses.

(b) From the amount deducted for quarter horse purses under subdivision (a), a sum equal to 25 percent thereof shall be held by the association to be paid as owners' premiums for California breds winning or placing second at the meeting. The premiums shall be distributed within 30 days of the close of the meeting on a prorated percentage basis of first and second moneys earned to persons owning California-bred quarter horses at the time of their wins in races having a total purse value equal to or in excess of the average purse value for races, other than stakes races, won by California-bred horses during the previous year. Except for fair meetings, the maximum award made to an owner in any one race shall not exceed 15 percent of the total awards fund.

The board shall designate the officially recognized organizations representing quarter horse horsemen to administer this subdivision and to distribute premiums. The organizations may, with the approval of the board, make a deduction for expenses not to exceed

5 percent of the total awards fund.

(c) From the amount deducted for Appaloosa horse purses under subdivision (a), a sum equal to 13.33 percent thereof shall be held by the association to be paid as owners' premiums for California breds winning at the meeting. The premiums shall be distributed within 30 days of the close of the meeting on a prorated percentage basis of first moneys earned to persons owning California-bred Appaloosa horses at the time of their wins in races having a total purse value in excess of the average purse value for races, other than stakes races, won by California-bred horses during the previous year. Except for fair meetings, the maximum award made to an owner in any one race shall not exceed 15 percent of the total awards fund. The board shall designate the officially recognized organization representing Appaloosa horsemen to administer this subdivision and to distribute premiums. The organization may, with the approval of the board, make a deduction for expenses not to exceed 5 percent of the total awards fund.

(d) At least 30 days prior to the commencement of its meeting, the association shall file with the board a statement of the additional deduction to be made pursuant to subdivision (a) and its distribution between commissions and purses. Except with the consent of the board, the amount of the deduction and its distribution shall not be changed during the course of the meeting.

(e) In addition to any deductions pursuant to this section, every harness racing association shall also deduct an additional 2 percent of its daily exotic parimutuel pool to be distributed equally as commissions and purses.

SEC. 3. Section 19614.2 of the Business and Professions Code is amended to read:

19614.2. (a) In addition to the amounts otherwise deducted pursuant to this chapter, the California Exposition and State Fair, or a district or county fair, or an association conducting its meeting pursuant to Section 19549.1, may deduct from the total amount handled in daily double, quinella, exacta, and other multiple wagering pools approved by the board up to 3 percent thereof to be distributed as additional commissions and purses in the current year of the fair meet. Of the amount deducted, if any, 52 percent shall be distributed as additional purses and 48 percent shall be distributed as additional commissions.

(b) At least 30 days prior to the commencement of its meeting, the association shall file with the board a statement of the additional deduction to be made pursuant to subdivision (a). Except with the consent of the board the amount of the deduction shall not be changed during the course of the meeting.

(c) From the amount deducted for thoroughbred purses under subdivision (a), a sum equal to 13.33 percent thereof shall be held by the association to be paid as owners' premiums for California-breds winning at the meeting. The sum shall be deposited within seven days of the close of the meeting with the official registering agency

of California thoroughbred racehorses in a depository approved by the board. After deduction of expenses, not to exceed 5 percent, and approval of all the deductions by the board, the fund shall then be distributed on a prorated percentage basis of first moneys earned to the persons owning California-bred thoroughbreds at the time of their wins at races having a total purse value of five thousand dollars ($5,000) or more.

(d) From the amount deducted for quarter horse purses under subdivision (a), a sum equal to 25 percent thereof shall be held by the association to be paid as owners' premiums for California-breds winning or placing at the meeting. The premiums shall be distributed within 10 days of the close of the meeting on a prorated percentage basis of first and second place moneys earned to persons owning California-bred quarter horses at the time of their wins in races having a total purse value equal to or in excess of the average purse value for races, other than stakes races, won by California-bred horses during the previous year.

The board shall designate the officially recognized organizations representing quarter horse horsemen to administer this subdivision and to distribute premiums.

The organization may, with the approval of the board, make a deduction for expenses not to exceed 5 percent of the total awards fund.

(e) From the amount deducted for Appaloosa horse purses under subdivision (a), a sum equal to 13.33 percent thereof shall be held by the association to be paid as owner's premiums for California-breds winning at the meeting. The premiums shall be distributed within 30 days of the close of the meeting on a prorated percentage basis of first moneys earned to persons owning California-bred Appaloosa horses at the time of their wins in races having a total purse value in excess of the average purse value for races, other than stakes races, won by California-bred horses during the previous year. The board shall designate the officially recognized organization representing Appaloosa horsemen to administer this subdivision and to distribute premiums. The organization may, with the approval of the board, make a deduction for expenses not to exceed 5 percent of the total awards fund.

SEC. 4. Section 19617.7 is added to the Business and Professions Code, to read:

19617.7. Any association other than a fair conducting a quarter horse racing meeting, except for a mixed breed meeting, shall deduct an additional 0.2 of 1 percent of the total amount handled in its daily conventional and exotic parimutuel pools for quarter horse races.

The board shall designate the officially recognized organization representing quarter horse horsemen to administer this section and to distribute amounts deducted under this section. The organization may, with the approval of the board, make a deduction for expenses not to exceed 5 percent of the total amount deducted.

After deduction of the percentage for administrative expenses, the

amounts deducted under this section shall be distributed as follows:

(a) An amount equal to 10 percent of the second place share of the purse won by a California-bred quarter horse at any meeting held in the state, other than a fair or mixed breed meeting, shall be paid to the breeder of the animal.

(b) The amount remaining after the payments are made under subdivision (a) shall be used for the payment of quarter horse stallion awards as provided in this subdivision.

At the end of the calendar year, stallion awards shall be made on a prorated percentage based on the win and second place shares of the purse, exclusive of all purse money not derived from the parimutuel pools, to the owners of sires of quarter horses who have been officially placed first or second in one or more races other than maiden or claiming races at a quarter horse meeting, or in a nonmaiden claiming race at a quarter horse meeting in the central or southern zone when the total purse is equal to or exceeds 85 percent of the daily average purse distributed at that meeting during the prior year, or in a nonmaiden claiming race at a quarter horse meeting in the northern zone when the total purse is equal to or exceeds 115 percent of the daily average purse distributed at that meeting during the prior year, or in any quarter horse stakes race run at the California Exposition and State Fair, or at any county or district agricultural association fair or mixed meeting.

Stallion awards shall not be made to the owner of a sire which has been out of the state for breeding purposes during the calendar year.

Stallion awards shall not be made for any race run outside the State of California.

In the event there are insufficient funds to make all of the distributions in this section, there shall be no additional assessments made against any association to fund the deficiencies.

CHAPTER 1498

An act to add Chapter 1.5 (commencing with Section 18010) to Part 11 of the Education Code, relating to public libraries, and making an appropriation therefor.

[Approved by Governor September 27, 1982. Filed with Secretary of State September 28, 1982.]

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

SECTION 1. Chapter 1.5 (commencing with Section 18010) is added to Part 11 of the Education Code, to read:

CHAPTER 1.5. PUBLIC LIBRARY FINANCE

Article 1. General Provisions

18010. The Legislature finds and declares that it is in the interest of the people and of the state that there be a general diffusion of information and knowledge through the continued operation of free public libraries. Such diffusion is a matter of general concern inasmuch as it is the duty of the state to provide encouragement to the voluntary lifelong learning of the people of the state.

The Legislature further declares that the public library is a supplement to the formal system of free public education, and a source of information and inspiration to persons of all ages, cultural backgrounds, and economic statuses, and a resource for continuing education and reeducation beyond the years of formal education, and as such deserves adequate financial support from government at all levels.

18011. It is the intent of the Legislature under this chapter to initiate and examine a specific program providing equitable and adequate funds to the public libraries of the state which are established under various provisions of law, and which, historically dependent for their support on local property tax revenues, face a fiscal crisis as a result of ad valorem tax limitations imposed by Article XIII A of the California Constitution, which fiscal crisis has not been sufficiently resolved through application of existing statutes.

18012. In adopting this chapter, the Legislature declares that its policy, and its objective in enacting the specific program prescribed in Section 18011, is to do all of the following:

(a) Assure the availability to every resident of the state of an adequate level of public library service regardless of the taxable wealth of the local jurisdiction providing the service.

(b) Provide permanent, stable, and predictable financing for public libraries of the state through a combination of state and local revenues.

(c) Provide state funds for public library service through application of a simple formula whose variable elements can be readily predicted and ascertained by both state and local officials, and which can be administered by the Controller and the State Librarian as ministerial functions.

(d) Reaffirm the principle of local control of the government and administration of public libraries under broad state policy determinations, and subject to the necessity for financial accounting to the state for the expenditure of state funds and required local matching funds.

18013. The Legislature finds and declares that this chapter effects a state policy that each public library provide a minimum level of service, known as the foundation program, to the extent state funds are made available for that purpose as prescribed by this chapter. The Legislature, therefore, declares that state funds made available

to each public library pursuant to this chapter, to the extent those funds are appropriations subject to limitation of a public library, shall be included in the appropriations limit of the state for purposes of Article XIII B of the California Constitution. However, this chapter does not mandate any new program or higher level of service on any local government for which state funds are not made available as prescribed by this chapter.

Article 2. Definitions

18015. As used in this chapter:

(a) "Public library" means a library, or two or more libraries, operated as a single entity by one or more public jurisdictions and which serve the general public without distinction.

(b) "Foundation program" means those elements of library service which are basic to its function as a provider of information, education, and cultural enrichment to all segments of the community, including, but not limited to, collection development and maintenance, lending services, information services, facility maintenance, and administration. The foundation program shall not include major capital improvements, which, for purposes of this chapter, shall be defined as the purchase of real property, the construction or improvement of buildings, and the purchase of equipment and the payment of fees or other costs in connection with the same.

(c) "Fiscal officer" means, for a municipal library, the chief fiscal officer of the municipality; for a county library, the chief fiscal officer of the county; and for a district library, the chief fiscal officer of the county in which the district is located. In the case of a public library which provides foundation program service by contract to one or more jurisdictions in addition to the jurisdiction or jurisdictions with which it is affiliated, the chief fiscal officer of the jurisdiction with which it is primarily affiliated shall be deemed the fiscal officer for the public library for the purposes of this chapter.

Article 3. Funding

18020. For the fiscal year 1982–83, the cost of the foundation program is deemed to be twelve dollars ($12) per capita.

For the 1983–84 fiscal year and each fiscal year thereafter, the cost of the foundation program shall be increased by a percentage equal to the average statewide percentage increase in the total revenue limit for all unified school districts computed pursuant to Section 42238 from the prior fiscal year.

18021. The State Librarian shall determine and certify, on or before June 1, 1982, and June 1 of each fiscal year thereafter, the population served by each public library of the state based upon census data compiled by the United States Department of Commerce or estimates prepared by the California Department of

Finance, whichever is more current. For such purposes, no person shall be deemed to be served by more than one public library.

18022. The total cost of the foundation program for each public library for the purposes of this chapter shall be the product of the per capita cost determined pursuant to Section 18020 multiplied by the population determined pursuant to Section 18021.

18023. On or before August 31, 1982, and August 31 of each fiscal year thereafter, the fiscal officer of each public library shall report to the State Librarian and the Controller the total revenue appropriated for the foundation program of the public library for that fiscal year and shall specify the amount of local revenue included in such total appropriation. For the purposes of this chapter, homeowner and business inventory exemption reimbursements and federal revenue sharing funds shall be deemed to be local revenues.

18024. (a) A fund is hereby created in the State Treasury to be known as the Public Library Fund.

(b) The Controller shall transfer in fiscal year 1982–83 and in each fiscal year thereafter, from the General Fund to the Public Library Fund, the amount necessary to meet the state's obligations under this chapter for each fiscal year.

18025. (a) For the 1982–83 fiscal year and each fiscal year thereafter, the Controller shall disburse from the Public Library Fund to the fiscal officer of each public library for support of the library during each such fiscal year an amount equal to 10 percent of the cost of the foundation program as determined pursuant to Section 18022.

(b) In the event local revenues appropriated for a public library for the 1982–83 fiscal year and each fiscal year thereafter, including tax revenues made available under the provisions of Chapter 282 of the Statutes of 1979, total less than 90 percent of the cost of the foundation program as determined pursuant to Section 18022, the state allocation for that fiscal year shall be reduced proportionately.

(c) In the event local revenues appropriated for a public library for the 1982–83 fiscal year and each fiscal year thereafter, including tax revenues made available under the provisions of Chapter 282 of the Statutes of 1979, total more than 90 percent of the cost of the foundation program as determined pursuant to Section 18022, the state allocation for that fiscal year shall remain at 10 percent of the cost of the foundation program as determined pursuant to Section 18022.

(d) In order for a public library to receive state funds under this chapter in the 1983–84 fiscal year and any fiscal year thereafter, the total amount of local revenues appropriated for such public library for that fiscal year, including tax revenues made available under the provisions of Chapter 282 of the Statutes of 1979 and other revenues deemed to be local revenues according to Section 18023, shall be equal to at least the total amount of local revenues, as defined, appropriated for the public library in the previous fiscal year. State funds provided under this chapter shall supplement, but not

supplant, local revenues appropriated for such public library.

(e) In the event that the state allocations computed pursuant to this section exceed the total amount of funds appropriated for such purposes in any fiscal year, the Controller shall adjust on a pro rata basis public library allocations prescribed by this section so that the total amount in each fiscal year does not exceed such amount.

18026. The amounts determined in Section 18025 for the 1982–83 fiscal year and each fiscal year thereafter, shall be distributed to each fiscal officer by the Controller in accordance with the following schedule:

On September 15	33 percent
On December 15	33 percent
On May 15	34 percent

Article 4. Services

18030. Notwithstanding any other provision of law, books and other library materials acquired or maintained by a public library as a part of the foundation program supported in part by state funds under this chapter shall be made available upon request to other public libraries in the state without charge, subject to any restrictions which may apply to the use of the materials by residents of the area normally served by the library.

18031. The provisions of this chapter shall become operative July 1, 1983.

SEC. 2. There is hereby appropriated from the General Fund to the Public Library Fund the sum of twenty-three million dollars ($23,000,000) for the 1982–83 fiscal year pursuant to Section 6 of Article XIII B of the California Constitution and Sections 2231 and 2234 of the Revenue and Taxation Code, in lieu of the amount required to be transferred by the Controller pursuant to Section 18024 of the Education Code for that fiscal year.

It is the intent of the Legislature that the funds appropriated from the General Fund by this section shall, to the extent available, be credited against revenues generated by the increase in penalties for delinquent taxes.

CHAPTER 1499

An act to add Chapter 3.7 (commencing with Section 5700) to Division 3 of the Business and Professions Code, and to repeal Section 26849 of the Government Code, relating to auctions, and making an appropriation therefor.

[Approved by Governor September 27, 1982. Filed with Secretary of State September 28, 1982.]

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

SECTION 1. Chapter 3.7 (commencing with Section 5700) is added to Division 3 of the Business and Professions Code, to read:

CHAPTER 3.7. AUCTIONEERS AND AUCTIONS

Article 1. General Provisions

5700. This chapter shall be known and cited as the Auctioneer and Auction Licensing Act.

5701. As used in this chapter:

(a) "Auction" means a sale transaction conducted by means of oral or written exchanges between an auctioneer and the members of his or her audience, which exchanges consist of a series of invitations for offers for the purchase of goods made by the auctioneer and offers to purchase made by members of the audience and culminate in the acceptance by the auctioneer of the highest or most favorable offer made by a member of the participating audience.

(b) "Auction company" means any person who, as a part of the person's business, arranges, manages, sponsors, advertises, or carries out auctions.

(c) "Auction house" means an established place of business, including an auction barn, a sale barn, and a sale pavilion, and its contiguous surroundings, where two or more auctions are held within any 12-month period and where representations are regularly made that goods are sold at auction. Each day during which goods are being offered for sale at auction shall constitute one auction.

(d) "Auctioneer" means an individual who is engaged in, or who by advertising or otherwise holds himself or herself out as being available to engage in, the calling for, the recognition of, and the acceptance of, offers for the purchase of goods at an auction.

(e) "Commission" means the California Auctioneer Commission.

(f) "Goods" means any goods, wares, chattels, merchandise, or other personal property, including domestic animals and farm products.

(g) "Licensee" means any person licensed under this chapter and, in the case of an auction house or auction company, includes the person required to obtain a license for such auction house or auction company.

(h) "Organization" means a corporation, partnership, trust, including a business trust, firm, association, or any other form of business enterprise which is owned by two or more individuals.

(i) "Person" means an organization, corporation, partnership, or an individual.

Article 2. Administration

5710. There is hereby created a public corporation to be known as the California Auctioneer Commission, hereinafter called the Auctioneer Commission.

5711. All persons licensed as auctioneers pursuant to this chapter shall be members of the Auctioneer Commission.

5712. The Auctioneer Commission has perpetual succession and a seal. It may sue and be sued. It may own property, make contracts, and do all other lawful acts necessary or expedient for the administration of its affairs.

The Auctioneer Commission may accept gifts, bequests, and other charitable donations.

No agreement or other obligation of the Auctioneer Commission shall ever create a liability of the state nor of any entity other than the Auctioneer Commission.

5713. The headquarters office of the Auctioneer Commission shall be in the City of Sacramento, California. Branch offices may be established in such locations in California deemed necessary by the board of governors.

5714. (a) The powers conferred on the Auctioneer Commission shall be exercised by its board of governors and the board is charged with their administration.

(b) The board of governors shall govern, control, and administer the affairs of the Auctioneer Commission, and shall exercise all rights and powers vested in it by this chapter.

(c) The Auctioneer Commission is invested with all duties, powers, purposes, responsibilities, and jurisdiction regarding auctions and auctioneering in California. No other agency, or political subdivision of the state, shall impose on a licensee or seller at auction any registration or license requirement or any license or employment fee or charge on account of such auction activities. No provision of this subdivision or chapter shall prohibit any city or county, or city and county, from imposing a business license fee on an auctioneer, including any city or county, or city and county, where the auctioneer conducts any sale.

5715. (a) The business of the Auctioneer Commission shall be administered by a governing board which shall consist of seven members. Each member of the board shall be a citizen of the United States. Except for the first members appointed to the board, three members of the board shall be licensed under this chapter and four members shall be public members.

The members of the first board appointed shall consist of three members representing the auctioneering industry and four members representing the public at large.

The Governor shall appoint the first members of the board within 60 days from the effective date of this chapter and the board shall hold its first meeting within 30 days after all the initial members are appointed.

Each member, except the public members, shall have at least five years of experience in auctioneering and shall be of recognized standing in his or her practice of the auctioneering business. Each member of the board of governors shall be at least 21 years of age and shall have been a resident of this state for at least five years immediately preceding his or her appointment.

The first board of governors shall consist of seven members appointed by the Governor. Two of the industry members and two of the public members shall be appointed for a term of two years and one of the industry members and two of the public members shall be appointed for a term of four years. Thereafter, members shall be appointed for a term of four years. Before selecting the industry members of the board of governors, the Governor shall consult with, and consider qualified candidates nominated by, individuals within, or organizations representing the auctioneering business. Any vacancies shall be filled by appointment by the Governor for the unexpired term. Each member appointed to fill a new term or vacancy shall be a licensed auctioneer as was his or her predecessor, or a public member as was his or her predecessor.

Each member of the board of governors shall hold office until the appointment and qualification of his or her successor or until six months shall have elapsed since the expiration of the term for which he or she was appointed whichever first occurs. Whenever the Governor has failed to appoint and qualify a member six months after the expiration of a term, or a vacancy created by other cause, the Speaker of the Assembly and President pro Tempore of the Senate, jointly, shall appoint a successor to fill the unexpired term. No person shall serve as a member of the board for more than two consecutive terms.

(b) There shall be a council of advisers to the board of governors. The board of governors shall, by rule and appointment as deemed necessary to comprehensively address matters of concern to the board of governors, establish the number and qualifications of advisers. An adviser shall be appointed by the board of governors and his or her term of office shall be one year. No person shall serve as a member of the council of advisers for more than two full consecutive terms. In any event, the board of governors shall provide for the appointment of three members of the council of advisers representing consumer interest organizations in this state. Vacancies in the council of advisers shall be filled by the board of governors by appointment for the unexpired term.

(c) The board of governors shall hold not less than four regular meetings each fiscal year, once in July, once in October, once in January, and once in April, for the purpose of transacting such business as may properly come before it. At the July meeting of each year the board of governors shall elect officers.

5716. The officers of the Auctioneer Commission shall elect a president and a vice president. The president and vice president shall be chosen by the board of governors from the board of

governors membership. Officers shall serve for one year or until their successors are chosen and qualify. The president shall preside at all meetings of the Auctioneer Commission and of the board of governors, and in the event of his or her absence or inability to act, the vice president shall preside.

5717. Subject to the laws of this state, the board of governors may formulate and declare rules and regulations necessary or expedient for the carrying out of this chapter. Such rules and regulations shall be adopted in accordance with the 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.

Upon enactment of this article, there is hereby created a special fund in the State Treasury, known as the Auctioneer Commission Fund, which fund shall be continuously appropriated for the purposes of this chapter. The board of governors may make appropriations and disbursements from the Auctioneer Commission Fund to pay all necessary expenses associated with the effective performance of the duties and powers of the board. Each member of the board of governors shall receive fifty dollars ($50) per day and his or her necessary expenses connected with the performance of his or her duties on the board of governors.

The board of governors shall appoint an executive officer for the Auctioneer Commission. No member of the Auctioneer Commission is eligible to serve as the executive officer.

The board of governors may appoint such committees, representatives, delegates, examiners, firms, and employees as it deems necessary or proper. The board of governors may by rule provide for the assignment of duties to the executive officer, the council of advisers, or to committees of the council. Committees of the council may be assigned responsibility for accepting or denying applications, preparing and grading examinations, receiving or designating complaints involving professional competence or standards of conduct and assisting the executive officer to investigate such complaints, and performing such other duties as the board of governors may, by rule, delegate to them. Except as otherwise provided in this section, the board of governors may fix and pay salaries, fees, and necessary expenses.

At the time this chapter takes effect, for the purposes of providing staff to the Auctioneer Commission, the board of governors may contract with the State Personnel Board and the Public Employees Retirement System for services. Replacement of staff members and all additional permanent employees may also be under the state civil service system. Nothing in this section shall be construed to prevent or discourage the selection of qualified individuals to serve as staff members or permanent employees for the Auctioneer Commission outside the state civil service system.

The board of governors may formulate rules of professional conduct which shall be binding upon members when ratified by majority vote of the members of the Auctioneer Commission who

vote at a regular or special election at which all members have an opportunity to vote.

5718. The Governor may remove any member of the board of governors for misconduct, incompetency, or neglect of duty.

5719. Notice of all meetings of the board of governors shall be governed by rule of the board of governors. A majority of the board of governors constitutes a quorum.

All meetings shall be open and public, except that the board of governors may hold executive sessions to do either of the following:

(a) Deliberate on the decision to be reached upon evidence in a disciplinary proceeding conducted in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.

(b) Prepare, approve, grade, or administer examinations.

5720. The board of governors may, by regulation, define the scope of each branch of auctioneering for which licensure is provided under this chapter.

5721. Any member of the board of governors may administer oaths and take testimony and evidence concerning all matters within the board's jurisdiction.

5722. The executive officer shall keep a complete record of all applications for licensure and the action of the board of governors thereon and, between July 1 and December 1 of each year, shall prepare a roster showing the names and addresses of all members of the Auctioneer Commission.

A copy of the roster shall be filed with the Secretary of State and with the clerk of each county in the state, and a copy of the roster shall be furnished to each member of the Auctioneer Commission in good standing. Copies of the roster shall be available on application to the executive officer, at a price per copy as may be fixed by the board of governors.

All records of the commission shall be public records except confidential letters of reference, examination material not yet used, and incomplete investigation files.

5723. Persons who hold only temporary authorizations to practice in California shall have no voting privileges in the Auctioneer Commission nor shall their names be listed in the roster of members.

5724. Within 30 days prior to the meeting of the general session of the Legislature, the board of governors shall submit to the Governor, the Speaker of the Assembly, and the Senate President pro Tempore a full and true report of their transactions during the preceding biennium including a complete statement of the receipts and expenditures of the Auctioneer Commission during the period. A copy of the report shall be filed with the Secretary of State.

Article 2.5. Licensing

5730. This article provides licensing and registration for persons engaged in operating, conducting, or otherwise producing auctions.

5731. On and after July 1, 1983, no person shall act as an auctioneer nor hold himself or herself out as an auctioneer unless that person holds an unexpired and unrevoked license issued pursuant to this chapter.

5732. On and after July 1, 1983, no person shall operate an auction house unless that person holds a license issued by the board of governors authorizing the operation of an auction house.

5733. (a) Except as provided in subdivision (b), no individual may act as an auctioneer and no person may operate an auction house or an auction company without obtaining and having in full force and effect a valid license issued by the commission in accordance with this chapter.

(b) The requirements of this chapter shall not apply to:

(1) An auction of goods conducted by an individual who personally owns such goods and who did not acquire such goods for resale.

(2) An auction conducted by or under the direction of any public authority.

(3) An auction conducted pursuant to any judicial order or to the settlement of a decedent's estate.

(4) A sale conducted by or on behalf of any person, political candidate or party, church, charitable corporation, or association, if the individual conducting the sale receives no compensation and does not, by advertising or otherwise, hold himself or herself out as being available to engage in the sale of goods at auction.

(5) A sale of real estate.

(6) Automobile auctions regulated by the Department of Motor Vehicles. However a person acting as an auctioneer at any such auto auction shall hold a license as required by this chapter.

5734. (a) Every individual, before acting as an auctioneer, shall obtain a license from the commission.

(b) An applicant shall be at least 18 years of age.

(c) An individual seeking an initial license as an auctioneer under this article shall file with the commission a completed application on the form prescribed by the board. When filing an initial application for an auctioneer license, each individual shall do all of the following:

(1) Pay a nonrefundable examination fee of thirty-five dollars ($35).

(2) Provide all the following:

(A) A surety bond in the amount and form as prescribed in Section 5760.

(B) The statements of two individuals, not related to the applicant or to each other, who are residents of the State of California, recommending that the applicant be licensed as an auctioneer and certifying to the applicant's honesty and truthfulness.

(C) Proof that the applicant holds a valid, unrevoked resale permit issued by the State Board of Equalization.

(d) An applicant shall be fingerprinted on a form approved by the Department of Justice. A fee, not to exceed fifteen dollars ($15), may be charged by the Department of Justice for fingerprinting.

(e) When filing an application for a renewal of an auctioneer license each individual shall do all the following:

(1) File with the executive officer a completed application on the form prescribed by the board.

(2) Pay the license fee prescribed by Section 5737.

(3) Satisfy the executive officer that a surety bond in the amount and form prescribed in Section 5760 is in full force and effect.

(f) Upon the receipt of a completed application for an initial or a renewal license, the executive officer shall examine the application and verify the information contained therein.

(g) An applicant who is seeking an initial license shall pass an examination prepared by the board and administered by the executive officer. The executive officer shall hold examinations as the board may prescribe. The examination for an auctioneer's license shall include questions on the applicant's ability to read and write, his or her knowledge of the value of merchandise, equipment, and the various goods commonly sold at auction, his or her ability to call bids, his or her knowledge of sale preparation and proper sale advertising and sale summary, his or her knowledge of mathematics and accounting principles, and his or her knowledge of the provisions of this chapter and the commission's regulations.

(h) Any individual who fails to pass two successive examinations administered by the executive officer is not eligible to take another examination until the expiration of one year from the date of his or her most recent failure.

(i) The board shall issue an auctioneer's license, in such form as it may prescribe, to each individual who meets all of the requirements for licensing and pays the appropriate fees.

(j) The board, upon application therefor on or before January 1, 1984, on its prescribed form, and upon payment of the application and license fees fixed by this chapter, which fees shall be retained by the board, may issue an auctioneer license, without examination, to any person who has held an auctioneer license issued to him or her by any city or county in this state for at least three of the last five years, when the applicant's qualifications meet the other requirements of this chapter and the rules established by the board.

(k) Auctioneer licenses shall be issued for a term of two years. A license issued under this chapter expires at 12 midnight on that day of the second year following the year in which the license is issued, which constitutes a full two-year term for the license, unless renewed before that date. Renewal applications shall be filed with the executive officer before the time at which the certificate would otherwise expire on a form prescribed by the board and shall be accompanied by the renewal fee to be prescribed by the board not

to exceed two hundred dollars ($200).

If the license has expired, it may be reinstated not more than one year after the date it expired upon the payment of the renewal fee plus the sum of twenty-five dollars ($25). If the license has expired for a period of more than one year, the person shall file an application and take the required examination.

The holder of an expired license shall cease to display the original wall certificate at his or her place of business and shall return the wall certificate to the executive officer upon notification by the executive officer of the expiration of his or her license.

(*l*) The board may waive the requirement that a nonresident applicant pass an examination and that he or she submit written statements by two individuals, if the nonresident applicant complies with all of the following:

(1) Is licensed to act as an auctioneer in the state of his or her domicile.

(2) Submits with his or her application a duly certified letter of certification issued by the licensing board of his or her domiciliary state.

(3) Includes with his or her application an irrevocable consent that actions may be commenced against him or her. The consent shall stipulate that service of process or pleadings on the board shall be taken and held in all courts as valid and binding as if service of process had been made upon the applicant personally within this state. If any process or pleading mentioned in this subdivision is served upon the board, it shall be by duplicate copies. One of the duplicate copies shall be filed in the Sacramento office of the commission and one shall be immediately forwarded by the executive officer by registered or certified mail to the applicant against whom the process or pleadings are directed.

(4) Files a bond in the amount of ten thousand dollars ($10,000) pursuant to Section 5760.

(m) The board may, for good cause shown, upon the receipt of an application for a license, issue a temporary permit for such reasonable period of time, not to exceed one year, as the board deems appropriate. A temporary permit has the same effect as a license and entitles and subjects the permittee to the same rights and obligations as if he or she had obtained a license subject to the restrictions contained in Section 5723.

5734.5. The Department of Justice shall notify the board of all felony convictions of the applicant. The board shall determine which convictions, if any, substantially relate to the qualifications of the applicant to be an auctioneer and shall consider those convictions prior to the issuance of a license.

5735. (a) Every person, except an individual who is a licensed auctioneer, before operating an auction house, shall obtain a license from the board for that auction house. Notwithstanding the fact that an individual who is a licensed auctioneer has an interest in the organization, every organization seeking to operate an auction house

shall obtain a license for that auction house.

(b) Every applicant seeking to operate an auction house shall file with the executive officer a completed application on a form prescribed by the board for a license for each auction house to be operated by that person. Each application shall be accompanied by the license fee prescribed by Section 5737 and a surety bond in the amount and form prescribed in Section 5761.

(c) Upon the receipt of a completed application for an initial or a renewal license, the executive officer shall examine the application and may verify the information contained therein.

(d) Upon determination by the executive officer that the application has been completed and that the statements made therein by the applicant are true, the board shall issue a license, in such form as it may prescribe, for the auction house.

(e) Auction house licenses shall expire at 12 midnight on that day of the second year following the year in which the license is issued, which constitutes a full two-year term for the license, unless renewed before that date. Renewal applications shall be filed with the executive officer before the time at which the certificate would otherwise expire on a form to be prescribed by the board and shall be accompanied by the renewal fee to be prescribed by the board not to exceed two hundred dollars ($200).

(f) In any case in which, by reason of the exception stated in subdivision (a), a licensed auctioneer who also operates an auction house or auction houses shall be exempt from the requirement that he or she obtain a license for such auction house or auction houses. The auctioneer shall, by July 1, 1983, or the date on which he or she begins the operation of any auction house, whichever is later, notify the executive officer in writing of the address of each auction house operated by the auctioneer and of the trade or business name by which each auction house is known. Whenever any licensed auctioneer to whom this subdivision applies shall discontinue the operation of any auction house operated by him or her, or shall change the address or trade or business name of any auction house operated by the auctioneer, the auctioneer shall promptly notify the executive officer in writing of the discontinuance or change.

5736. (a) Every person other than (1) an individual who is a licensed auctioneer or (2) an individual who has a licensed auction house who is seeking to operate as an auction company shall obtain a license from the board. Notwithstanding the fact that an individual who is a licensed auctioneer or an individual who has a licensed auction house also has an interest in an organization, every organization which seeks to operate an auction company shall obtain a license for that auction company.

(b) Every such person shall file with the executive officer a completed application on the form prescribed by the board. Each application shall be accompanied by the license fee prescribed by Section 5737 and a surety bond in the amount and form prescribed in Section 5762.

(c) Upon the receipt of a completed application for an initial or renewal license the executive officer shall examine the application and verify the information contained therein.

(d) Upon determination by the executive officer that an application is completed and duly verified, the board shall issue an auction company license in such form as it may prescribe, to the applicant.

(e) Auction company licenses shall expire at 12 midnight on that day of the second year following the year in which the license is issued, which constitutes a full two-year term for the license, unless renewed before that date. Renewal applications shall be filed with the executive officer before the time at which the certificate would otherwise expire on a form to be prescribed by the board and shall be accompanied by the renewal fee to be precribed by the board not to exceed two hundred dollars ($200).

(f) Any individual who wishes to operate an auction company, and who is exempt under subdivision (a) from obtaining an auction company license, shall, by July 1, 1983, or on the date on which he or she begins to operate any auction company, whichever is later, notify the executive officer in writing that he or she is operating as an auction company or as more than one auction company. He or she shall specify in the written notification, the trade or business name, and the address of the principal place of business, of each auction company which he or she operates. Whenever any individual to whom this subdivision applies shall discontinue the operation of any auction company operated by him or her, or shall change its address or trade or business name, he or she shall promptly notify the executive officer in writing of the discontinuance or change.

5737. At the time of obtaining a license under this chapter, any person, auction company, or auction house shall pay a license fee in an amount to be prescribed by the board not to exceed two hundred dollars ($200), except that the fee for a license shall be one hundred dollars ($100) until April 1, 1984, and on and after that date, the fee shall be fixed by the board in accordance with this section.

5739. Every person licensed under this chapter shall display his or her license or a certified copy of it issued by the board in the full and unobstructed view of the public at his or her principal place of business.

5740. (a) The board may charge a fee not to exceed ten dollars ($10) as the cost of providing duplicate licenses to replace lost or destroyed licenses.

(b) The board may charge a fee not to exceed five dollars ($5) as the cost of certified copies of licenses, which shall include certified copies of a type and size which can be easily carried on the person of the licensee (pocket card).

5741. Any person who makes proper and complete application for licensure under this chapter, and who is denied a license under this chapter, has all of the rights and remedies prescribed in Division 1.5 (commencing with Section 475).

5742. (a) When the board, upon notification by the executive officer or any other person, determines that a person not licensed under this chapter is engaged in or is believed to be engaged in activities for which a license is required under this chapter, the board may apply to an appropriate court for an order to show cause why he or she should not be ordered to cease and desist from such activities. The show cause order shall set forth a time and place for a hearing at which the affected person may appear and show cause as to why he or she should not be subject to licensing under this article.

(b) If the court, after a hearing, determines that the activities in which the person is engaged are subject to licensing under this article, the court may issue a cease and desist order which shall describe the person and activities which are the subject of the order.

(c) A cease and desist order issued under this section shall be enforceable in the superior courts of this state.

Article 3. Denial, Suspension and Revocation of Licenses

5750. The board may deny, suspend, revoke, or refuse to issue or reissue a license to any person for any of the following reasons:

(a) A failure to comply with this chapter.

(b) A failure to comply with the regulations of the board.

(c) That the person or an employee, agent, owner, officer or partner of the person did either of the following:

(1) Knowingly made a substantial misrepresentation related to the business of auctioneering.

(2) Has been convicted of forgery, embezzlement, obtaining money under false pretenses, extortion, conspiracy to defraud, receiving stolen property, or a similar offense which would bear upon the person's qualifications to be a licensee under this chapter.

(d) A failure within 30 working days to account for or to pay over moneys belonging to others which have come into the licensee's possession as a result of a sale transaction.

(e) Placing or using any misleading or untruthful advertising.

(f) Failing to keep the funds of others separate from his own private accounts.

(g) Failure of the licensee to account and make payment pursuant to Sections 5773 and 5774.

(h) Using, utilizing, or allowing any person to bid at a sale for the sole purpose of increasing the bid on any item or items being sold by the auctioneer, as defined in Section 2328 of the Commercial Code and Section 535 of the Penal Code.

5751. (a) After a hearing, the board may suspend the license of any licensee for any of the reasons set forth in Section 5750, for a period not to exceed 6 months except that for a violation of subdivision (h) of Section 5750, the board may suspend the license for a period not to exceed one year.

(b) During the period of a suspension, the board may allow

continued activity under the license under such restrictions and conditions as the board determines are necessary.

5752. (a) After a hearing, the board may revoke the license of any licensee for any of the reasons set forth in Section 5750.

(b) Not earlier than one year after the revocation of a license, the board may consider the application of the licensee or his successor and may issue a new license for good cause.

5753. All hearings held under this chapter shall be held in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.

Article 3.5. Bonding

5760. Every individual who applies for an auctioneer's license shall, as a condition to the granting and the retention thereof, file or have on file with the executive officer a bond in the amount of ten thousand dollars ($10,000) which meets the requirements contained in Section 5763.

5761. Every person who applies for an auction house license shall, as a condition to the granting and the retention thereof, file or have on file with the executive officer a bond for each such auction house in the amount of ten thousand dollars ($10,000) which meets the requirements contained in Section 5763.

5762. Every person or persons who apply for an auction company license shall, as a condition to the granting and the retention thereof, file or have on file with the executive officer a bond in the amount of ten thousand dollars ($10,000) which meets the requirements contained in Section 5763.

5763. (a) The State of California shall be the obligee under the bond.

(b) The bond shall comply with all the following:

(1) Be executed by the person seeking the license as principal and by a corporate surety, licensed to do business in this state, as surety.

(2) Be in such form and shall contain such terms and conditions as the board prescribes.

(3) Be conditioned upon the faithful performance of all obligations of a licensee under this chapter and the regulations, including the obligation to account for and pay over moneys and proceeds to persons who are entitled to them.

(4) Be effective from the date of filing with the executive officer and shall not be affected by the expiration of the license and shall continue in full force and effect until canceled, provided that the total and aggregate liability of the surety on a bond shall be limited to the amount specified in the bond and the continuous nature of the bond shall in no event be construed as allowing the liability of the surety under a bond to accumulate for each successive license period during which the bond is in force.

(c) (1) A licensee may not cancel a bond without the prior written approval of the board and its approval of a substitute bond

so as to provide continuous bonding of the licensee's activities.

(2) The surety on a bond may cancel a bond filed under this chapter only after the expiration of 90 days from the date the surety mails a notice of intent to cancel, by registered or certified mail, return receipt requested, to the board and to the principal on the bond.

(3) Not later than 30 days prior to the date upon which a bond cancellation becomes effective, the licensee shall give written notice to the board that a new bond has been obtained in order to provide continuous bond coverage of the licensee's activities.

5764. (a) If any licensee fails, or is alleged to have failed, to meet the obligations of the licensee under this chapter and the regulations, the board shall hold a hearing and determine whether there has been such a failure, determine those persons who are proved claimants under the bond and, if appropriate, distribute the bond proceeds to the proven claimants.

(b) Actions upon the bond and the right to payment under the bond shall extend solely to the board; however, if the board has not initiated action under the bond by scheduling and holding a hearing, by litigation or otherwise, within 30 days of a written request to do so, any claimant may initiate an action in a superior court in this state to require the board to take action.

(c) If, upon a hearing, the board determines that proved claims exceed the amount of the bond proceeds, the proceeds shall be prorated among proven claimants in the ratio that the amount of their proven claim bears to the total amount of all proved claims.

(d) The determination of the board as to the fact and the amount of liability under the bond and the amount distributed to the claimants under the bond shall be binding upon the principal and surety of the bond.

(e) All hearings held under this section shall be held in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.

(f) The existence of the bond and the bond recovery procedure shall in no way affect or alter any other right or remedy which a person may have under applicable law.

Article 4. Licensee Obligations

5770. In performing the duties of an auctioneer, every auctioneer shall follow all reasonable requests of the owner or consignor of the goods being sold at the auction, shall perform his or her duties so that the highest or most favorable offer made by a member of his or her audience is accepted, and shall otherwise perform his or her duties in accordance with the highest standards of the auctioneering profession.

5772. Each licensed auctioneer shall have in his or her possession at the time of any auction sale a certified copy of his or her auction license ("pocket card").

5773. (a) Every licensee, within 30 working days after the sale transaction, shall account to, or see to an accounting for, those persons who own or who are acting as consignor of goods which is the subject of an auction engaged in or conducted by such licensee or upon such licensee's premises.

(b) Every licensee, within 30 working days after a sale transaction of goods, shall pay over, or see to the paying over of, all moneys and proceeds due to the owner or the consignor of goods which was the subject of an auction engaged in or conducted by such licensee or upon the licensee's premises unless delayed by legal proceedings or the inability of the licensee, through no fault of his or her own, to transfer title to such goods or to comply with the provisions of this chapter, the Commercial Code, or other applicable provisions of law.

5774. Each licensee shall keep and maintain in a place of safety for a period of not less than 2 years complete and correct records and accounts pertaining to that licensee's licensed activity, including the name and address of the owner or consignor of all goods involved in such activities, a description of such goods, the terms and conditions of the acceptance and sale of such goods, and accounts of all moneys received and paid out, whether on the licensee's own behalf or as agent, as a result of such activities.

5775. Except with respect to goods sold through an auction house, or those items personally owned by the licensed auctioneer, no licensee shall sell goods at auction until the auctioneer or auction company involved has first entered into a written contract with the owner or consignor of such goods, which contract sets forth the terms and conditions upon which the auctioneer or auction company accepts the goods for sale. A copy of every written contract shall be retained for a period of two years from the date of the auction.

5776. All advertising of auctions shall disclose both of the following:

(1) The auctioneer's name and the name of the auction house or the auction company involved, and their addresses and telephone numbers.

(2) The auctioneer's and auction house or auction company's state license number.

5777. The auctioneer shall post a prominent sign at each auction stating that the auction is being conducted pursuant to Section 2328 of the Commercial Code, and Section 535 of the Penal Code. The sign shall be prominently posted at the main entrance to the auction.

Article 4.5. Offenses Against the Chapter

5780. The board of governors and the executive officer shall have the power, duty, and authority to investigate violations of the provisions of this chapter. It is the duty of the executive officer, under the direction of the board of governors, to seek compliance of all persons and entities with the provisions of this chapter.

5781. It is a violation of this chapter for any person to do any of

the following:

(a) Practice or offer to practice auctioneering in this state according to the provisions of this chapter, without legal authorization, unless he or she is exempt from licensure under this chapter.

(b) Present or attempt to file as his or her own the license of another.

(c) Give false evidence of any kind to the board of governors, or to any member thereof, or to the executive officer, in obtaining a license.

(d) Impersonate or use the seal of any other practitioner.

(e) Use an expired or revoked license.

(f) Represent himself or herself as, or use the title of, auctioneer or licensed auctioneer, or any other title whereby such person could be considered as practicing or offering to practice auctioneering in any of its branches, unless he or she is qualified as an auctioneer under this chapter.

(g) Manage, or conduct as a manager, proprietor, or agent, any place of business from which auctioneering work is solicited, performed or practiced, unless licensed under this chapter.

5782. A violation of any provision of this chapter is a misdemeanor.

SEC. 2. Section 26849 of the Government Code is repealed.

SEC. 3. The sum of twelve thousand dollars ($12,000) is hereby appropriated from the General Fund to the California Auctioneer Commission for the purpose of implementing the provisions of this act, which sum shall be repaid to the General Fund, including interest, in accordance with terms and conditions as may be agreed upon between the commission and the Department of Finance.

No additional funds shall be available to the commission from the General Fund other than as provided in the section. Any additional funds required by the commission shall be obtained from the Auctioneer Commission Fund in accordance with the provisions of this act.

SEC. 4. No appropriation is made and no reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution or Section 2231 or 2234 of the Revenue and Taxation Code because the only costs which may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, changes the definition of a crime or infraction, changes the penalty for a crime or infraction, or eliminates a crime or infraction.

CHAPTER 1500

An act to amend Sections 8101.6 and 8655 of the Revenue and Taxation Code, relating to taxation, and making an appropriation therefor, to take effect immediately, tax levy.

[Approved by Governor September 27, 1982. Filed with Secretary of State September 28, 1982.]

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

SECTION 1. Section 8101.6 of the Revenue and Taxation Code is amended to read:

8101.6. (a) No refund of any tax shall be granted on motor vehicle fuel used in propelling passenger carrying vehicles, except six cents ($0.06) of the tax imposed upon each gallon of motor vehicle fuel used in propelling passenger carrying vehicles used for the transportation of persons for hire, compensation, or profit of the following:

(1) Any transit district, transit authority, or city owning and operating a local transit system itself or through a wholly owned nonprofit corporation.

(2) Any private entity providing transportation services for the transportation of people under contract or agreement, except general franchise agreements, with a public agency authorized to provide public transportation services, only for fuels consumed while providing services under such contracts or agreements entered into subsequent to the effective date of this act.

(3) Any passenger stage corporation subject to the jurisdiction of the Public Utilities Commission when the motor vehicles of such passenger stage corporation are exclusively operated in urban or suburban areas or between cities in close proximity; provided, however, that the exemption is not extended to any line or lines operated by such passenger stage corporation which shall exceed 50 miles of one-way route mileage.

(4) Any common carrier of passengers operating exclusively on any line or lines within the limits of a single city between fixed termini or over a regular route, 98 percent of whose operations, as measured by total route mileage operated, are exclusively within the limits of a single city, and who by reason thereof is not a passenger stage corporation subject to the jurisdiction of the Public Utilities Commission.

(b) The exemption provided for in subdivision (a) shall not be applicable to motor vehicle fuel used by a charter-party carrier of passengers. The term "charter-party carrier of passengers" has the same meaning as that specified in Section 5360 of the Public Utilities Code and shall further include those transportation services described in subdivisions (a) and (e) of Section 5353 of the Public Utilities Code, if such transportation service is rendered as contract

carriage and not as common carriage of passengers.

(c) There are in the State of California many private entities providing public transportation services for the transportation of people in vehicles other than buses under contract or agreement with local government, transit districts or local bus transit operators. It is the purpose of this section to provide relief from the payment of fuel tax for gasoline fuel for those private entities only for fuels consumed while providing these services.

SEC. 2. Section 8655 of the Revenue and Taxation Code is amended to read:

8655. (a) This section shall be known and may be cited as the Mills-Hayes Act.

(b) No tax shall be imposed upon fuel used by:

(1) Any transit district, transit authority, or city owning and operating a local transit system itself or through a wholly owned nonprofit corporation.

(2) Any private entity providing transportation services for the transportation of people under contract or agreement, except general franchise agreements, with a public agency authorized to provide public transportation services, only for fuels consumed while providing services under such contracts or agreements entered into subsequent to the effective date of this act.

(3) Any passenger stage corporation subject to the jurisdiction of the Public Utilities Commission when the motor vehicles of such passenger stage corporation are exclusively operated in urban or suburban areas or between cities in close proximity for the transportation of persons for hire, compensation, or profit; provided, however, that the exemption is not extended to any line or lines operated by such passenger stage corporation which shall exceed 50 miles of one-way route mileage.

(4) Any common carrier of passengers operating exclusively on any line or lines within the limits of a single city between fixed termini or over a regular route, 98 percent of whose operations, as measured by total route mileage operated, are exclusively within the limits of a single city, and who by reason thereof is not a passenger stage corporation subject to the jurisdiction of the Public Utilities Commission.

(c) Notwithstanding the exemption provided for by subdivision (b), any system, corporation, or carrier using fuel exempt under the provisions of subdivision (b) shall, for the privilege of operating vehicles on state highways and freeways, make a payment equal to one cent ($0.01) for each gallon of such exempt fuel used. The payments required by this subdivision shall be paid to the State Board of Equalization in the manner prescribed by the board, and such payments shall be treated as a tax for all purposes of this part.

(d) The exemption provided for in subdivision (b) and the payments provided for in subdivision (c) shall not be applicable to fuel used by a charter-party carrier of passengers. The term "charter-party carrier of passengers" has the same meaning as that

specified in Section 5360 of the Public Utilities Code and shall further include those transportation services described in subdivisions (a) and (e) of Section 5353 of the Public Utilities Code, if such transportation service is rendered as contract carriage and not as common carriage of passengers.

(e) There are in the State of California many local bus transit operators in need of financial assistance from sources other than the local property tax. These operators are performing essential public transit service as a vital counterpart of the streets and highways. It is the purpose of this section to provide relief from the payment of use fuel tax for local transit operators and it is the intent of the Legislature that the funds accruing to such operators shall be used for the improvement of their transit operations and to aid in providing better transit service to and from places of employment.

There are also in the State of California many private entities providing public transportation services for the transportation of people in vehicles other than buses under contract or agreement with local government, transit districts or local bus transit operators. It is the purpose of this section to provide relief from the payment of use fuel taxes for diesel fuel for those private entities only for fuel consumed while providing these services.

SEC. 3. The Legislature finds and declares that this act is declaratory of existing law enacted by Chapter 1140 of the Statutes of 1978, and that private entities providing specified services by contract to a public agency providing public transportation services be exempt from gasoline and diesel fuel taxes, and that qualifying entities are entitled to refunds of these taxes paid from the operative date of Chapter 1140.

SEC. 4. If any provision of this act which authorizes retroactive refunds to private entities providing specified transportation services by contract to a public agency providing public transportation services, or the application thereof to any person or circumstances, is held invalid, that invalidity shall not affect other prospective refunds to those entities which can be given effect without the invalid provision or application, and to this end the provisions of this act are severable.

SEC. 5. This act provides for a tax levy within the meaning of Article IV of the Constitution and shall go into immediate effect.

CHAPTER 1501

An act to amend Section 741 of the Public Utilities Code, relating to public utilities.

[Approved by Governor September 27, 1982. Filed with Secretary of State September 28, 1982.]

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

SECTION 1. Section 741 of the Public Utilities Code is amended to read:

741. The rates for natural gas supplied for the manufacture of ammonia shall not exceed the average price paid by the gas corporation for gas from all suppliers as determined in the latest rate proceeding before the commission, plus 10 percent of that average price, except that the rates shall in no event be lower than the rates in effect on December 31, 1979.

This section shall not apply to the sale of natural gas which is subject to the incremental pricing provisions of the federal Natural Gas Policy Act of 1978, (P.L. 95-621; 15 U.S.C. Sec. 3301 et seq.).

It is the intent of the Legislature, in enacting this section, that those ammonia manufacturers purchasing natural gas under the provisions of this section shall continue to sell ammonia manufactured from that gas principally for California agricultural purposes and not for export.

The commission shall prepare and submit to the Legislature on or before March 1, 1986, a report on the effects of the provisions of this section, including, but not limited to, the rates for gas charged to ammonia producers and changes in rates charged to other categories of gas customers by gas corporations as a result of carrying out this section.

This section shall remain in effect only until January 1, 1987, and as of that date is repealed, unless a later enacted statute, which is chaptered before January 1, 1987, deletes or extends that date.

CHAPTER 1502

An act to amend Sections 33435 and 33438 of, and to repeal and add Article 2 (commencing with Section 40040) of Chapter 6 of Part 23 to, the Education Code, relating to education.

[Approved by Governor September 28, 1982. Filed with Secretary of State September 30, 1982.]

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

SECTION 1. It is the intent of the Legislature in enacting this act to guarantee public access to school facilities, while at the same time acknowledging the limited resources of school districts. While there are many circumstances under which school districts should not charge the organizations listed in subdivision (a) of Section 40043 of the Education Code any fee for the use of school facilities, the Legislature recognizes that when the use of school facilities results in significant costs, school districts should be able to recover some or all of those costs from those organizations. In deciding when to

recover costs from those organizations pursuant to subdivision (b) of Section 40043 of the Education Code, the school district should consider not only the nature of the organization and its ability to pay, but also the frequency of the use and the cumulative burden which this may place upon the school district.

SEC. 2. Section 33435 of the Education Code is amended to read:

33435. The State Department of Education shall design, and the State Board of Education shall approve, additional standardized forms for all state or federal laws with new data collecting and reporting requirements which affect employees with teaching credentials and services credentials authorizing pupil personnel, health, or librarian services. The department shall distribute the forms to local governing boards no later than January 1, 1984, for use in the 1984–85 school year, except that the standardized form specified in subdivision (1) of Section 33433 shall be distributed by January 1, 1983, for use by districts in the 1983–84 school year. The same procedure shall be used in all subsequent years with any yearly additions or revisions being made available to local governing boards by July 1 of the school year of initial use.

SEC. 3. Section 33438 of the Education Code is amended to read:

33438. This article shall remain in effect until June 30, 1986, and as of that date is repealed, unless a later enacted statute, which is chaptered before June 30, 1986, deletes or extends that date.

SEC. 4. Article 2 (commencing with Section 40040) of Chapter 6 of Part 23 of the Education Code is repealed.

SEC. 5. Article 2 (commencing with Section 40040) is added to Chapter 6 of Part 23 of the Education Code, to read:

Article 2. Use of School Property

40040. This article shall be known and may be cited as the Civic Center Act.

40041. (a) There is a civic center at each and every public school facility and grounds within the state where the citizens, parent-teachers' association, camp fire girls, boy scout troops, farmers' organizations, school-community advisory councils, senior citizens' organizations, clubs, and associations formed for recreational, educational, political, economic, artistic, or moral activities of the public school districts may engage in supervised recreational activities, and where they may meet and discuss, from time to time, as they may desire, any subjects and questions which in their judgment appertain to the educational, political, economic, artistic, and moral interests of the citizens of the communities in which they reside.

(b) The governing board of any school district may grant the use of school facilities or grounds as a civic center upon the terms and conditions the board deems proper, subject to the limitations, requirements, and restrictions set forth in this article, for any of the following purposes:

(1) Public, literary, scientific, recreational, educational, or public agency meetings.

(2) The discussion of matters of general or public interest.

(3) The conduct of religious services for temporary periods by any church or religious organizations which has no suitable meeting place for the conduct of the services, provided the governing board charges the church or religious organization using the school facilities or grounds a fee as specified in subdivision (c) of Section 40043.

(4) Child care or day care programs to provide supervision and activities for children of preschool and elementary school age.

(5) The administration of examinations for the selection of personnel or the instruction of precinct board members by public agencies.

(6) Supervised recreational activities.

(7) Mass care and welfare shelters during disasters or other emergencies affecting the public health and welfare by public agencies, including, but not limited to, the American Red Cross; and the provision of any services deemed necessary by the governing board to meet the needs of the community.

(8) Other purposes deemed appropriate by the governing board.

40042. The management, direction, and control of school facilities under this article is vested in the governing board of the school district which shall promulgate all rules and regulations necessary to provide, at a minimum, for the following:

(1) Aid, assistance, and encouragement to any of the activities authorized in Section 40041.

(2) Preservation of order in school facilities and on school grounds, and protection of school facilities and school grounds, including, if the governing board deems necessary, appointment of a person who shall have charge of the school facilities and grounds for purposes of their preservation and protection.

(3) That the use of school facilities or grounds is not inconsistent with the use of the school facilities or grounds for school purposes or interferes with the regular conduct of schoolwork.

40043. (a) Except as provided in subdivision (b), the governing board of any school district shall grant without charge the use of any school facilities or grounds under its control, pursuant to the requirements of this article, to the following organizations:

(1) Student clubs and organizations.

(2) Fundraising entertainments or meetings where admission fees charged or contributions solicited are expended for the welfare of the pupils of the district.

(3) Parent-teachers' associations.

(4) School-community advisory councils.

(5) Camp fire girls and boy scout troops.

(6) Senior citizens' organizations.

(7) Other public agencies.

(8) Organizations, clubs, or associations organized for cultural

activities and general character building or welfare purposes (such as folk and square dancing).

(9) Groups organized for the purpose specified in paragraph (7) of subdivision (b) of Section 40041.

(b) The governing board may charge those organizations and activities listed in subdivision (a) an amount not to exceed the following:

(1) The cost of opening and closing the facilities, if no school employees would otherwise be available to perform that function as a part of their normal duties.

(2) The cost of a school employee's presence during the organization's use of the facilities, if the governing board determines that the supervision is needed, and if that employee would not otherwise be present as part of his or her normal duties.

(3) The cost of janitorial services, if the services are necessary, and would not have otherwise been performed as part of the janitor's normal duties.

(4) The cost of utilities directly attributable to the organization's use of the facilities.

(c) The governing board may charge an amount not to exceed its direct costs or not to exceed fair rental value of school facilities and grounds under its control, and pursuant to the requirements of this article, for activities other than those specified in subdivision (a). Each governing board which decides to levy these charges shall first adopt a policy specifying which activities shall be charged an amount not to exceed direct costs and which activities shall be charged an amount not to exceed fair rental value.

(d) The governing board of any school district which authorizes the use of school facilities or grounds for the purpose specified in paragraph (3) of subdivision (b) of Section 40041 shall charge the church or religious denomination an amount at least equal to the district's direct costs.

(e) In the case of entertainments or meetings where admission fees are charged or contributions are solicited and the net receipts are not expended for the welfare of the pupils of the district or for charitable purposes, a charge shall be made for the use of school facilities or grounds which charge shall be for fair rental value.

(f) As used in this section, "direct costs" to the district for the use of school facilities or grounds means those costs of supplies, utilities, janitorial services, services of any other district employees, and salaries paid school district employees necessitated by the organization's use of the school facilities and grounds of the district.

(g) As used in this section, "fair rental value" means the direct costs to the district, plus the amortized costs of the school facilities or grounds used for the duration of the activity authorized.

40044. Any use, by any individual, society, group, or organization for the commission of any act intended to further any program or movement the purpose of which is to accomplish the overthrow of the government of the United States or of the state by force,

violence, or other unlawful means shall not be permitted or suffered.

Any individual, society, group, or organization which commits any act intended to further any program or movement the purpose of which is to accomplish the overthrow of the government by force, violence, or other unlawful means while using school property pursuant to the provisions of this chapter is guilty of a misdemeanor.

40045. No governing board of a school district shall grant the use of any school property to any person or organization for any use in violation of Section 40044.

For the purpose of determining whether or not any individual, society, group, or organization applying for the use of the school property intends to violate Section 40044, the governing board shall require the making and delivery to the governing board, by the applicant of a written statement of information in the following form:

STATEMENT OF INFORMATION

The undersigned states that, to the best of his or her knowledge, the school property for use of which application is hereby made will not be used for the commission of any act intended to further any program or movement the purpose of which is to accomplish the overthrow of the government of the United States by force, violence or other unlawful means;

That _____, the organization on whose behalf he or she is making application for use of school property, does not, to the best of his or her knowledge, advocate the overthrow of the government of the United States or of the State of California by force, violence, or other unlawful means, and that, to the best of his or her knowledge, it is not a Communist action organization or Communist front organization required by law to be registered with the Attorney General of the United States. This statement is made under the penalties of perjury.

_____

(Signature)

The school board may require the furnishing of additional information as it deems necessary to make the determination that the use of school property for which application is made would not violate Section 40044.

Any person applying for the use of school property on behalf of any society, group, or organization shall be a member of the applicant group and, unless he or she is an officer of the group, must present written authorization from the applicant group to make the application.

The governing board of any school district may, in its discretion, consider any statement of information or written authorization made pursuant to the requirements of this section as being continuing in effect for the purposes of this section for the period of one year from the date of the statement of information or written authorization.

40046. Written statements of information as required by Section 40045 need not be under oath, but shall contain a written declaration that they are made under the penalty of perjury, and any person so signing the statements who willfully states therein as true any material matter which he or she knows to be false, is subject to the penalties prescribed for perjury in the Penal Code.

40047. Notwithstanding the provisions of this article or any other provisions of law, when a nonpartisan charitable organization organized under the laws of this state has constructed or will construct, subject to the provisions of Article 3 (commencing with Section 39140) of Chapter 2 of this part, a school athletic and youth center facility at no cost to a school district, upon a school-district-owned site to be owned by and for the benefit of the school occupying the site, the governing board of the school district, in accepting the donation and prescribing the conditions and restrictions with respect thereto, may permit the general use of the facility under the provisions of this article for specified supervised recreational activities which are sponsored by or conducted by the donor organization, and may also permit the donor organization to use the facility for this purpose at times when the facility is not being used by the school district for the educational program and related school activities of the designated beneficiary school, unless the use and occupancy of the facility by the donor organization would otherwise interfere with the regular conduct of the school. Any use granted to the donor organization shall, however, immediately and forever terminate if the donor organization denies the use of the facility to any person because of their race, religion, creed, national origin, ancestry, or sex.

This section shall apply only to elementary school districts in San Diego County which had an average daily attendance of 425 or less during the 1970–71 school year, and which, during the 1970–71 school year, had a modified assessed valuation per pupil in average daily attendance of between forty-five thousand dollars ($45,000) and fifty thousand dollars ($50,000).

SEC. 6. The Legislative Analyst shall submit to the Legislature on or before March 1, 1984, a report on the practices of school districts with regard to charging of fees under Article 2 (commencing with Section 40040) of Chapter 6 of Part 23 of the Education Code.

SEC. 7. No appropriation is made and no reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution or Section 2231 or 2234 of the Revenue and Taxation Code because the Legislature finds and declares that there are savings as well as costs in this act which, in the aggregate, do not result in additional net costs.

CHAPTER 1503

An act to amend Sections 60200, 60241, 60242, 60243, 60263, 60264, 60280, 60281, 60285, 60286, 60294, and 60310 of, and to add Sections 60206, 60242.1, 60242.5, and 60296 to, the Education Code, relating to instructional materials.

[Approved by Governor September 28, 1982. Filed with Secretary of State September 30, 1982.]

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

SECTION 1. Section 60200 of the Education Code is amended to read:

60200. The state board shall adopt instructional materials for use in kindergarten and grades 1 through 8 for governing boards, subject to Section 60265 and to the following provisions:

(a) At least biennially, adoptions shall be made for all applicable levels for the following categories: (1) language arts, (2) mathematics, (3) reading, (4) science, (5) social science, (6) bilingual or bicultural subjects, and (7) any other subject, discipline, or interdisciplinary areas for which the state board may determine the need and desirability for instructional materials to promote the maximum efficiency of pupil learning.

(b) While categories may be designated to be adopted in alternate years, the state board shall adopt not less than five but no more than 15 of any of the following for basic instructional materials in each subject in each grade: (a) instructional materials, (b) instructional materials systems, (c) instructional materials sets, and, (d) a combination of instructional materials, instructional materials systems, and instructional materials sets, as the state board may select. However, less than five items per subject, per grade may be adopted when the state board establishes that adequate materials are not available for certain grades and subjects. The state board shall not adopt more than two instructional materials sets for each subject in each grade.

Nothing in this subdivision shall limit the authority of the state board to adopt materials which are not basic instructional materials, and the adoption of those materials shall not be governed by the maximum and minimum limits specified by this subdivision.

(c) In the event that a district board establishes to the satisfaction of the state board that the state-adopted instructional materials do not promote the maximum efficiency of pupil learning in the district, the state board shall authorize that district board to use its instructional materials' allowances to purchase materials as specified by the state board, in accordance with standards and procedures established by the state board.

(d) The state board shall establish procedures to provide the most open and flexible submissions, as to timing and processing, to provide

collections of instructional materials which, when taken as a whole, illustrate diverse points of view; represent cultural pluralism and provide a broad spectrum of knowledge, information, and a cross section of opinions; and allow for a combination of approaches and media to best meet the goals of a program and the needs of pupils.

(e) Upon making an adoption, the state board shall make available to listed publishers and manufacturers and all school interests a listing of instructional materials, including the most current unit cost of such materials as computed pursuant to subdivision (b) of Section 60222 and Section 60223. Items placed upon lists shall remain thereon, and be available for procurement through the state's systems of financing, for a period of not less than four years following the date of initial use as established pursuant to subdivision (i). All previous adoptions shall be integrated on lists and made available by subject and level.

(f) The state board may approve multiple lists of instructional materials, without designating a grade or subject, and the state board may designate more than one grade or subject whenever the state board designates that a single subject designation or a single grade designation would not promote the maximum efficiency of pupil learning. Any materials so designated may be placed on single grade or single subject lists, or multigrade or interdisciplinary lists, or may be placed on separate lists including other materials with similar grade or subject designations; however, all materials so designated shall be adopted subject to the limitations of subdivision (b).

(g) A composite listing in the format of an order form may be used to meet the requirements of this section.

(h) The lists maintained pursuant to this section shall not be deemed to control the use period by any local district.

(i) The state board shall, at the time of initiating the call for bids for instructional materials, establish the date upon which such state-adopted materials shall initially be available for use by the pupils.

SEC. 1.5. Section 60206 is added to the Education Code, to read:

60206. The state board may adopt appropriate regulations to implement this chapter. These regulations may include a procedure to review district invoices for instructional materials purchases made pursuant to subdivision (b) of Section 60242.

SEC. 2. Section 60241 of the Education Code is amended to read:

60241. The fund shall be administered by the Department of Education under policies established by the state board. The state board shall encumber part of the fund to:

(a) Pay for the cost of royalties, warehousing, and shipping for those textbooks in the state textbook warehouse as of July 1, 1973, and adopted by the state board prior to March 7, 1973.

(b) Pay for the costs of instructional materials to be loaned to nonpublic school pupils pursuant to Section 60315.

(c) Pay for the costs of braille and large print textbooks to be furnished for visually handicapped pupils pursuant to Sections 60312

and 60313.

(d) Pay for the costs of warehousing and transporting textbooks acquired for the purposes of Sections 60281 and 60310. Such costs shall not exceed 10 percent of the cost of each textbook printed by the Department of General Services.

(e) Establish, commencing with the 1974–75 fiscal year, a reserve account, of not to exceed two hundred thousand dollars ($200,000) to pay for the cost of:

(1) Acquisition of instructional materials, including those ordered for purchase by persons and entities pursuant to subdivisions (a) and (b) of Section 60310.

(2) Replacement of instructional materials obtained by a school district with its credit or allowance, which are lost or destroyed by reason of fire, theft, natural disaster, or vandalism.

SEC. 3. Section 60242 of the Education Code is amended to read:

60242. After the application of Section 60241, the state board shall encumber the balance of the fund for the purpose of:

(a) Establishing credits and cash allotments as follows:

(1) The state board shall establish a credit for each district board with which instructional materials adopted by the state board may be ordered by districts which choose to order materials through the state.

(2) The state board shall establish a cash allotment in an amount determined by the state board for use in purchasing instructional materials from any source, or for the purchase of tests or in-service training pursuant to Sections 60224 and 60225.

The state board shall specify the percentage of a district board's credit authorized to be used for each of the above purposes.

(b) Establishing an allowance for each district board, which the district board may use for the following purposes:

(1) To purchase instructional materials adopted by the state board.

(2) To purchase instructional materials from any source.

(3) To purchase tests or in-service training pursuant to Sections 60224 and 60225.

The state board shall specify the percentage of a district board's allowance authorized to be used for each of the above purposes.

Allowances established for school districts pursuant to this section shall be apportioned to districts as part of the special purpose apportionment in accordance with paragraph (5) of subdivision (a) of Section 14041.

The Superintendent of Public Instruction may establish a date each fiscal year by which districts shall notify the State Department of Education of their decision to operate under this subdivision.

(c) Obtaining instructional materials in subsequent fiscal years.

SEC. 4. Section 60242.1 is added to the Education Code, to read:

60242.1. In establishing the credits and allowances authorized by Section 60242, the state board may take into consideration estimated increases or decreases in average daily attendance for the year in

which the instructional materials will be used.

SEC. 5. Section 60242.5 is added to the Education Code, to read:

60242.5. Allowances received by districts pursuant to subdivision (b) of Section 60242 shall be deposited into a separate account as specified by the Superintendent of Public Instruction. These allowances, including any interest generated by them, shall be used only for the purchase of instructional materials, tests, or in-service training pursuant to subdivision (b) of Section 60242. Interest posted to the account shall be based upon reasonable estimates of monthly balances in the account and the average rate of interest earned by other funds of the district.

All purchases of instructional materials made with funds from this account shall conform to law and the applicable rules and regulations adopted by the state board, and the district superintendent shall provide written assurance of such conformance to the Superintendent of Public Instruction. Commencing September 1, 1984, the Superintendent of Public Instruction may withhold the allowance established pursuant to Section 60242 for any district which has failed to file a written assurance for the prior fiscal year. The Superintendent of Public Instruction may restore the amount withheld once the district provides the written assurance.

The Department of Finance, in cooperation with the State Department of Education, shall include procedures to review compliance with this section in its independent audit instructions.

SEC. 6. Section 60243 of the Education Code is amended to read:

60243. District boards ordering instructional materials from lists adopted by the state board pursuant to subdivision (a) of Section 60242 shall have deducted from their credit a unit cost based on the information provided by publishers or manufacturers pursuant to subdivision (b) of Section 60222.

SEC. 7. Section 60263 of the Education Code is amended to read:

60263. District boards may order state-adopted textbooks and instructional materials on forms prescribed by the State Department of Education. The forms shall include, or be accompanied by, information concerning the grade or grades and subject or subjects for which each instructional material is intended, and the unit cost of the material, as computed pursuant to Section 60243, which will be deducted from the credit of the district when ordered.

SEC. 8. Section 60264 of the Education Code is amended to read:

60264. (a) All district orders made pursuant to subdivision (a) of Section 60242 for state-adopted instructional materials shall be forwarded as directed by the Superintendent of Public Instruction for procurement of such materials in the most economical and timely manner pursuant to Article 5 (commencing with Section 60280) of this chapter. However, in cases where the district does not qualify as a city school district and is an elementary district with fewer than 901 average daily attendance or a unified district with fewer than 1,501 average daily attendance, the county superintendent of schools shall approve the orders for instructional materials by the districts before

forwarding as directed by the Superintendent of Public Instruction.

(b) All district orders for instructional materials not adopted by the state shall be placed directly with the publisher or manufacturer at any of its offices in the State of California or at any publishers' or manufacturers' depository in the State of California, except that all district orders for instructional materials other than textbooks, and other than instructional materials systems and instructional materials sets which include textbooks, may be placed directly with the publisher or manufacturer. The provisions of this paragraph with respect to the purchase of textbooks are subject to the numerical limitations of subdivision (f) of Section 60061.

SEC. 9. Section 60280 of the Education Code is amended to read:

60280. The state board shall cause to be acquired and distributed any instructional materials ordered by district boards pursuant to subdivision (a) of Section 60242.

SEC. 10. Section 60285 of the Education Code is amended to read:

60285. The state board, in order to procure textbooks, shall tabulate all orders for each textbook title received from school districts and nonpublic school pupils pursuant to subdivision (a) of Section 60243. The Department of General Services shall select from the tabulation those titles which can be manufactured by that department at a unit cost lower than that specified in the price schedule submitted by the publisher or manufacturer pursuant to subdivision (b) of Section 60222 and which that department can complete manufacture of in time to permit delivery to the school districts and nonpublic school pupils prior to the opening of school in the year in which the textbooks are to be used.

SEC. 11. Section 60286 of the Education Code is amended to read:

60286. All textbooks not printed pursuant to Section 60285 and all other instructional materials may be obtained by the state board pursuant to Section 60281.

SEC. 12. Section 60294 of the Education Code is amended to read:

60294. The Superintendent of Public Instruction shall arrange for the warehousing and shipping of all instructional materials for handicapped minors acquired pursuant to Section 60281 in the most economical and timely manner.

SEC. 13. Section 60296 is added to the Education Code, to read:

60296. The state board, in cooperation with the Department of General Services, shall develop a procedure for the expeditious disposition of instructional materials warehoused, or proposed to be manufactured, by the Department of General Services prior to July 1, 1983.

As part of this procedure, the state board shall charge against the cash allotment established for a district pursuant to subdivision (b) of Section 60242, as in effect on or before June 30, 1983, the cost of materials previously ordered by that district which have been, or are proposed to be, manufactured by the Department of General Services prior to July 1, 1983.

The provisions of this section shall not apply to instructional

materials acquired by the State Board of Education for purposes of Sections 60281 and 60310.

SEC. 14. Section 60310 of the Education Code is amended to read:

60310. The following individuals or organizations may order instructional materials from lists adopted by the state board:

(a) The head of any state institution offering instruction in the elementary grades, or giving instruction in the teaching of elementary subjects.

(b) Governing boards or nonpublic schools.

(c) Individuals for use only in California.

The materials shall be purchased at the unit cost determined pursuant to subdivision (b) of Section 60222.

SEC. 15. Sections 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, and 14 of this act shall become operative July 1, 1983.

SEC. 16. The Legislative Analyst in cooperation with the Department of Education shall review the instructional materials review process of the Department of Education and report on the increase in funding needed by the Department of Education and the Curriculum Development and Instructional Materials Commission to support effective quality and legal compliance review processes. Any needed increase shall not exceed the administrative savings created by the implementation of this act. The report shall be made to the appropriate legislative budget subcommittees during the 1983–84 budget review process.

SEC. 17. Before January 1, 1986, the Department of Education shall submit an evaluation of this act to the Legislature. The evaluation shall include an analysis of the amount of interest income posted to the accounts of local districts pursuant to Section 60242.5, any evidence of violations of the provisions of Section 60242.5, and any other relevant information.

SEC. 18. It is not the intent of the Legislature in enacting the provisions of this act to cause the layoff of any permanent state civil service employees employed on a full-time basis.

SEC. 19. No appropriation is made and no reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution or Section 2231 or 2234 of the Revenue and Taxation Code because the Legislature finds and declares that there are savings as well as costs in this act which, in the aggregate, do not result in additional net costs.

CHAPTER 1504

An act to add and repeal Section 437.117 of the Health and Safety Code, relating to health planning, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 28, 1982. Filed with Secretary of State September 30, 1982.]

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

SECTION 1. Section 437.117 is added to the Health and Safety Code, to read:

437.117. The office shall exempt from the provisions of Sections 438 to 438.13, inclusive, and shall issue a certificate of need for those projects where the applicant has shown, and the office director has found, that the project is to add not more than 10 beds to an existing skilled nursing or intermediate care facility, as defined in Section 1250, that participates in Medi-Cal programs, provided all of the following conditions exist:

(1) The current Statewide Health Facilities and Services Plan indicates a need for the proposed number of beds, taking into account the current number of approved beds in the health facilities planning area in which the project is located including beds approved hereunder.

(2) The applicant facility has had at least a 95 percent occupancy rate for existing beds for the 12 months preceding the submission of an application.

(3) The applicant facility does not have sustained class A violations within the 12 months preceding the submission of an application.

In determining the current number of approved beds in the health facilities planning area in which the project is located, the office shall count the number of beds for which applications for a certificate of need have been deemed complete pursuant to Section 438.2, before the effective date of this section.

Such a project shall not require a capital expenditure which exceeds three hundred thousand dollars ($300,000) and only one such project may be approved for a facility in a 12-month period. However, no facility shall receive approval pursuant to this section for more than two projects. The office shall annually adjust this capital expenditure threshold to reflect changes in the cost of living, as determined by the Department of Finance, using 1981 as the base year.

Any certificate issued for such projects shall expire upon failure of the applicant to complete the project within 12 months after issuance unless the office, for good cause shown, extends the certificate.

The office shall submit a report on the number of beds added pursuant to this section to the Legislature by January 1, 1984.

This section shall remain in effect only until January 1, 1985, and as of such date is repealed, unless a later enacted statute, which is chaptered before January 1, 1985, deletes or extends such date.

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 allow nursing homes to add needed beds as quickly as possible, it is necessary that this act take effect immediately.

CHAPTER 1505

An act to amend Sections 867, 871.5, 995, 995a, 999a, and 1538.5 of the Penal Code, relating to criminal procedure.

[Approved by Governor September 28, 1982. Filed with Secretary of State September 30, 1982.]

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

SECTION 1. Section 867 of the Penal Code is amended to read:

867. While a witness is under examination, the magistrate shall, upon motion of either party, exclude all potential and actual witnesses who have not been examined.

The magistrate shall also order the witnesses not to converse with each other until they are all examined. The magistrate may also order, where feasible, that the witnesses be kept separated from each other until they are all examined.

This section does not apply to the investigating officer or the investigator for the defendant, nor does it apply to officers having custody of persons brought before the magistrate.

SEC. 2. Section 871.5 of the Penal Code, as proposed to be amended by Section 1 of Senate Bill 1743, is amended to read:

871.5. (a) When an action is dismissed by a magistrate pursuant to Section 859b, 861, 871, 1008, 1381, 1381.5, 1385, 1387, or 1389, or a portion thereof is dismissed pursuant to those same sections which may not be charged by information under the provisions of Section 739, the prosecutor may make a motion in the superior court within 15 days to compel the magistrate to reinstate the complaint or a portion thereof and to reinstate the custodial status of the defendant under the same terms and conditions as when the defendant last appeared before the magistrate.

(b) Notice of the motion shall be made to the defendant and the magistrate. The only ground for the motion shall be that, as a matter of law, the magistrate erroneously dismissed the action or a portion thereof.

(c) The superior court shall hear and determine the motion on the basis of the record of the proceedings before the magistrate. If the motion is litigated to decision by the prosecutor, the prosecution is prohibited from refiling the dismissed action, or portion thereof.

(d) Within 10 days after the magistrate has dismissed the action or a portion thereof, the prosecuting attorney may file a written request for a transcript of the proceedings with the clerk of the magistrate. The reporter shall immediately transcribe his or her

shorthand notes pursuant to Section 869 and file with the clerk of the superior court an original plus one copy, and as many copies as there are defendants (other than a fictitious defendant). The reporter shall be entitled to compensation in accordance with the provisions of Section 869. The clerk of the superior court shall deliver a copy of the transcript to the prosecuting attorney immediately upon its receipt and shall deliver a copy of the transcript to each defendant (other than a fictitious defendant) upon his or her demand without cost.

(e) When a court has ordered the resumption of proceedings before the magistrate, the magistrate shall resume the proceedings and when so ordered, issue an order of commitment for the reinstated offense or offenses within 10 days after the superior court has entered an order to that effect or within 10 days after the remittitur is filed in the superior court. Upon receipt of the remittitur, the superior court shall forward a copy to the magistrate.

(f) Pursuant to paragraph (9) of subdivision (a) of Section 1238 the people may take an appeal from the denial of the motion by the superior court to reinstate the complaint or a portion thereof. If the motion to reinstate the complaint is granted, the defendant may seek review thereof only pursuant to Sections 995 and 999a. Such review may only be sought in the event the defendant is held to answer pursuant to Section 872.

(g) Nothing contained herein shall preclude a magistrate, upon the resumption of proceedings, from considering a motion made pursuant to Section 1318.

If the superior court grants the motion for reinstatement and orders the magistrate to issue an order of commitment, the defendant, in lieu of resumed proceedings before the magistrate, may elect to waive his or her right to be committed by a magistrate, and consent to the filing of an amended or initial information containing the reinstated charge or charges. After arraignment thereon, he or she may adopt as a motion pursuant to Section 995, the record and proceedings of the motion taken pursuant to this section and the order issued pursuant thereto, and may seek review of the order in the manner prescribed in Section 999a.

SEC. 3. Section 995 of the Penal Code is amended to read:

995. (a) Subject to subdivision (b) of Section 995a, the indictment or information shall be set aside by the court in which the defendant is arraigned, upon his or her motion, in either of the following cases:

(1) If it is an indictment:

(A) Where it is not found, endorsed, and presented as prescribed in this code.

(B) That the defendant has been indicted without reasonable or probable cause.

(2) If it is an information:

(A) That before the filing thereof the defendant had not been legally committed by a magistrate.

(B) That the defendant had been committed without reasonable

or probable cause.

(b) In cases in which the procedure set out in subdivision (b) of Section 995a is utilized, the court shall reserve a final ruling on the motion until those procedures have been completed.

SEC. 4. Section 995a of the Penal Code is amended to read:

995a. (a) If the names of the witnesses examined before the grand jury are not inserted at the foot of the indictment or indorsed thereon, the court shall order them to be so inserted or indorsed; and if the information be not subscribed by the district attorney, the court may order it to be so subscribed.

(b) (1) Without setting aside the information, the court may, upon motion of the prosecuting attorney, order further proceedings to correct errors alleged by the defendant if the court finds that such errors are minor errors of omission, ambiguity, or technical defect which can be expeditiously cured or corrected without a rehearing of a substantial portion of the evidence. The court may remand the cause to the committing magistrate for further proceedings, or if the parties and the court agree, the court may itself sit as a magistrate and conduct further proceedings. When remanding the cause to the committing magistrate, the court shall state in its remand order which minor errors it finds could be expeditiously cured or corrected.

(2) Any further proceedings conducted pursuant to this subdivision may include the taking of testimony and shall be deemed to be a part of the preliminary examination.

(3) The procedure specified in this subdivision may be utilized only once for each information filed. Any further proceedings conducted pursuant to this subdivision shall not be deemed to extend the time within which a defendant must be brought to trial under Section 1382.

SEC. 5. Section 999a of the Penal Code is amended to read:

999a. A petition for a writ of prohibition, predicated upon the ground that the indictment was found without reasonable or probable cause or that the defendant had been committed on an information without reasonable or probable cause, or that the court abused its discretion in utilizing the procedure set out in subdivision (b) of Section 995a, must be filed in the appellate court within 15 days after a motion made under Section 995 to set aside the indictment on the ground that the defendant has been indicted without reasonable or probable cause or that the defendant had been committed on an information without reasonable or probable cause, has been denied by the trial court. A copy of such petition shall be served upon the district attorney of the county in which the indictment is returned or the information is filed. The alternative writ shall not issue until five days after the service of notice upon the district attorney and until he has had an opportunity to appear before the appellate court and to indicate to the court the particulars in which the evidence is sufficient to sustain the indictment or commitment.

SEC. 6. Section 1538.5 of the Penal Code, as proposed to be amended by Section 1 of Senate Bill 1744, is amended to read:

1538.5. (a) A defendant may move for the return of property or to suppress as evidence any tangible or intangible thing obtained as a result of a search or seizure on either of the following grounds:

(1) The search or seizure without a warrant was unreasonable.

(2) The search or seizure with a warrant was unreasonable because (i) the warrant is insufficient on its face; (ii) the property or evidence obtained is not that described in the warrant; (iii) there was not probable cause for the issuance of the warrant; (iv) the method of execution of the warrant violated federal or state constitutional standards; (v) there was any other violation of federal or state constitutional standards.

(b) When consistent with the procedures set forth in this section and subject to the provisions of Section 170 through 170.6 of the Code of Civil Procedure, the motion should first be heard by the magistrate who issued the search warrant if there is a warrant.

(c) Whenever a search or seizure motion is made in the municipal, justice or superior court as provided in this section, the judge or magistrate shall receive evidence on any issue of fact necessary to determine the motion.

(d) If a search or seizure motion is granted pursuant to the proceedings authorized by this section, the property or evidence shall not be admissible against the movant at any trial or other hearing unless further proceedings authorized by this section, Section 871.5, Section 1238, or Section 1466 are utilized by the people.

(e) If a search or seizure motion is granted at a trial, the property shall be returned upon order of the court unless it is otherwise subject to lawful detention. If the motion is granted at a special hearing, the property shall be returned upon order of the court only if, after the conclusion of any further proceedings authorized by this section or Section 1238 or Section 1466, the property is not subject to lawful detention or if the time for initiating such proceedings has expired, whichever occurs last. If the motion is granted at a preliminary hearing, the property shall be returned upon order of court after 10 days unless the property is otherwise subject to lawful detention or unless, within that time, further proceedings authorized by this section, Section 871.5, or Section 1238 are utilized; if they are utilized, the property shall be returned only if, after the conclusion of such proceedings, the property is no longer subject to lawful detention.

(f) If the property or evidence relates to a felony offense initiated by a complaint, the motion shall be made in the superior court only upon filing of an information, except that the defendant may make the motion at the preliminary hearing in the municipal or justice court but the motion in the municipal or justice court shall be restricted to evidence sought to be introduced by the people at the preliminary hearing.

(g) If the property or evidence relates to a misdemeanor

complaint, the motion shall be made in the municipal or justice court before trial and heard prior to trial at a special hearing relating to the validity of the search or seizure. If the property or evidence relates to a misdemeanor filed together with a felony, the procedure provided for a felony in this section and Sections 1238 and 1539 shall be applicable.

(h) If, prior to the trial of a felony or misdemeanor, opportunity for this motion did not exist or the defendant was not aware of the grounds for the motion, the defendant shall have the right to make this motion during the course of trial in the municipal, justice or superior court.

(i) If the property or evidence obtained relates to a felony offense initiated by complaint and the defendant was held to answer at the preliminary hearing, or if the property or evidence relates to a felony offense initiated by indictment, the defendant shall have the right to renew or make the motion in the superior court at a special hearing relating to the validity of the search or seizure which shall be heard prior to trial and at least 10 days after notice to the people unless the people are willing to waive a portion of this time. The defendant shall have the right to litigate the validity of a search or seizure de novo on the basis of the evidence presented at a special hearing. After the special hearing is held in the superior court, any review thereafter desired by the defendant prior to trial shall be by means of an extraordinary writ of mandate or prohibition filed within 30 days after the denial of his motion at the special hearing.

(j) If the property or evidence relates to a felony offense initiated by complaint and the defendant's motion for the return of the property or suppression of the evidence at the preliminary hearing is granted, and if the defendant is not held to answer at the preliminary hearing, the people may file a new complaint or seek an indictment after the preliminary hearing, and the ruling at the prior hearing shall not be binding in any subsequent proceeding. In the alternative, the people may move to reinstate the complaint, or those parts of the complaint for which the defendant was not held to answer, pursuant to Section 871.5. If the property or evidence relates to a felony offense initiated by complaint and the defendant's motion for the return or suppression of the property or evidence at the preliminary hearing is granted, and if the defendant is held to answer at the preliminary hearing, the ruling at the preliminary hearing shall be binding upon the people unless, upon notice to the defendant and the court in which the preliminary hearing was held and upon the filing of an information, the people within 15 days after the preliminary hearing request in the superior court a special hearing, in which case the validity of the search or seizure shall be relitigated de novo on the basis of the evidence presented at the special hearing, and the defendant shall be entitled, as a matter of right, to a continuance of the special hearing for a period of time up to 30 days. If defendant's motion is granted at a special hearing in the superior court, the people, if they have additional evidence relating

to the motion and not presented at the special hearing, shall have the right to show good cause at the trial why such evidence was not presented at the special hearing and why the prior ruling at the special hearing should not be binding, or the people may seek appellate review as provided in subdivision (o), unless the court prior to the time such review is sought has dismissed the case pursuant to Section 1385. If the property or evidence seized relates solely to a misdemeanor complaint, and the defendant made a motion for the return of property or the suppression of evidence in the municipal court or justice court prior to trial, both the people and defendant shall have the right to appeal any decision of that court relating to that motion to the superior court of the county in which such inferior court is located, in accordance with the California Rules of Court provisions governing appeals from municipal and justice courts in criminal cases. If the people prosecute review by appeal or writ to decision, or any review thereof, in a felony or misdemeanor case, it shall be binding upon them.

(k) If the defendant's motion to return property or suppress evidence is granted and the case is dismissed pursuant to Section 1385, or the people appeal in a misdemeanor case pursuant to subdivision (j), the defendant shall be released pursuant to Section 1318 if he is in custody and not returned to custody unless the proceedings are resumed in the trial court and he is lawfully ordered by the court to be returned to custody.

If the defendant's motion to return property or suppress evidence is granted and the people file a petition for writ of mandate or prohibition pursuant to subdivision (o) or a notice of intention to file such a petition, the defendant shall be released pursuant to Section 1318 unless (1) he is charged with a capital offense in a case where the proof is evident and the presumption great, or (2) he is charged with a noncapital offense defined in Chapter 1 (commencing with Section 187) of Title 8 of Part 1 and the court orders that the defendant be discharged from actual custody upon bail.

(*l*) If the defendant's motion to return property or suppress evidence is granted, the trial of a criminal case shall be stayed to a specified date pending the termination in the appellate courts of this state of the proceedings provided for in this section, Section 871.5, Section 1238, or Section 1466 and, except upon stipulation of the parties, pending the time for the initiation of such proceedings. Upon the termination of such proceedings, the defendant shall be brought to trial as provided by Section 1382, and subject to the provisions of Section 1382, whenever the people have sought and been denied appellate review pursuant to subdivision (o), the defendant shall be entitled to have the action dismissed if he is not brought to trial within 30 days of the date of the order which is the last denial of the petition. Nothing contained in this subdivision shall prohibit a court, at the same time as it rules upon the search and seizure motion, from dismissing a case pursuant to Section 1385 when such dismissal is upon the court's own motion and is based upon an order at the

special hearing granting defendant's motion to return property or suppress evidence. In a misdemeanor case, the defendant shall be entitled to a continuance of up to 30 days if he intends to file a motion to return property or suppress evidence and needs this time to prepare for the special hearing on the motion. In case of an appeal by the defendant in a misdemeanor case from the denial of such motion, he shall be entitled to bail as a matter of right, and, in the discretion of the trial or appellate court, may be released on his own recognizance pursuant to Section 1318.4.

(m) The proceedings provided for in this section, Section 871.5, Section 995, Section 1238, and Section 1466 shall constitute the sole and exclusive remedies prior to conviction to test the unreasonableness of a search or seizure where the person making the motion for the return of property or the suppression of evidence is a defendant in a criminal case and the property or thing has been offered or will be offered as evidence against him. A defendant may seek further review of the validity of a search or seizure on appeal from a conviction in a criminal case notwithstanding the fact that such judgment of conviction is predicated upon a plea of guilty. Such review on appeal may be obtained by the defendant providing that at some stage of the proceedings prior to conviction he has moved for the return of property or the suppression of the evidence.

(n) Nothing contained in this section shall prohibit a person from making a motion, otherwise permitted by law, to return property, brought on the ground that the property obtained is protected by the free speech and press provisions of the Federal and State Constitutions. Nothing in this section shall be construed as altering (i) the law of standing to raise the issue of an unreasonable search or seizure; (ii) the law relating to the status of the person conducting the search or seizure; (iii) the law relating to the burden of proof regarding the search or seizure; (iv) the law relating to the reasonableness of a search or seizure regardless of any warrant which may have been utilized; or (v) the procedure and law relating to a motion made pursuant to Section 871.5 or 995 or the procedures which may be initiated after the granting or denial of such a motion.

(o) Within 30 days after a defendant's motion is granted at a special hearing in the superior court, the people may file a petition for writ of mandate or prohibition, seeking appellate review of the ruling regarding the search or seizure motion. If the trial of a criminal case is set for a date which is less than 30 days from the granting of a defendant's motion at a special hearing in the superior court, the people, if they have not filed such a petition and wish to preserve their right to file such a petition, shall file in the superior court on or before the trial date or within 10 days after the special hearing, whichever occurs last, a notice of intention to file such a petition and shall serve a copy of the notice upon the defendant.

SEC. 7. It is the intent of the Legislature if this bill and Senate Bill 1743 are both chaptered and become effective on or before January 1, 1983, Senate Bill 1743 amends Section 871.5 of the Penal Code, this

bill is chaptered after Senate Bill 1743, and no other bill which amends Section 871.5 and is effective on or before January 1, 1983, is chaptered after Senate Bill 1743 and before this bill, that Section 871.5 of the Penal Code as amended by Section 1 of Senate Bill 1743 be further amended on the operative date of this act to incorporate the changes in Section 871.5 proposed by this bill. Therefore, Section 2 of this act shall become operative only if this bill and Senate Bill 1743 are both chaptered and become effective on or before January 1, 1983, Senate Bill 1743 amends Section 871.5, this bill is chaptered after Senate Bill 1743 and no other bill which amends Section 871.5 and is effective on or before January 1, 1983, is chaptered after Senate Bill 1743 and before this bill.

SEC. 8. It is the intent of the Legislature, if this bill and Senate Bill 1744 are both chaptered and become effective on or before January 1, 1983, Senate Bill 1744 amends Section 1538.5 of the Penal Code, this bill is chaptered after Senate Bill 1744, and no other bill which amends Section 1538.5 and is effective on or before January 1, 1983, is chaptered after Senate Bill 1744 and before this bill, that Section 1538.5 of the Penal Code, as amended by Section 1 of Senate Bill 1744 be further amended on the operative date of this act in the form set forth in Section 6 of this act to incorporate the changes in Section 1538.5 proposed by this bill. Therefore, Section 6 of this act shall become operative only if this bill and Senate Bill 1744 are both chaptered and become effective on or before January 1, 1983, Senate Bill 1744 amends Section 1538.5, this bill is chaptered after Senate Bill 1744, and no other bill which amends Section 1538.5 and is effective on or before January 1, 1983, is chaptered after Senate Bill 1744 and before this bill.

CHAPTER 1506

An act to add Article 10.8 (commencing with Section 65591) and Article 10.9 (commencing with Section 65596) to Chapter 3 of Division 1 of Title 7 of, the Government Code, relating to planning.

[Approved by Governor September 28, 1982. Filed with Secretary of State September 30, 1982.]

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

SECTION 1. Article 10.8 (commencing with Section 65591) is added to Chapter 3 of Division 1 of Title 7 of the Government Code, to read:

Article 10.8. Community Facilities Plan

65591. This article shall be known and may be cited as the "Local-State Financial Coordination Act."

65591.5. It is the Legislature's intent that local agencies pursue financing, within the limitations, prescribed by Article XIII A and XIII B of the California Constitution, for required public facilities. In order to protect the health, safety, and welfare of the people of this state and to effectively plan for future development, it is essential that all public facilities be provided in accordance with the coordinated construction schedule to assure necessary public services to residential, commercial, and industrial developments.

65592. An action to determine the validity of any resolution, ordinance, agreement, or method of financing authorized or undertaken pursuant to this chapter may be brought pursuant to Chapter 9 (commencing with Section 860) of Title 10 of Part 2 of the Code of Civil Procedure.

65593. Unless the provision or context otherwise requires, the definitions contained in this section shall govern the construction of this article. The definition of a word applies to any of its variants. As used in this article:

(a) "Legislative body" means the elected or appointed governing body or authority of a local agency.

(b) "Local agency" means a city, county, city and county, special district, school district, community college district, county superintendent of schools, or any other agency of the state formed for the local performance of governmental or proprietary functions within limited boundaries.

(c) "Plan" means a plan which specifies the new public facilities to serve residential, commercial, and industrial developments within a defined area and the financing and construction schedule of new public facilities.

(d) "State agency" means any office, department, commission, or agency of the State of California with authority to approve or recommend approval of the priority of allocation, or allocations, of state funds to local agencies or to approve or recommend approval of the priority or allocation of funds for state construction.

65594. Any city, county, or city and county may adopt a plan which shall include, but not be limited to, a component identifying public facilities needed for development within a defined area and a component describing the method of financing construction of such public facilities.

65595. It is the specific intent of this chapter to protect the financial integrity of a plan by assuring continued and timely allocation of state funds to meet construction of public facilities which are the responsibility of the state and are included in the adopted plan.

65595.5. The local agency shall give written notice of the adoption of the plan, and submit copies for delivery, to those state agencies which may be affected as determined by the State Clearinghouse in the Office of Planning and Research.

65595.7. A city, county, or city and county and a state agency may enter into an agreement to coordinate the priority or allocation of

state funds to the city, county, or city and county for state construction projects in order to implement the financial component of the plan.

65596. On and after the date that an agreement is executed pursuant to Section 65595.7, or if a city, county, or city and county adopts a plan which is consistent with a priority list adopted by a state agency, or if a state agency adopts a priority list consistent with a plan adopted by a city, county, or city and county, no state agency shall alter, defer, or deny priority or allocation of state funds or alter, defer, or deny priority or allocation of state construction, except where necessary for reasons beyond the control of either agency, including, but not limited to, environmental complications, a change in the scope of the project, or insufficient funds.

The provisions of this section shall not apply to the Clean Water Grant Program, which the federal Environmental Protection Agency has delegated to the State Water Resources Control Board to administer pursuant to the Porter-Cologne Water Quality Control Act and the Federal Clean Water Act.

SEC. 3. Article 10.9 (commencing with Section 65596.5) is added to Chapter 3 of Division 1 of Title 7 of the Government Code, to read:

Article 10.9. Local Tax Allocation Agreements to Implement Community Facilities Plan

65596.5. A local agency may enter into an agreement with any other local agency for the allocation of ad valorem taxes for the purpose of implementing the financial component of the plan. Any such agreement shall be consistent with legislation implementing Article XIII A and Article XIII B of the California Constitution.

65597. No state agency shall, on or after the date that a tax allocation agreement is entered into pursuant to this Section 65596.5 alter, defer, or deny priority or allocation of state funds to a local agency or for state construction projects by virtue of such tax allocation agreement.

65597.5. A local agency and state agency may enter into an agreement to coordinate the priority or allocation of state funds to the local agency or state construction projects in order to implement the financial component of the plan.

CHAPTER 1507

An act to amend Section 4215.5 of, to add Sections 4216 and 4217 to, and to repeal Section 4215.5 of, the Government Code, relating to subsurface installations.

[Approved by Governor September 28, 1982 Filed with Secretary of State September 30, 1982.]

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

SECTION 1. Section 4215.5 of the Government Code is amended to read:

4215.5. The legislative body of a city, city and county, or county may by ordinance require public utility companies owning or operating subsurface installations and all other owners or operators of subsurface installations within public streets, to become members, participate in the activities, and share in the costs of a regional notification center providing advance warning of excavations or other work close to existing installations, for the purpose of protecting such installations from damage, removal, relocation, or repair.

This section shall apply only to a city, county, or city and county in which three or more public utility companies or other owners or operators were members of a regional notification center prior to January 1, 1980.

This section shall remain in effect only until July 1, 1983, and as of such date is repealed, unless a later enacted statute, which is chaptered before July 1, 1983, deletes or extends such date.

SEC. 2. Section 4216 is added to the Government Code, to read:

4216. (a) For purposes of this section:

(1) "Inquiry identification number" means the number which shall be provided by a regional notification center to every person who contacts the center pursuant to subdivision (c) or subdivision (d).

(2) "Subsurface installation" means any underground pipeline, conduit, duct, wire, or other structure operated or maintained in or across a public street or public right-of-way.

(3) "Regional notification center" means a nonprofit association or other organization of operators of subsurface installations which provides advance warning of excavations or other work close to existing subsurface installations, for the purpose of protecting those installations from damage, removal, relocation, or repair.

(4) "Emergency" means a sudden, unexpected occurrence, involving a clear and imminent danger, demanding immediate action to prevent or mitigate loss of, or damage to, life, health, property, or essential public services. "Emergency" includes such occurrences as fire, flood, earthquake, or other soil or geologic movements, as well as such occurrences as riot, accident, or sabotage.

(b) Every owner of a subsurface installation, except the Department of Transportation, shall become a member of, participate in, and share in the costs of a regional notification center. Owners of subsurface installations who are members of, participate in, and share in the costs of either the Underground Service Alert—Northern California or the Underground Service

Alert—Southern California, or both, on or after July 1, 1983, shall be deemed to be in compliance with the provisions of this section and Section 4217.

(c) Except in an emergency, every person planning to conduct any excavation shall contact the appropriate regional notification center, at least two working days prior to commencing that excavation, if the excavation will be conducted in an area which is known, or reasonably should be known, to contain subsurface installations other than the underground facilities owned or operated by the excavator. The regional notification center shall provide an inquiry identification number to the person who contacts the center and shall notify any member, if known, who has a subsurface installation in the area of the proposed excavation.

(d) Every person planning to conduct an excavation in a private easement may contact the appropriate regional notification center if the private easement is known, or reasonably should be known, to contain subsurface installations other than the underground facilities owned or operated by the excavator. The regional notification center shall provide an inquiry identification number to the person who contacts the center and shall notify any member, if known, who has a subsurface installation in the area of the proposed excavation.

(e) The requirements of this section shall apply to state agencies, except as otherwise provided in subdivision (b), and to local agencies which own or operate subsurface installations. For the purposes of this section, "state agency" means every state agency, department, division, bureau, board, or commission, and "local agency" means a city, county, city and county, school district, or special district.

(f) This section shall become operative July 1, 1983.

SEC. 3. Section 4217 is added to the Government Code, to read:

4217. No permit to excavate issued by any local agency, as defined in Section 4216, or any state agency, shall be valid unless the applicant has been provided an inquiry identification number by a regional notification center pursuant to Section 4216. For purposes of this section, "state agency" means every state agency, department, division, bureau, board, or commission, including the Department of Transportation.

This section shall become operative July 1, 1983.

SEC. 4. No appropriation is made and no reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution or Section 2231 or 2234 of the Revenue and Taxation Code because the local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the program or level of service mandated by this act.

SEC. 5. Notwithstanding Section 2231.5 of the Revenue and Taxation Code, this act does not contain a repealer, as required by that section; therefore, the provisions of this act shall remain in effect unless and until they are amended or repealed by a later enacted act.

CHAPTER 1508

An act to add Section 14042 to the Welfare and Institutions Code, relating to the Medical Assistance Program.

[Approved by Governor September 28, 1982. Filed with Secretary of State September 30, 1982.]

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

SECTION 1. Section 14042 is added to the Welfare and Institutions Code, to read:

14042. Each contract for fiscal intermediary services shall provide for an automated system for verifying the eligibility of Medi-Cal recipients. The automated eligibility verification system shall provide the health care provider with a unique method of identifying the eligibility of the beneficiary. The provider shall include the eligibility identifier on the claim for payment. Where a recipient's eligibility has been verified by the automated system and the provider provides a unique identifier on the claim form, the director may not require any label, card impression, or any other evidence to establish the recipient's eligibility. The automated system for eligibility verification shall provide for the continuous updating of recipient eligibility determination.

The department shall periodically test the automated system for verifying recipient eligibility for completeness and accuracy, and report the findings of such testing to the Legislature. Unless and until the automated system for verifying recipient eligibility is accurate in at least 97 percent of the cases tested, the director shall provide for the issuance of proof-of-eligibility labels, or identity cards from which an identifying impression may be taken, or other evidence of eligibility to be used as a secondary recipient eligibility verification system. Notwithstanding the inability to provide verification of a recipient's eligibility through use of the automated system for eligibility verification, presentation of a claim for service with evidence of recipient eligibility as is provided for by the secondary system shall conclusively establish the recipient's eligibility.

On-line access shall be available to providers, at their discretion, upon the payment of a reasonable fee. The department shall establish the amount of the fees charged to providers for on-line access, which shall be based upon the costs of providing on-line access to providers.

SEC. 2. Section 1 of this act shall not apply to the current fiscal intermediary services contract entered into between the State Department of Health Services and the Computer Sciences Corporation.

SEC. 3. Section 1 of this act shall not apply to a contract for the provision of dental services under the Medi-Cal program entered into pursuant to Article 7 (commencing with Section 14490) of

Chapter 7 of Part 3 of Division 9 of the Welfare and Institutions Code.

CHAPTER 1509

An act to add Chapter 7 (commencing with Section 85100) to Part 50 of the Education Code, relating to education.

[Approved by Governor September 28, 1982. Filed with Secretary of State September 30, 1982.]

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

SECTION 1. Chapter 7 (commencing with Section 85100) is added to Part 50 of the Education Code, to read:

CHAPTER 7. VOTER APPROVED SPECIAL TAXES

85100. It is the intent of the Legislature that the authority of community college districts to impose special taxes pursuant to the provisions of Article XIII A of the California Constitution shall be limited by this chapter. Notwithstanding the provisions of Section 50077 of the Government Code or any other provison of law, no community college district may levy a special tax for any purpose other than those enumerated in this chapter.

85101. It is also the intent of the Legislature that voter-approved special taxes shall supplement the revenue a community college district receives pursuant to Article 3 (commencing with Section 84620) of Chapter 4.5 of Part 50, or its successor. Therefore, any revenue a district derives from a special tax levied pursuant to this chapter shall not reduce the amount of any funds received pursuant to Article 3 (commencing with Section 84620) of Chapter 4.5 of Part 50, or its successor, to which the district is entitled and shall not be included in any calculation of the district's entitlement to those funds.

85102. (a) The revenue derived from any special tax levied pursuant to this chapter shall be used exclusively for any or all of the following purposes:

(1) To initiate, operate, or maintain classes and programs under the provisions of the Community Service Act, the Civic Center Act, and the Recreation Act, as specified in subdivision (c) of Section 72283.

(2) To purchase real property and fixtures for use by the district in providing community college programs and services.

(3) To acquire or construct new college buildings or to make alterations or additions to existing college buildings that are used in providing community college programs and services.

(4) To preserve, maintain, and improve district owned or operated facilities.

(5) To purchase furniture, apparatus, or equipment for programs and facilities maintained by the district.

(b) As used in this section, "purchase" includes the acquisition of property under a lease-purchase agreement.

85103. Notwithstanding Section 85102, the revenue derived from any voter-approved special tax levied pursuant to this chapter may be pledged, in whole or in part, to secure the payment of interest and principal of revenue bonds issued by a governing board pursuant to Chapter 5 (commencing with Section 81900) of Part 49.

85104. As used in this article, "special tax" does not include any fee which does not exceed the reasonable cost of providing the service for which the fee is charged and which is not levied for general revenue purposes.

85105. The governing board of any community college district may, by resolution, call an election to approve the levy of a special tax for any of the purposes authorized by this chapter. The resolution shall include the type of tax and the rate of tax to be levied, its method of collection, and the purposes for which the revenue raised by the special tax will be used. Pursuant to the order of the governing board, an election shall be called, held, and conducted by the county superintendent of schools as nearly as practicable in accordance with provisions of Chapter 3 (commencing with Section 5300) of Part 4. Upon approval of two-thirds of the votes cast by voters voting upon the proposed special tax, the governing board of the district may levy the tax.

85106. The governing board of the district may provide for the collection of a voter-approved special tax in the same manner and subject to the same penalty as, or with, other charges and taxes fixed and collected by the county on behalf of the district. The county may deduct its reasonable costs incurred for the service of collecting the special tax before remitting the balance to the district.

SEC. 2. The Legislature finds and declares that the number of hours required for behind-the-wheel training of schoolbus drivers was arrived at without sufficient objective justification.

The Department of the California Highway Patrol therefore shall prepare and submit a report to the Legislature, on or before July 1, 1983, thoroughly reviewing the current behind-the-wheel training requirements of schoolbus drivers, which report shall include findings and conclusions regarding the advisability and validity of the requirement that an applicant for a certificate to drive a schoolbus successfully complete, as part of the total training requirement, 20 hours of behind-the-wheel training, driving vehicles comparable to those that will be driven by the applicant to transport pupils.

The Department of the California Highway Patrol shall request, and consider, recommendations from the Department of Education, the Schoolbus Advisory Committee, and other interested parties in compiling the information necessary for preparation of the report. Upon completion of review of those recommendations by the Department of the California Highway Patrol, the report submitted

to the Legislature shall contain a recommendation as to advisability and validity of current behind-the-wheel requirements and any recommendations for changes to these requirements.

It is the legislative intent, in enacting this section, that the training requirements for schoolbus drivers provide students with the safest, most cost-effective transportation possible.

SEC. 3. No appropriation is made and no reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution or Section 2231 or 2234 of the Revenue and Taxation Code because the local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the program or level of service mandated by this act.

CHAPTER 1510

An act to amend Sections 437c and 581c of the Code of Civil Procedure, relating to procedure.

[Approved by Governor September 28, 1982. Filed with Secretary of State September 30, 1982.]

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

SECTION 1. Section 437c of the Code of Civil Procedure is amended to read:

437c. (a) Any party may move for summary judgment in any action or proceeding if it is contended that the action has no merit or that there is no defense thereto. The motion may be made at any time after 60 days have elapsed since the general appearance in the action or proceeding of each party against whom the motion is directed or at such earlier time after such general appearance as the court, with or without notice and upon good cause shown, may direct. Notice of the motion and supporting papers shall be served on the other party to the action at least 10 days before the time fixed for the hearing. The motion shall be heard no later than 45 days before the date of trial, unless the court for good cause orders otherwise. The filing of such motion shall not extend the time within which a party must otherwise file a responsive pleading.

(b) The motion shall be supported or opposed by affidavits, declarations, admissions, answers to interrogatories, depositions and matters of which judicial notice shall or may be taken. Evidentiary objections, not raised here in writing or orally at the hearing, shall be deemed waived.

(c) The motion shall be granted if all the papers submitted show that there is no triable issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. In determining whether the papers show that there is no triable issue as to any material fact the court shall consider all of the evidence set

forth in the papers, except that to which objections have been made and sustained by the court, and all inferences reasonably deducible from such evidence, except summary judgment shall not be granted by the court based on inferences reasonably deducible from such evidence, if contradicted by other inferences or evidence, which raise a triable issue as to any material fact.

(d) Supporting and opposing affidavits or declarations shall be made by any person on personal knowledge, shall set forth admissible evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated therein.

(e) If a party is otherwise entitled to a summary judgment pursuant to the provisions of this section, summary judgment shall not be denied on grounds of credibility or for want of cross-examination of witnesses furnishing affidavits or declarations in support of the summary judgment, except that summary judgment may be denied in the discretion of the court, where the only proof of a material fact offered in support of the summary judgment is an affidavit or declaration made by an individual who was the sole witness to such fact; or where a material fact is an individual's state of mind, or lack thereof, and such fact is sought to be established solely by the individual's affirmation thereof.

(f) If it appears that the proof supports the granting of such motion as to some but not all the issues involved in the action, or that one or more of the issues raised by a claim is admitted, or that one or more of the issues raised by a defense is conceded, the court shall, by order, specify that such issues are without substantial controversy. At the trial of the action the issue so specified shall be deemed established and the action shall proceed as to the issues remaining.

(g) If it appears from the affidavits submitted in opposition to the motion that facts essential to justify opposition may exist but cannot, for reasons stated, then be presented, the court shall deny the motion, or order a continuance to permit affidavits to be obtained or discovery to be had or may make such other order as may be just.

(h) If the court determines at any time that any of the affidavits are presented in bad faith or solely for purposes of delay, the court shall order the party presenting such affidavits to pay the other party the amount of the reasonable expenses which the filing of the affidavits caused such other party to incur.

(i) Except where a separate judgment may properly be awarded in the action, no final judgment shall be entered on a motion for summary judgment prior to the termination of the action, but the final judgment shall, in addition to any matters determined in the action, award judgment as established by the summary proceeding herein provided for.

(j) In actions which arise out of an injury to the person or to property, when a motion for summary judgment was granted on the basis that the defendant was without fault, no other defendant during trial, over plaintiff's objection, may attempt to attribute fault to or comment on the absence or involvement of the defendant who

was granted the motion.

(k) A summary judgment entered under this section is an appealable judgment as in other cases.

SEC. 2. Section 581c of the Code of Civil Procedure is amended to read:

581c. (a) After the plaintiff has completed his or her opening statement, or the presentation of his or her evidence in a trial by jury, the defendant, without waiving his right to offer evidence in the event the motion is not granted, may move for a judgment of nonsuit.

(b) If it appears that the evidence presented, or to be presented, supports the granting of the motion as to some but not all of the issues involved in the action, the court shall grant the motion as to those issues and the action shall proceed as to the issues remaining. Despite the granting of the motion, no final judgment shall be entered prior to the termination of the action, but the final judgment in the action shall, in addition to any matters determined in the trial, award judgment as determined by the motion herein provided for.

(c) If the motion is granted, unless the court in its order for judgment otherwise specifies, the judgment of nonsuit operates as an adjudication upon the merits.

(d) In actions which arise out of an injury to the person or to property, when a motion for judgment of nonsuit was granted on the basis that the defendant was without fault, no other defendant during trial, over plaintiff's objection, may attempt to attribute fault to or comment on the absence or involvement of the defendant who was granted the motion.

CHAPTER 1511

An act to amend Section 26820.8 of, to add Sections 26820.9, 68206.2, 68206.3, 69595.1, 72056.7, 75073, and 75101.1 to, to add Chapter 5.1 (commencing with Section 70200) to Title 8 of, and to repeal Article 9 (commencing with Section 73640), Article 16 (commencing with Section 73950), Article 25 (commencing with Section 74340), and Article 30 (commencing with Section 74740), of Chapter 10 of Title 8 of, the Government Code, relating to courts.

[Approved by Governor September 28, 1982. Filed with Secretary of State September 30, 1982.]

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

SECTION 1. Chapter 5.1 (commencing with Section 70200) is added to Title 8 of the Government Code, to read:

CHAPTER 5.1. THE UNIFIED SUPERIOR COURTS

Article 1. Adoption of Provisions

70200. This chapter shall be known and may be cited as the County Court Unification Act.

70201. This chapter shall apply to the County of San Diego and to other counties designated pursuant to Section 70202.

70202. Article 2 (commencing with Section 70210) and Article 3 (commencing with Section 70220) shall become operative in San Diego County only upon the adoption of a ballot measure, proposed by a majority vote of the board of supervisors of the County of San Diego and approved by a majority of the voters of the County of San Diego voting thereon at a countywide election; and, in that event, shall become operative on July 1 of the year next following adoption of the ballot measure. Article 2 (commencing with Section 70210) and Article 3 (commencing with Section 70220) may also become operative in any other county when all of the following conditions are met:

(1) The county requests the Legislature, by resolution, that those provisions be made applicable, which resolution shall agree that the county shall pay increased costs imposed by Section 26820.9.

(2) The Legislature, by statute, authorizes the establishment of a unified superior court in that county.

(3) A ballot measure, proposed by a majority vote of the board of supervisors of the county is adopted by a majority of the voters of the county voting thereon, in which case Article 2 (commencing with Section 70210) and Article 3 (commencing with Section 70220) shall become operative in that county on July 1 of the year next following adoption of the ballot measure.

70203. Except as otherwise provided in this chapter, all general laws applicable to superior courts in other counties shall apply to a unified superior court.

70204. All laws generally applicable to the procedures of municipal and justice courts shall be applied in unified superior courts as appropriate.

70205. Within 30 days of July 1, one year following unification, and within 30 days of July 1 each year thereafter for a period of five years, the county shall report to the Legislature regarding the cost effectiveness of court unification. The report shall include statistical data addressing the effect of unification on court delay, the number of positions before and after unification, total court costs, judicial productivity, and other information as requested by the Legislature.

Article 2. Superior Court Judges

70210. Judges of the unified superior court shall each be assigned to a branch court, if they have been established, by the presiding judge, in accordance with policies established by the judicial policy

committee. No judge who held office as a judge of the superior or municipal court immediately prior to the operative date of this article may be assigned, during his or her initial term of office without his or her consent, to serve in a branch court other than the branch court corresponding to the judicial district in which he or she previously served.

70211. The supervising judge of each branch court, or if no branch courts have been established, two judges designated by the presiding judge and the presiding judge, who shall be chairperson, shall constitute the judicial policy committee for the unified superior court. The presiding judge shall designate the supervising judge of each branch court.

70212. Upon the operative date of this article, each superior court judge shall continue to serve the unified superior court for the balance of his or her term. Incumbent municipal court judges shall succeed to the newly created judicial positions on the superior court for terms equal to the balance of the terms to which they have been elected or appointed.

70213. Branch courts may be established by the board of supervisors. Each branch court shall operate in accordance with the policies established by the judicial policy committee, and under the supervision of the supervising judge of that branch.

70214. There is an appellate department of the unified superior court. Selection of judges to the appellate department shall be governed by the provisions of Section 77 of the Code of Civil Procedure. The Judicial Council shall adopt rules governing the practices, procedures, and disposition of the business of the appellate department.

70215. In each unified superior court there shall be a small claims division. The fees in small claims actions in unified courts shall be those set forth in Chapter 5A (commencing with Section 116) of Title 1 of Part 1 the Code of Civil Procedure.

70216. No judge who held office as a judge of the superior court immediately prior to the operative date of this article may be required during his or her initial term of office, without his or her consent, to perform duties or hear matters other than duties performed or matters heard by judges of the superior courts throughout the state. Except for judges who immediately prior to the operative date of this article were superior court judges, no judge who has less than five years' experience as a judge of a court of record in this state may perform any duty or exercise any power reserved to judges of the superior court in other counties, except upon designation by the presiding judge.

Article 3. Superior Court Personnel

70220. Upon the operative date of this article, all personnel of, or assigned to, the superior court and municipal courts of the county shall be consolidated, and shall serve under the direction of the

presiding judge, in accordance with personnel policies established by the judicial policy committee, consistent with personnel classifications established by the county or by statute. Notwithstanding any other provisions of law, court reporters shall not be required in a unified court in any action or proceeding if they were not required in that county prior to unification.

All such personnel shall retain no less than their former seniority, salary levels, and benefits; provided, that the board of supervisors may otherwise prescribe the number, classification, and compensation of personnel of the unified court except as provided by statute.

70221. All court services shall be consolidated in such a manner that the unified superior court shall have available to it a staff to serve the court which shall provide security to the court and its personnel, serve warrants, handle civil process and discharge orders of the unified superior court.

70222. Upon the operative date of this article, all referees and commissioners of the superior court and municipal court in the county shall become commissioners of the unified superior court, who shall serve at the pleasure of, and shall perform subordinate judicial duties as specified by the judicial policy committee. In no instance may the ratio in a unified superior court of referees and commissioners to judges exceed the ratio thereof immediately prior to unification.

70223. Pursuant to paragraph 6 of subdivision (c) of Section 5 of Article VI of the Constitution, the clerk of the unified court shall be selected by the judicial policy committee, and shall serve at the pleasure of the majority of the judges of the court.

SEC. 2. Section 26820.8 of the Government Code is amended to read:

26820.8. The maximum amounts set forth in Sections 26820.4, 26826, and 26827, shall be deemed adjusted, effective January 1, 1983, and on January 1 of each odd-numbered year thereafter, to reflect changes in the value of the dollar. Such adjustments shall be made by multiplying the base amounts by the percent change in the California Consumer Price Index as compiled and reported by the California Department of Industrial Relations with the result rounded to the nearest dollar, however, such adjustment shall not exceed three percent per year except as provided in Section 26820.9.

SEC. 3. Section 26820.9 is added to the Government Code, to read:

26820.9. In any county which has adopted a unified superior court, the maximum amounts set forth in Sections 26820.4, 26826, and 26827, and adjusted pursuant to Section 26820.8 may be further adjusted to reflect the increased cost to the county and to the state for judges' salaries, retirement benefits, and support costs imposed by unification; provided, however, that such additional adjustments shall not exceed an amount equal to multiplying the base amounts by the percentage change in the California Consumer Price Index,

as compiled and reported by the California Department of Industrial Relations, rounded to the nearest dollar.

SEC. 3.5. Section 68206.2 is added to the Government Code, to read:

68206.2. In any unified county, the county shall reimburse the state annually for the amount of any increased cost to the state for judges' health benefits due to unification.

SEC. 4. Section 68206.3 is added to the Government Code, to read:

68206.3. Notwithstanding the provisions of Section 68206, if the provisions of Chapter 5.1 (commencing with Section 70200) of Title 8, which provide for county court unification, become operative in San Diego County:

(a) The state's share of salary costs pursuant to Section 68206 for superior court judgeships in San Diego County shall be limited to the number of superior court judgeships which were authorized on the date just prior to the operative date of county court unification, and San Diego County shall pay the remainder of the salary costs for those judges. In addition it is the intent of the Legislature to maintain the block grant support for those judges at the levels existing on the date just prior to the operative date of county court unification.

(b) The state's share of salary and support costs for any other judgeship in the Superior Court of San Diego County, created subsequent to the operative date of unification, shall be 47 percent of the amounts payable per judge pursuant to Section 68206 and the intent of the Legislature to provide block grant support.

SEC. 5. Section 69595.1 is added to the Government Code, to read:

69595.1. Upon the unification of the superior court in San Diego County, the number of superior court judges specified in Section 69595 shall be increased by the number of municipal court judges provided by law for San Diego County immediately prior to unification.

SEC. 5.5. Section 72056.7 is added to the Government Code, to read:

72056.7. Notwithstanding the limitations set forth in Section 72056.2, in any county which has adopted a unified superior court, the maximum amounts set forth in Sections 72055 and 72056 and adjusted pursuant to Section 72056.5 shall apply to actions which are specified by Section 86 of the Code of Civil Procedure, except that such maximum amounts may be further adjusted to reflect the increased costs to the county for judges' salaries, retirement benefits, and support costs; provided, however, that no such additional adjustment shall exceed an amount equal to multiplying the base amounts by the percentage change in the California Consumer Price Index, as compiled and reported by the California Department of Industrial Relations, rounded to the nearest dollar.

SEC. 5.6. Section 75073 is added to the Government Code, to read:

75073. The benefits for a retired municipal court judge who retired prior to a unification of the municipal and superior courts shall be based on the current salary of a municipal court judge.

SEC. 5.7. Section 75101.1 is added to the Government Code, to read:

75101.1. Notwithstanding the provisions of Section 75101, if the provisions of Chapter 5.1 (commencing with Section 70200) of Title 8, which provide for county court unification, become operative in San Diego County:

(a) Except as provided in subdivisions (b) and (c), the state's share of contributions to the Judges' Retirement Fund for superior court judges in San Diego County shall be limited to the number of superior court judgeships which were authorized on the date just prior to the operative date of county court unification.

(b) For municipal court judgeships which become superior court judgeships as a result of county court unification, the state share of contributions to the Judges' Retirement Fund shall be limited to the amount of the state's share prior to the operative date of county court unification and the County of San Diego shall pay the remainder of the retirement fund contribution required pursuant to Section 75101.

(c) For any judgeship created subsequent to the operative date of county court unification, the contribution to the Judges' Retirement Fund required by Section 75101 shall be paid as follows:

(1) The state's share shall be 8 percent of a municipal court judge's salary plus 47 percent of the difference in the contribution for a municipal court judge and a superior court judge.

(2) The County of San Diego shall pay the remainder of the contribution required by Section 75101 and not payable by the state pursuant to this subdivision.

(d) The county shall annually pay to the Judges' Retirement Fund an amount equivalent to the actual increased retirement costs of judges elevated to the superior court due to court unification.

SEC. 6. Article 9 (commencing with Section 73640) of Chapter 10 of Title 8 of the Government Code is repealed.

SEC. 7. Article 16 (commencing with Section 73950) of Chapter 10 of Title 8 of the Government Code is repealed.

SEC. 8. Article 25 (commencing with Section 74340) of Chapter 10 of Title 8 of the Government Code is repealed.

SEC. 9. Article 30 (commencing with Section 74740) of Chapter 10 of Title 8 of the Government Code is repealed.

SEC. 10. Sections 1, 2, 3, 3.5, 5.5, and 5.6 of this act shall become operative only upon the adoption of Assembly Constitutional Amendment No. 36 of the 1981–82 Regular Session by the people; and in that event, shall become operative at the same time as Assembly Constitutional Amendment No. 36.

SEC. 11. Sections 4, 5, 5.7, 6, 7, 8, and 9 of this act shall become operative only upon the adoption of Assembly Constitutional Amendment No. 36 of the 1981–82 Regular Session, by the people, the subsequent adoption of a ballot measure proposed by the Board of

Supervisors of San Diego County pursuant to Section 70202 of the Government Code, and a resolution by the Board of Supervisors of San Diego County declaring that they will not seek reimbursement from the state for any costs associated with the report required by Section 70205 of the Government Code; and in that event, shall become operative on July 1 of the year next following the adoption of such ballot measure.

SEC. 12. No appropriation is made and no reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution or Section 2231 or 2234 of the Revenue and Taxation Code because this act is in accordance with the request of a local agency or school district which desired legislative authority to carry out the program specified in this act.

CHAPTER 1512

An act to add Sections 26801.5, 68206.2, 69606.1, and 75101.5 to, and to repeal Article 35 (commencing with Section 74900) of Chapter 10 of Title 8 of, the Government Code, relating to courts.

[Approved by Governor September 28, 1982. Filed with Secretary of State September 30, 1982.]

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

SECTION 1. Section 26801.5 is added to the Government Code, to read:

26801.5. If the provisions of Chapter 5.1 (commencing with Section 70200) of Title 8, which provide for county court unification, become operative in Ventura County, the county clerk shall be the ex-officio clerk of the unified superior court. All personnel of the unified superior court shall retain no less than their former seniority, salary levels, and benefits; provided that the board of supervisors may otherwise prescribe the number, classification, and compensation of personnel of the unified court except as provided by statute.

SEC. 1.5. Section 68206.2 is added to the Government Code, to read:

68206.2. Notwithstanding the provisions of Section 68206, if the provisions of Chapter 5.1 (commencing with Section 70200) of Title 8, which provide for county court unification, become operative in Ventura County:

(a) The state's share of salary costs pursuant to Section 68206 for superior court judgeships in Ventura County shall be limited to the number of superior court judgeships which were authorized on the date just prior to the operative date of county court unification, and Ventura County shall pay the remainder of the salary costs for those judges. In addition, it is the intent of the Legislature to maintain the

block grant support for those judges at the levels existing on the date just prior to the operative date of county court unification.

(b) The state's share of salary costs for any other judgeship in the Superior Court of Ventura County created subsequent to the operative date of unification shall be 54 percent of the amounts payable per judge pursuant to Section 68206. In addition, it is the intent of the Legislature to provide block grant support for each such judge in the Unified Superior Court of Ventura County at a rate equal to 54 percent of the amount provided per judge in nonunified counties.

(c) Nothing in this section shall affect the Ventura County Court Services Consolidation Act of 1980 (Article 1.5 (commencing with Section 26630) of Chapter 2 of Part 3 of Division 2 of Title 3 of the Government Code.

SEC. 2. Section 69606.1 is added to the Government Code, to read:

69606.1. Upon the unification of the Superior Court of Ventura County, the number of Superior Court judges specified in Section 69606 shall be increased by the number of municipal court judges provided by law for Ventura County immediately prior to unification.

SEC. 3. Article 35 (commencing with Section 74900) of Chapter 10 of Title 8 of the Government Code is repealed.

SEC. 4. Section 75101.5 is added to the Government Code, to read:

75101.5. Notwithstanding the provisions of Section 75101, if the provisions of Chapter 5.1 (commencing with Section 70200) of Title 8, which provide for county court unification, become operative in Ventura County:

(a) Except as provided in subdivisions (b) and (c), the state's share of contributions to the Judges' Retirement Fund for superior court judges in Ventura County shall be limited to the number of superior court judgeships which were authorized on the date just prior to the operative date of county court unification.

(b) For municipal court judgeships which become superior court judgeships as a result of county court unification, the state share of contributions to the Judges' Retirement Fund shall be limited to the amount of the state's share prior to the operative date of county court unification and the County of Ventura shall pay the remainder of the retirement fund contribution required pursuant to Section 75101.

(c) For any judgeship created subsequent to the operative date of county court unification, the contribution to the Judges' Retirement Fund required by Section 75101 shall be paid as follows:

(1) The state's share shall be 8 percent of a municipal court judge's salary plus 54 percent of the difference in the contribution for a municipal court judge and a superior court judge.

(2) The County of Ventura shall pay the remainder of the contribution required by Section 75101 and not payable by the state pursuant to this subdivision.

(d) The County of Ventura shall annually pay to the Judges Retirement Fund an amount equivalent to the actual increased retirement cost of judges elevated to the superior court due to court unification.

SEC. 5. This act shall become operative only upon the occurrence of all of the following events, in which case this act shall become operative on July 1 of the year next following the adoption of the ballot measure referred to in subsection (4).

(1) Adoption of Assembly Constitutional Amendment No. 36 of the 1981–82 Regular Session, by the people.

(2) Enactment of Assembly Bill No. 1646 of the 1981–82 Regular Session.

(3) Adoption of a resolution by the Board of Supervisors of Ventura County agreeing to pay the increased retirement costs resulting from this act and agreeing not to seek reimbursement from the state for any costs associated with the report required by Section 70205 of the Government Code.

(4) Adoption of a ballot measure proposed by the Board of Supervisors of Ventura County pursuant to Section 70202 of the Government Code, said ballot measure to be voted on at the November, 1982, general election, or at a subsequent election.

(5) Adoption of a resolution by the Board of Supervisors of Ventura County following the completion of an administrative and cost-benefit study which must be completed and presented to the board prior to July 1 of the year next following the adoption of the ballot measure referred to in subsection (4).

SEC. 6. No appropriation is made and no reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution or Section 2231 or 2234 of the Revenue and Taxation Code because this act is in accordance with the request of a local agency or school district which desired legislative authority to carry out the program specified in this act.

CHAPTER 1513

An act to amend Sections 436.14, 32100.2, 32102, 32103, 32106, 32121, 32121.2, 32125, 32127.2, 32132, 32155, and 32315 of, to add Sections 32316, 32317, 32318, 32319, 32320, 32321, and 32322 to, and to repeal Section 32201 of, the Health and Safety Code, relating to hospital districts.

[Approved by Governor September 28, 1982. Filed with Secretary of State September 30, 1982.]

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

SECTION 1. Section 436.14 of the Health and Safety Code is amended to read:

436.14. In any case in which a political subdivision defaults on the payment of interest or principal accrued and due on bonds or other evidences of indebtedness insured under this chapter, debentures in an amount equal to the outstanding original principal obligation and interest on the bonds which were accrued and unpaid on the date of default and bearing interest at a rate equal to and payment schedule identical with those of such bonds shall be issued by the State Treasurer upon notification thereof by the office to the bondholders upon the surrender of such bonds to the office.

In any case in which a hospital district defaults on the payment of interest or principal accrued and due on an insured loan secured by a first mortgage, first deed of trust, or other security agreement as authorized by Section 32127.2, debentures in an amount equal to the outstanding original principal obligation and interest on the bonds which were accrued and unpaid on the date of default and bearing interest at a rate equal to and payment schedule identical with those of such bonds shall be issued by the State Treasurer upon notification thereof by the office to the bondholders upon surrender of such bonds to the office after the state has enforced its rights under such first mortgage, first deed of trust, or other security agreement.

SEC. 2. Section 32100.2 of the Health and Safety Code is amended to read:

32100.2. Notwithstanding any other provision of law, the term of any member of the board of directors shall expire if he or she is absent from three consecutive regular meetings, or from three of any five consecutive meetings of the board and the board by resolution declares that a vacancy exists on the board.

SEC. 3. Section 32102 of the Health and Safety Code is amended to read:

32102. The board of hospital directors shall meet on the first Monday subsequent to 30 days after the completion of organization of the district and shall organize by the election of one of their members as chairperson or president and one as secretary.

SEC. 4. Section 32103 of the Health and Safety Code is amended to read:

32103. The board of directors shall serve without compensation except that the board of directors, by a resolution adopted by a majority vote of the members of the board, may authorize the payment of not to exceed one hundred dollars ($100) per meeting for not to exceed four meetings a month as compensation to each member of the board of directors.

Each member of the board of directors shall be allowed his or her actual necessary traveling and incidental expenses incurred in the performance of official business of the district as approved by the board.

SEC. 5. Section 32106 of the Health and Safety Code is amended to read:

32106. Except as provided in Section 32155, all of the sessions of the board of directors, whether regular or special, shall be open to the public, and a majority of the members of the board shall constitute a quorum for the transaction of business.

SEC. 6. Section 32121 of the Health and Safety Code is amended to read:

32121. Each local hospital district shall have and exercise the following powers:

(a) To have and use a corporate seal and alter it at 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 the limits of the district, and to control, dispose of, convey and encumber the same and create a leasehold interest in 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 administer any trust declared or created for hospitals of the district, and received by gift, devise, or bequest and hold in trust or otherwise, property situated in this state or elsewhere, and where not otherwise provided, dispose of the same for the benefit of such hospitals.

(f) To employ legal counsel to advise the board of directors in all matters pertaining to the business of the district, and to perform such 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 such legal advice and assistance.

(g) To employ such officers and employees, including architects and consultants, as the board of directors deems necessary to carry on properly the business of the district.

(h) To prescribe the duties and powers of the hospital administrator, secretary and other officers and employees of any such hospitals; to establish such offices as may be appropriate and to appoint board members or employees to those offices; to determine the number of and appoint all such officers and employees, and to fix their compensation, which officers and employees shall hold their offices or positions at the pleasure of the boards.

(i) To do any and all things which an individual might do which is necessary for and to the advantage of a hospital and a nurses' training school.

(j) To establish, maintain and operate one or more health facilities, situated within the territorial limits of the district.

(k) To do any and all other acts and things necessary to carry out the provisions of 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 and such other health care provider groups and organizations as 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 for the benefit of the hospital district.

SEC. 6.5. Section 32121 of the Health and Safety Code is amended to read:

32121. Each local hospital district shall have and exercise the following powers:

(a) To have and use a corporate seal and alter it at 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 the limits of the district, and to control, dispose of, convey and encumber the same and create a leasehold interest in 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 administer any trust declared or created for hospitals of the district, and received by gift, devise, or bequest and hold in trust or otherwise, property situated in this state or elsewhere, and where not otherwise provided, dispose of the same for the benefit of such hospitals.

(f) To employ legal counsel to advise the board of directors in all matters pertaining to the business of the district, and to perform such 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 such legal advice and assistance.

(g) To employ such officers and employees, including architects and consultants, as the board of directors deems necessary to carry on properly the business of the district.

(h) To prescribe the duties and powers of the hospital administrator, secretary and other officers and employees of any such hospitals; to establish such offices as may be appropriate and to appoint board members or employees to those offices; to determine the number of and appoint all such officers and employees, and to fix their compensation, which officers and employees shall hold their offices or positions at the pleasure of the boards.

(i) To do any and all things which an individual might do which

is necessary for and to the advantage of a hospital and a nurses' training school.

(j) To establish, maintain and operate one or more health facilities at any location within the hospital district's service area as stated in the state health plan.

(k) To do any and all other acts and things necessary to carry out the provisions of 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 and such other health care provider groups and organizations as 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 hospital district.

SEC. 7. Section 32121.2 of the Health and Safety Code is amended to read:

32121.2. Except as provided in this section, by resolution, the board of directors of a local hospital district may authorize the disposition of any surplus property of the district at fair market value by any method determined appropriate by the board.

The board of directors of a local hospital district may donate or sell, at less than fair market value, any surplus property to another local hospital district in California.

SEC. 8. Section 32125 of the Health and Safety Code is amended to read:

32125. The board of directors shall be responsible for the operation of all hospitals owned or leased by the district, according to the best interests of the public health and shall make and enforce all rules, regulations and by-laws necessary for the administration, government, protection and maintenance of hospitals under their management and all property belonging thereto and may prescribe the terms upon which patients may be admitted thereto. However, such hospitals shall not contract to care for indigent county patients at below the cost for care. In setting the rates the board shall, insofar as possible, establish such rates as will permit the hospital to be operated upon a self-supporting basis. The board may establish different rates for residents of the district than for persons who do not reside within the district. Minimum standards of operation as prescribed in this article shall be established and enforced by the board of directors.

SEC. 9. Section 32127.2 of the Health and Safety Code is amended to read:

32127.2. Exclusively for the purpose of securing state insurance of

financing for the construction of new health facilities, the expansion, modernization, renovation, remodeling and alteration of existing health facilities, and the initial equipping of any such health facilities under Chapter 4 (commencing with Section 436) of Part 1 of Division 1, and notwithstanding any provision of this division or any other provision or holding of law, the board of directors of any district may (a) borrow money or credit, or issue bonds, as well as by the financing methods specified in this division, and (b) execute in favor of the state first mortgages, first deeds of trust, and such other necessary security interests as the Office of Statewide Health Planning and Development may reasonably require in respect to a health facility project property as security for such insurance. No payments of principal, interest, insurance premium and inspection fees, and all other costs of state-insured loans obtained under the authorization of this section shall be made from funds derived from the district's power to tax. It is hereby declared that the authorizations for the executing of such mortgages, deeds of trust and other necessary security agreements by the board and for the enforcement of the state's rights thereunder is in the public interest in order to preserve and promote the health, welfare, and safety of the people of this state by providing, without cost to the state, a state insurance program for health facility construction loans in order to stimulate the flow of private capital into health facilities construction to enable the rational meeting of the critical need for new, expanded and modernized public health facilities.

SEC. 10. Section 32132 of the Health and Safety Code is amended to read:

32132. (a) Except as otherwise provided in this section, the board of directors shall let any contract involving an expenditure of more than ten thousand dollars ($10,000) for work to be done or for materials and supplies to be furnished, sold, or leased to the district, to the lowest responsible bidder who shall give such security as the board requires, or else reject all bids.

(b) Subdivision (a) shall not apply to medical or surgical equipment or supplies or to professional services, including data processing programs or software.

(c) Bids need not be secured for change orders which do not materially change the scope of the work as set forth in a contract previously made if such contract was made after compliance with bidding requirements, and if each individual change order does not total more than 5 percent of such contract.

(d) As used in this section, "medical or surgical equipment or supplies" includes only equipment or supplies commonly, necessarily, and directly used by, or under the direction of, a physician and surgeon in caring for or treating a patient in a hospital.

(e) Nothing in this section shall prevent any district hospital from participating as a member of any organization described in Section 23704 of the Revenue and Taxation Code, nor shall this section apply to any purchase made, or services rendered, by such organization on

behalf of a district hospital which is a member of such organization.

SEC. 11. Section 32155 of the Health and Safety Code is amended to read:

32155. The board of directors may order that the hearing pursuant to this article, and hearings on the reports of the hospital medical audit or quality assurance committees, be held in private or executive session, provided, that an applicant or medical staff member whose staff privileges are the direct subject of a hearing may request a public hearing. Deliberations of the board of directors in connection with matters pertaining to this article may be held in executive session.

SEC. 12. Section 32201 of the Health and Safety Code is repealed.

SEC. 13. Section 32315 of the Health and Safety Code is amended to read:

32315. Notwithstanding any other provision of law, a local hospital district may issue revenue bonds pursuant to the provisions of Chapter 6 (commencing with Section 54300) of Part 1 of Division 2 of Title 5 of the Government Code. However, the provisions of Article 3 (commencing with Section 54380) of Chapter 6 of Part 1 of Division 2 of Title 5 of the Government Code shall not be applicable to local hospital districts.

SEC. 14. Section 32316 is added to the Health and Safety Code, to read:

32316. By resolution of the board of directors adopted by a vote of four-fifths of the membership of the board, the district may issue bonds of not more than a maximum of 50 percent of the average of the district's gross revenues for the preceding three years, pursuant to Chapter 6 (commencing with Section 54300) of Part 1 of Division 2 of Title 5 of the Government Code, to provide funds for the acquisition, construction, improvement, or financing of an enterprise, including, but not limited to, any or all expenses incidental thereto, or connected therewith, or any combination of two or more of those purposes.

SEC. 15. Section 32317 is added to the Health and Safety Code, to read:

32317. The resolution shall include all of the following:

(a) The purpose for which the bonds are proposed to be issued.

(b) The estimated cost of the acquisition, construction, improvement, and financing.

(c) The principal amount of the bonds.

(d) The maximum rate of the interest on the bonds, which shall not exceed 12 percent per year, payable annually or semiannually.

(e) A statement that the bonds are to be revenue bonds, payable exclusively from the revenues of the enterprise, and that the bonds are not to be secured by the taxing power of the district.

SEC. 16. Section 32318 is added to the Health and Safety Code, to read:

32318. The resolution shall be published once a week for at least two weeks in a newspaper of general circulation in the district, or if

there is none, in the newspaper of general circulation published nearest to the district. If there are no newspapers, the resolution shall be posted in three public places in the district for two succeeding weeks.

SEC. 17. Section 32319 is added to the Health and Safety Code, to read:

32319. The board of directors may sell the bonds pursuant to the resolution as follows:

(a) By giving notice inviting sealed bids and selling to the highest responsible bidder.

(b) By private sale, pursuant to a vote of four-fifths of the entire board.

SEC. 18. Section 32320 is added to the Health and Safety Code, to read:

32320. No hospital district shall sell revenue bonds until a formal agreement of such sale has been approved by the board of directors, by ordinance, which shall state that the agreement is subject to referendum as provided by Chapter 4 (commencing with Section 5150) of Division 5 of the Elections Code.

SEC. 19. Section 32321 is added to the Health and Safety Code, to read:

32321. Any ordinance subject to the provisions of Section 32320 shall be published after adoption as provided by Chapter 4 (commencing with Section 5150) of Division 5 of the Elections Code within 15 days after such adoption.

The board of directors of the district may introduce and enact such ordinance at any regular or adjourned regular meeting by the approving votes of a majority of all its members. The electors of the district shall have the right to petition for referendum on such ordinance pursuant to Article 2 (commencing with Section 3750) of Chapter 2 of Division 5 of the Elections Code, except that all computations referred to in those sections, and officers of the county mentioned in those sections, shall be construed to refer to comparable computations and officers of the district. For the purpose of the section, the term "electors" means the electors of territory entitled to vote at elections for the members of the board of directors.

SEC. 20. Section 32322 is added to the Health and Safety Code, to read:

32322. If an ordinance enacted pursuant to Section 32320 is subjected to a successful referendum election, or is repealed or rescinded by the board of directors, no ordinance authorizing the district to sell revenue bonds shall be adopted by the district for a period of one year from the date of the referendum repeal or rescission.

SEC. 21. It is the intent of the Legislature, if this bill and Senate Bill 2012 are both chaptered and become effective January 1, 1983, both bills amend Section 32121 of the Health and Safety Code, and this bill is chaptered after Senate Bill 2012, that the amendments to

Section 32121 proposed by both bills be given effect and incorporated in Section 32121 in the form set forth in Section 6.5 of this act. Therefore, Section 6.5 of this act shall become operative only if this bill and Senate Bill 2012 are both chaptered and become effective January 1, 1983, both bills amend Section 32121, and this bill is chaptered after Senate Bill 2012, in which case Section 6 of this act shall not become operative.

CHAPTER 1514

An act to amend Sections 45260, 45266, and 88086 of, to amend, repeal, and add Section 88080 of, and to add Sections 45285.5 and 88104.5 to, the Education Code, relating to school personnel.

[Approved by Governor September 28, 1982. Filed with Secretary of State September 30, 1982.]

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

SECTION 1. Section 45260 of the Education Code, as amended by Section 3 of Chapter 784 of the Statutes of 1981, is amended to read:

45260. (a) The commission shall prescribe, amend, and interpret, subject to this article, such rules as may be necessary to insure the efficiency of the service and the selection and retention of employees upon a basis of merit and fitness. The rules shall not apply to bargaining unit members if the subject matter is within the scope of representation, as defined in Section 3543.2 of the Government Code, and is included in a negotiated agreement between the governing board and that unit. The rules shall be binding upon the governing board, but shall not restrict the authority of the governing board provided pursuant to other sections of this code.

(b) No rule or amendment which would affect classified employees who are represented by a certified or recognized exclusive bargaining representative shall be adopted by the commission until the exclusive bargaining representative and the public school employer of the classified employees who would be affected have been given reasonable notice of the proposal.

(c) This section shall remain in effect only until January 1, 1988, and as of such date is repealed, unless a later enacted statute, which is chaptered before January 1, 1988, deletes or extends such date.

SEC. 2. Section 45260 of the Education Code, as added by Section 4 of Chapter 784 of the Statutes of 1981, is amended to read:

45260. (a) The commission shall prescribe and amend, subject to this article, such rules as may be necessary to insure the efficiency of the service and the selection and retention of employees upon a basis of merit and fitness. The rules shall be binding upon the

governing board.

(b) No rule or amendment which would affect classified employees who are represented by a certified or recognized exclusive bargaining representative shall be adopted by the commission until the exclusive bargaining representative and the public school employer of the classified employees who would be affected have been given reasonable notice of the proposal.

(c) This section shall become operative January 1, 1988.

SEC. 3. Section 45266 of the Education Code is amended to read:

45266. The personnel director shall be responsible to the commission for carrying out all procedures in the administration of the classified personnel in conformity with this article and the rules of the commission, and shall be free of prejudgment or bias in order to ensure the impartiality of the commission. He or she shall also act as secretary of the commission and shall prepare, or cause to be prepared, an annual report which shall be sent by the commission to the governing board.

SEC. 4. Section 45285.5 is added to the Education Code, to read:

45285.5. No position classification or reclassification plan which would affect classified employees who are represented by a certified or recognized exclusive bargaining representative shall be adopted by the commission until the exclusive bargaining representative and the public school employer of the classified employees who would be affected have been given reasonable notice of the proposed classifications or reclassifications.

SEC. 5. Section 88080 of the Education Code is amended to read:

88080. (a) The commission shall prescribe and amend, subject to this article, such rules as may be necessary to insure the efficiency of the service and the selection and retention of employees upon a basis of merit and fitness. The rules shall be binding upon the governing board.

(b) No rule or amendment which would affect classified employees who are represented by a certified or recognized exclusive bargaining representative shall be adopted by the commisssion until the exclusive bargaining representative and the community college employer of the classified employees who would be affected have been given reasonable notice of the proposal.

SEC. 5.5. Section 88080 of the Education Code is amended to read:

88080. (a) The commission shall prescribe and, amend, and interpret subject to this article, such rules as may be necessary to insure the efficiency of the service and the selection and retention of employees upon a basis of merit and fitness. The rules shall not apply to bargaining unit members if the subject matter is within the scope of representation, as defined in Section 3543.2 of the Government Code, and is included in a negotiated agreement between the governing board and that unit. The rules shall be binding upon the governing board, but shall not restrict the authority of the governing board provided pursuant to other sections of this

code.

(b) No rule or amendment which would affect classified employees who are represented by a certified or recognized exclusive bargaining representative shall be adopted by the commission until the exclusive bargaining representative and the community college employer of the classified employees who would be affected have been given reasonable notice of the proposal.

This section shall remain in effect only until January 1, 1989, and as of that date is repealed, unless a later enacted statute, which is chaptered before January 1, 1989, deletes or extends that date.

SEC. 5.7. Section 88080 is added to the Education Code, to read:

88080. (a) The commission shall prescribe and amend, subject to this article, such rules as may be necessary to insure the efficiency of the service and the selection and retention of employees upon a basis of merit and fitness. The rules shall be binding upon the governing board.

(b) No rule or amendment which would affect classified employees who are represented by a certified or recognized exclusive bargaining representative shall be adopted by the commission until the exclusive bargaining representative and the community college employer of the classified employees who would be affected have been given reasonable notice of the proposal.

This section shall become operative January 1, 1989.

SEC. 6. Section 88086 of the Education Code is amended to read:

88086. The personnel director shall be responsible to the commission for carrying out all procedures in the administration of the classified personnel in conformity with this article and the rules of the commission, and shall be free of prejudgment or bias in order to ensure the impartiality of the commission. He or she shall also act as secretary of the commission and shall prepare, or cause to be prepared, an annual report which shall be sent by the commission to the governing board.

SEC. 7. Section 88104.5 is added to the Education Code, to read:

88104.5. No position classification or reclassification plan which would affect classified employees who are represented by a certified or recognized exclusive bargaining representative shall be adopted by the commission until the exclusive bargaining representative and the community college employer of the classified employees who would be affected have been given reasonable notice of the proposed classifications or reclassifications.

SEC. 7.5. It is the intent of the Legislature, if this bill and Assembly Bill 3386 are both chaptered and become effective January 1, 1983, both bills amend Section 88080 of the Education Code, and this bill is chaptered after Assembly Bill 3386, that the amendments to Section 88080 proposed by both bills be given effect and incorporated in Section 88080 in the form set forth in Sections 5.5 and 5.7 of this act. Therefore, Sections 5.5 and 5.7 of this act shall become operative only if this bill and Assembly Bill 3386 are both chaptered and become effective January 1, 1983, both amend Section 88080, and

this bill is chaptered after Assembly Bill 3386, in which case Section 5 of this act shall not become operative.

SEC. 8. Notwithstanding Section 6 of Article XIII B of the California Constitution and Section 2231 or 2234 of the Revenue and Taxation Code, no appropriation is made by this act for the purpose of making reimbursement pursuant to these sections. It is recognized, however, that a local agency or school district may pursue any remedies to obtain reimbursement available to it under Chapter 3 (commencing with Section 2201) of Part 4 of Division 1 of that code.

SEC. 9. Notwithstanding Section 2231.5 of the Revenue and Taxation Code, this act does not contain a repealer, as required by that section; therefore, the provisions of this act shall remain in effect unless and until they are amended or repealed by a later enacted act.

CHAPTER 1515

An act to amend Section 1170.1 of the Penal Code, relating to criminal sentences, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 28, 1982. Filed with Secretary of State September 30, 1982]

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

SECTION 1. Section 1170.1 of the Penal Code is amended to read:

1170.1. (a) Except as provided in subdivision (c) and subject to Section 654, when any person is convicted of two or more felonies, whether in the same proceeding or court or in different proceedings or courts, and whether by judgment rendered by the same or by a different court, and a consecutive term of imprisonment is imposed under Sections 669 and 1170, the aggregate term of imprisonment for all such convictions shall be the sum of the principal term, the subordinate term and any additional term imposed pursuant to Section 667.5 or 667.6. The principal term shall consist of the greatest term of imprisonment imposed by the court for any of the crimes, including any enhancements imposed pursuant to Section 12022, 12022.3, 12022.5, 12022.6, 12022.7 or 12022.8. The subordinate term for each consecutive offense which is not a "violent felony" as defined in subdivision (c) of Section 667.5 shall consist of one-third of the middle term of imprisonment prescribed for each other such felony conviction for which a consecutive term of imprisonment is imposed, and shall exclude any enhancements. In no case shall the total of subordinate terms for such consecutive offenses which are not "violent felonies" as defined in subdivision (c) of Section 667.5 exceed five years. The subordinate term for each consecutive offense

which is a "violent felony" as defined in subdivision (c) of Section 667.5, including those offenses described in paragraph (8) of subdivision (c) of Section 667.5, shall consist of one-third of the middle term of imprisonment prescribed for each other such felony conviction for which a consecutive term of imprisonment is imposed, and shall include one-third of any enhancements imposed pursuant to Section 12022, 12022.5 or 12022.7.

(b) When a consecutive term of imprisonment is imposed under Sections 669 and 1170 for two or more convictions for kidnapping, as defined in Section 207, involving both separate victims and separate occasions, the aggregate term shall be calculated as provided in subdivision (a), except that the subordinate term for each subsequent kidnapping conviction shall consist of the middle term for each kidnapping conviction for which a consecutive term of imprisonment is imposed and shall include one-third of any enhancements imposed pursuant to Section 12022, 12022.5, or 12022.7. The five-year limitation on the total of subordinate terms provided in subdivision (a) shall not apply to subordinate terms for second and subsequent convictions of kidnapping, as defined in Section 207, involving separate victims and separate occasions.

(c) In the case of any person convicted of one or more felonies committed while such person is confined in a state prison, or is subject to reimprisonment for escape from such custody and the law either requires the terms to be served consecutively or the court imposes consecutive terms, the term of imprisonment for all such convictions which such person is required to serve consecutively shall commence from the time such person would otherwise have been released from prison. If the new offenses are consecutive with each other, the principal and subordinate terms shall be calculated as provided in subdivision (a), except that the total of subordinate terms may exceed five years. The provisions of this subdivision shall be applicable in cases of convictions of more than one offense in different proceedings, and convictions of more than one offense in the same or different proceedings.

(d) When the court imposes a prison sentence for a felony pursuant to Section 1170 the court shall also impose the additional terms provided in Sections 667.5, 12022, 12022.5, 12022.6, and 12022.7, unless the additional punishment therefore is stricken pursuant to subdivision (h). The court shall also impose any other additional term which the court determines in its discretion or as required by law shall run consecutive to the term imposed under Section 1170. In considering the imposition of such additional term, the court shall apply the sentencing rules of the Judicial Council.

(e) When two or more enhancements under Sections 12022, 12022.5, and 12022.7 may be imposed for any single offense, only the greatest enhancement shall apply; however, in cases of robbery, rape or burglary, or attempted robbery, rape or burglary the court may impose both (1) one enhancement for weapons as provided in either Section 12022 or 12022.5 and (2) an enhancement for great bodily

injury as provided in Section 12022.7.

(f) The enhancements provided in Sections 667.5, 667.6, 12022, 12022.3, 12022.5, 12022.6, 12022.7, and 12022.8 shall be pleaded and proven as provided by law.

(g) The term of imprisonment shall not exceed twice the number of years imposed by the trial court as the base term pursuant to subdivision (b) of Section 1170 unless the defendant stands convicted of a "violent felony" as defined in subdivision (c) of Section 667.5, or a consecutive sentence is being imposed pursuant to subdivision (c) of this section, or an enhancement is imposed pursuant to Section 12022, 12022.5, 12022.6 or 12022.7 or the defendant stands convicted of felony escape from an institution in which he is lawfully confined.

(h) Notwithstanding any other provision of law, the court may strike the additional punishment for the enhancements provided in Sections 667.5, 12022, 12022.5, 12022.6, and 12022.7 if it determines that there are circumstances in mitigation of the additional punishment and states on the record its reasons for striking the additional punishment.

(i) For any violation of subdivision (2) or (3) of Section 261, Section 264.1, subdivision (b) of Section 288, Section 289, or sodomy or oral copulation by force, violence, duress, menace or threat of great bodily harm as provided in Section 286 or 288a, the number of enhancements which may be imposed shall not be limited, regardless of whether such enhancements are pursuant to this or some other section of law. Each of such enhancements shall be a full and separately served enhancement and shall not be merged with any term or with any other enhancement.

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 insure the proper punishment of persons who kidnap victims on more than one occasion and to apply that punishment at the earliest possible time, it is necessary that this act take effect immediately.

CHAPTER 1516

An act to amend Sections 33753 and 33760 of the Health and Safety Code, relating to redevelopment, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 28, 1982. Filed with Secretary of State September 30, 1982.]

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

SECTION 1. Section 33753 of the Health and Safety Code is amended to read:

33753. The definitions set forth in Article 1 (commencing with Section 33000) of Chapter 1 of this part shall govern the construction of this chapter. Additionally, as used in this chapter:

(a) "Construction loan" means a loan to finance residential construction under this chapter, whether such loan is insured or uninsured.

(b) "Financing" means the lending of moneys or any other thing of value for the purpose of facilitating residential construction pursuant to this chapter, including the making of construction loans and mortgage loans to purchasers of newly constructed and newly rehabilitated residences, the making of loans to qualified mortgage lenders, and the making of mortgage loans to purchasers of newly constructed or existing residences located in targeted areas as provided in Section 33760.

(c) "Local codes" means applicable local, state and federal standards for residential construction or rehabilitation, including any higher standards adopted by the agency for a redevelopment project area or as part of its redevelopment program.

(d) "Mortgage loan" means a long-term loan which is secured by a mortgage and is made for permanent financing of residences, pursuant to this chapter.

(e) "Participating party" means any person, corporation, partnership, firm, or other entity or group of entities requiring financing for residential construction pursuant to the provisions of this chapter. No elective officer of the state other than officers provided for by Article VI of the California Constitution, and no employee or member of the redevelopment agency, shall be eligible to be a participating party under the provisions of this chapter. If any elected officer of any political subdivision of the state participates in deliberations or votes on a financing plan, redevelopment plan, or bond issue, that person shall not be eligible to be a participating party for bonds issued pursuant to those plans or issues.

(f) "Qualified mortgage lender" means a mortgage lender authorized by a redevelopment agency to do business with the agency and to aid in financing pursuant to this chapter on behalf of the agency, for which service the qualified mortgage lender will be reasonably compensated. Such a mortgage lender shall be a state or national bank, federal or state-chartered savings and loan association, or trust company or mortgage banker which is capable of providing service or otherwise aiding in the financing of mortgages on residential construction within the jurisdiction of the agency. Nothing in any other provision of state law shall prevent such a lender from serving as a qualified mortgage lender pursuant to this chapter.

(g) "Redevelopment project area" means a project area, as

defined in Section 33320.1, for which a final redevelopment plan has been adopted pursuant to Section 33365.

(h) "Rehabilitation" means repairs and improvements to a substandard residence necessary to make it meet local codes. As used in this section, "substandard residence" has the same meaning as the term "substandard building," as defined in Section 17920.3, except that "substandard residence" shall include all property improved with any structure defined in subdivision (j) of this section as a "residence," with respect to which any of the conditions listed in Section 17920.3 exist.

(i) "Residential construction" means the construction of new residences or the rehabilitation and improvement of substandard residences to meet requirements of local codes and the redevelopment plan.

(j) "Residence" means real property improved with a residential structure and within a redevelopment project area real property improved with a commercial structure (or structures) or a mixed residential and commercial structure, which the redevelopment agency determines to be an integral part of a residential neighborhood. For purposes of determining the integrality of new construction for such purpose, a proposed commercial or mixed residential and commercial structure shall be located within or immediately adjacent to a neighborhood primarily residential in character.

New construction of any commercial structure, or of the commercial portion of any mixed residential and commercial structure, financed under this chapter shall not exceed 80,000 square feet of gross building area per development. Any suit challenging such finding shall be filed within 60 days, or the findings of the agency shall be conclusive.

An agency may not provide long-term financing pursuant to this chapter for new construction of a commercial structure or the commercial portion of a mixed residential and commercial structure if conventional financing in an amount sufficient to complete the construction has been obtained for the construction of such structure or portion thereof.

Prior to the financing of any commercial structure within a redevelopment project area, the agency shall adopt a financing plan by resolution, which may include commercial and residential structures. The square footage of the commercial structures shall not exceed 30 percent of the aggregate square footage of all the commercial and residential structures within the project area and financed pursuant to the financing plan. The financing plan for the commercial and residential structures shall include structures that have been, or are being, financed pursuant to this chapter or under federal or state financial assistance programs or local assistance programs of any kind whatsoever. However, such a financing plan shall not be required for an agency that has financed residential structures with the proceeds of bonds issued prior to September 30,

1980, nor shall such amendments affect the validity of the tax-exempt status of bonds issued pursuant to this chapter prior to such date.

Additionally, any financing for a commercial structure or a mixed residential and commercial structure authorized or preliminarily approved by resolution adopted by a redevelopment agency or community development commission established pursuant to Section 33201 either (1) on or before June 3, 1980, in furtherance of which the agency or any person or entity has expended substantial funds or committed to reimburse another person or entity which has expended substantial funds, or (2) before October 31, 1980, in furtherance of which the agency has expended funds in connection with such financing or plans relating to such financing if the structure to be financed is located within a city designated pursuant to Section 119 of federal Public Law 95-128, as amended, or within a city designated as of September 30, 1980 under Title IX of federal Public Law 89-136, as amended, as a long-term economic deterioration area, or financing for a commercial structure or mixed residential and commercial structure as to which bonds have been delivered on or before July 31, 1980 (without regard to the date the bonds were authorized or received preliminary approval), shall not be subject to new requirements or conditions of this subdivision enacted by Chapter 1331 of the Statutes of 1980.

"Residence" includes condominium and cooperative dwelling units, and includes both real property improved with single-family residential structures and real property improved with multiple-family residential structures.

(k) "Revenue bonds" means any bonds, notes, interim certificates, debentures, or other obligations issued by an agency pursuant to this chapter and which are payable exclusively from revenues and from any other funds specified in this chapter upon which the revenue bonds may be made a charge and from which they are payable.

(*l*) "Revenues" means all amounts reeeived as repayment of principal, interest, and all other charges received for, and all other income and receipts derived by, the redevelopment agency from the financing of residential construction, including moneys deposited in a sinking, redemption, or reserve fund or other fund to secure the revenue bonds or to provide for the payment of the principal of, or interest on, the revenue bonds.

(m) "Target areas" has the same meaning as in Section 103A of the federal Internal Revenue Code of 1954, as amended.

SEC. 2. Section 33760 of the Health and Safety Code is amended to read:

33760. Within its territorial jurisdiction, an agency may determine the location and character of any residential construction to be financed under the provisions of this chapter and may make mortgage or construction loans to participating parties through qualified mortgage lenders, or purchase mortgage or construction loans without premium made by qualified mortgage lenders to

participating parties, or make loans to qualified mortgage lenders, for financing (1) residential construction within a redevelopment project area, (2) residential construction of residences in which the dwelling units are committed, for the period during which the loan is outstanding, for occupancy by persons or families who are eligible for financial assistance specifically provided by a governmental agency for the benefit of occupants of the residence, or (3) to the extent required by Section 103A of the federal Internal Revenue Code of 1954, as amended, to maintain the exemption from federal income taxes of interest on bonds or notes issued by the agency under the provisions of this chapter, of residences located within targeted areas. Any loans to qualified mortgage lenders shall be made under terms and conditions which, in addition to other provisions as determined by the agency, shall require the qualified mortgage lender to use all of the net proceeds thereof, directly or indirectly, for the making of mortgage loans or construction loans in an appropriate principal amount equal to the amount of such net proceeds; such mortgage loans may, but need not, be insured.

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:

The Mortgage Subsidy Bond Tax Act of 1980 made provision for the financing of residences located in target areas. In order to be in conformity with federal law and thereby maximize housing opportunities to the people of this state, it is necessary that this act go into effect immediately.

CHAPTER 1517

An act to amend Section 987 of, and to add Section 989 to, the Civil Code, relating to fine art.

[Approved by Governor September 28, 1982. Filed with Secretary of State September 30, 1982.]

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

SECTION 1. Section 987 of the Civil Code is amended to read:

987. (a) The Legislature hereby finds and declares that the physical alteration or destruction of fine art, which is an expression of the artist's personality, is detrimental to the artist's reputation, and artists therefore have an interest in protecting their works of fine art against such alteration or destruction; and that there is also a public interest in preserving the integrity of cultural and artistic creations.

(b) As used in this section:

(1) "Artist" means the individual or individuals who create a work of fine art.

(2) "Fine art" means an original painting, sculpture, or drawing of recognized quality, but shall not include work prepared under contract for commercial use by its purchaser.

(3) "Person" means an individual, partnership, corporation, association or other group, however organized.

(4) "Frame" means to prepare, or cause to be prepared, a work of fine art for display in a manner customarily considered to be appropriate for a work of fine art in the particular medium.

(5) "Restore" means to return, or cause to be returned, a deteriorated or damaged work of fine art as nearly as is feasible to its original state or condition, in accordance with prevailing standards.

(6) "Conserve" means to preserve, or cause to be preserved, a work of fine art by retarding or preventing deterioration or damage through appropriate treatment in accordance with prevailing standards in order to maintain the structural integrity to the fullest extent possible in an unchanging state.

(7) "Commercial use" means fine art created under a work-for-hire arrangement for use in advertising, magazines, newspapers, or other print and electronic media.

(c) (1) No person, except an artist who owns and possesses a work of fine art which the artist has created, shall intentionally commit, or authorize the intentional commission of, any physical defacement, mutilation, alteration, or destruction of a work of fine art.

(2) In addition to the prohibitions contained in paragraph (1), no person who frames, conserves, or restores a work of fine art shall commit, or authorize the commission of, any physical defacement, mutilation, alteration, or destruction of a work of fine art by any act constituting gross negligence. For purposes of this section, the term "gross negligence" shall mean the exercise of so slight a degree of care as to justify the belief that there was an indifference to the particular work of fine art.

(d) The artist shall retain at all times the right to claim authorship, or, for just and valid reason, to disclaim authorship of his or her work of fine art.

(e) To effectuate the rights created by this section, the artist may commence an action to recover or obtain any of the following:

(1) Injunctive relief.

(2) Actual damages.

(3) Punitive damages. In the event that punitive damages are awarded, the court shall, in its discretion, select an organization or organizations engaged in charitable or educational activities involving the fine arts in California to receive such damages.

(4) Reasonable attorneys' and expert witness fees.

(5) Any other relief which the court deems proper.

(f) In determining whether a work of fine art is of recognized quality, the trier of fact shall rely on the opinions of artists, art dealers, collectors of fine art, curators of art museums, and other persons involved with the creation or marketing of fine art.

(g) The rights and duties created under this section:

(1) Shall, with respect to the artist, or if any artist is deceased, his heir, legatee, or personal representative, exist until the 50th anniversary of the death of such artist.

(2) Shall exist in addition to any other rights and duties which may now or in the future be applicable.

(3) Except as provided in paragraph (1) of subdivision (h), may not be waived except by an instrument in writing expressly so providing which is signed by the artist.

(h) (1) If a work of fine art cannot be removed from a building without substantial physical defacement, mutilation, alteration, or destruction of such work, the rights and duties created under this section, unless expressly reserved by an instrument in writing signed by the owner of such building and properly recorded, shall be deemed waived. Such instrument, if properly recorded, shall be binding on subsequent owners of such building.

(2) If the owner of a building wishes to remove a work of fine art which is a part of such building but which can be removed from the building without substantial harm to such fine art, and in the course of or after removal, the owner intends to cause or allow the fine art to suffer physical defacement, mutilation, alteration, or destruction, the rights and duties created under this section shall apply unless the owner has diligently attempted without success to notify the artist, or, if the artist is deceased, his heir, legatee, or personal representative, in writing of his intended action affecting the work of fine art, or unless he did provide notice and that person failed within 90 days either to remove the work or to pay for its removal. If such work is removed at the expense of the artist, his heir, legatee, or personal representative, title to such fine art shall pass to that person.

(3) Nothing in this subdivision shall affect the rights of authorship created in subdivision (d) of this section.

(i) No action may be maintained to enforce any liability under this section unless brought within three years of the act complained of or one year after discovery of such act, whichever is longer.

(j) This section shall become operative on January 1, 1980, and shall apply to claims based on proscribed acts occurring on or after that date to works of fine art whenever created.

(k) If any provision of this section or the application thereof to any person or circumstance is held invalid for any reason, such invalidity shall not affect any other provisions or applications of this section which can be effected without the invalid provision or application, and to this end the provisions of this section are severable.

SEC. 2. Section 987 of the Civil Code is amended to read:

987. (a) The Legislature hereby finds and declares that the physical alteration or destruction of fine art, which is an expression of the artist's personality, is detrimental to the artist's reputation, and artists therefore have an interest in protecting their works of fine art against such alteration or destruction; and that there is also a public

interest in preserving the integrity of cultural and artistic creations.

(b) As used in this section:

(1) "Artist" means the individual or individuals who create a work of fine art.

(2) "Fine art" means an original painting, sculpture, or drawing, or an original work of art in glass, of recognized quality, but shall not include work prepared under contract for commercial use by its purchaser.

(3) "Person" means an individual, partnership, corporation, association or other group, however organized.

(4) "Frame" means to prepare, or cause to be prepared, a work of fine art for display in a manner customarily considered to be appropriate for a work of fine art in the particular medium.

(5) "Restore" means to return, or cause to be returned, a deteriorated or damaged work of fine art as nearly as is feasible to its original state or condition, in accordance with prevailing standards.

(6) "Conserve" means to preserve, or cause to be preserved, a work of fine art by retarding or preventing deterioration or damage through appropriate treatment in accordance with prevailing standards in order to maintain the structural integrity to the fullest extent possible in an unchanging state.

(7) "Commercial use" means fine art created under a work-for-hire arrangement for use in advertising, magazines, newspapers, or other print and electronic media.

(c) (1) No person, except an artist who owns and possesses a work of fine art which the artist has created, shall intentionally commit, or authorize the intentional commission of, any physical defacement, mutilation, alteration, or destruction of a work of fine art.

(2) In addition to the prohibitions contained in paragraph (1), no person who frames, conserves, or restores a work of fine art shall commit, or authorize the commission of, any physical defacement, mutilation, alteration, or destruction of a work of fine art by any act constituting gross negligence. For purposes of this section, the term "gross negligence" shall mean the exercise of so slight a degree of care as to justify the belief that there was an indifference to the particular work of fine art.

(d) The artist shall retain at all times the right to claim authorship, or, for just and valid reason, to disclaim authorship of his or her work of fine art.

(e) To effectuate the rights created by this section, the artist may commence an action to recover or obtain any of the following:

(1) Injunctive relief.

(2) Actual damages.

(3) Punitive damages. In the event that punitive damages are awarded, the court shall, in its discretion, select an organization or organizations engaged in charitable or educational activities involving the fine arts in California to receive such damages.

(4) Reasonable attorneys' and expert witness fees.

(5) Any other relief which the court deems proper.

(f) In determining whether a work of fine art is of recognized quality, the trier of fact shall rely on the opinions of artists, art dealers, collectors of fine art, curators of art museums, and other persons involved with the creation or marketing of fine art.

(g) The rights and duties created under this section:

(1) Shall, with respect to the artist, or if any artist is deceased, his heir, legatee, or personal representative, exist until the 50th anniversary of the death of such artist.

(2) Shall exist in addition to any other rights and duties which may now or in the future be applicable.

(3) Except as provided in paragraph (1) of subdivision (h), may not be waived except by an instrument in writing expressly so providing which is signed by the artist.

(h) (1) If a work of fine art cannot be removed from a building without substantial physical defacement, mutilation, alteration, or destruction of such work, the rights and duties created under this section, unless expressly reserved by an instrument in writing signed by the owner of such building and properly recorded, shall be deemed waived. Such instrument, if properly recorded, shall be binding on subsequent owners of such building.

(2) If the owner of a building wishes to remove a work of fine art which is a part of such building but which can be removed from the building without substantial harm to such fine art, and in the course of or after removal, the owner intends to cause or allow the fine art to suffer physical defacement, mutilation, alteration, or destruction, the rights and duties created under this section shall apply unless the owner has diligently attempted without success to notify the artist, or, if the artist is deceased, his heir, legatee, or personal representative, in writing of his intended action affecting the work of fine art, or unless he did provide notice and that person failed within 90 days either to remove the work or to pay for its removal. If such work is removed at the expense of the artist, his heir, legatee, or personal representative, title to such fine art shall pass to that person.

(3) Nothing in this subdivision shall affect the rights of authorship created in subdivision (d) of this section.

(i) No action may be maintained to enforce any liability under this section unless brought within three years of the act complained of or one year after discovery of such act, whichever is longer.

(j) This section shall become operative on January 1, 1980, and shall apply to claims based on proscribed acts occurring on or after that date to works of fine art whenever created.

(k) If any provision of this section or the application thereof to any person or circumstance is held invalid for any reason, such invalidity shall not affect any other provisions or applications of this section which can be effected without the invalid provision or application, and to this end the provisions of this section are severable.

SEC. 3. Section 989 is added to the Civil Code, to read:

989. (a) The Legislature hereby finds and declares that there is a public interest in preserving the integrity of cultural and artistic creations.

(b) As used in this section:

(1) "Fine art" means an original painting, sculpture, or drawing of recognized quality, and of substantial public interest.

(2) "Organization" means a public or private not-for-profit entity or association, in existence at least three years at the time an action is filed pursuant to this section, a major purpose of which is to stage, display, or otherwise present works of art to the public or to promote the interests of the arts or artists.

(3) "Cost of removal" includes reasonable costs, if any, for the repair of damage to the real property caused by the removal of the work of fine art.

(c) An organization acting in the public interest may commence an action for injunctive relief to preserve or restore the integrity of a work of fine art from acts prohibited by subdivision (c) of Section 987.

(d) In determining whether a work of fine art is of recognized quality and of substantial public interest the trier of fact shall rely on the opinions of those described in subdivision (f) of Section 987.

(e) (1) If a work of fine art cannot be removed from real property without substantial physical defacement, mutilation, alteration, or destruction of such work, no action to preserve the integrity of the work of fine art may be brought under this section. However, if an organization offers some evidence giving rise to a reasonable likelihood that a work of art can be removed from the real property without substantial physical defacement, mutilation, alteration, or destruction of the work, and is prepared to pay the cost of removal of the work, it may bring a legal action for a determination of this issue. In that action the organization shall be entitled to injunctive relief to preserve the integrity of the work of fine art, but shall also have the burden of proof. The action shall commence within 30 days after filing. No action may be brought under this paragraph if the organization's interest in preserving the work of art is in conflict with an instrument described in paragraph (1) of subdivision (h) of Section 987.

(2) If the owner of the real property wishes to remove a work of fine art which is part of the real property, but which can be removed from the real property without substantial harm to such fine art, and in the course of or after removal, the owner intends to cause or allow the fine art to suffer physical defacement, mutilation, alteration, or destruction, the owner shall do the following:

(A) If the artist or artist's heir, legatee, or personal representative fails to take action to remove the work of fine art after the notice provided by paragraph (2) of subdivision (h) of Section 987, the owner shall provide 30 days' notice of his or her intended action affecting the work of art. The written notice shall be a display advertisement in a newspaper of general circulation in the area

where the fine art is located. The notice required by this paragraph may run concurrently with the notice required by subdivision (h) of Section 987.

(i) If within the 30-day period an organization agrees to remove the work of fine art and pay the cost of removal of the work, the payment and removal shall occur within 90 days of the first day of the 30-day notice.

(ii) If the work is removed at the expense of an organization, title to the fine art shall pass to that organization.

(B) If an organization does not agree to remove the work of fine art within the 30-day period or fails to remove and pay the cost of removal of the work of fine art within the 90-day period the owner may take the intended action affecting the work of fine art.

(f) To effectuate the rights created by this section, the court may do the following:

(1) Award reasonable attorney's and expert witness fees to the prevailing party, in an amount as determined by the court.

(2) Require the organization to post a bond in a reasonable amount as determined by the court.

(g) No action may be maintained under this section unless brought within three years of the act complained of or one year after discovery of such act, whichever is longer.

(h) This section shall become operative on January 1, 1983, and shall apply to claims based on acts occurring on or after that date to works of fine art, whenever created.

(i) If any provision of this section or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of this section which can be given effect without the invalid provision or application, and to this end the provisions of this section are severable.

SEC. 4. Section 989 is added to the Civil Code, to read:

989. (a) The Legislature hereby finds and declares that there is a public interest in preserving the integrity of cultural and artistic creations.

(b) As used in this section:

(1) "Fine art" means an original painting, sculpture, or drawing, or an original work of art in glass, of recognized quality, and of substantial public interest.

(2) "Organization" means a public or private not-for-profit entity or association, in existence at least three years at the time an action is filed pursuant to this section, a major purpose of which is to stage, display, or otherwise present works of art to the public or to promote the interests of the arts or artists.

(3) "Cost of removal" includes reasonable costs, if any, for the repair of damage to the real property caused by the removal of the work of fine art.

(c) An organization acting in the public interest may commence an action for injunctive relief to preserve or restore the integrity of a work of fine art from acts prohibited by subdivision (c) of Section

987.

(d) In determining whether a work of fine art is of recognized quality and of substantial public interest the trier of fact shall rely on the opinions of those described in subdivision (f) of Section 987.

(e) (1) If a work of fine art cannot be removed from real property without substantial physical defacement, mutilation, alteration, or destruction of such work, no action to preserve the integrity of the work of fine art may be brought under this section. However, if an organization offers some evidence giving rise to a reasonable likelihood that a work of art can be removed from the real property without substantial physical defacement, mutilation, alteration, or destruction of the work, and is prepared to pay the cost of removal of the work, it may bring a legal action for a determination of this issue. In that action the organization shall be entitled to injunctive relief to preserve the integrity of the work of fine art, but shall also have the burden of proof. The action shall commence within 30 days after filing. No action may be brought under this paragraph if the organization's interest in preserving the work of art is in conflict with an instrument described in paragraph (1) of subdivision (h) of Section 987.

(2) If the owner of the real property wishes to remove a work of fine art which is part of the real property, but which can be removed from the real property without substantial harm to such fine art, and in the course of or after removal, the owner intends to cause or allow the fine art to suffer physical defacement, mutilation, alteration, or destruction the owner shall do the following:

(A) If the artist or artist's heir, legatee, or personal representative fails to take action to remove the work of fine art after the notice provided by paragraph (2) of subdivision (h) of Section 987, the owner shall provide 30 days' notice of his or her intended action affecting the work of art. The written notice shall be a display advertisement in a newspaper of general circulation in the area where the fine art is located. The notice required by this paragraph may run concurrently with the notice required by subdivision (h) of Section 987.

(i) If within the 30-day period an organization agrees to remove the work of fine art and pay the cost of removal of the work, the payment and removal shall occur within 90 days of the first day of the 30-day notice.

(ii) If the work is removed at the expense of an organization, title to the fine art shall pass to that organization.

(B) If an organization does not agree to remove the work of fine art within the 30-day period or fails to remove and pay the cost of removal of the work of fine art within the 90-day period the owner may take the intended action affecting the work of fine art.

(f) To effectuate the rights created by this section, the court may do the following:

(1) Award reasonable attorney's and expert witness fees to the prevailing party, in an amount as determined by the court.

(2) Require the organization to post a bond in a reasonable amount as determined by the court.

(g) No action may be maintained under this section unless brought within three years of the act complained of or one year after discovery of such act, whichever is longer.

(h) This section shall become operative on January 1, 1983, and shall apply to claims based on acts occurring on or after that date to works of fine art, whenever created.

(i) If any provision of this section or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of this section which can be given effect without the invalid provision or application, and to this end the provisions of this section are severable.

SEC. 5. Section 4 of this act shall become operative only if this bill and Assembly Bill 3299 are both chaptered and become effective January 1, 1983, in which case Section 3 of this act shall not become operative.

SEC. 6. It is the intent of the Legislature, if this bill and Assembly Bill 3299 are both chaptered and become effective January 1, 1983, both bills amend Section 987 of the Civil Code, and this bill is chaptered after Assembly Bill 3299, that the amendments to Section 987 proposed by both bills be given effect and incorporated in Section 987 in the form set forth in Section 2 of this act. Therefore, Section 2 of this act shall become operative only if this bill and Assembly Bill 3299 are both chaptered and become effective January 1, 1983, both amend Section 987, and this bill is chaptered after Assembly Bill 3299, in which case Section 1 of this act shall not become operative.

CHAPTER 1518

An act to add Section 33 to the Code of Civil Procedure, to add Section 1153.5 to the Evidence Code, and to amend Section 476a of the Penal Code, relating to crimes.

[Approved by Governor September 28, 1982. Filed with Secretary of State September 30, 1982.]

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

SECTION 1. Section 33 is added to the Code of Civil Procedure, to read:

33. A prosecuting attorney, in his or her discretion, may assist in the civil resolution of a violation of an offense described in Title 13 (commencing with Section 450) of Part 1 of the Penal Code in lieu of filing a criminal complaint.

SEC. 2. Section 1153.5 is added to the Evidence Code, to read:

1153.5. Evidence of an offer for civil resolution of a criminal

matter pursuant to the provisions of Section 33 of the Code of Civil Procedure, or admissions made in the course of or negotiations for the offer shall not be admissible in any action.

SEC. 3. Section 476a of the Penal Code is amended to read:

476a. (a) Any person who for himself or as the agent or representative of another or as an officer of a corporation, willfully, with intent to defraud, makes or draws or utters or delivers any check, or draft or order upon any bank or depositary, or person, or firm, or corporation, for the payment of money, knowing at the time of such making, drawing, uttering or delivering that the maker or drawer or the corporation has not sufficient funds in, or credit with said bank or depositary, or person, or firm, or corporation, for the payment of such check, draft, or order and all other checks, drafts, or orders upon such funds then outstanding, in full upon its presentation, although no express representation is made with reference thereto, is punishable by imprisonment in the county jail for not more than one year, or in the state prison.

(b) However, if the total amount of all such checks, drafts, or orders that the defendant is charged with and convicted of making, drawing, or uttering does not exceed two hundred dollars ($200), the offense is punishable only by imprisonment in the county jail for not more than one year, except that this subdivision shall not be applicable if the defendant has previously been convicted of a violation of Section 470, 475, or 476, or of this section, or of the crime of petty theft in a case in which defendant's offense was a violation also of Section 470, 475, or 476 or of this section or if the defendant has previously been convicted of any offense under the laws of any other state or of the United States which, if committed in this state, would have been punishable as a violation of Section 470, 475 or 476 or of this section or if he has been so convicted of the crime of petty theft in a case in which, if defendant's offense had been committed in this state, it would have been a violation also of Section 470, 475, or 476, or of this section.

(c) Where such check, draft, or order is protested, on the ground of insufficiency of funds or credit, the notice of protest thereof shall be admissible as proof of presentation, nonpayment and protest and shall be presumptive evidence of knowledge of insufficiency of funds or credit with such bank or depositary, or person, or firm, or corporation.

(d) In any prosecution under this section involving two or more checks, drafts, or orders, it shall constitute prima facie evidence of the identity of the drawer of a check, draft, or order if:

(1) At the time of the acceptance of such check, draft or order from the drawer by the payee there is obtained from the drawer the following information: name and residence of the drawer, business or mailing address, either a valid driver's license number or Department of Motor Vehicles identification card number, and the drawer's home or work phone number or place of employment. Such information may be recorded on the check, draft, or order itself or

may be retained on file by the payee and referred to on the check, draft, or order by identifying number or other similar means; and

(2) The person receiving the check, draft, or order witnesses the drawer's signature or endorsement, and, as evidence of that, initials the check, draft, or order at the time of receipt.

(e) The word "credit" as used herein shall be construed to mean an arrangement or understanding with the bank or depositary or person or firm or corporation for the payment of such check, draft or order.

(f) If any of the preceding paragraphs, or parts thereof, shall be found unconstitutional or invalid, the remainder of this section shall not thereby be invalidated, but shall remain in full force and effect.

SEC. 4. No appropriation is made and no reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution or Section 2231 or 2234 of the Revenue and Taxation Code because the only costs which may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, changes the definition of a crime or infraction, changes the penalty for a crime or infraction, or eliminates a crime or infraction.

CHAPTER 1519

An act to add Section 637.5 to the Penal Code, relating to privacy.

[Approved by Governor September 28, 1982. Filed with Secretary of State September 30, 1982.]

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

SECTION 1. Section 637.5 is added to the Penal Code, to read:

637.5. (a) No person who owns, controls, operates, or manages a cable television corporation, or who leases channels on a cable system shall:

(1) Use any electronic device to record, transmit, or observe any events or listen to, record, or monitor any conversations which take place inside a subscriber's residence, workplace, or place of business, without obtaining the express written consent of the subscriber. A 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 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 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 such lists. However, a cable television corporation shall maintain adequate safeguards to ensure the physical security and confidentiality of any such subscriber information.

(c) A 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 such information are made, a 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), Division 7, Title 1, Government Code).

(d) Any individually identifiable subscriber information gathered by a cable television corporation shall be made available for subscriber examination within 30 days of receiving a request by a subscriber to examine such information on the premises of the corporation. Upon a reasonable showing by the subscriber that the information is inaccurate, a cable television corporation shall correct such information. Subscribers shall bear all costs of copying any records or information gathered by the cable television corporation and supplied to the subscriber.

(e) Upon a subscriber's application for cable television service, including, but not limited to, interactive service, a 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 cable system other than the mere fact that such individual is a cable television subscriber.

(3) "Person" includes an individual, business association,

partnership, corporation, 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 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 cable television corporation, or vice versa.

(g) Nothing in this section shall be construed to limit the ability of a cable television corporation to market cable television or ancillary services to its subscribers.

(h) Any person receiving subscriber information from a 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 cable television corporation, service provider, or person that leases a channel or channels on a 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 such 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. 2. No appropriation is made and no reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution or Section 2231 or 2234 of the Revenue and Taxation Code because the only costs which may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, changes the definition of a crime or infraction, changes the penalty for a crime or infraction, or eliminates a crime or infraction.